

ORIGINAL ARTICLE

Introducing sectoral bargaining in the United Kingdom: Why it makes sense and how it might be done

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Abstract

This study argues that sectoral bargaining offers a flexible alternative to legal regulation in setting terms and conditions of employment, encourages participation and involvement, brings benefits to employers and improves productivity and performance. It also provides a platform for sector and cross-sector social dialogue leading to improved policymaking and better macroeconomic outcomes. A statutory framework based on Wages Council-type arrangements and Advisory, Conciliation and Arbitration Service Codes of Practice is recommended for the United Kingdom, with sectors in the 'foundational economy' being prioritised. Sector agreements need to be about much more than pay, though, if they are to realise their potential.

1 | INTRODUCTION

In its review of the Labour Party's 2021 Green Paper (2021), *A New Deal for Working People*, the highly respected law firm Lewis Silkin (2024) suggested the commitment to introducing sectoral collective bargaining was 'arguably the single most radical proposal'. Not only would the proposed Fair Pay Agreements be multi-employer in their scope and set terms and conditions of employment for entire sectors, in contrast to the status of most existing collective

[Correction added on 12 September 2024, after first online publication: 'Lewis Silkin' was incorrectly added in the author's affiliation and correspondence details and has now been removed in this version.]

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agreements, which weren't legally enforceable between employers and trade unions, these terms and conditions would be 'binding'.

Since the publication of the Green Paper, it is not unfair to suggest that there has been a good deal of backtracking so far as sectoral bargaining is concerned. The *Labour's Plan To Make Work Pay* (Labour Party, 2024), published in May 2024, only committed to introducing sectoral bargaining in social care. As for its prospects more generally, there was just a promise to 'assess how and to what extent' sectoral bargaining arrangements 'could benefit other sectors and tackle labour market challenges'. It was also made clear that sectoral bargaining wasn't being seen as 'the best solution for many parts of our economy'.

It's not entirely clear why the Labour Party changed tack. Sectoral bargaining had powerful support not just from the TUC (2019) but also two influential think tanks: the Institute of Employment Rights (2016 and 2018) and the Resolution Foundation (2023). Most likely, and understandably, it was perhaps decided that too much devil in the detail remained to be resolved in an election year. To begin with, there was the focus: the Green Paper emphasised 'fair pay', whereas the Scottish (2017) and Welsh (2019) governments were prioritising 'fair work'. At issue, too, was the justification for sectoral bargaining—whether it was to be about enhancing the coverage of collective bargaining, along with trade union power, or was also expected to contribute to other objectives like improving productivity and performance. Additionally, there was a wider cluster of questions about mechanisms—some, no doubt, arising from the consultation taking place with business leaders—for which there didn't yet appear to be ready answers. As O'Connor (2023) reported in *The Financial Times* in September 2023:

When I spoke to David Hopper, a lawyer at Lewis Silkin who specialises in industrial relations, he reeled off a series of questions that would need to be answered. How would employers in the sector coordinate themselves, before they even sit down with the unions? What mechanism would there be if the parties failed to agree? How would the agreement extend to companies that didn't want to take part? Who would enforce it, and how? And perhaps most important: if the agreement succeeded in raising low pay and improving working conditions in the sector, who would pay for those higher labour costs?

Not helping matters was that the New Zealand Labour Government's Fair Pay Agreements Act (New Zealand, 2020), said to be one of the inspirations for the Green Paper's proposals, turned out to be ill-fated. The Act, which introduced after long and acrimonious debate, figured prominently in the run up to the election in late 2023, which the Labour Party lost to a National Party-led coalition. Whereupon the coalition immediately removed the legislation from the statute book as it had campaigned to do.

Hopefully, with the uncertainty of the UK's July 2024 election out of the way and a Labour Government securing a massive majority, there can now be a constructive discussion and debate about what is indeed one of the most significant institutional reforms proposed in recent years. Because, as Part 1 of this study argues, there is a strong case to be made for sectoral bargaining much of which sadly goes by the board in the United Kingdom. Also, as Part 2 contends, the main issues needing to be resolved if sectoral bargaining is to be successfully introduced in the United Kingdom are not as challenging as they might at first appear.

2 | PART 1: WHY SECTORAL BARGAINING MAKES SENSE

There are two very common misconceptions about collective bargaining needing to be corrected if the full potential of sectoral bargaining is to be appreciated. One is that it is the collective equivalent of individual bargaining. The other is that pay is its be-all and end-all. Neither do justice to the concept or the practice. As Flanders (1970a, p. 215) famously put it in describing the role of trade unions in promoting it, collective bargaining is essentially a rule making process—it's a form of joint regulation that stands comparison with legal regulation. Crucially, too, the rules aren't just concerned with pay,¹ but also issues such as employee voice, training and development, and discipline and dismissal.

Stated in the simplest possible terms these rules provide protection, a shield, for their members. And they protect not only their material standards of living, but equally their security, status and self-respect; in short their dignity as human beings (Flanders, 1970b, p. 42).

As the following sections explain, although some of sectoral bargaining's benefits have long been appreciated, others have been acknowledged only recently. Also, it is international agencies like the OECD, which have been to the fore in doing so—organisations that in the past have been less than enthusiastic about the role of trade unions and collective bargaining reflecting the primacy accorded to markets and market-based policies. As the OECD's (2019a) 'Negotiating our way up: Collective bargaining in the changing world of work' most clearly shows, it seems that debates about economic performance, business strategy and inequality are changing minds: there is a return to the belief that institutions are also important and governments have a key role in shaping them. Reinforcing these views is appreciation of the role of collective bargaining and 'social dialogue' in handling the impact of the covid pandemic to be found in the OECD's (2020) 'Global deal report, social dialogue, skills and Covid-19'.²

2.1 | Sector agreements offer a flexible alternative to legal regulation

The underlying logic of sector agreements is that they establish a floor of minimum employment standards across an industry: the benefits of collective bargaining are not just the preserve

¹Much collective bargaining is not 'distributive'—it's not a fixed sum game with 'winners and losers'. Rather it's 'integrative': it's about making trade-offs between different aspirations and finding common ground. Collective bargaining almost invariably involves an ongoing relationship as well: opportunities for 'attitudinal structuring' are ever present. Complicating matters is that the parties are collective actors: 'intra-organisational' bargaining is a constant as well. See Walton and McKersie (1965).

