

Scottish Affairs Committee

Oral evidence: [Sustainable employment in Scotland](#),
HC 449

Monday 6 November 2017, Stirling

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Members present: Pete Wishart (Chair); Deidre Brock; David Duguid; Christine Jardine; John Lamont; Paul Masterton; Danielle Rowley; Tommy Sheppard.

Questions 819 - 931

Witnesses

I: Rob Gowans, Policy Officer, Citizens Advice Scotland, and Layla Theiner, Director, Disability Agenda Scotland.

II: Professor Patricia Findlay, Fair Work Convention, Gordon McGuinness, Director, Industry and Enterprise Networks, Skills Development Scotland, and Kenny Richmond, Head of Economics, Scottish Enterprise.

III: Keith Brown MSP, Cabinet Secretary for Economy, Jobs and Fair Work, and Hugh McAloon, Deputy Director, Fair Work, Employability and Skills Directorate, Scottish Government.



Examination of witnesses

Rob Gowans and Layla Theiner.

Q819 Chair: Good morning and thank you very much for coming along to the lovely environs of Stirling University. This is part of a sustainable employment inquiry and you were both very helpful when we were looking into this in the last session of Parliament. For the record, please state who you are, who you represent and anything in the way of a short introductory statement. We will start with you, Ms Theiner.

Layla Theiner: Thanks a lot for inviting me back. It is really helpful to be able to talk to you about sustainable employment. I am Layla Theiner. I work for Disability Agenda Scotland; we are a coalition of disability charities.

The main thing we briefly wanted to flag with you is that there are, as you are probably aware, quite a lot of people who, despite relatively low unemployment, are still keen to be in work even if they are not. That might be full-time, part-time work or voluntary. We believe strongly that more could be done to support people into employment and appropriate employment.

There is anecdotal evidence of discrimination against disabled people. We believe it could be looked into more and more could be done to support employers to employ disabled people and other hard-to-reach groups by making it easier to access tools and also making them aware of the tools that are available. Some of that would require additional funding, but the investment would be worthwhile. Flagging up preparatory work in education and skills is something that comes up a lot for people who are quite far away from the jobs market.

Rob Gowans: My name is Rob Gowans. I am a policy officer at Citizens Advice Scotland. Our main interest in this area is that we are one of the largest providers of independent advice on problems at work. Last year the CAB service in Scotland advised people on about 45,000 issues related to employment and employment problems. We have done an amount of policy work over the last two or three years on some of the problems that people see, issues with misuse of zero-hours contracts and other areas, and some suggestions for how policy can be improved in those areas.

Q820 Chair: We are very grateful to you, Mr Gowans, for the many significant reports you have done on this issue over the past years. In light of the work that you have done, you have stated that new forms of employment have put a strain on existing employment protections. How has that been the case?

Rob Gowans: Over the years we have seen new forms of employment that are quite precarious, zero-hours contracts being an example. We do not necessarily have an objection to zero-hours contracts in and of



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themselves. What we are concerned about is how they can be used as a discipline tool, for instance. If someone is not guaranteed hours, employers can stop giving them shifts and they are not having to go through any sort of redundancy or disciplinary process. It can also cause deprivation and hardship due to the unpredictable nature of the work.

There are other areas such as the rise in self-employment. We are concerned about some of the areas where people would prefer a more stable or traditional form of employment but are listed as independent contractors. In the past we have seen issues where it has affected people's tax status and also if people are coming for advice on what their rights at work are, their status in law is quite unclear.

There is a distinction at the moment between employees and workers and self-employed people, all of whom have slightly different basic rights guaranteed in law. You can sometimes find what the arrangement in practice is, what we would consider an employee/employer relationship; because of the contractual status that somebody has, they might not be entitled to some basic rights—to holiday—and that can take quite a while to unpick. There are some areas where the law may need to be reviewed to take account of the changing nature of these relationships.

Q821 Chair: We are looking at the employment environment in Scotland. In your view, do you think there are any particular issues that we have to be aware of in Scotland, which is perhaps different to the rest of the United Kingdom?

Rob Gowans: It is somewhat difficult to tell exactly the extent of the difficulties. Zero-hours contracts have been a prevalent issue over the last few years for us. We are still trying to figure out the impact of the so-called gig economy for the self-employed. That is not something that has come up at CAB in as large numbers as problems with zero-hours contracts and other problems with work.

What we have seen in the last few years is that there has been a rise in issues related to pay and entitlements at work. This can be things like people not receiving their final pay packet after leaving employment or where there is a dispute over unpaid wages, which was particularly difficult when employment tribunal fees were enforced. In many cases it was not worth people's while taking a case to tribunal, because the amount that they were owed in unpaid wages was less than the employment tribunal fees. This seems to be for holiday pay and sick pay and people not being aware of what their rights are to paid holiday, particularly if they are on short hours or a zero-hours arrangement. A couple of years ago we did a short campaign to promote people's awareness of their rights at work and particularly that—

Q822 Chair: Just on that, I know you have done a lot of work on the zero-hours contracts and the Committee has had an opportunity to have a look at all this. Is there any way that you suggest people who are on zero-hours contracts have an opportunity to assert their rights? Is there any



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way that they could take this forward? What can people who are on zero-hours contracts do in order to try to ensure that they will be able to look after their interests?

Rob Gowans: There are a few things that people can do. First, despite their contractual arrangement, it might be that at the very least people are entitled to basic rights at work. Depending on the nature of the employment relationship, if somebody is in practice working regular hours, that might change their status. As I say, it is quite a complicated system. One of the things that we would recommend is that Government have a look at the balance of rights between workers and employees, and whether that distinction needs to be the case.

On zero-hours contracts, we would like to see a right to request a permanent contract if the zero-hours relationship is not what the employee wants. I think the flexibility in the employment relationship needs to be on both sides if it is a flexible arrangement.

Q823 **Chair:** We have heard from a number of organisations and there has been the view that there are people who think that zero-hours contracts are useful for their own lifestyle or are just the means to enter into the workplace. Have you found any examples of that? What is your view on that?

Rob Gowans: There is no doubt that there are situations where that sort of thing will suit people. The example that springs to mind is someone who has retired but would like to pick up some work every now and again. I am thinking of people who work driving tour buses in the Highlands and there is occasional seasonal work. If there is work, the employer will contact them to see if they were available. Where the problematic situation arises is if zero-hours contracts are used in lieu of what we would normally consider as either fixed part-time or full-time employment. The fluctuations in people's work patterns can cause difficulties in the form of hardship and getting into debt or in some cases having to be referred for food parcels because they have not had any work during the last few weeks.

There are definitely situations where it would suit people, but in situations where it does not suit the person, we would like to see them have a statutory right to request a more permanent arrangement.

Q824 **Danielle Rowley:** Layla, you mentioned anecdotal discrimination. Disability Agenda Scotland has stated that there are cases of discrimination in employment that are not taken forward but that does not mean they do not exist. If workers are being discriminated against, why do you think they are not taking any action?

Layla Theiner: It is a combination of things, as ever. The only reason I say anecdotal is because people are not taking it forward, it is difficult to measure. If people are not progressing with it, it is not necessarily showing in the figures; it just comes through that people are experiencing that. Some of it can be if they are in a rural environment, it



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is someone on their street or someone they know and they feel they did not get offered a job by them because of a disability.

Sometimes it is difficult, even if it is not in that environment, because it is perception and they believe that they should have been offered a job and they have explored it further. Some of it is perception. It is shades of grey. It is difficulty in applying for certain roles, but people find it challenging to get the feedback and properly understand why they might not have been given a particular role or even an interview. Does that answer your question?

Q825 Danielle Rowley: Yes, it does. How may we then use anecdotal evidence to try to get a grasp of the figures on discrimination?

Layla Theiner: We are putting out some research in a couple of weeks' time, which we will share with the Committee. It is looking at the barriers to employment for disabled people and specifically the disability employment gap, which is something the UK Government and the Scottish Government have talked about halving or at least reducing. There is potentially room for more research on discrimination. I know the Scottish Government were looking at setting up a disability legal hub to enable people who thought they had been discriminated against to look at legal action, or if it was not necessarily legal action, it could be mediation or exploring it further.

Beyond discrimination, there are clearer barriers around, is it fear on the part of employers, say? The Scottish Chamber of Commerce did a report a few years ago that is interesting. They surveyed their members to ask whether they employed a disabled person and, if not, why not; what were their concerns or had they thought about it? It highlighted caution, or fear almost. Where we are coming from is not to demonise employers but to look at why that is. Is it because they are not aware of things like Access to Work and funding for reasonable adjustments? Is it because they do not believe somebody could do the job? In some cases, that might well be so.

Beyond looking at the figures for discrimination, there are things that we know would help, such as working with employers, supporting them, making them aware of what is available and working with disabled people to get into employment.

Q826 Tommy Sheppard: Layla, in a similar vein, I think most people recognise that the legislation as written provides the intention of outlawing discrimination on the grounds of disability, but you have said more needs to be done to make that work in practice. Maybe I am asking for a sneak preview of future reports, but in terms of Government action, can you indicate some specific things that would constitute what that more is that needs to be done?

Layla Theiner: From our perspective, the more that needs to be done is not necessarily around legal discrimination cases at the moment. More



could be done to help people into work more positively by letting them know what jobs are available, providing the tools, because some people are just far away from the jobs market, and helping employers, so almost more of a carrot approach. In terms of discrimination—

Q827 Tommy Sheppard: How could that be done?

Layla Theiner: How could that be done? I think it is greater investment in employment programmes. Some employment programmes have been devolved. There is an extra £10 million for disabled people, but to really change the number of people in employment—and reduce the benefits bill, arguably—it is putting some money behind it. In terms of measuring outcomes, it is not just somebody getting a job. It is are they nearer to getting a job, whether that is education or training. Other ways would be to promote Access to Work more from the UK level and at a Scottish level.

Access to Work is the way that the UK Government fund tools that people might need to do their job, whether it is an extra screen, a Braille reader, a ramp because they have a wheelchair. It has been described by the Work and Pensions Select Committee as the UK Government's best-kept secret. It has time and again been called to be better promoted because businesses and disabled people are not aware it is there. Even when they are aware it is there, it is quite bureaucratic. Making it a little bit easier for people to access that in a timely way so that it does not put employers off employing them would be a massive help. Those are a couple of things.

The other ones that we have are about targets being set. There have been some nice words about reducing the disability employment gap but very little progress has been made. For some groups like people with visual impairment, fewer people are employed than they were a few years ago, so it is being more proactive about setting targets. It was a 2015 Conservative manifesto commitment to halve the disability employment gap and last year the Scottish Government also said that they would at least halve the disability employment gap, but without really being clear about how and when that is going to be achieved, we do not think progress would be made.

There is also a role for the public sector. The public sector could set targets on how many disabled people, for instance, they were going to employ, because they employ fewer as a percentage of their workforce than the private sector does. In taking leadership, they could set targets and also look at their ways of contracting, in a similar way to the living wage in Scotland. The public sector has been encouraged to use that in contracting in order to encourage take-up of the living wage and in contracting there could be ways to encourage employment of disabled people. It is not just because it is a nice thing. There is a genuine business case that could be made for that around more people being in work, diversity, what those people would bring, as well as potentially the



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health and economic benefits to the individuals and the people around them.

Q828 Deidre Brock: I spoke at a Barriers to Work event recently and there was some disquiet at changes that had been made to the Access to Work programme. There is a call from Inclusion Scotland for the whole programme to be devolved to Scotland. Do you think the sort of change that you are talking about, in terms of embedding it in procurement contracts and so on, would make that easier?

Layla Theiner: I think there is a general perception that it was a bit surprising that in the Scotland Act, when employment programmes and various aspects of employability were being devolved, Access to Work was not, because it is a big piece of the jigsaw. Various other things have been devolved but that big piece of the jigsaw remains reserved. Almost just from a practical perspective, making it—

Deidre Brock: With sufficient funding.

Layla Theiner: With some of those changes, it might be potentially easier to undertake and make it more tailored to Scotland and the needs.

Going back to the point on the differences between Scotland and England, there are lots of similarities in the jobs market and economy, but if you look at the Highlands and Islands, the jobs market there is very different. Some of the most innovative things that happen there are around social enterprises, people being able to be a bit flexible because they know someone so they will give them a job. It is a bit about the gig economy, because various people have three or four jobs anyway so there is some flexibility. Potentially devolving Access to Work might make it easier to address some of those things, but that is not to say while it remains reserved we cannot look at improving it.

Q829 Chair: You mentioned on a couple of occasions the disability employment gap. Could you talk a little bit about what you mean by that? Is there any sense that this is improving, in your view, with some of the new initiatives that have been brought forward?

Layla Theiner: The disability employment gap is the level of disabled people compared to the wider population in employment. As it stands, the general population is about 78% in employment, whereas for disabled people it is 42%.

Q830 Chair: That is a big gap, isn't it?

Layla Theiner: It is a massive gap. Some of those people probably cannot work, but within that 36% there is a lot of people who do want to work and five of our six members provide services to people who want to get into work. There is a diversity there in the type of employment, whether it is quite senior or relatively junior, low-skilled, part-time or full-time. But there are thousands and thousands of people who would like to work and contribute and currently do not feel they are able to. It is about



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how we get those people into work. I am sure you are going to go on to the Taylor review.