²It is not just in the United Kingdom that policy makers are looking to sectoral bargaining for help in solving their problems. In 2022, Australia introduced the Fair Work Legislation Amendment Act incorporating new provisions for multi-employer bargaining (Forsyth & McCrystal, 2023). In the same year, as already noted, New Zealand introduced a Fair Pay Agreements Act promoting sector bargaining. In October 2022, the European Parliament and the Council of Europe introduced a directive on adequate minimum wages requiring member states to promote collective bargaining with a target coverage rate of 80%: it does not specifically prioritise sector bargaining, but it is widely accepted that many countries—and not just those in central and eastern Europe—will not get anywhere near the target without doing so, given collective bargaining is presently limited to a few companies (Müller & Schulten, 2020). There has also been growing interest and support in Canada (Centre for Future Work, 2024) and the United States (Madland, 2019) for 'broad-based bargaining', which is roughly equivalent to sectoral bargaining.

of workers in larger companies, in other words, but in small and medium size enterprises (SMEs) as well. Perhaps the most celebrated expression is to be found in Winston Churchill's speech introducing Trade Boards (later to become 'Wages Councils') in 1909. As President of the Board of Trade at the time, his immediate aim was to establish a level playing field in the so-called 'sweated trades' characterised by poverty-level wages, excessive hours and unsafe workplace conditions. In referring to 'healthy and unhealthy conditions of bargaining', however, Churchill (1909) explains the essence of sectoral bargaining in inimitable words:

The first clear division which we make on the question to-day is between healthy and unhealthy conditions of bargaining. Where in the great staple trades in the country you have a powerful organisation on both sides, where you have responsible leaders able to bind their constituents to their decision, where that organisation is conjoint with an automatic scale of wages or arrangements for avoiding a deadlock by means of arbitration, there you have a healthy bargaining which increases the competitive power of the industry, enforces a progressive standard of life and the productive scale, and continually weaves capital and labour more closely together.³ But where you have what we call sweated trades, you have no organisation, no parity of bargaining, the good employer is undercut by the bad, and the bad employer is undercut by the worst; the worker, whose whole livelihood depends upon the industry, is undersold by the worker who only takes the trade up as a second string, his feebleness and ignorance generally renders the worker an easy prey to the tyranny; of the masters and middle-men, only a step higher up the ladder than the worker, and held in the same relentless grip of forces - where those conditions prevail you have not a condition of progress, but a condition of progressive degeneration.

There are two main reasons why joint self-regulatory mechanisms like collective bargaining are to be preferred to legal regulation. One, which will be expanded upon below, is that they encourage participation and involvement. Inasmuch as large numbers of people are typically involved in discussing and debating the possibilities, the outcomes enjoy greater legitimacy and commitment.

The second reason is their much greater ability to adapt regulation to circumstances. In the words of the OECD's (2019b) 'Employment outlook facing the future of work: How to make the

³Churchill's speech is a reminder that multi-employer sectoral bargaining has a long history in the United Kingdom dating back to the 1800s; indeed, it was the dominant level of collective bargaining in the private sector until the 1960s when the inclusive structure enshrined in sectoral agreements gave way in most industries to a highly fragmented one based on individual workplaces and companies. It originated in industries such as printing and engineering in the 19c with the role of employers being as critical as that of trade unions. In printing, groups of 'masters' and 'journeymen' meeting separately sought to ensure there was no undercutting of the 'going rate'. Very quickly they realised that taking wages out of competition jointly would be more effective. In engineering, it was employers who imposed sectoral bargaining on trade unions following a widespread lockout in 1897–1898: it took the form of the 'Provisions for Avoiding Disputes' and reflected the difficulty employers had in dealing individually with the 'rolling strike' tactics of the craft unions: collective bargaining was as much about the recognition of management prerogative as it was about trade unions negotiating terms and conditions of employment. Sectoral bargaining was extended more or less across the board by government pressure after World War 1 following the reports of the Whitely Committee in 1917–1918; the Committee had been set up at the height of industrial unrest to make suggestions for a permanent improvement in employment relations. For further details, see Sisson (1987).

most of collective bargaining', collective bargaining offers a 'more flexible and pragmatic but fair manner than labour law' for dealing with issues. It can help to adapt pay, working time and work organisation to new needs; deal with work–life balance and increased working time flexibility; and regulate the use of artificial intelligence, big data and electronic performance monitoring, as well as their implications for occupational health and safety, privacy, evaluation of work in performance and hiring and firing decisions.

Ironically, it might be added, the decline of sectoral bargaining in the United Kingdom did not give employers the flexibility that they might have expected. On the contrary. It has meant more 'juridification', that is, the greater involvement of the law and the courts in employment relations matters. In the absence of sector agreements, governments have had little option but to introduce legal rules to help deal with the risks and uncertainties that might otherwise result in conflict involving individuals and/or groups of workers. However, it is difficult to come up with top-down and one-size-fits-all solutions to the complexities involved in the employment relationship, let alone the complications that can arise in different sectors.