Chair: Indeed, yes.

Layla Theiner: There was a really nice quote from Adecco in there about there being a business case for trying to get those people into employment. It is that massive gap between the number of disabled people in employment versus the wider population.

Q831 **Chair:** Is that improving over the years? It is not?

Layla Theiner: No. The figures have not changed at all really in the last few years. There has been talk about it and I think there is political will—cross-party political, in some ways—but not a lot of proper action towards it. That is why we have been calling for targets, because we need to be transparent about how we are measuring this. It could be looking at the labour survey figures and Office for National Statistics figures for tracking that more publicly. There has been very little movement within some groups—like I say, visual impairment—where traditionally more people might have been working. Particularly post-war, people accepted that disabled people would work, maybe because they had come out of the war. That has gone backwards.

Q832 **Christine Jardine:** To go back slightly to the question about why it was not devolved in the Scotland Bill, was that considered in the discussion with the Smith commission? How would that relate to the UK Government's overall responsibility for disability legislation? Do you think there is a balance to be drawn there?

Layla Theiner: Possibly. I am not sure why it was not devolved. I believe it was considered. Yes, there is a balance to be drawn there. It was just the outcome of those discussions. It did seem surprising to people within the sector. If you are going to devolve employability and employment programmes, which have been or are in the process of being devolved, Access to Work being reserved does complicate matters a little bit.

Q833 **Christine Jardine:** That was not what I was asking. I was asking: is it because of the employment legislation being UK-wide and that it falls under the UK legislation? Would there be any danger of conflict with UK legislation if it was devolved?

Layla Theiner: I am not sure, to be honest. I can come back to the Committee on that. Off the top of my head, I am not sure. There is obviously UK-wide employment legislation and it also ties to European legislation, but I am not sure that that would necessarily negate Access to Work being devolved. I would need to have more of a think about that, to be honest.

Q834 **David Duguid:** Going back to Citizens Advice Scotland for a second, Citizens Advice Scotland has recommended the creation of an



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employment commission. This is to oversee the enforcement of employment law, as I understand it. Why do you think this is necessary?

Rob Gowans: One of the conclusions we came to from all the various issues that people face is that there is not a collective body that has the responsibility for ensuring that repeat offenders or rogue employers are targeted. For instance, someone who has a problem at work, if they have been unfairly dismissed or if they face discrimination, can take that to an employment tribunal, but that is only individual redress. There is nothing to stop the same employer doing it over and over again. There is definitely a role for promoting good practice, which the Scottish Government have been doing in recent years and was a welcome focus of the Taylor review, but there will be employers who are not interested in good practice and would not take their responsibilities seriously.

What we would recommend is a commission to bring together reports from employment tribunals. It could have reports, on a confidential basis, from individuals and from third parties such as CAB. Where there is discrimination, they would potentially have some powers to punish employers who repeatedly violate employees' rights. For instance, they might have the power to fine them.

Q835 **David Duguid:** That answers my next question. I was going to ask how that would differ from typical or traditional employment tribunals, but what I am hearing you say is that they only help individual cases at individual times, so this would be some overseeing body.

Rob Gowans: Yes.

Q836 **David Duguid:** Are you aware of any similar bodies that exist outside the UK?

Rob Gowans: Probably the nearest equivalent, from what we have found, is the Fair Work Ombudsman and Fair Work Commission in Australia, who will work together. It is not exactly the same as what we have suggested, but they have power to ensure that rights are being promoted and if there are people who repeatedly break the law that there is some sort of redress.

Q837 **Chair:** What sort of sanction do you have in mind? Have you suggested anything for rogue employers who are consistently breaking employment law?

Rob Gowans: There are a few options. There might be fines. In recent years the UK Government have taken to naming and shaming employers who pay people below the national minimum wage. That might be an option to extend more widely. We see the purpose of this as improving the quality of work, by promoting good practice but also by having some action, working on people who would not be interested in being a good employer.

Q838 **John Lamont:** I want to push a bit further on this idea of an



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employment commission. Are you arguing for, effectively, a new court to be created?

Rob Gowans: We would see it as a government agency that would link together the reporting mechanisms, in the same way that HMRC does for national minimum wage violations and tax evasion. It might be that they would take some of the functions from HMRC and other bodies, but rather than being a court, there would be an agency with responsibility for promoting fair work.

Q839 **John Lamont:** What new enforcement powers would have to be created to be given to that commission?

Rob Gowans: It is probably the ability to be able to act on the reports that they receive and having some powers to, for instance, levy fines, to name and shame employers or other types of sanction along those lines.

Q840 **John Lamont:** That may already exist. Is that what you are saying?

Rob Gowans: It might be. I think it is literally bringing some of the functions together to take a wider view of the landscape, in particular if there are reports going into several bodies—there are other enforcement things, the Gangmasters and Labour Abuse Authority, for instance—and taking some of those together to see if there is a pattern with particular employers or perhaps some sectors that can help drive up the standards of work and promote good practice.

Q841 **John Lamont:** I am not quite clear how it all fits. If an employee or employer is not happy with how the commission has determined a particular case, how do you foresee the appeal mechanism working? Would that be through the court system or would that be—

Rob Gowans: Potentially. I think that is one way of looking at it.

Q842 **John Lamont:** The particular detail of what you are proposing is still quite uncertain?

Rob Gowans: Yes.

Q843 **Chair:** Let me ask a bit more about what you are proposing with this commission. Would it work in conjunction with the structures that are already in place or are you proposing or suggesting that a new body is going to be created to deal with some of the issues that you have suggested?

Rob Gowans: Potentially a new body that can bring together some functions that already exist and some that do not. I mentioned that there are lead roles for HMRC, the Gangmasters and Labour Abuse Authority, the various equalities bodies. This potentially would have an overview of all of them, but I think it would be a new statutory body.

Q844 **Chair:** We have seen your submission to the inquiry and you say that more people have been coming to the CAB because of employment-related issues. Could you give us a sense of the scale of people who have



approached different CABs in the course of the past few years and tell us a bit about the range of issues that they bring to you?

Rob Gowans: There is quite a varied mix in what people tell us about. I said at the outset that last year we advised people on 45,062 issues related to employment, the biggest being pay and entitlements, dismissal and terms and conditions. We advised people on unfair dismissal and what their rights are in those circumstances; what they can do to get the pay they are entitled to if they have not been paid by their employers; if they believe they are being paid less than the national minimum wage; if they have not received sick pay or there are problems about them being able to take paid holiday; if they have experienced bullying or discrimination at work and issues related to that. Those are probably the more common things. There are also people coming in with enquiries about their rights. One of the things we find is that people often are not aware of what their rights at work are until something goes wrong.

Q845 **Chair:** That is why I asked you about that. In your view, and with the range of issues that are being presented at Citizens Advice, are people now more aware of their rights in the workplace? Is this why you are seeing people prepared to come forward and discuss them with you?

Rob Gowans: We tend to find that people have some knowledge of their rights at work. For instance, they might be aware that there is a national minimum wage but they are not quite sure how much it is or how it applies to them. In some situations they come in when something has happened, "This doesn't seem to be very fair. Is that right? Is it legal for my employer to do this?" and that is where—

Q846 **Chair:** What is your view of the Taylor review? Do you think that is going to improve the situation in the workplace? We are going to be speaking to Matthew Taylor, so is there anything that you want us to ask him from your experience in the last few years?

Rob Gowans: In general we welcome the recommendations of the Taylor review. We welcome particularly the focus on good work. One of the things we find is that if people are in a difficult situation at work, it can be an extremely stressful experience for them. There is some academic research from the University of Glasgow that suggests that workers in low-quality stressful jobs have poorer general health outcomes and a poorer daily quality of life than other groups but even than those who are unemployed. I think that is an important thing.

Where CAB thought that the Taylor review could go further—while it rightly focuses on where there are changes in employment status—is whether the dependent contractor model that they suggest is quite the right one. It is whether you would need various distinctions between employees and workers and looking at whether creating another category would complicate the picture. We were also a bit disappointed at the time of the Taylor review's publication that while it was critical of employment tribunal fees, it did not recommend that they should be abolished, but



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since the court ruling that no longer applies. That is an extremely welcome change that will help solve some of the problems that we see.

Q847 Deidre Brock: I wanted to ask, Ms Theiner, what your thoughts are on the modern employment practices that the Committee has been discussing over the last wee while and how they either assist, or potentially hamper, disabled people in their efforts to find work.

Layla Theiner: Modern employment practices do vary a lot. Greater self-employment does seem to have provided some opportunities for people who have struggled to get into work in other ways and it supports flexible working. There are disabled people who have created their own businesses, social enterprises, and have been able to develop that over time, when they have struggled to get another role. It has meant also that they have been able to do something that they are particularly passionate about.

There does seem to be interest in freelancing self-employment. That can be quite precarious work in some ways, so there can be challenges for people coming off social security or welfare and how they manage that, but there does seem to be a potential opportunity with that. Zero-hours contracts have not come up when we have spoken to people. We have not particularly raised it with folk.

Q848 Deidre Brock: That was what I was quite interested in. Preparation does take time for some folk with disabilities. With potentially very little notice of work being given to them, I would imagine it would have been—

Layla Theiner: With zero-hours contracts?

Deidre Brock: Yes.

Layla Theiner: As I say, it is not something that has come up. That is not to say it is not an issue. The benefits of freelancing and self-employment have come up quite a lot in talking to people, the challenges of getting into the jobs market generally and more people being offered part-time hours. We have worked with young people who have a hearing impairment or a learning difficulty and might be offered seasonal work at Christmas, to work in a supermarket and stack the shelves, and that ends after two or three months. That has been more of an issue that has come up: they get a job for a short length of time and then are back to unemployment. Coming on and off benefits is quite challenging. They feel that they could do the job, they were able to do it, but can only get it when employers are quite desperate to get as many people in as possible.

Q849 Deidre Brock: Could you tell us what you think of the recommendations of the Taylor report and how they might improve matters, if enacted of course?

Layla Theiner: If enacted and implemented effectively, there are two areas that we are particularly interested in and would welcome. One is



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flexibility of employment and the Taylor review does highlight that that is helpful for quite a few disabled people and also people with caring responsibilities. Flexible working that can benefit employees and employers, probably not through a zero-hours contract but having some flexible working, was definitely something that we thought was interesting and we would welcome being implemented more widely.

The other one is the idea of a pool of untapped talent that the Taylor review touches on, which is disabled people but other groups as well, and almost the business case for tapping into that talent. We would fully support any of the recommendations that relate to doing that, but it is about it being enacted and implemented. There have been various reviews and reports that have touched on disability employment that unfortunately have not been fully implemented.

Q850 Christine Jardine: I was almost quite pleasantly surprised with what you were saying about modern employment practices and flexibility enabling people with disabilities to become self-employed. Is there some way you would like to see that flexibility for disabled people protected? Is there some way, short of zero-hours contracts, that it could be protected?

Layla Theiner: In some ways, if it could be protected. I think some of it is quite cultural. It seems more of an acceptance that flexible working can benefit people, whether that is working from home or having flexible hours that are managed over a week. We are quite pragmatic, that is not always possible, but if there are ways of protecting that, sure, within the contracts and conversations that people have with their managers. But some of it is just cultural and people being aware that that can be of benefit. It could be enacted to protect that in law, which we would certainly welcome. That can be quite difficult; cultural change is always hard.

Q851 Christine Jardine: Yes. If that were better publicised would that help with the thing that you spoke about at the beginning, the almost fear that some employers seem to have? You said they were very cautious, according to one report, and there was almost a fear about employing people with disabilities. Do you think that would help get over that?

Layla Theiner: They are almost separate issues, because I think some of that fear and the challenge that we have is people getting in the door to prove that they can do the job. That is the main challenge we seem to come up against a lot. Once people are doing the job or if they have been doing the job and develop a disability or a long-term condition, they can continue to do it and to do the job well, whereas flexible working would help some people and it might address some of it, but I think they are almost slightly different issues.

Q852 Tommy Sheppard: Could I turn to the devolution of employment support programmes? There is widespread concern, as you know, that while the programmes are being devolved, not all the money is coming



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with them. Do you share that concern and have you made any assessment of the likely impact of what is about to happen? Do you have any recommendations for us about what we should say about it?

Layla Theiner: We had concerns about the money that is there and that it was reduced. I believe it is being topped up slightly by the Scottish Government. We have concerns about the amount of funding and how realistic it is, the level of funding for the challenge that is there. But separate to that, an initial programme for 2017 to 2018 has been devolved and the contracts were allocated. Fair Start Scotland starts from April next year and is being devolved. The contracts were announced about two weeks ago and there has been concern about the split of those contracts and how that might work. Some of that is broader issues about employability and how you measure success within that and concerns that some providers might be creaming off the top by helping the easiest into the jobs market rather than working with anyone who might be a bit further away to do that. Those are some of the issues.

In terms of improving Fair Start Scotland, some of the issues have been about co-ordination between Skills Development Scotland, the Scottish Government and the Department for Work and Pensions, because of the process of devolution and challenges around different things being devolved. The key things that we have had concerns about are the awarding of the contracts and where they have gone, prime providers and then more specialist support. The level of specialist support has been smaller than we would have hoped.