2.2 | Sector agreements encourage participation and involvement

It has long been recognised that collective bargaining brings the opportunity for employee 'voice' in both making employment rules and administering them. From this involvement comes ownership and from ownership a measure of commitment.⁴ Not for nothing did many of the pioneers of employment relations study in the United Kingdom and the United States talk about 'private systems of governance', 'industrial jurisprudence', 'industrial self-government', 'secondary systems of industrial citizenship', 'industrial democracy' and the like.⁵

There is little doubt that most workers in the United Kingdom have lost out as a result of the decline of sectoral bargaining and the joint regulation it enables: below inflation pay rises and greater insecurity (arising particularly from uncontrolled outsourcing) are but two considerations. Less commented on, though, is that society at large is also suffering from the halving of trade union membership since the 1970s.⁶ Coats (2004, p. 11) puts the argument most forcibly in discussing the wider significance of employee 'voice'. Democracy, he argues,

... is about more than periodic elections on a one-person-one-vote universal franchise ... Citizenship has to be learned. It depends on discussion, debate, the assessment of alternative points of view, a democratic decision by majority vote and a willingness by the losers to live with the outcome.

Trade unions not only ensure an independent voice, in other words, but also an opportunity to be involved in the democratic processes of argument and voting. Coats' conclusion does not pull any punches: 'If worker voice institutions are weak then the public domain is weakened. If the public domain is weakened then the quality of our democracy is diminished'. Similar

⁴The Chartered Institute for Personnel Development (2020) offers some up-to-date examples in its *Collective Employee Voice*.

⁵See for example, Slichter et al. (1960), Marshall (1991), Dunlop (1967) and Ackers (2007).

⁶Peak trade union membership was 13.2 million in the late 1970s. It was around 6.25 million in 2022 or 22.3%. See House of Lords Library (2023).

arguments have been made more recently in the discussion and debate about the need for a new social contract in light of increasing concern about the rise in inequality discussed below.⁷

2.3 | Sector agreements bring benefits to employers as well as trade unions

The historical role of sectoral bargaining in combating the rolling strike tactics of craft trade unions has already been touched on. Ongoing benefits of sectoral bargaining to employers are that it saves on the management costs of dealing with employment issues independently - in particular, businesses are able to avoid the time and potentially damaging conflict that can arise from distributional bargaining over pay. They also continue to make 'undercutting' and 'poaching' more difficult and investment in training more worthwhile. Mather (2014, p. 34) reports that the Scottish Government (2022) gives us a succinct up-to-date summary:

The benefits of a sector approach come from an ability to address challenges and determine strategies that affect all organisations and workers in a sector. They also come from an ability to determine agreed standards on pay, terms and conditions and other matters such as investment in training. A sector approach maximises efficiencies in the consultation and negotiation process and establishes a level playing field that marginalises firms seeking an advantage through 'undercutting' the competition - either by paying lower wages and offering poorer terms and conditions or poaching skilled workers from those who invest in workforce training.

One of the few surviving private sector multi-employer agreements in the UK offers a particular example of the role sector agreements can play. In the words of The National Agreement for the Engineering Construction Industry (2024):

The key objective of the NAECI is to continue to supply a modern, robust and 'fit-for purpose' national employment relations structure that:

- (a) enables United Kingdom engineering construction industry employers and clients to remain globally competitive;
- (b) provides attractive terms and conditions and greater security of employment for a competent, motivated, productive and competitive industry workforce and

⁷For example, Stiglitz (2017), the former World Bank chief economist, argues that society must promote civic engagement, to ensure an appropriate system of checks and balances, together with as much transparency and accountability as possible: if not, 'The voice of the wealthy will predominate both public choices... and in the setting of the rules of the game'. Such engagement occurs not just through national governments, he goes on, but a host of institutional arrangements, some governmental and some civil society. 'These are the means by which "voice" of various groups within society can get injected into the political process'. Sectoral bargaining is one set of such 'institutional arrangements'.

- (c) establishes a sound foundation for further improvements to industry productivity, resourcing and employment relations, assuring global clients of the benefits of continuing to invest in United Kingdom projects and sites.⁸

Also not to be forgotten is that, because of its multi-employer coverage, sectoral bargaining doesn't just help to maintain the membership, status, and authority of trade unions (their 'legitimacy power').⁹ It does the same for employers' organisations. As well as enabling individual businesses also to have a collective 'voice', it gives employer's organisations a key intermediary role. Indeed, without them, meaningful communications between national policymakers and individual employers other than large companies is very difficult—arguably, another major gap in the UK's institutional policy-making framework and a contributing factor to its poor productivity record.

2.4 | Sector agreements encourage 'high road' business strategies

For many years, the practice of employers' organisations and trade unions using sectoral bargaining to take wages out of competition tended to be frowned upon, reflecting the prevailing 'primacy of markets' thinking. This was particularly the case, as in printing, when across the board rises in product prices often immediately followed increases in pay. Recently, however, taking wages out of competition has come to be viewed much more positively. Indeed, it is seen as contributing not just to reducing inequality, but also to boosting growth and productivity. In the words of the OECD (2017) 'Better use of skills in the workplace. Why it matters for productivity and local jobs', 'There is a broad distinction between employers that pursue "high road strategies", where employees and the skills that they possess are viewed as an integral part of a business's competitive advantage, or "low road" strategies, where labour is considered a commodity and workers are seen as a cost to be minimised'.

In a globalised marketplace, a 'low road' strategy is not only seen as a dead end on its own terms but also as hampering much needed innovation and growth. Müller and Schulten (2020) put it like this in discussing the debate that took place over the European Union's (EU's) minimum wage directive: in contrast to the aftermath of the 2008 financial crisis, 'adequate minimum wages and strong collective bargaining are no longer viewed as impediments to "flexibility" and "competitiveness" but instead as "preconditions of inclusive growth in Europe"'.¹⁰

⁸As well as engineering construction and electrical contracting mentioned later, national sector bargaining is prominent in theatrical production where UK Theatre negotiates a range of agreements involving the Musicians' Union, the Broadcasting, Entertainment, Communications and Theatre Union and the Writers' Guild. The Independent Theatre Council also conducts sectoral bargaining with a range of trade unions.