The idea is that if you are going to really help people into employment, it needs to be individualised and it requires expertise with different groups. Someone who is in a wheelchair will need different support to somebody with a mental health condition to somebody with a learning disability, and tailoring that as much as possible within those schemes is pretty key. There is concern about how much of that has been recognised. That would be improved if the KPIs could be changed slightly.

Q853 **Tommy Sheppard:** Do you have a view on this, Rob?

Rob Gowans: In terms of the employment programmes, yes, it would be better if there was more funding available. Probably the problems that we previously saw—or certainly CAB saw—with the employment programmes were more about the suitability of them for particular people. It is Adecco's latest point that they need to be individualised and tailored.

On the interaction with the benefit sanction system, we consider that not referring people for sanctions in the new system is welcome, because it is where we saw some of the most unfair referrals in some of the work programmes. That was partly because the contractors had to refer every example of non-compliance. For instance, if somebody could not find the building and turned up two minutes late, they were referred for a sanction. That is a positive element, but I think there is certainly a lot



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more that can be done and would need to be done to make a reduction in the disability employment gap.

Layla Theiner: One thing I would add is about evaluation. Contracts are awarded through the employment programmes. There does not seem to have been, in previous years, much looking at the results of those providers and evaluating levels of success. They have KPIs to meet, but we could look at whether they were the best contractors to be provided with the contract; could it have gone elsewhere; what are the best models for getting as much value from the money provided? We are coming from the perspective that individualised, personalised support is the best way to go, and that is what you would find by evaluating, but there has not been a lot of evaluation from previous contracts. We would like to see getting value for Government money because we believe that there could be greater value, as well as additional investment being needed.

Q854 **Chair:** Thank you very much. That is right on time too, so we have managed to get through everything we needed to ask. We have another couple of sessions of this inquiry still to run. If there is anything further that you feel you could usefully contribute, please submit it. We look forward to seeing your report. Hopefully that will be available before this inquiry concludes.

Layla Theiner: Yes, it will be in the next two weeks.

Chair: Thank you very much.

Examination of witnesses

Professor Patricia Findlay, Gordon McGuinness and Kenny Richmond.

Q855 **Chair:** Good morning and welcome to our inquiry into sustainable employment in Scotland. For the record, please tell us who you are, who you represent and anything by way of a short introductory statement. We will start with you, Professor Findlay.

Professor Findlay: My name is Patricia Findlay. I am a member of and academic adviser to Scotland's Fair Work Convention. I also have a day job, which is I am Professor of Work and Employment Relations at the University of Strathclyde, where I am the Director of the Scottish Centre for Employment Research. We lead a programme of research around improving job quality and workplace innovation. By way of introduction to the Convention, it might be worth saying that it was established following a recommendation of the Working Together Review: Progressive Workplace Policies, established by the Scottish Government, but independent of the Scottish Government.

Kenny Richmond: Kenny Richmond, Head of Economics at Scottish Enterprise. Scottish Enterprise is Scotland's main economic development



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agency and our role is to support companies and sectors to grow in Scotland and to attract investment to Scotland.

Gordon McGuinness: My name is Gordon McGuinness. I am a Director with Skills Development Scotland. I head up our Industry and Enterprise Team. Skills Development Scotland is a sister agency to Scottish Enterprise and we are Scotland's main skills development agency.

Q856 **Chair:** Thank you for that. We know about the developing labour market, and the responsibilities that the Scottish Government have at their disposal as well as the UK Government. Can you talk a little bit about how you see these things and what your specific role within Scotland's labour market is? We will start with you, Mr Richmond.

Kenny Richmond: Part of our work of supporting companies and sectors to grow includes supporting companies to develop their workforce, to encourage companies to adopt free and progressive workplace practices through a range of different types of support and initiatives. It is working with companies to help them understand the business benefits of sustainable working practices, good-quality jobs, both from the perspective of the employee but also the business benefits to the companies themselves through a range of approaches and initiatives to attempt to do that.

Professor Findlay: The role of the Convention is to advise the Scottish Government. Since its establishment in 2015, the Convention has attempted to bring together a robust evidence base of the challenges of work in the workplace in Scotland and how that connects to broader labour market issues. There is a separate labour market strategy group in Scotland that deals specifically with labour market issues, but the role of the Convention is trying to encourage a national conversation, to be evidenced-based and to address some real challenges that affect not just the Scottish but also the broader UK and other economies.

Q857 **Chair:** I was just going to ask you that. Do you have much interaction with the UK agencies as part of your work?

Professor Findlay: No, we do not. We are specifically in relation to the Scottish Government. There are areas where the UK Government retain power, particularly on employment legislation and other related matters. Our role in that case would be to take a view as a Convention and to make that view known to the Scottish Government. That view may or may not then inform the Scottish Government's response.

Gordon McGuinness: We work on behalf of the Scottish Government. The activities are guided by three pieces of strategic documents: the economic strategy, Scotland's "Developing the Young Workforce", and, as Patricia mentioned, also the Scottish market labour strategy. Our activities fall into two main areas, I would suggest. One is careers information and guidance within our education system. We have a large programme across all our schools, developing young people's career



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management skills, trying to make them more adaptable for the future, because the nature of work is changing. Our other main service is the delivery of the Modern Apprenticeships programme and the family of apprenticeships, which range from foundation through to graduate level apprenticeships. Our main programme is modern apprentices. We will probably start 27,000 apprentices with employers in Scotland this year.

Q858 Chair: As a Committee, we report to UK Government and any recommendations that we accept would be made to them. In your view who is primarily responsible now, when we look at the labour market for Scotland, for setting policy and setting business objectives? Is it the UK Government or the Scottish Government that take a predominant role in the areas that you work in? You could help us with that, Professor Findlay.

Professor Findlay: That is quite a tricky question, because the labour market is subject to a whole range of broader influences. It is subject to what happens in fiscal policy, broader economic policy and competition policy. There is a whole series of other areas of work, of policy activity that impact on the labour market that are clearly important areas.

For example, you have talked this morning about areas of employment law that are reserved to Westminster. Part of what the Convention has had to think about is how does it try to make an impact, notwithstanding that some of the powers that might be available to any such body in a different constitutional settlement are not there. The labour market is clearly an outcome of a whole series of interactions between different policy areas and, therefore, the responsibilities for that lie across the Scottish Government and the UK Government.

Q859 Chair: Do either of you gentlemen have a view on that? Particularly on job creation and business viability, who sets the biggest trend when it comes to the intervention?

Kenny Richmond: I think Patricia is right, if you make a distinction between law and policy. Within Scotland we do have the ability to shape our policy to reflect the distinctive needs, whether it is local economies, sectors or individual businesses. Through the Scottish Government's labour market strategy, for example, our work with industry leadership groups across Scotland, we can get a good understanding of labour markets and employee needs and we can help shape policy to address that.

Q860 Chair: Mr McGuinness, what is your view on this?

Gordon McGuinness: From our perspective, the Scottish Government enable us to better respond to what is happening within the labour market rather than the UK Government, for example on actions that will be taken. I use the example of what has happened in the north-east with the oil and gas downturn and how we have been enabled through Scottish Enterprise with things like the Energy Jobs Taskforce and then the Scottish Government providing resources for things like the Transition



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Training Fund, which has allowed us to make a more robust contribution to how we respond to particular issues. Another one I would probably flag is the decisions that will be taken over Brexit will have a significant impact on how the labour market responds.

Q861 **Chair:** Do you work together at all?

Gordon McGuinness: Yes.

Q862 **Chair:** Yes, you do, because I could sense that you are all communicating with each other. How do you come together and do some sort of joint work?

Kenny Richmond: That could be through a range of initiatives. As Gordon mentioned, the Oil and Gas Task Force is one, whether it is through working at the local level, linking with local authorities, through the community planning partnerships, for example. There is a whole range of approaches and ways where we work together.

Q863 **David Duguid:** You mentioned the Energy Jobs Taskforce. I declare an interest: I am ex-oil and gas myself and I am a north-east MP. Do you think the Energy Jobs Taskforce has served its purpose or do you think that maybe it was a bit premature in being—I do not want to use the word “abandoned” but it was stopped a few weeks ago.

Gordon McGuinness: I attended the last meeting. The work does not stop; it will continue. Our resources, if anything, are going to sustain. We still have a large presence in the work that we are doing with partners on things like the Transition Training Fund. We have another year and a half to run on that, I think, from the work that Scottish Enterprise had undertaken. The oil and gas sector had been performing very well and I would not say it was limited but there was under-representation of companies accessing services from the public sector. Through a lot of the work that has been done with engagement with the private sector and Scottish Enterprise, that is a very different profile now. Many more companies are engaging in diversification programmes and there is much more collaboration on apprenticeships and training and those types of developments.

There is an undertaking that we will go back and work carefully with industry to appoint leaders, whether that is through Oil & Gas UK or the Oil and Gas Authority, so that the work of the workstreams is continued and does not fall off. Thankfully, oil prices have picked up a bit, so I think you are starting to see a change in the labour market conditions. I do not think it has been abandoned by any means.

Q864 **Christine Jardine:** When you talked about the balance between Holyrood and Westminster, you made an interesting point about the difference between policy and law. I think it was Professor Findlay who made the point that there are policies outwith employment law that impact. We have a lot of discussion in these sessions about the European framework that we work in at the moment and how that framework will



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translate into the relationship between Holyrood and Westminster after Brexit. Do you think that yours is an area where that will be particularly significant and there is a need for some sort of framework if you bear in mind the number of employers? I have always worked for employers who were UK-wide. There will be a need for some sort of framework post-Brexit that enables you to continue working effectively in response to policies from both Governments and to legislation.

Professor Findlay: It is a very open question currently, isn't it? Clearly, in the area where I have expertise, which is employment law, there are some important protections. Not all of the important protections in the UK emanated from the European Union, but a number of very important ones did.

Christine Jardine: Quite a few.

Professor Findlay: The issue will become how they are transposed into law within the UK and, indeed, whether or not that is something that remains a reserved matter, which it is currently, or it becomes something different. At the moment, we simply do not know what will happen with that. I am sure there are lots of people who hope that many of those protections will remain. They are crucially important and, as you heard in your session this morning, are not necessarily, even though they are there, producing the kinds of outcomes that we wanted for them. We do not know where they will remain and where they will be located at this point in time.

Q865 **Christine Jardine:** Mr Richmond, you talked about the difference between policy and law. Is there a different balance between Holyrood and Westminster on policy and law or is it much the same?

Kenny Richmond: Given what we are seeing in Scotland, for example through the Fair Work Convention and the labour market strategy from the Scottish Government, I get the sense that there is probably more of a focus on labour market issues in Scotland than perhaps you see in the rest of the UK, which I think is obviously a positive thing.

Professor Findlay: The extent to which policy attempts to engage with the workplace and what goes on within the workplace is very different from what goes on within the labour market. The workplace is not somewhere that is necessarily very amenable to policy interventions because it is within the private remit of employers. There has been an attempt in Scotland to broaden the reach of policy and to join up areas of policy to try to push forward things in the workplace. A few weeks ago, I was with a group of academics at the British Academy in London talking about whether or not we should intervene to try to improve job quality. There was a very strong difference in the room between people who worked in England, Scotland and Wales about the extent to which policymakers were willing to discuss issues of what goes on in the workplace and whether policy should try to leverage something there.

Q866 **Christine Jardine:** Do you feel that those differences are allowed to



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develop within the current constitutional set-up?

Professor Findlay: They clearly have developed within the current constitutional set-up, but they have limits. The one that I referred you to on employment law is the most obvious one.

Q867 **John Lamont:** My question is in relation to policy decisions and the need to create sustainable employment and economic growth. As you will know, last week the Scottish Government published a paper on income tax for Scotland. You will be aware of the different views that have been expressed in that paper and, as a consequence of its publication, how it is going to impact on the Scottish economy and particularly job creation. Did Scottish Enterprise and Skills Development Scotland feed into the Scottish Government on the analysis before that paper was published?

Kenny Richmond: From a Scottish Enterprise point of view, not that I am aware of, no.

Gordon McGuinness: Likewise I am not aware of it.

John Lamont: I find that quite surprising.

Kenny Richmond: I guess it was focusing on income tax rather than specifically on the economic development or economic growth issues following from that but—

Q868 **John Lamont:** Sorry, forgive me, but does the rate of income tax not impact on the economic success or otherwise of our country?

Kenny Richmond: Potentially it does, yes, absolutely.

Q869 **John Lamont:** Will there now be some analysis undertaken on the impact of the proposals as outlined last week in the Scottish Government's paper?

Gordon McGuinness: I would imagine there will be discussion at a board level on taking a view on the options that have been presented, but these are political decisions that are being taken. If we are invited to make a formal contribution, we will do so.

Q870 **Chair:** Have you been involved in any of the discussions and conversations about setting the budget in the past, given that you are very significant agencies within Scotland and your role within the Scottish employment scene?

Gordon McGuinness: Those are always active discussions on the work programmes that we have. Programmes are set out through a letter of guidance from Government. As an example, we have apprentices in the system and that is potentially a full-year financial commitment you are making to a young person if they are in one of the longer trade-related apprenticeships. In discussions with Government, we are also minded that we are looking two, three or four years ahead because of the financial commitments. We have very active and ongoing discussions on existing business and other interventions that either we propose to



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Government or where they are asking to make interventions. Those are ongoing.