⁹As Simms et al. (2009, p. 128) remind us, collective bargaining does not just depend on the ability of trade unions to undertake industrial action ('coercive' power). Also important is their 'legitimacy power'—the extent to which society legitimises the wider representative roles trade unions fulfil.

¹⁰Coincidentally, the introduction of sector bargaining in the United Kingdom might be regarded as a shift towards 'active alignment' with EU regulations. The UK in a Changing Europe programme publishes a periodic regulatory divergence tracker, in which it differentiates between 'active divergence' (from regulations in place before Brexit took effect), 'passive divergence' (where the EU adopts new regulation post-Brexit and the UK does not) and 'active alignment' (where the EU adopts new regulation and the UK mirrors this). As things stand, the EU's minimum wages directive, specifically its provisions promoting collective bargaining, is currently an instance of 'passive divergence'.

A key benefit of sector agreements is that they raise awareness of the importance of employment matters and help to diffuse good employment practice and workplace innovation. Inadequate diffusion, the Productivity Institute (2024) emphasises, along with an absence of joined-up policy-making and underinvestment, are the fundamental issues needing to be tackled if the United Kingdom's growth performance is to be improved.

A good illustration of what sector agreements can do is to be found in another of the UK industries where multi-employer bargaining is the norm: electrical contracting. The Joint Industry Board for Electrical Contracting, (2024) involving the Electrical Contractors' Association and Unite, which dates back to the late 1960s, publishes a Handbook that not only gives details of the various 'agreements' between the two parties. It also has sections covering the 'main provisions' of employment law along with codes of 'best practice' and 'good practice'. Significantly, too the JIB does not limit itself to employment matters. In its own words, the aim of the JIB is

... far reaching in seeking to generally improve the Industry, its status and its productivity in the interests of the employer, the employees and the nation. It goes far beyond a normal Industrial Agreement; the parties to the JIB seek at all times to develop a common approach to all the problems which are encountered by an industry not only in their own interests but in the public interest as well.

2.5 | Sector agreements contribute to better policy making

A fundamentally important dimension that rarely gets any attention in the United Kingdom is that sectoral bargaining creates the platform for the involvement of both trade unions and employers' organisations in economic and social policymaking.¹¹ Indeed, in several countries, sector agreements have been supplemented by cross-sector 'social pacts', reflecting the value policymakers place on involving representative trade unions and employers' organisations (the 'social partners') in grappling with their country's economic and social problems.

The benefits of involving representatives of trade unions and employers' organisations in policymaking are increasingly recognised. In its 2019 'Employment outlook chapter, facing the future of work: How to make the most of collective bargaining', the OECD (2019b) offers what might be described as a paean to collective bargaining and 'social dialogue', seeing them as 'flexible tools to address some of today's and tomorrow's challenges' complementing public policies. In its 2020 'Global deal report, social dialogue, skills and Covid-19', the OECD (2020) is again very complimentary. To paraphrase Nilsson's (2020) overview for Social Europe, 'social dialogue has proved a key tool in addressing the damage wrought on labour markets by the pandemic': examples include short-time working schemes, guidelines and protocols on measures to keep the virus from spreading through workplaces, flexibility in working time and supply chain management.

¹¹Needless to say, there is no such platform in the United Kingdom. The incidence of 'tripartite agreements' is also very rare: the only recent example is the 'furlough' scheme introduced in March 2020 following discussions between the government, CBI and TUC as the Covid pandemic took off.

To put it at its most basic, ‘social dialogue’¹² is recognised to make for better decision-making in such instances, because people with intimate knowledge are involved. However, that’s not all. ‘Social dialogue’ combines two of Walton and McKersie’s (1965) negotiation processes mentioned earlier: ‘integrative bargaining’ and (mutual) ‘attitudinal structuring’. The essentially deliberative decision-making involved in ‘social dialogue’ helps to build trust and social cohesion. By regularly meeting to discuss and manage problems, the different stakeholders, along with policymakers, improve their mutual understanding of the problems each is facing. When a crisis strikes, therefore, the existence of sufficient social trust helps to secure a consensus that can more readily be reached.

Also important, the process works as a coordination instrument. Again at its most basic, it encourages joined-up government, with different agencies becoming involved. More generally, it encourages the parties involved to pursue similar action and behaviour in the knowledge that everyone is more or less in the same boat. It could be short-time working arrangements, for example, or levels of pay increase.

2.6 | Sector agreements help to achieve better macroeconomic outcomes

2.6.1 | The trade-off between wages, inflation, levels of unemployment and rates of economic growth

Coordination is especially important in understanding the contribution that sectoral bargaining can make to economic performance—in particular, to the trade off between wages, inflation, levels of unemployment and rates of economic growth. Here, as the OECD’s, (2004) *Employment Outlook*: Chapter 3, ‘Wage setting institutions and outcomes’ reminds us there has been a considerable technical debate going back over three decades.¹³

Initially, the econometric evidence suggested that both highly centralised and/or highly coordinated and highly decentralised bargaining structures outperformed intermediate ones. Where collective bargaining was centralised/co-ordinated, it was argued, negotiators had to take account of the wider economic consequences of their actions. Where it was fully decentralised, they had to have concern for the impact of settlements on the firm’s competitiveness.