Q871 **John Lamont:** Do you have a view as to how income tax in Scotland will impact on our economic activity and job creation?

Gordon McGuinness: I cannot speak on behalf of our organisation, because it has not had that conversation yet, but I have not personally given that sufficient thought to offer you a view today.

Kenny Richmond: Neither have we considered that yet at Scottish Enterprise.

Q872 **Deidre Brock:** Of course, it is a discussion paper so that is to be discussed.

Kenny Richmond: Indeed, yes.

Q873 **Christine Jardine:** Our remit is the UK Government and how it operates in relation to Scotland. Would you normally expect organisations like yours at a UK level or at a Scottish level to be asked to contribute opinions; for example, someone from the Treasury to have discussions with CBI Scotland, with yourselves, about the impact of any changes in the UK budget?

Kenny Richmond: If there are issues where there is a consultation, for example, for a significant change or a significant new initiative, then sometimes we will be asked to contribute to a consultation, but we will not always be contacted or asked for our opinions.

Q874 **Christine Jardine:** How useful do you think it would be to have some input before budgetary decisions are made?

Gordon McGuinness: As a practical example for myself when it has had a significant impact would be the introduction of the apprenticeship levy. I do not think there was consultation at a Scottish or UK level, so that has given a number of challenges not just to Scotland but to the devolved nations as well and those continue. It applies to companies across business so now we have different systems in place, and I think many businesses view that as an additional tax rather than something that would have been like the construction levy that was seen as a positive step.

Q875 **Christine Jardine:** How useful would it be to be consulted on things like tax changes beforehand or to have your opinion sought?

Kenny Richmond: It is always useful to be able to share opinions, whether we are picking up views from businesses or from sectors on what the potential impacts of some of these large decisions could be. Scottish Enterprise can contribute quite a lot of our own real-time intelligence to these types of issues.

Q876 **Deidre Brock:** Following on from that, you have mentioned consultation. Professor Findlay, the Fair Work Convention has noted that many of the



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legislative powers, as we have discussed already, that are relevant to fair work are reserved to Westminster and are matters for the UK Government. Given that, what more might the UK Government be doing in order to ensure that the fair work framework works better in the future or at least as well as it can?

Professor Findlay: The fair work framework has been established as a multidimensional framework. It is multidimensional in what we think fair work is. We have taken a very broad and quite ambitious definition of what we think fair work is, and we have talked about issues. We define it as work that has effective voice, opportunity, security, fulfilment and respect, and that spans a number of areas that we would traditionally talk about for job quality. It also spans a number of areas on how workplaces are governed and how decision-making in the workplace is taken.

Part of the ambition of the Convention has been that we would engage a broad range of players. If anybody has looked at the framework, you will see that we outline what we call the landscape or the ecosystem of fair work, and that ecosystem has multiple players. It has Government and policymakers, public agencies like my colleagues at the table, consumers, workers, employers, trade unions and other campaigning organisations in it.

We think the framework needs to be collectively delivered. It is important that Governments signal how they support that. For example, if they are signalling that certain types of contractual arrangements are not appropriate or not consistent with fair work or certain forms of decision-making within organisations or approaches are not consistent with fair work, it is thinking about what other levers are there to try to both encourage people to do the right thing and discourage people from doing the wrong thing.

The workplace is quite a complex area so there is not a single thing that I think Government could do to make the framework more likely to be implemented. We have thought about lots of different directions to do that. Sometimes that is encouragement and persuasion, sometimes that is using levers that are available in the policy space and sometimes, inevitably, that will be how you use legislation.

Q877 Deidre Brock: Do you feel that there is a listening ear there in both Governments? I think the Scottish Government's commitment is fairly clear.

Professor Findlay: We do not speak directly to the UK Government at all, but there are areas, I suppose, where we would have, as a Convention, some concern. If I take the example of the recent Trade Union Act, as a Convention we felt that that was inconsistent with effective voice in the workplace. We made those views known to the Scottish Government and the Scottish Government made those views known in their submissions to the legislative process at UK level. We



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were quite concerned that anything that undermines some collective voice within workplace would make it less likely—and the evidence is fairly strong—that fair work was likely to be delivered.

Q878 David Duguid: Mr McGuinness, this is for you. The UK Government have recently introduced the apprenticeship levy. As the skills policy is devolved, the Scottish Government receives a proportion of that funding. How has the interaction of the UK and Scottish responsibilities worked in relation to these policies? I should say as well that the Scottish Government announced a new flexible workforce development fund to upscale and reskill existing employees. How have the UK and Scottish Government responsibilities interacted?

Gordon McGuinness: I appreciate you have Mr Brown and Mr McAloon following us and you may wish to ask for a direct view from them. I know from the interaction I have had with our Minister, Jamie Hepburn, there is a degree of frustration at the lack of consultation and co-ordination. Even now I think there are practical issues in identification of who is actually paying the levy through HMRC. There have been some challenges there.

In the calculations on the devolved settlement, there has been more or less a direct substitution of the resources that were previously received for skills and learning activity, and I think the Government have sought to build on programmes to fund. There was a commitment they would allocate all funds from the levy to skills and learning, so there was a programme of work set out on that last December. That is on the sustained funding of apprenticeships and expansion of foundation and graduates, a commitment to support the further development of the workforce for early years to meet commitments in the expansion of childcare in Scotland, and a range of other measures. Off the top of my head, I think the statement was made on something like 15 December.

The flexible workforce fund was developed in response to the consultation exercise that the Scottish Government undertook with employers. In that consultation I think nearly 80% had indicated that they would welcome some resource applied to workforce development. That £10 million fund has been disbursed through Scotland through the regional colleges and the levy-paying companies can apply into that.

Q879 David Duguid: You mentioned a couple of things there like childcare, for example, that would not necessarily apply to all apprentices. Not all apprentices have children.

Gordon McGuinness: If I can clarify, the Scottish Government's commitment to increase the amount of childcare provided will require an increase in the workforce of around 11,000. That would be a mixture of apprentices coming in, new staff and additional provision through our colleges. The funding that I mentioned, and I think it is around £25 million, is allocated to training and development.

Q880 David Duguid: To bring it back, I have heard from some businesses in



my constituency, and across the north-east of Scotland in fact, who operate in both Scotland and the rest of the UK, that they do not seem to get as much back for the Scottish apprenticeship funding as their English counterparts seem to do. Do you have any idea why that might be?

Gordon McGuinness: Time will tell. I think on paper the offer available in England financially looks more attractive. In practice, it has proven to be something slightly different. We have done a lot of work with the OPITO on the programme in Scotland, and the combination of funding from ourselves and the Scottish Funding Council for the academic element of that delivers around £19,000 worth of support. Notionally, in England that could be up to £27,000 but I think that is a paper exercise. I do not think it is actually going to work out like that, but it is early days and we will need to look at how that plays out.

What we are getting from feedback from employers in Scotland is that we have a tried and tested programme of apprenticeships in Scotland, probably slightly more stringent employment criteria and good outcomes. The message back from many employers is if a system is not broken, don't fix it. Time will tell, I guess, on those financial elements.

One of the other challenges, certainly in the north-east, is that many employers were already paying in through ECITB, so they are paying a double levy. That was certainly an issue in the oil and gas sector.

Q881 Paul Masterton: One of the issues that there has been in Scotland for a little while but it has become increasingly exacerbated is a lack of good STEM skills from kids who are leaving schools now. You mentioned that you work closely with schools on career pathways and guidance and suchlike. Are you confident that the next generation of school leavers is going to be equipped with the skills that businesses are looking for, given that so many businesses, particularly small businesses, identify lack of actual real-world work skills as being one of the biggest barriers to growth?

Gordon McGuinness: There are probably two issues there in terms of real work skills and STEM. We have been working with Government Minister Shirley-Anne Somerville. There will be a new STEM strategy published shortly, and that has been a collaborative exercise across Government, Education Scotland and ourselves.

We have done a lot of work trying to understand where young people fall out of those STEM subjects. Some of it is how the curriculum is organised in schools at times and limiting choice, and some is gender stereotyping and young people drifting away from the subject. There are challenges in areas with supply of teachers with some of the STEM criteria and we are working with Government on alternative routes into teaching to try to boost numbers. We have done some work in Aberdeen related to people leaving the oil and gas sector.



We think hopefully with the new STEM strategy, which is pretty comprehensive and challenging, we are going to be in a better place. A lot of good work is done in the schools, but it is trying to get that done on a more consistent basis across the patch and having a better understanding of where young people are falling out of the system. The attainment gap that exists in Scotland is particularly relevant to STEM-related subjects, and that has rightly been a focus for Mr Swinney in some of the changes that he is making within the education system.

Q882 Chair: Could I ask a more general question? I think some of you were in for the session where we heard from Citizens Advice, and it has raised a number of its concerns about unfair employment practices. Given that you work with employers and employees, do you think this is a significant issue that needs to be properly addressed in Scotland? Maybe you could help us, Professor Findlay.

Professor Findlay: I think it is a significant issue that needs to be addressed in the UK. We have very individualised remedies for problems of employment practices—we can maybe talk in a second about the nature of changes in employment practices that some people are finding quite difficult— and how we deal with those. Traditionally, people would have dealt with challenges in their employment relationship either through a trade union mechanism or a legal mechanism. Reducing numbers of trade unions and trade union recognition across the UK means that that is not something that is available to people in workplaces.

Until very recently, employment tribunal fees were massively prohibitive for individuals to try to do something about the challenges that they face. Even with the removal of fees following the recent ruling, it is still a very difficult process. We heard a colleague sitting where I am sitting this morning talking about individuals with disabilities. Sometimes they do not choose to take that legal remedy, because it is not just about fees, it is about the challenges therein.

I have been an employment tribunal lay judge for 20 years. Even if you get a ruling, it is not necessarily always enforced. It is really difficult at a UK level and there is evidence across the UK of how many people who get an employment tribunal never have it enforced. They incur the cost and the trauma, and in the end nothing happens. There are employers who are, in effect, serial abusers. They appear at tribunal again and again. There is no mechanism for doing anything about that because it is all individually driven. There is no way in which that gets tackled or targeted.

Q883 Chair: Do you recognise some of the things that Citizens Advice have been telling us about not getting paid for sick leave or holiday pay, and issues to do with harassment in the workplace? Is this something that you see as prevalent in Scottish workplaces?



Professor Findlay: Prevalent is the wrong word, because I do not think it applies across the whole population, but I think there are pockets of activity and types of activity that are affecting some groups more than others. When we looked at our evidence and our consultation, we consulted across a broad range of groups for a year. If you are in a category where you are disadvantaged in one element of our framework, so you are in insecure work, you are more likely to have little opportunity associated with that insecure work. You are less likely to have what we would consider respect at work and less likely to have access to training.

One of the difficulties is if you are at the bottom end of the labour market or a disadvantaged section of the labour market, you do not just have problems accessing work. Once you get into work, the quality of that work tends to be lower, other things being equal. You tend to get multiple interactions where you do not get a good job in the first place; it is insecure. If it is insecure you churn in and out of it; it is less good for your health; it tends to be less fulfilling; you tend to have less voice; and those things tend to stack up. There are no obvious places for people to go to remedy that. People go to Citizens Advice, and we heard a lot from people who would have been at the edge of their sanity without the support of Citizens Advice. They do an important job because they are there to support employees or workers who cannot get help from anybody else.

Q884 **Chair:** I think all of us around this table recognise the importance of Citizens Advice Bureaux. Certainly, all of us at times would use their support and advice when it comes to these issues. I asked them today and it was particularly clear in their response. What do we do about employer serial offenders when it comes to bad practice in the workplace?

Professor Findlay: I am going to say what I said before in answer to a different question, which is that we do lots of different things. There isn't any one single lever that makes a difference. I think there is a role for naming and shaming. There are ways in which we might use public contracting to try to deter firms from engaging in poor practice. We should use procurement more ambitiously, and it is part of the Convention's view that we should use public money as a lever. We should use our public agencies and the delivery of their services to support good practice and to deter bad practice. We should not be offering Government funding to businesses who we know are serial offenders. There is work that might be done on elements of corporate governance where you could think about how people are barred from being directors for being serial offenders in certain ways. There is work on how companies are able to self-cleanse in procurement exercises.

There is a whole series of different types of activity, and then there is the general thing that works very well with some parts of the business community, which is just to say, "This is not appropriate. This is not acceptable and we need to not allow it to happen". There is a need for



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that. There are lots of businesses out there that will listen to that. Part of it is about promoting good practice and showing people how good practice is beneficial for everybody. Support people to improve their practice, and at the really poor practice end I do think there is nothing that you can do to some kinds of businesses or some kinds of business models other than to regulate them. The challenge is that those business models do not just damage workers, they damage other businesses who cannot compete with them and who are drawn down into the worst kinds of practices because that is the only way in which they can compete. I think that is an area where we really need to be more robust about how we challenge that.

Q885 **Chair:** Do either of you gentlemen have a view on this prevalence of bad practice in the workplace for Scotland?

Kenny Richmond: We find that some businesses may overestimate the costs of introducing progressive and good workplace practices and underestimate the benefits. Quite often it is almost educating businesses that there are many benefits of that. For example, we encourage companies that receive RSA grants from Scottish Enterprise to adopt and invest in youth policy. Every single company that we have spoken to has gone ahead and taken that forward. That is a good example of how we can encourage companies through public sector support to adopt progressive workplace practices.

Gordon McGuinness: We do see it through a zero tolerance approach. We would not provide any further support to companies if we were getting such feedback through our training organisations or individual apprentices. On Friday we produced a jobs and skills report, which I will circulate to members. We tried to break down the categorisation of what we call non-standard work. Statistically I think it is only about 2.2% of people in Scotland experience actual zero-hours contracts. We have seen increases in non-standard work, much more part-time work and self-employment, and I think it is that type of activity that makes the journey from being on benefits and welfare support into employment all the more difficult, particularly with things like the universal credit percentages because people do not know what their income levels are going to be.

Q886 **Christine Jardine:** I think you may have answered much of what I was going to ask, Professor Findlay, which is whether the UK employment legislation meets the needs of workers in Scotland? From what you have said, I would anticipate your answer would be no, it does not in a lot of ways; there are shortcomings with it. Would that be correct?

Professor Findlay: I think there are areas in which it does not meet the needs of workers in Scotland, nor the needs of workers in the rest of the UK. There are some areas in which protections are weaker than they might be. There are some areas in which even where those protections exist they are not terribly well enforced. We have ended up in a discussion, which I think is sometimes not helpful, about different terminologies for what we mean by flexible working. Flexible working



people tend, in surveys, to say is a good idea. That is not the same as saying that particular forms of flexible working are a good idea. I think that we get into a position whereby there are some real challenges around the evidence here.

I spend a lot of time in my academic work talking about patterns and trends. The pattern is, as Gordon has just said, not many people are involved in zero-hours contracts but some of the trends might be slightly different and some of the challenges that those might impose on people are different. We need to think about both law and policy as being something that deters people from using practices that an individual business might find beneficial but which, if we consider the costs and benefits in the round—what happens to the individual, what happens to the business, what happens to the broader society—we might find are too costly.

A lot of the work that I do and a lot of the work that the Convention has done is about saying, let's think about the full cost of these employment policies or the business models that underpin them and, if the full cost of those is too high, we should think about finding ways to try to eliminate them. The full cost might mean not just what happens to an individual who is in insecure work, because that is really obvious and evident to see, but what happens to the business that does not use the skills that we have invested in, often publicly, what happens to the business that misses opportunities to change and innovate appropriately because it does not have the sort of staff that will do that, and what happens to the broader costs that are imposed on society, so the costs of welfare, missed taxation revenue, short and long-term health implications. We know that bad work is bad for our health. We know that it imposes significant costs on individuals and on the healthcare system.

It is thinking about the full costs of business models or employment practices. We should understand it in that sense and we should then be able to distinguish between forms of flexibility that we think are good, which are about employers and employees coming to voluntary arrangements that work for both—and we see lots of examples of that—and forms of flexibility that are not working and are imposing an unfair balance, risk and burden on employees.

Q887 Chair: What do you make of the Taylor review? What do you make of the recommendations being proposed? Do you think this will have an impact on employment practices in Scotland? We will start with you, Mr Richmond.

Kenny Richmond: I guess it goes back to an earlier point we talked about, looking at how we get businesses to think more about their workforce as their prized asset and how we get them to realise that investing in that asset will have benefits not only for the employee but for the business, too. I guess one of the good things about the Taylor report is that it has started to bring more of these issues up to the surface. We are talking about it a lot more. Maybe on the back of that we can do



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more about raising the knowledge of how we do get better progression in our workplace practices all the way through the economy. From that respect, I think the Taylor report has been very useful.

Q888 Chair: We had trade union colleagues in front of this Committee last week to discuss it. They demonstrated their disappointment with some of the recommendations and felt they did not go far enough. Is there a view that there could have been more out of this report and review, given that we have Mr Taylor coming to this Committee in the course of the next couple of weeks? Do you have a view, Professor Findlay?

Professor Findlay: I do. I should say first of all that I was very pleased that the Taylor review said something that we have been saying in the Fair Work Convention and the framework for about 18 months prior to its publication. It makes a similar type of argument. It talks about the importance of good work and why good work should be supported because of its broader benefits beyond individuals. In that sense, that discussion being raised at a UK level is beneficial.

We have not discussed it as a Convention. I was personally deeply disappointed that it did not go far enough. I thought that some of its recommendations were potentially more confusing. Some of the issues around dependent contractors is a complex legal area in how you define what employment and worker status is. I thought it did not say enough about the ways in which we could use the mechanism that was available within the discussion of Taylor. When we wrote the framework as a Fair Work Convention, we were not engaging with any constitutional issues, so we did not talk about employment law. I thought that the Taylor report should have engaged with that a bit further. I also thought it should have engaged a bit further with how we build collective structures and forms of collective representation of a variety of different kinds that could make workplaces better and could make businesses better. So, I was disappointed.

Gordon McGuinness: The Fair Work Convention has probably ranged a bit further and as a Scottish framework probably has more relevance to ourselves. Patricia touched on the dependent contractor element. In the dim and distant past, I was a national insurance inspector, and I do not see how much of that is enforceable. It says if individuals want to work flexibly let them do so. I think it is an area that could remain open to abuse. There is some positive stuff in there about skills and skills progression and rights for individuals to do that, and we welcome that.

Q889 Chair: A lot of this was in response to what was described as the gig economy. We had representatives of the gig economy in front of this Committee in the last session. We have Deliveroo in Perth now, which I was quite surprised to see and observe in the course of the past weeks. Is this having a big impact on employment practices in Scotland? Mr Richmond, particularly, given you have put a quizzical face on there?



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Kenny Richmond: Yes. I can share the paper with the Committee. We looked at self-employment and the growth in self-employment about a year or so ago and to what extent that is linked to what we call the gig economy as opposed to what I guess you could call true self-employment where people are finding new business and niche opportunities. Interestingly, most people who become self-employed, whether that is gig economy or starting their own business, are very satisfied with being self-employed. Whether Deliveroo or Uber is true self-employment or not is a different discussion, but it is definitely a business model that has shaken up the labour market and has had implications.

Chair: Yes, I think that is what we have found in this Committee.

Q890 **Deidre Brock:** Professor Findlay, I wanted to ask your views on the proposal from Citizens Advice that there be an employment commission given some statutory powers over enforcement. You mentioned employment tribunals and the fact that the outcomes are not actually enforced. What are your thoughts on that?

Professor Findlay: I have not looked in detail at the proposal from Citizens Advice for an employment commission. I suppose I would come to it slightly differently. I do think there is a role for some regulatory intervention that is not legislation. For example, in the same way that we have the HSE or we have the HMRC looking after the national minimum wage, I think there is room for some kind of inspectorate that allows for investigation and response to certain kinds of employment practices. We do not have, unlike many of our European counterparts for example, a labour inspectorate or a ministry of labour in the UK or in Scotland. We now have a Cabinet Secretary who has responsibility for fair work, so that is about as close as we have been able to come. That is quite different from operation in other countries where some of those matters would be dealt with at that level. I think there is a role for some kind of public body or inspectorate that would allow us to look more closely at these issues.

Q891 **John Lamont:** My question is to Mr Richmond. It relates to the economy of the south of Scotland and its particular ties with that in the north of England. What discussions has Scottish Enterprise had with the UK Government, and indeed the councils in the north of England, to ensure economic prosperity in the south of Scotland?

Kenny Richmond: I think it is called the Borderlands Initiative that has been taken forward. Scottish Enterprise has been an observer on those discussions, just observing what has been taken forward in some of the discussions. I presume that the new south of Scotland agency that is being introduced over the next couple of years or so will take that forward in more detail.

Q892 **John Lamont:** I was not talking about Borderlands. I was talking about the role of Scottish Enterprise in promoting the south of Scotland economy, bearing in mind its links to the north of England. Borderlands is going to be coming as part of the Growth Deal, but I would have hoped



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Scottish Enterprise would have had engagement with the councils and the UK Government given the dependency of the south of Scotland economy on the north of England.

Kenny Richmond: Of course. Scottish Enterprise works very closely with both the councils in the south of Scotland and also looking at—

Q893 **John Lamont:** Sorry, I am not being clear. It is the north of England I am talking about. What discussions has Scottish Enterprise had with the councils in the north of England and the UK Government to ensure the south of Scotland economy is as prosperous as it should be?

Kenny Richmond: Links with the councils in the north of England are through, as I mentioned, observer status on the Borderlands Initiative. The south of Scotland and the UK Government could be linked in with the discussions about, for example, where there is going to be a Growth Deal and Scottish Enterprise advising on and supporting developments of any potential Growth Deal.

Q894 **John Lamont:** Okay. There are no specific examples that you can give of where Scottish Enterprise has met with, say, Cumbria Council or Carlisle City Council or Northumberland Council about economic development in the south of Scotland?

Kenny Richmond: Not that I am personally aware of, but that does not mean to say it has not happened. We can come back to the Committee with further information on that.

Chair: I am grateful. That is right on time, so thank you all very much for being so concise. I think there were a few outstanding things that you might be able to provide to the Committee, which we would be very grateful to receive and secure at your leisure. Thank you very much for attending this morning.

Examination of witnesses

Keith Brown MSP and Hugh McAloon.

Q895 **Chair:** Cabinet Secretary, we are very grateful for your appearance in front of our inquiry into sustainable employment in Scotland. For the record please say who you are, what position you hold and anything by way of an introductory statement. In that process, please introduce Mr McAloon to us.

Keith Brown: Hugh McAloon is a director—is that your title, Hugh?

Hugh McAloon: Deputy Director, you promoted me. It is fair work and skills I cover within the Fair Work, Employability and Skills Directorate.

Keith Brown: Thanks very much for the invitation to come along and welcome to my constituency as well.

Chair: Yes, of course.



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Keith Brown: Thanks for the invitation to speak. I will just say a few words.

First, I remind the Committee that I wrote to the Committee in early 2017. That was with the purpose of setting out the Scottish Government's vision and strategy for creating a growing, inclusive, sustainable and fair labour market in Scotland. I also set out in that letter some specific actions that we were taking and highlighted current and future challenges. However, that was early 2017 and an awful lot has happened in the meantime.

In July the Supreme Court ruled that the UK Government's employment tribunal fees were unlawful and that led to their immediate abolition. The Scottish Government had strongly opposed their introduction in 2013 on the basis that they would prevent access to justice for those in society most likely to require it. Over the last few years, the Ministry of Justice figures show a dramatic decrease of about 70% in the number of cases that have been brought to that tribunal. I was delighted with the Supreme Court decision and also pleased that steps are now being taken to refund fees to those who had paid them.

The Lord Chancellor stated last week that the UK Government still intend to charge fees as a deterrent to frivolous and vexatious litigation. I would suggest, though, that the Lord Chancellor learns from past mistakes and puts access to justice and the protection of workers at the heart of the tribunal system. For our part, in the meantime the process is under way to devolve the operation and management of the employment tribunals, which will ensure at the very least that unfair fees are not imposed upon the people of Scotland again.

It is my view that Scotland remains ahead of the curve in embedding fair work throughout workplaces. Matthew Taylor's report, which I know you have been discussing, the "Good Work" report, raised some interesting points, particularly in relation to precarious contracts. However, in my view it did fall short in recognising some fundamental principles of fair work; for example, the importance of trade union representation and payment of the living wage as opposed, of course, to the national living wage. This morning I was delighted to confirm the rise in the living wage rate, which will benefit thousands of individuals and households around Scotland. In 2017, Scotland remains the best performing of all four UK countries with the highest proportion of employees paid the living wage or more—that is 81.6%—which I think is a fantastic achievement and a testament to the work that has been done to promote the Scottish Government's fair work agenda and putting equality at the heart of the labour market. I am also very confident that we will meet the target of 1,000 Scots-based accredited living wage employers.

Just to touch on these challenges, the view of the Scottish Government is that it is in the interests of the people who live and work here to stay as members of the EU and also, of course, to stay in the European single



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market. We will, therefore, continue to make a constructive and positive case that protects jobs and rights of all workers in Scotland, including pressing for the powers we need to deliver the inclusive and fair society from which all Scotland's citizens can benefit. I think sustainability, to go back to the Committee's inquiry, is key to that vision, but we need to have the ability to adapt to increasingly fluid conditions, which is why we also now have the strategic labour market group to provide expert opinion on future challenges and opportunities.

With that, I am happy to try to answer some of the questions the Committee may have.

Q896 Chair: I am grateful, and thank you for that. The first question is on the division of responsibilities across the United Kingdom. The UK Government are responsible for macroeconomic policy, for skills and wider economic growth, where you, Cabinet Secretary, and the Scottish Government have responsibility for creating employment opportunities and the skills agenda. What do you see about the mixture of these responsibilities and what options and powers are available to you to make a difference to some of the issues about sustainable employment in Scotland?

Keith Brown: In addition to the ones that you have just described, we are very involved, for example, in providing assistance to companies that want to come to Scotland, providing support to companies in Scotland, and encouraging particular sectors. We have the ability to do that through Scottish Enterprise, Highlands and Islands Enterprise, and will have with the forthcoming south of Scotland board that is to be established as well. The picture is a bit more complex than that. We have powers well beyond those in the employment and labour market sphere.