The OECD has returned to the issue on several occasions, nuancing its findings each time. Its most recent thinking, first appearing in its 2018 *Employment Outlook*, draws on a new taxonomy of collective bargaining systems. In its special 2019 volume ‘Negotiating our way up: Collective bargaining in a changing world of work’, it describes the links between collective bargaining and employment, wages and productivity like this:

¹²In the words of the International Labour Organisation (2019), ‘social dialogue’ is defined to include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. It can exist as a tripartite process, with the government as an official party to the dialogue, or it may consist of bipartite relations only between labour and management (or trade unions and employers’ organisations), with or without indirect government involvement. The main goal of social dialogue itself is to promote consensus building and democratic involvement among the main stakeholders in the world of work. Successful social dialogue structures and processes have the potential to resolve important economic and social issues, encourage good governance, advance social and industrial peace and stability, and boost economic progress.

¹³For an up-to-date review of the debate and the issues involved, see Brandl (2023). See also Benassi and Wright (2023).

Wage coordination across sectors and bargaining units is a particularly important dimension of collective bargaining. Bargaining systems characterised by a high degree of wage coordination across bargaining units are associated with higher employment and lower unemployment for all workers, compared to fully decentralised systems. This is because coordination helps the social partners to account for the business-cycle situation and the macroeconomic effects of wage agreements on competitiveness. The actual level of centralisation is another crucial dimension: Organised decentralised and co-ordinated systems (i.e. systems where sector-level agreements set broad framework conditions but leave detailed provisions to firm-level negotiations and where coordination is rather strong) tend to deliver good employment performance and higher productivity.

The main linkages involved in helping to understand what comes close to being a virtuous circle have already been touched on. Individual employers under sector agreements are able to avoid the time and potential conflict that can arise from distributional bargaining over pay—effectively the workplace might be said to be ‘neutralised’. They have greater incentive to invest in the training and skills necessary for high performance work systems—there is less likelihood of the ‘poaching’ of employees. They are also likely to be more aware about the role of good employment practice in improving productivity and performance.

2.6.2 | Reducing inequality

One of the main reasons for the growing policymaker interest in and support for collective bargaining arises from concerns about inequality. Beginning at the turn of the millennium, a raft of international bodies joined the OECD in highlighting the knock-on effects for society at large in terms of a sense of social injustice, inefficiency and impediments to growth: they include the International Monetary Fund, the United Nations and the World Bank.¹⁴ Especially worrying for many commentators have been the political and economic implications of inequality. In the The World Bank’s (2018) words:

persistent unfairness and growing inequality between groups - rather than individuals - are insidiously corroding social cohesion. Tensions between workers, between generations, and between regions have been increasing. Insecurity, unfairness, and growing tensions among groups have also led to perceptions of increases in overall inequality and influence demands for corrective actions. Fissures in the social contract are becoming more evident. Losers from the distributional tensions - young cohorts, routine task-intensive and low-wage workers, inhabitants of lagging regions - choose to voice their discontent by supporting extreme political movements and parties or choose to exit the social and political dialogue altogether.

¹⁴See, for example, the International Monetary Fund (Ostry et al., 2014), Focus on inequality and growth (OECD, 2014); United Nations Development Programme (UNDP, 2005) and UNDP (2013).

The OECD uses two main measures to make overall international comparisons of inequality, the up-to-date figures being found in the respective links. One is the dispersion of earnings (OECD, 2024a): low pay is defined as below two-thirds of median hourly earnings and high pay as more than 1.5 times median hourly earnings. The other is the ‘Gini’ coefficient (OECD, 2024b). This is a single figure measure that condenses the entire household disposable income distribution into a single number between zero and one: the higher the number, the greater the degree of income inequality.

The OECD (2024c) also has a measure of the gender wage gap. This is the difference between the median earnings of men and women relative to the median earnings of men, the data referring to full time employees: the higher the number, again, the greater the degree of gender inequality.

On all three measures, inequality is greater in the United Kingdom and the United States than it is in comparable countries. For example, looking at just the Gini coefficient will show that, of the 38 countries listed by income inequality, the United States was ranked fifth and the United Kingdom eighth. It is hardly a coincidence. Simply put, inequality can be correlated with the structure of collective bargaining—the more decentralised the bargaining, the greater the inequality and vice versa.

As long ago as 2004, in its *Employment Outlook*: Chapter 3, ‘Wage setting institutions and outcomes’, the OECD was suggesting that:

high union density and bargaining coverage, and the centralisation/co-ordination of wage bargaining tend to go hand-in-hand with lower overall wage inequality.

At the individual level, there is a wage premium for employees who are covered by firm-level bargaining compared with those not covered or those covered only by sector bargaining while wage dispersion is on average smallest among workers who are covered by sector-level bargaining compared with systems based on firm-level bargaining only.¹⁵

In other words, because it is multi-employer in coverage, sector bargaining benefits both unionised and non-unionised employees. Single-employer bargaining benefits only employees in companies recognising trade unions.

Also implicit in the results from the OECD’s two main measures of inequality is that sector bargaining does not just involve redistribution of earnings within sectors. It is also associated with redistribution between sectors.¹⁶

¹⁵Based on an international review of collective agreements and practices in some 80 countries, the International Labour Organization (2022) argues that, the higher the coverage of employees by collective agreements, the lower the wage differences are. Collective bargaining can effectively reduce wage inequality whether in an enterprise, sector or industry. Likewise, it can also contribute to narrowing the gender pay gap as a result of employers and trade unions making a joint commitment to address gender inequality by ensuring equal pay for work of equal value, providing for parental and family leave, and addressing gender-based violence at work.

¹⁶Perhaps one of the best known proponents of the view that trade unions and collective bargaining help to reduce inequality is Robert Reich, the US Secretary for Labor under the Obama administration. In a series of contributions over many years, he has reported on the evidence showing that in the United States the share of income was more equal than other periods when trade union density and the coverage of collective bargaining was highest. For a brief overview, see his testimony in Reich (2021) before the US Senate Budget Committee Hearings.