Of course, on the employment side, our powers are fairly circumscribed. We do have powers over skills provision. We fund the universities and Skills Development Scotland. However, we do not have control over the vast majority of employment laws. To take one of the points I raised in my opening remarks, we would very much like to legislate for a real living wage. We do not have that power to do that. It is a mix of powers.

To my mind, one of the most important things is—and it is a very good question—if there was a broader understanding of the different powers of the two Governments, it would aid the economic debate that we have in Scotland. We do have a very odd debate where, for example, I have been told that everything that happens with jobs and the economy and growth is, in the words of one of my opponents, on my shoulders when it quite clearly is not. There is a division of powers between the UK Government and ourselves. At least to have that acknowledged and better understood would be a good idea, but it is quite a subtle difference. We have powers over, for example, Scottish Development International, so we can try to attract businesses here. We do not have the full range of powers on employment, much of which is left with the UK Government.



Q897 **Chair:** What sort of engagement do you have with the UK Government, given that there are these mixed levers of responsibility? Are you in regular contact with your counterparts in Westminster?

Keith Brown: It very much depends on the individual Ministers. I met last week with Liam Fox, but that seemed to take an awful long time and lots of cancelled meetings before it happened. We have had quite good engagement with Greg Clark. It is difficult to get the meetings that you need at the time that you need them. That is partly because of parliamentary timetables on both sides.

There needs to be a willingness on both sides and I have found that it is patchy over the eight or nine years I have been in Government. It varies from Minister to Minister. However, most recently I met with Greg Clark on the industrial strategy—he also has responsibility for energy and renewables—and there has been quite a constructive engagement. With Liam Fox there were obviously very different views on many things but it was a relatively constructive engagement last week. I always take the position that we should try to work together. There is a bigger prize to be won here for the benefit of people in Scotland. We do not wish away the differences that we have between us politically, but I think it is worth trying to work together where we can do that.

Q898 **Chair:** I think there is general agreement with the Secretary of State, who told this Committee that a number of significant challenges remain and in his view it is more important than ever that Scotland's two Governments work together to help ensure Scotland's prosperity. Is there anything that you could propose or suggest about how we achieve that?

Keith Brown: Yes, some process things. First of all, if you take the industrial strategy, the UK Government tried to consult with the Scottish Government. We are not a consultee and they have to realise what devolution actually means. It should mean working together and in partnership. It seems plain to me that the Scottish Government should be heavily involved in some of the things that the industrial strategy seeks to take forward. One of the aims of the industrial strategy, as I understand it, is to address the huge inequalities that there are within the UK—for example, if you compare transport investment in the north of England to London and the south-east, it is a tiny fraction of that—and the increasing imbalance there is. The industrial strategy is meant to address that and if it is going to do it properly there has to be proper consultation.

There is also the talk about a shared prosperity fund, which will be the replacement for much of the European funding that large parts of Scotland and, of course, Wales, Northern Ireland and northern England will rely on, yet there is very little clarity on that. I made this point to Liam Fox last week. There is not a single recorded instance that I know of where the Scottish Government have been taken into the confidence of the UK Government and have betrayed that confidence. They really have to start loosening up and talk to us and let us know in advance what



some of these proposals are. People across Scotland, especially the Highlands but elsewhere as well, are very eager to know what is going to replace European funding. Let's have a discussion about it. Let's not do what happened with the Trade Bill where I was in a SNP conference, in a fringe meeting, and got an e-mail saying that the Trade Bill has now been published. That should not be the way that business works.

In terms of process, there is a lot that can be changed, but it really does come down to a culture of trying to recognise the different mandates of different Governments.

Q899 John Lamont: Minister, you spoke about the desire of the Scottish Government to have control over employment law and you want that devolved. Could you talk us through how that would work in practice, particularly for UK-wide employers? There is also, which is very personal to me, the cross-border employers who have people who live in Scotland but are working in England or vice versa. Have you given any thought or analysis as to how much that is going to cost business in terms of the extra bureaucracy?

Keith Brown: It does depend upon which particular aspect of employment law you are talking about. For example, there is a different living wage in London. Employers who are active in London, the rest of the UK and in Scotland seem to cope with that. They seem well able to deal with that. Different aspects of employment law devolved to Northern Ireland are not devolved to Scotland.

I am not saying we should do it for its own sake and I do think we have to have regard to what it might mean for employers if there was added bureaucracy, but it is possible to do. Nevertheless, I do believe it makes sense to have the full range of employment law and employment powers available to you if you are to act in a most coherent and effective way. You have to have regard to what it might mean and what it might cost, but there are many examples of where that is currently done. I was talking recently to a very large company, a household name, trying to encourage them to pay the living wage in Scotland. They said it would be difficult because it is set at a UK level. In fact, it is set internationally. I said, "You pay more than that just now in London, so how is it impossible to do it in Scotland?" It is possible to do it.

Q900 John Lamont: Would an employer based in Eyemouth and employing people in Berwick-upon-Tweed need to have separate contracts for those people employed in Scotland compared to those employed in Berwick-upon-Tweed?

Keith Brown: In the end, if we had the ability, for example, to legislate on a living wage, the choice would rest with the employer. If they wanted to pay people less over the southern part of the border—

Q901 John Lamont: No, I am talking about the contracts of employment. The contract of employment will specify which jurisdiction is applicable,



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whether it is the law of Scotland or whether it is the law of England and Wales. There will have to be a decision made by Government as to which law is going to be applicable, based on the residency of the business. I assume the Government have given that some thought.

Keith Brown: Employers currently can decide which legal system they want to have a contract under. The choice would still rest with the employer, but in relation to the point I made about the living wage, again the choice rests with the employer. If they think the bureaucracy involved is worth undertaking to pay employees less on the southern side of the border, I do not agree with it but that is the choice that they would make.

Q902 **John Lamont:** Just so I am clear about what your position is, in the eventuality of employment law being devolved, Scottish businesses could still choose the jurisdiction of the English courts for the purposes of employment law within the contracts of employment?

Keith Brown: No, the point I was making was they currently do make that choice. They have that choice to make. It is simply a statement of fact that companies can choose which legal system the contracts are drawn up in. They can do that now; it is possible to do that.

What I am saying is if Scotland had employment law and if your example means the whole of employment law, which again would be something I would support, if that was possible to do then, of course, it is not an unusual situation. It happens in many countries around the world that are sitting next to each other. In fact, sometimes they are much smaller distances apart than that between, say, Scotland and Wales. It is possible to do. The question is whether employment law being devolved would lead to more effective employment law and a more equal society. I believe it would do that. I believe that the infrastructure for that is not insurmountable. In fact, many other countries seem to adapt it now.

Q903 **John Lamont:** Would there be no additional administrative costs to businesses on a UK-wide basis operating between both jurisdictions?

Keith Brown: Well, are there additional costs now for companies that pay a different rate in one part of the UK from other parts of the UK? Companies have choices; that is the point I am making.

Q904 **Tommy Sheppard:** Sticking with devolution of employment legislation, we are not quite in it yet, we have stalled, but we will soon be going forward in the throes of Brexit. Assuming that Brexit happens, do you think that offers the opportunity to revisit the question of the devolution of employment legislation given the number of employment powers that are going to be repatriated to the UK? Is your Department having any discussions or any input into the ongoing discussions between the Scottish and UK Governments on either the devolution of some of these powers or the creation of a UK common framework within which the Scottish Government would have some ability to argue for differential arrangements in Scotland?



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Keith Brown: That discussion has happened through correspondence but there has not been direct face-to-face discussion because essentially that infrastructure, the bureaucracy of how that consultation would take place, is not working, as you will know, I would imagine, from Mike Russell's statements in the past. Even the joint ministerial meetings have not been taking place. There is one to take place in December and that would be the proper forum for discussing that. I asked Liam Fox as recently as last week to consider the establishment of a similar joint committee on trade, given how important trade is. We do not have that dialogue just now, other than through individual meetings and through correspondence. You are right to say there should be a format for that. If things are repatriated—if that is the word—from the EU, whether it is consumer protection or employment law, the danger is that all those additional powers rest with the UK Government and I do not believe that is what should happen.

In addition to supporting the bringing back or further devolution of employment powers to Scotland, I have also tried to say to the UK Government that in one or two particular examples there are situations where the current disposition does not make sense. I support independence and I want to see powers coming to Scotland. The UK wants to retain those powers, but there are some cases, not least in relation to tribunals, for example, where the current disposition does not really work. We should both be able to agree on the fact that it is not the ideal disposition of powers. Even outwith the Brexit process, I think there is a need for a pragmatic discussion about where powers best lie.

You are right to say that we are concerned at the Brexit process. I think you portrayed it in terms of opportunities, which is a good way to do it. We are a bit more concerned about the threats that might come as a result of that. Some of the protections that workers currently have under the EU through the Social Chapter could be jeopardised if that power resides at the UK level and they take a different approach. The dialogue, if that is the point of the question, is not nearly what it should be and it should be on a formal basis through a ministerial joint committee.

Tommy Sheppard: Could I follow up on that? One of the arguments that is presented for not devolving powers in this field and in others is that the UK Government do not want to create a situation that might jeopardise their ability to enter into future international trade deals because they want a level playing field, as they would put it, throughout the United Kingdom. Has this come up in your discussions with Liam Fox or others? What would be your response to an argument that says that Scotland having different employment legislation would somehow make it more difficult for a UK trading agreement with any other country?

Keith Brown: The general approach from the Scottish Government, as I tried to lay out in my opening remarks, is to currently improve the situation. I mentioned the living wage. We would want to get to the stage where Scotland is essentially a living wage nation. The same is true of



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fair work. We are already getting a lot of international attention for inclusive growth and fair work and also the living wage.

If that is perceived to be the direction of travel of the Scottish Government by the UK Government, if their concern is that is pushing things too far, that is making it an unlevel playing field because we are going further ahead, it is for them to answer. They have to say why they cannot do the same thing. It is not my remit to say how the rest of the UK should order its affairs in that regard. I would have thought that being known internationally as a country that champions fair work and inclusive growth would be an attraction for increasing trade. It is an attraction in its own right and it taps into where many countries are now looking to go, and the G8 increasingly discusses inclusive economic growth. I would have thought it would be an attraction.

My bigger concern is when is the UK going to get around to getting involved in trade deals. I asked Liam Fox directly, "Is it going to happen in the two-year period? Whether it is implementation as some say or whether it is a transition period, when is the UK going to start discussing these trade deals?" I don't think I have it clear in my mind as to when the UK intends to do that or how it intends to do that. Given how long CETA took to discuss, it is hard to see how long that will be. We cannot sit back waiting for five or seven years to improve the lives of people in Scotland, so we are going to do that in any event. I don't see why that should jeopardise the UK's position in relation to trade deals, unless it is the intention to have this low tax, low workers' rights environment where you can poach trade from elsewhere, a sort of "beggar thy neighbour" approach. But I don't see why the UK should be concerned about what the Scottish Government are doing.

Q905 Deidre Brock: Government Secretary, I want to ask about the Scottish Business Pledge. You seem to have an ever expanding group of businesses and companies signing up to it, but we were told last week by a witness—the head of the FSB in Scotland—there was a risk that it could become just a tick-box exercise and, also, that the employers who had signed up were probably already good employers. He also expressed some concerns about SMEs and their ability to sign up. How would you respond to that?

Keith Brown: Even if for some companies it was to be a tick-box exercise, I would like them to tick the box that says they are paying a full living wage, they are treating their subcontractors properly and there is respect for staff, even if it is the case that some companies are doing all of those things.

I will give you one example. A company asked that they speak to me about the Business Pledge and I met with their parent company in Canada. They said they wanted to sign it and that they were agreeing all of this in any event and then, when they looked into it, they found out that three of their security staff were not paid the living wage, for example. It forced them to examine their practices. There were also



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some other issues about prompt payment, which is another aspect of the Business Pledge. They signed the Business Pledge and were pleased to have done so. I do recognise that it is more difficult for some companies. That particular company had an issue with paying their bills too soon to companies from the Far East. It was counter-cultural with some of their customers, so they had an issue with that but they have agreed to do that in any event.

There are challenges. We have about 400 businesses that have signed up to it and I think it is a good thing. Even those large companies that perhaps already tick all the boxes are a good example to other companies as to how to do it. The more companies that do it the easier it becomes for some in the SME sector as well. If they are being paid, for example, on time by largescale construction companies, that is going to help.

Q906 **Deidre Brock:** There is a knock-on effect as well.

Keith Brown: Yes.

Q907 **Deidre Brock:** With regard to the Scottish Living Wage Accreditation, there has been a bit of a suggestion from one or two witnesses that there would be difficulty sustaining the minimum wage increase and that, ultimately, it could cause job losses. What would you say to that?

Keith Brown: I think there are two real purposes behind the living wage. One is a moral argument; you should pay somebody a wage they can live on if you think that is the right thing to do. The other is an economic argument. I have had this discussion with the Scottish Retail Consortium in the past. They are very concerned that anything that takes money out of people's pockets hits their bottom line, because people buy goods and services from the Retail Consortium according to the disposable income that they have. I have made the point back to them, "If you pay your staff a living wage they are not putting it in some Paradise Papers, a foreign kind of investment thing. They are spending it on getting by on goods and services that the Scottish Retail Consortium will be trying to sell", so it helps the economy. It is a benefit to the economy. If we can get to the stage where everyone is doing that there is no competitive disadvantage to anybody else but there is a big economic boost, including to those companies that you are talking about that might otherwise find it difficult. It is like the old Henry Ford thing where he wanted to create a middle class that could afford to buy his cars. It is the same kind of principle that is working there. If you are at the stage, as we are, with 81.6% of people in Scotland paid the living wage, let's just get through the rest of it and you will get it up to 100% and I think every company will benefit from that.

Q908 **Chair:** I want to check the number who are in the Living Wage Foundation. Is it 800 Scottish businesses have now signed up, and your ambition is for 1,000 to sign up for when?

Keith Brown: The autumn.



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Q909 **Chair:** The autumn. So you have a bit of work to do when it comes.

Keith Brown: I think we are well ahead. The last count I had is there are around 990.

Q910 **Chair:** Again, just for clarity, the number of businesses that have signed up to the pledge is 402 businesses; is that correct?

Keith Brown: Yes.

Q911 **Chair:** What are you doing to try to encourage more businesses to sign up? Are you actively going around and speaking to businesses and business organisations?

Keith Brown: Yes, at every meeting I go to. I was recently in the States and Canada, saying it to companies over there that are active over here, and trying to lay out what the benefits are of the living wage and the Business Pledge, and it takes time to do this. We have had some criticism from opponents for 400, but you have to start from somewhere and I think that 400 businesses have signed up to all of these things is very important, and then 900-plus. To put it in context, I think the UK is sitting at around 3,000-plus. That means that Scotland has almost one-third of all the companies in the UK that have signed up to the Living Wage. It is a pretty good track record.

What we have to do now is see what the next iteration and the next targets are to keep pushing it further. We know we have challenges, for example, in the retail and hospitality sectors, so we have a very good base from which to go forward. I think the UK average now is 78%. In Northern Ireland it is 72% and we are up at 81.6%, but we want to keep moving things forward.

Q912 **Chair:** In the city of Perth we are hoping to become Scotland's first living wage city. That is an ambition for us.

Keith Brown: Fantastic.

Q913 **Christine Jardine:** You mentioned the Business Pledge, which has cross-party support. My own party supports it. You aim to accredit businesses that pay fair wages, train young people, have women in senior positions, but your critics have contrasted that with the grants that the Scottish Government have given Amazon. How would you answer the criticism that you have given those grants to Amazon in contrast to the Business Pledge?

Keith Brown: I have had a number of discussions with Amazon, not least because of some of the publicity about their alleged employment practices. I don't investigate these things but I have certainly gone to Amazon and spoken to them. I have questioned them on this. I have visited their facility, the one in Dunfermline at least. It is very important that we have these jobs, so I think it was right from the grants—not just by the current Administration but by previous Labour-Lib Dem Administrations who also awarded grants to Amazon to bring these jobs



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here—to have these jobs. If you have the jobs that are here currently, which people want to do, the thing to do then is improve the situation.

I have had a discussion with Amazon, not least on the living wage, trying to say to them—for all the reasons I have just mentioned—they might want to consider the living wage. I did get the response, “It would be difficult because we are not doing it elsewhere”. I said, “Well, you are. You are doing it in London. In fact, it is over £9 an hour in London, so it is possible to do that”. We are continuing that dialogue, but that seems to me the best way to go about it, to make sure we have these jobs. These jobs are sought after. Many places were after that investment as well and Scotland won it, through the actions of both the SNP and the previous Administration. Once you have those jobs you have to make sure you improve the conditions for people working there in the security of their employment and their wage.

Q914 Christine Jardine: But the grants themselves have not succeeded in encouraging Amazon or putting pressure on Amazon to use the conditions of the Business Pledge.

Keith Brown: The grants themselves, from both Administrations, were designed to try to attract investment in the first place. I do think they are very conscious of public money now being used for purposes that are consistent with their own policies, but both Administrations sought to get that investment in the first place.

Q915 Christine Jardine: The Scottish Growth Scheme was launched last year and promised £500 million in loans and guarantees, but it has not paid out any so far. Could you explain to the Committee what is happening there?

Keith Brown: If you are going to initiate something like a growth scheme with £0.5 billion of potential support in it, first of all, we had to have a discussion with the UK Government. That was always understood. Then you have to set up the mechanisms. That has now been done. There are a number of companies actively involved—and my colleague Derek Mackay led on that—so there is an application process. The application is well advanced with some companies and it will provide a huge boost, especially to the tech sector but also to start-up businesses and some scale-up businesses. They will be able to access funding that is not otherwise available to them from the market, so I think it is a very good initiative. Obviously, it takes time to set up. It has been set up and we are now engaging with the companies that want to access it.

Q916 Christine Jardine: You have not changed parliamentary procedures to allow the guarantees and so on. When do you anticipate that companies can receive the first loans?

Keith Brown: That is not dependent on change to parliamentary procedures, so that is why the companies are currently involved. There is a different series of measures that can be provided. It can be a grant, a loan or a loan guarantee. The people that have come forward are not



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waiting on a further parliamentary process. If they pass through that application process they will receive the money and the support they are after.

Q917 Christine Jardine: When do you anticipate that we will see the first of these?

Keith Brown: There are two parties involved in this discussion, so I cannot say for certain, but I think the ones I am aware of are pretty well advanced. I would expect very shortly we will see the first of those being converted.

Q918 Chair: I note that one of the elements of the Scottish Business Pledge is not using exploitative zero-hours contracts. What is the Scottish Government's view on the use of zero-hours contracts? We have heard a bit of conflicting evidence about zero-hours contracts. People have suggested that it assists flexible employment. What is the Scottish Government's position on this?

Keith Brown: The key is that word that you have used, Chair, "exploitative". There is no question but that some people find that zero hours is what they want; they want to have that flexibility. Our concern is where the balance of power in that battle lies too far with the employer and not enough with the employee, so we have borne down on zero hours. I think we have fewer than anybody else in the UK, around 2%-something zero hours.

We are very concerned—and this is consistent with our fair work agenda, and it might be worth hearing from Hugh McAloon about this as well—and we have said we want to try to make sure the balance of power is also an employee's choice. It is not exploitative. It is something that is agreed between the parties and, in any event, we want to try to bear down on the overall number of people involved in zero hours because it does not provide the security that we like to see, and that is a big part of the fair work agenda. I don't know if you would like to—

Hugh McAloon: Yes, I would add something about the definition of fair work. Fair work sounds like it is very much about rebalancing relationships between employers and employees, and I think there is an element of that. But what fair work is about is actually a partnership between employers and their employees to grow the business and create value in the business. I do not think you would do that if you are imposing zero-hours contracts or low wages on people. If you can move those kinds of milestones around hours and conditions and wages so that they are part of engaging with your staff, your staff start to become part of that mode of innovation within a firm.

That is a key element and, as the Minister said specifically about zero hours: do we think that we are going to get the level of commitment from employees who have no certainty about the hours they are going to work? Do you think they are going to feel like part of the endeavours of



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that company compared to those who have more certainty and a bit more of a stake in the company? I think when they are not exploitative, when the individual is keen to have, for whatever reason, the flexibility or whatever things that are attached to the zero-hours contract, that is a different matter.

A lot of what we are trying to do around fair work is improve the lot of employees but, also, improve the competitiveness and productivity of the businesses that engage in fair work. In some ways, the name “fair work” may be a little bit misleading. It is about a new way of creating value for the benefit of the business and the overall economy.

Q919 David Duguid: I was going to ask about whether or not you considered all zero-hours contracts to be exploitative, based on the language I have read, but I think you clarified that. I have been on a zero-hours contract and it suited me, for example, but it does not suit everyone of course. How do you assess objectively, whether it is a zero-hours contract or a non-zero-hours contract, how exploitative it is and what criteria do you look for?

Keith Brown: Again, it might be useful to hear Hugh’s contribution but, first of all, we don’t have the powers in this area. We have no power to limit the use of zero-hours contracts. As with many of the other economic data, whether it is job figures or economic growth, it is often survey-based. We don’t have the powers just now and it is a matter of at least a little bit of satisfaction that, in terms of the prevalence of zero hours, we have managed to work it down, through encouragement, to, I think, the lowest levels of the four UK countries. I am not certain of that but certainly it is lower than the rest of the UK as a whole, just over 2% I think. We don’t have the data to say whether it is exploitative. That is why we are doing the work through the fair work agenda and working with trade unions to try to see—especially in the worst cases—whether they are being exploitative. What we can do is have the data and the ability to interrogate what the Scottish Government and their agencies do and to make sure it is not part of what they do.

Interestingly, we are about to set up a strategic board that Nora Senior will chair. That will have an analytical unit attached to it and they want to look at all the economic data we have to make sure they are fit for purpose. There are a lot of things—as I have mentioned, sometimes a survey or a boost to a survey—that are carried out and sometimes the data is wrong. The UK seems to have lost £0.5 trillion recently for some reason. I am not sure how that worked out. The export figures that we have for Scotland have been proven to be wrong. We have had problems with the quantifying of oil exports from oil fields, so we want to interrogate the data that we have and make sure it is fit for purpose. On the point you make about knowing the nature of contracts, it is much easier if you have control over employment law in its entirety but we should be looking at how we can gather that data as well.



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Hugh McAloon: Understanding how employees feel about the conditions, the contracts that they have been given, I think is one of the important elements of the fair work framework. The Fair Work Convention has set out the whole area of employee voice. That can be through trade unions or through our mechanisms, but having an effective employee voice within an enterprise is the sort of thing that will unearth this sort of practice.

It also goes back to my point earlier about the shared sense of purpose and endeavour within an enterprise. Having a strong voice about how workers are treated is an important element but it is important also to have mechanisms for employees and all workers to engage with management, to come up with better ways and more productive ways for the enterprise to go about its business. What you are looking for there is moving away from a “them and us” thing into a shared endeavour. I think highlighting practices that the workers in any enterprise find unacceptable and finding ways of resolving that is a key element of what the Fair Work Convention laid out.

Q920 **Chair:** I am grateful. A significant theme in the evidence we have collected is to do with new business models that have emerged in the course of the past three years. What is your view, Cabinet Secretary, of the impact that this has had on Scotland’s labour market? Do you have any concerns about what you have observed?

Keith Brown: Scotland has not been immune from the new business models and new business models, in and of themselves, can be real disruptors in the economy, which can be a good thing. There can be real benefits from that, so you want to keep yourself open to the possibility of new business models and to encourage them. Some of the things that we have seen are in what is sometimes called the collaborative economy. We have set up a group to look at this a bit like the—

Chair: The collaborative economy?

Keith Brown: The collaborative economy, yes. I suppose it is between individuals and organisation. If you think about Airbnb, for example—even Uber—one term for it is a collaborative economy. I did ask Matthew Taylor to give input from Scotland into his report. That was not taken up, which is unfortunate, so it was done without the input of the Scottish Government. But we have our own collaborative economy.

What we are keen to do is to see where the benefits might be realised. We are also trying to address some of what seem to be the obvious problems. That goes back to the point about insecurity and lack of rights for a number of employees, whether they are termed as employees, which we think they should be. We want to try to tackle that as best we can and there are other issues as well. In the Scottish Parliament there has been quite a lot of discussion about the impact on the Edinburgh housing market. Things like Airbnb are also short-term lets, whereby it is said that entire communities within the city centre of Edinburgh can be



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pretty much taken over by short-term lets and people are priced out of those areas. We are currently looking at that through the Commission. That is chaired by somebody from Nesta and reports back before the end of this year I think, so I will have more to say on it then.

It is quite clear to me there are, of course, economic drivers and opportunities in there but we want to make sure that what happens for employees is consistent with a fair work agenda. The notion of the precariats, people who are very precariously employed or, if they are employed, they don't have the same right as others is something that is very central to a fair work agenda.

Q921 **Chair:** Notwithstanding what you have said about the lack of consultation with the Taylor review, what is your view of the recommendations that have been made?

Keith Brown: Much of it we agreed with. We would have gone further on the aspects of people being termed employees. There was no mention, for example, of trade union recognition, which we would have liked to have seen in relation to that, so I think we would have gone further. We have said it is a useful contribution to the debate. It could have been more than that had they been willing to have input from the Scottish Government, but we are saying it is a useful contribution to the debate. We will look at it through the collaborative economy group that we have set up and we will come to our own conclusions in due course.

Q922 **David Duguid:** You mentioned earlier, Cabinet Secretary, the imbalance between London and the south-east and the north of England, particularly in terms of transport and digital infrastructure. To bring it back to Scotland—you can probably guess where this is going—we have heard during this and a number of inquiries that there are significant barriers to the success of local economies outside of the central belt, in particular digital and transport infrastructure. To what extent are you currently working or do you need to work with the UK Government on these matters?

Keith Brown: I would say quite sincerely that I think the Government that I am part of have done a huge amount, far more than any previous Government, on transport, with investment in the ferries, new routes, new vessels, new port facilities, the establishment of RET. This has been a huge boost to those transport links. It was never done to everyone's satisfaction, I understand that point, but we have done a huge amount to improve it and have spent a lot of money in doing so.

In relation to the roads network, I think we were the first Government ever to commit themselves to dualling of the A9 between Inverness and Perth, and the A96 between Inverness and Aberdeen, but even with smaller roads in more rural areas. The Mosstodloch bypass is perhaps not best known to everybody but it was campaigned for for 50 years and it was this Government that completed that. We have never seen such high



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investment in rail and new routes and new stations. The Borders railway was the biggest piece of rail infrastructure in the UK for 100 years.