3 | PART 2: HOW TO INTRODUCE SECTORAL BARGAINING IN THE UNITED KINGDOM

3.1 | Target the ‘foundational economy’

Along with the Scottish and Welsh governments, the new Labour Government has committed to introducing a sector agreement in social care in England. It's right to do so: social care is widely recognised to be in crisis and unable to fulfil its essential role in enabling the national health service (NHS) to look after an increasingly ageing population. As well as issues of ownership structure,¹⁷ there are major problems of recruitment and retention among the predominantly female workforce—women account for around eight out every 10 employees—reflecting poor levels of pay and considerable insecurity of employment. For the reasons outlined in Part 1, bargaining would be a very effective way of tackling these problems.¹⁸

As for extending sectoral bargaining, the Labour Government is being unnecessarily cautious. It may be true, in the words of *Labour's Plan to Make Work Pay* (Labour Party, 2024), that sectoral bargaining isn't ‘the best solution for many parts of our economy’. However, it surely is for most sectors in the ‘foundational economy’.¹⁹ Examples include child care, cleaning services, construction, hospitality, retail, and warehousing and logistics.²⁰ As the Chancellor of the Exchequer (Rachel Reeves) recognised in *Everyday Work*²¹ published in 2020, these sectors are like social care in being characterised by a mismatch between the key role they play in delivering essential services, on the one hand, and the very poor state of the terms and conditions of employment, on the other (not to mention a lack of any serious workforce planning for the future). If this fundamental anomaly needed to be underlined, the Covid pandemic did so with

¹⁷Kessler et al. (2022) remind us that complicating matters in social care is the emergence of a mixed economy for delivery. From being the main employer able to pursue a common approach, the state now sits alongside a multitude of service providers. In adult social care, local authorities principally rely on the delivery of care through some 18,500 commissioned provider organisations from the private and voluntary sectors. Quite a few of the organisations involved are also private equity groups dependent on debt financing to stay in business.

¹⁸For even more reasons for focusing on social care, see Hayes (2019).

¹⁹The term has come to be associated with The Foundational Economy Collective (2024), which is a loose grouping of mainly European researchers. Essentially, it sees an economy comprising different groups. Unlike, say, the automotive and pharmaceutical sectors, which are competitive and tradeable internationally, the ‘foundational economy’ is largely immobile and shielded from international competition. Accounting for about 40% of total employment, it provides two types of essential services: the ‘material’, for example, the utilities, banking, food and so on, and the ‘providential’, for example, care, education and health.

²⁰The Resolution Foundation (2023) highlights two sectors for attention following social care: cleaning and warehousing. The Institute of Employment Rights (2018) suggests that the Secretary of State give particular consideration to sectors where a significant proportion of workers are in households receiving state benefits (i.e., where it appears the state is subsidising low wages) and the level of median earnings has significantly fallen below the retail price index. Sectors where a significant proportion of employers receive state subsidy or have operations licensed by state or run an economic activity as a consequence of public contract should also feature. It goes on to suggest that ‘certain sectors, by reason of the public interest in protecting vulnerable workers and ensuring stability in economically precarious industries, will be at or near the top of the list...’. It lists adult social care, childcare, delivery riders and drivers, hotel and catering (especially fast food), retail, agriculture in England, and taxis and private hire vehicles, and cleaning.

²¹Top of the list for Reeves and Reader (2020) is ‘ensuring better pay through an increased minimum wage, as well as the promotion of collective bargaining, and promoting the status of workers’. In *The Dignity of Labour*, published in Cruddas (2019), the former Labour policy chief, calls for a ‘new covenant for key workers’. There would be a basic package of rewards including pay and new entitlements covering essentials such as housing and travel. There would also be a ‘new system of education, skills and professional development’, along with an overhaul of career progression.

a vengeance. Along with doctors, nurses and their colleagues, it was workers in sectors such as these who emerged as indispensable in keeping things going during lockdowns—in the BBC's words, they were the 'minimum wage heroes'.

Fundamentally important too, is that, like most public services, the structural features of many of the activities involved in the 'foundational/everyday economy' could hardly be more suited to sector-wide treatment. Jobs are pretty similar from one employer to another and the same publicly recognised qualifications and training are the starting points for demonstrating competence. Also, many businesses are SMEs employing relatively small numbers of people. So, the advantages of sector agreements the Mather report identifies are particularly compelling: savings in management costs of having to deal with issues independently and a level playing field making 'undercutting' and 'poaching' of skilled workers more difficult.

3.2 | Don't overcomplicate the statutory framework

In social care, where action is urgently needed, a twin-track approach is recommended in which pay and other terms and conditions are treated separately to begin with. Also very helpful would be to make the most of the opportunities for 'assisted negotiation' that existing agencies make possible.

In the case of pay, it's expected that social care workers in England will be paid at least the real Living Wage as they have been in Scotland and Wales.²² To help pay setting in the medium term—and perhaps the longer as well—a Pay Review Body might be introduced. Especially important is that this would mean being able to draw on the expertise of the Office of Manpower Economics in carrying out urgent needed investigations. Specific issues are a standard system of job grades and aligning social care pay with the starting salary of the appropriate NHS band.

In the case of other terms and conditions, Advisory, Conciliation and Arbitration Service (ACAS) might be asked to work with a representative tripartite Fair Work Council to produce the framework. Possible contents are discussed in a later section. If the council is able to reach agreement, so much to the good. If it's not, the third party representatives would have the final say in deciding them.

In social care, the government has influence because it holds some of the purse strings in the form of grants made for statutory-required services. In sectors like hospitality or warehousing, however, this is not the case. If social care produces an authoritative sector agreement, employers in other sectors may be encouraged to follow suit—on employment relations and/or public relations grounds. However, they may not be. In the circumstances, a statutory process will be difficult to avoid if sectoral bargaining is to be extended.