We have made the investment in transport, and it is trying to look beyond that. It was originally felt there had been too much concentration on the central belt of Scotland. The Aberdeen West and peripheral route for a number of years was the largest roads project in the UK—I am not sure if it still is. That had been campaigned for for 50 years, and a former Minister, Patrick McLoughlin, came to Scotland a few years back and said, “Your problem here in Scotland is you have not sufficiently invested in your transport infrastructure for decades” and he was right. He was a Transport Minister and that was pointed out to him, but he was right that there has not been that investment.

I think we are doing that in terms of digital. Going back to your point about the rural areas, it is quite clear to me, as a former Transport Minister, that people are very concerned about the road, rail and ferry networks but, nowadays, it is the digital highway that is going to be hugely important for employment, health and education, and there is a big job of work to do. It is not my job in the Scottish Government to do that. It is Fergus Ewing’s, but that is a big job of work. That is why we made the commitment to have everybody and every business with access to superfast broadband by 2021.

These are big commitments. They are not all able to be done at our own hand. Digital is a lot to do with the UK Government, but that does recognise the need for local economies further removed from, say, the central belt of Scotland, to be able to make sure they can have the same experience of economic growth and opportunities as everyone else.

Q923 David Duguid: I am sure the businesses in my constituency of Banff and Buchan will be glad to hear that. But I go back to a key part of my question, which was: to what extent are you working with the UK Government or need to work closer with the UK Government, or vice versa, to try to push this along?

Keith Brown: One of the ways in which we are doing that is through City Deals. That might sound counterintuitive because, by and large, you are talking about rural areas away from cities, but many of the City Deals that we have struck have been with areas outwith the cities. You will know that Aberdeen and Aberdeenshire was a City Deal. Even in Glasgow, seven other authorities were not part of the City of Glasgow, so one of the ways that we are doing that is by a City Deal process. What I am very keen to get from the UK Government is their sense of what they intend for those areas not covered by the City Deal: Moray, Falkirk, Argyll, the Islands and the Northern Isles. What is it their intention to do there?

To be fair, Ian Duncan agrees that we have to have a coherent basis on which to go forward, and if the two Governments can act together then we are liable to achieve more in doing that. I have made that offer to the



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UK Government: "Let's try to work out exactly what we are going to do right across the country", and that will cover every community in Scotland if we can achieve that. There is work going on now and the City Deal process has been a relative success in collaboration between the two Governments.

Q924 **Christine Jardine:** I am sure my colleague Tavish Scott will be delighted to hear you congratulate him, in a way, on the Borders rail link. If I remember rightly, it was his announcement that the Borders rail link was going to be built.

I may have missed this in your answer, so apologies if I have, but do you have any real projects to link areas like Aberdeenshire and Inverness more closely with the central belt, say, Edinburgh? Do you have any proposals to improve the rail link, which has been the subject of a fair amount of criticism over the past few years?

Keith Brown: I am not aware of any Tavish Scott announcement. It certainly is not what drove me to do it, to be the first Government to do it rather than talk about it for a number of years. Anyway, I think it was generally supported by all political parties that we did that.

We are looking to improve the rail link from Aberdeen to the central belt. We announced that as part of the City Region Deal, particularly acknowledging the problems of the Montrose Basin, which are a major inhibition to improving journey times. I think the amount that was being talked about was £200 million but, although I was the person that announced that because it was a City Deal, I am not the Transport Minister now so I do not have knowledge of all the different transport and rail infrastructure deals.

The recent announcement by the UK Government, which essentially limits or cuts around £600 million off the capital investment we would want to make in a railway, will fundamentally, if it stays the same, inhibit ability to take on new stations and new routes or carry out improvements. The major improvement we are doing now is electrification. Aberdeen to Glasgow is currently underway going north to Dunblane and then, of course, we want to see the whole of the network electrified because of the environmental and efficiency benefits. You need the money to do that. Moving from what is called the H loss, the higher level spending figure, to a new figure—sorry for the acronym—the RAB, the resource asset base, which is how things were funded before, if that is changing from 2019 and it is being done by grants, and there is substantially less, that will affect the rail programme. That is a discussion we are currently having with the UK, but the main part of the improvements to Aberdeenshire are through the example I mentioned of the Montrose Basin.

Chair: You did touch on City Deals but I know John Lamont has a question on this. John.

Q925 **John Lamont:** I do and I will come back to that. I know it is not your



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Department but David was talking earlier about digital connectivity. Could you outline what the Scottish Government have been doing on that?

Keith Brown: There are a number of things. Again, it is not my department, it is Fergus Ewing, but a number of different things have been done to try to roll out broadband across the country. In areas where it is very difficult in the short term to see how that could be done by the establishment of cable networks, we are looking at other methods of supporting that for individual communities, using satellites or voucher systems to try to improve that in the short term, but just now it is very much a fluid situation. It is not going to affect our overall commitment to make sure that everyone is established by 2021, but the process of getting there will depend on the discussions that the UK Government are currently having with BT and others about how the rollout will happen in England and Wales.

A lot is being done now. Progress has been made. They have exceeded the targets they had up to this point, and the endpoint is still to have every business and individual having the ability to connect to superfast broadband by 2021. As to the detail of how they will reach that, you would have to ask Fergus Ewing I think, John.

Q926 **John Lamont:** Are these Scottish Government initiatives as opposed to anything that BT or the UK Government are doing?

Keith Brown: The Scottish Government's target in the manifesto is to have that established by 2021, but the process for getting there does involve working with BT. The relationship that the UK Government have with BT will impact on the relationship that the Scottish Government have with BT. It is quite an involved process and we want to see how that is going to develop for the rest of the UK. For example, there are different speeds being committed to south of the border than there are north of the border. It is quite a complex area and, without trying to pass the buck, I am sure Fergus Ewing could give you detail more easily than I can.

John Lamont: That is very helpful. Thank you very much.

Chair: That is helpful. We will be having an inquiry into connectivity.

Q927 **John Lamont:** Going on to the City Deals and Regional Deals—and obviously I am very supportive of the Borderlands Growth Deal—are the Scottish Government positive? I think you touched on this earlier and I think I know the answer, but are you generally positive about these Regional Deals?

Keith Brown: Yes. We have given a commitment. In fact, I think the Borderlands was first mooted by Alex Salmond. I could be wrong on that, but that is the first I recall of it being mentioned. We said from the start that we are keen to see this, but you can immediately see the anomaly that is there. The Scottish Borders have already benefited from a City Deal. If we push ahead with a Borderlands Deal—and we are saying we want to make sure there is a Borderlands Deal—then that would mean



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that one part of the country has had two deals. Other parts of the country have had none, which is my reason for saying to Ian Duncan—and I think I have his agreement on this—that we want to try to think about how this is done across the country. If you have one area that has two deals and other areas that have none you are going to get some resentment, so let's plan it out in the best way possible and, yes, we are positive about a Borderlands Deal.

Q928 John Lamont: How much impact are these deals having on job growth?

Keith Brown: It is difficult to say at this stage. The oldest one or the one that is longest established is Glasgow. In general terms, you can say the Scottish economy is 4.1% in terms of employment. It was down to a record low of 3.8% recently, so employment generally is very good, but it is hard to say exactly what the impact of those are at this stage, given the Glasgow one is I think three years and some of the projects are only just coming through. Aberdeen is more recent, as is Inverness, so I think we have to wait a bit longer. Also, it will be for the local governance arrangements to report back on the impact of these investments as well, so the local authorities are involved.

Q929 Chair: We had Lord Duncan in front of this Committee a couple of weeks ago. I raised the issue of the Tay Cities Deal and a concern that there might have been not so much on delay but about what Lord Duncan described as the "reserved space" and an imbalance in the bids that had been submitted and gone forward. Is that a feature that you recognise and what can we do in order to try to correct some of these features?

Keith Brown: It is worth thinking back to the first one that happened in Scotland, Glasgow, where the cast iron rule we were told was 50:50. The UK Government were putting in 50% and we put in 50%. Then you would add on to that the local authority and private sector contribution. That then changed subsequently. The UK Government changed their view on that to say that they were going to be supporting only reserved areas. They did not make it absolutely cast iron. I can think of an example in the Inverness deal that was done that was not really reserved but the UK Government funded in any event, but they have stuck to that kind of line.

If that is to be the line for the UK Government that means that local authorities and those involved in City Deals have to try to have regard, if they want to increase the quantum of the deal, to making sure they have sufficient reserved issues, because very often what comes forward is a huge list of devolved issues, infrastructure projects in particular for us to fund. If they do that and the reserved element is down here, then the whole deal comes down. They have to think quite imaginatively about what they will do on the reserved elements to the bid, and Ian Duncan has said the same thing.

For my part and the Scottish Government's part, we are willing to be flexible if the constituent parts of any particular deal—you mentioned Tay Cities, so it comprises Angus, Fife, Dundee and Perth and Kinross. From



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my point of view, it doesn't have to necessarily be 50:50 in each area. I think Ian Duncan has agreed with that as well. We are willing to be flexible in relation to it, but it does mean that those proposing City Deals have to have regard to what they can do in the reserved space as much as what they can do in the devolved space.

Chair: Great. That is really helpful. Thank you.

Q930 **Paul Masterton:** A number of these big investment projects are long term. Not all Governments like thinking long term. They like things that are short term and deliver a quick bang for their buck. On some of the larger capital investment projects that have been talked about, which will deliver the kind of sustainable growth and jobs and productivity we have been talking about, how is the Scottish Government going through that budgeting process for long-term investment decisions?

Keith Brown: In relation to City Deals?

Paul Masterton: Yes, and even more generally for just single projects.

Keith Brown: In relation to City Deals, you are bound by the deal when you strike it. When we struck the Glasgow City Deal, we are bound to put into our capital programme in future years our contribution to the Glasgow Deal, as we have done for the Aberdeen/Aberdeenshire and also the Inverness City Deal. That is factored into the capital programmes for us already. It is a baseline that has to go in there. It tends to be the case, I would imagine, that most Governments will look at what the legal commitments are, contractual commitments, ministerial commitments and what is discretionary, and they are legal commitments that we will fund those. Beyond that it is a difficult situation.

We have had a substantial real terms cut to our capital programme, so we have had to look at different ways that we can boost what we are doing for capital. The optimum you can do it is on a three-year basis, if you can do that. But each year we will look at what is available to us. We do have the new borrowing powers, which have increased the amount we can put into the pot by £450 million but, overall, we have a cut in our capital programme.

It means that each year you have those pressures to contain. That will not affect City Deals because they will be baked in from the start, as I have committed to. You have mentioned long-term projects. The A9 we announced, I think in 2012, as a 13-year project. I am hoping it is still an SNP Government by 2025-26, but you are not going to guarantee to get a short-term benefit from that. We have just opened the first of 11 phases on the A9, but we think it is right for the country that we do that. That is an example of a long-term commitment, longer than most Governments have thought about in the past I think.

Q931 **Chair:** Lastly, because I know you have to get away, Cabinet Secretary, on the UK's industrial strategy, we know they are consulting now. What role are you going to be playing? What level of consultation do you



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expect, and will this have an impact on some of these issues we have been talking about when it comes to sustainable employment?

Keith Brown: Yes, if we can get it right. If we can get the process and the consultation right then we can achieve a great deal, which can also benefit employment. As I have said already, when we did get the chance to discuss it with the UK Government we did point out that there was no reference to trade unions, very little reference to employees, so we have made that point to them. Also, much of the industrial strategy will involve Innovate UK. The First Minister and I recently met with innovate UK but, once again, we find out something at two days' notice about giving appointments to a board and then we are not told who is appointed to the board afterwards, so I think there are still some issues.

If you look at the projects that Innovate UK are accessing for some of the industrial strategies monies, again you are still seeing the same imbalance, not just Scotland and the UK but northern England. The response of the UK Government and Innovate UK is they are trying to fund the things that will have the biggest impact. We have a lot of sympathy for that but if you are doing it in such a way that it is not going to address the imbalance that is there—I understood that to be one of the fundamental aims of the industrial strategy. I could be wrong on this but I thought there was an overhang from George Osborne's Northern Powerhouse to try to address that.

If you continue to funnel resources to areas of huge economic activity, like the south-east of England, at the expense of, say, northern England or Scotland or Wales, then you are not going to have the desired effect. The best way for us to deal with that—certainly from the Scottish perspective—is to have that meaningful engagement. If UK Ministers, and that means not just Greg Clark but other Ministers, are willing to engage and speak with us and also to give a level of control and discretion to, in our case, the Scottish Government to access and try to help direct some of that funding, you are going to get more bang for your buck out of that.

That is a plea I have made to Greg Clark and it is a plea I would make to the UK Government to continue where you co-operate with the UK Government on the industrial strategy. I have said, I don't know how many times, "Of course we will" but it requires two to do that. If it is the big opportunity that it has been promoted as, let's try to make sure we get the most out of it and try to do it in a collaborative way.

Chair: I am grateful. I know you have to get away right about now, so we are very grateful. There are so many other questions we could have asked you but we are grateful for your time, Cabinet Secretary. If there is anything further that you feel you can meaningfully contribute to this inquiry, please make any submission to the Committee. Thank you very much.