A key consideration is that, although many of their structural features in the 'foundational/everyday economy' lend themselves to sector bargaining, they are also very perversely affected by Churchill's 'unhealthy conditions of bargaining' highlighted earlier. Weak or nonexistent employers' organisations are especially problematic. Any business organisations are likely to be trade associations. In which case they are unlikely to have a mandate to negotiate collective agreements

²²See the Living Wage Foundation (2024), the Health Foundation and Nuffield Trust (2024) and Skills for Care (2024).

and little or no experience of collective bargaining.²³ Where there is low trade union density and lack of employers' organisations, says the Fair Work Wales report (2019), tripartite arrangements have a key role to play in building capacity and gaining wider acceptance.

As for the nature and extent of the necessary legislation, an important distinction is to be made between the primary and secondary features. The primary features would deal with the process and key institutions. The secondary would deal with the legal status of agreements and securing adherence to them.

3.2.1 | Process and key institutions: Update WAGES COUNCIL arrangements

Deciding the main features of the process, along with the key institutions legislation would need to provide for, shouldn't be too difficult: the long-standing Wages Council arrangements offer a starting point.²⁴ In the words of the Institute of Employment Rights (2018, p. 15), Wages Councils involved 'collective bargaining imposed by legislation'. The then Minister of Labour was given statutory power to establish a Council in sectors where there appeared to be no effective voluntary collective bargaining. The scope of bargaining was statutorily defined and limited to setting standard hourly rates for the various occupations; differential rates for night work, overtime, waiting time, and travel; hours of work; holidays and holiday pay; and permitted deductions for housing. Each Wages Council consisted of an equal number of employers' and trade union representatives plus three independent members. If the two sets of representatives could not reach agreement, the independent members cast votes to resolve the disagreement. The 'agreement' was made into an Order by the Minister: it was a criminal offence not to abide by it and workers could also make a civil claim for failure to pay the appropriate rates.²⁵

3.2.2 | Sector agreements to be codes rather than contracts?

It is often claimed that one of the reasons why sector agreements declined in the United Kingdom was that they lacked legal status: they were regarded as 'gentlemen's agreements'

²³As Heery et al. (2023) put it in recent and comprehensive overview of the activities of employers' organisations in the United Kingdom, sector bargaining would 'reverse the main lines of evolution of the past few decades'. Along with offering 'HR support' in the form of advice and training, representing members in the political process of national and local government is a major role. Relevant, too, is that these organisations were not so much involved in 'horizontal' matters such as common standards, but 'virtual integration in supply chains'. There was also a tendency to be involved in regional and issue-based issues as opposed to national and/or sector ones.

²⁴Churchill's trade boards became Wages Councils in 1945; by 1954, 3.5 million workers were covered. The last 26 UK Wages Councils were controversially abolished in 1993. As Dickens et al. (1993) argued at the time, there was little evidence for the Major Government's case for doing so: (1) that they did little to alleviate poverty, (2) that they reduced employment (3) and that the problems of poverty were no longer relevant. They concluded that 'there appears to be an increasing need for minimum wage legislation in the UK'.

²⁵The Institute of Employment Rights (2018, pp. 20–27) describes in some detail what updated arrangements might involve. The Resolution Foundation's (2023) favours a 'incremental but steady approach' starting with social care and moving onto other sectors. It nonetheless talks of 'Good Work Councils' being established under a 'framework' set by the Department for Business and Trade. One or both of worker and employer representatives could apply for a 'Good Work Agreement' on the basis that there were material problems in labour standards in the sector.

binding in honour only rather than as statutory codes. In keeping with ‘common law’ as opposed to ‘statute law’ thinking, developments in the legal framework in the United Kingdom involved the granting of immunities in respect of the activities of trade unions and employers’ associations rather than positive rights. Indeed, it was only in 1971 and the Industrial Relations Act that positive rights of association or recognition of such bodies came into being.

As currently is the case,²⁶ there was nothing to stop the parties from making their agreements legally enforceable. It was just, said the Royal Commission on Trade Unions and Employers’ Associations (1968, p. 127), there was no ‘intention of the parties themselves. They do not intend to make a legally binding contract, and without both parties intending to be legally bound there can be no contract in the legal sense’. Moreover, the agreements did not lend themselves to legal enforcement. The Commission went on: ‘To make them enforceable would in the first place require their redrafting, a task which could only be undertaken by or with the assistance of professional lawyers’. Significantly, the majority of the Commission rejected proposals to make collective agreements legally enforceable not so much on grounds of principle, but because of the practical realities of collective bargaining in the United Kingdom.

When it comes to the legislation needed to introduce sectoral bargaining, there would appear to be three main options so far as the secondary provisions are concerned. The first is that sector agreements should be legally enforceable contracts. The Resolution Foundation (2023, p. 65) puts it like this:

Once implemented, Good Work [sector] Agreements will only be worth the paper (or screens) they are written on if the terms are enforced in some way. Here, the clear precedent from other countries is to make comparable agreements legally enforceable in the same way as other labour market rights. The terms of both Ireland’s EROs [Employment Regulation Orders] ... and New Zealand’s Fair Pay Agreements ... are enforced by the same government bodies that police national regulations.

Readers are directed to two boxes where they will discover that Ireland has a long-standing Labour Court and New Zealand an Employment Relations Authority with a not dissimilar extensive range of powers.

The Institute of Employment Rights (2018, p. 42) is more direct. Not only would sector agreements be legally enforceable, but ...

There should be a new Labour Court system, the first tier of which would be the ETs [Employment Tribunals], the Central Arbitration Committee (CAC), and Certification Officer. The Labour Court would have exclusive jurisdiction to deal with all work-related claims. There would be an appeal from the Labour Court to the Labour Court of Appeal, in what would be a three-tier system.

The principle seems eminently reasonable—especially if the prime concern is to enforce workers’ rights. The problem is that resolving the many complex issues involved is likely to take

²⁶Under the Trade Union and Labour Relations (Consolidation) Act 1992 (section 179 [TULRCA]), an agreement or arrangement between an employer or employers’ association and one or more trade unions covering terms and conditions of employment may be legally binding. But to be so, it has to be in writing and the parties have to state it is to be legally enforceable. There are currently no major examples.

some time: to name but a few, the balance between sector agreements and the very considerable amount of individual rights legislation also being proposed, the relationship between sector and workplace agreements and, above all, the role of a yet-to-be-established specialist Labour Court within the traditional court system. Not only that, the suggestion that there should be a specialist Labour Court or Employment Relations Authority is likely to be particularly controversial.

Also, as the Royal Commission recognised, the practical realities of the 'common law' model of collective bargaining in the United Kingdom cannot be easily ignored. If sector agreements are to be legally enforceable and intelligible to the people who have to work under them, they would need to combine the expertise of both lawyers and employment relations specialists in their drafting.

In these circumstances, it would be worth exploring other possibilities. One would be to look to the secondary as well as the primary features of the Wages Councils model. The 'agreement', in other words, would be made into an 'Order' making it an offence not to abide by and enabling workers to make a civil claim for failure to honour the specifics.

Another possibility would be to enable the Secretary of State to offer the parties the option of turning their sector agreement into an ACAS Code of Practice. Under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992,²⁷ ACAS has the power to issue Codes of Practice 'containing such practical guidance as it thinks fit for the purpose of promoting the improvement of industrial relations'. As well as having to have the approval of the Secretary of State, such codes must go before both Houses of Parliament for approval. Thereafter, Employment Tribunals are expected to take them into account in arriving at their judgements.

These approaches may require some changes in legislation dealing with the powers of Employment Tribunals and the procedure for issuing an ACAS Code of Practice. These are likely to be relatively minor, however, compared to those that would be required to make collective agreements enforceable involving a specialist Labour Court.

ACAS Codes of Practice, in particular, have intrinsic merits worth emphasising. It means that sector agreements could be expressed in the language of employment relations rather than of lawyers and the courts. It means, too, that many of ACAS' advisory materials dealing with employment law, human resources (HR) processes and good practice at work could be referenced and/or annexed, along with their associated template letters, forms and policies. Rather than just being regarded as something to be complied with, to put this another way, sector agreements would also be seen to have a 'best practice' profile and a key educational role in helping businesses to keep abreast of the challenges a sector faces.

The idea of sector agreements taking on this role may appear far-fetched. As pointed out in Part 1, there is nevertheless an excellent UK example. It's the electrical contracting sector. The Joint Industry Board involving the Electrical Contractors' Association and Unite, it will be

²⁷The main procedure for issuing a Code is as follows:

- (1) Where ACAS proposes to issue a Code of Practice, or a revised Code, it shall prepare and publish a draft of the Code, shall consider any representations made to it about the draft and may modify the draft accordingly.
- (2) If ACAS determines to proceed with the draft, it shall transmit the draft to the Secretary of State who
 - (a) if he approves of it, shall lay it before both Houses of Parliament, and
 - (b) if he does not approve of it, shall publish details of his reasons for withholding approval.

recalled, publishes a 'Handbook' that not only gives details of the various 'agreements' between the two parties. It also has sections covering the 'main provisions' of employment law along with codes of 'best practice' and 'good practice'.

Much will depend on the perceptions of sector agreements that the government wishes to encourage. If it wants to emphasise the enforcement of workers' rights, then either the first or second approach might be thought to be more appropriate. If, on the other hand, it also wants to encourage employers to shift their business strategies from the 'low road' to the 'high road' as part of its mission to promote growth, then it might be better to think in terms of securing adherence to a Code of Practice. As well as emphasising good practice, the advantages are that the legislation would be simpler to draft and more quickly introduced; sector agreements could be expressed in the language of employment relations rather than of lawyers and the courts.

There could also be implications for the process involved in initiating sectoral bargaining discussed earlier. Instead of the 'compulsory bargaining' of the Wages Council model, there might be a form of ACAS-facilitated 'assisted negotiation'.²⁸ This would give the parties an opportunity to develop their relationship in a less adversarial legal environment.

In any event, there are several ways in which public policy could strengthen adherence to sector agreements.²⁹ Particularly important are 'extension policies': procedures that extend some or all of the terms of agreements to all companies in a sector, regardless of membership of employers' organisations. International experience is that such policies work like 'a turbo' when it comes to collective bargaining coverage.³⁰

Another mechanism with the potential to make a significant difference to the terms and conditions of workers in the 'foundational/everyday economy' in particular³¹ is 'conditionality'. Public tenders, in other words, could stipulate that sector agreements must be respected by companies awarded public contracts. Such 'conditionality' could also be applied to public spending more broadly.

A final point needing to be emphasised is that a properly resourced enforcement agency will be essential whatever arrangements for securing adherence to sector agreements are decided on.³² Currently, there are no fewer than four separate bodies offering alternatives to the employment tribunal route: His majesty's revenue and customs, which enforces the National

²⁸In June 2023 'supported bargaining' was introduced in Australia enabling the Fair Work Commission, to encourage agreements in sectors where it's been difficult for the parties to get them off the ground. See Forsyth and McCrystal (2023).

²⁹See, for example, the recent review sponsored by Uni-europa (2024).

³⁰As a matter of interest, there used to be provisions for extending the terms and conditions of collective agreements in the United Kingdom, albeit they were essentially ad hoc in operation. The most recent appeared in Schedule 11 of the Employment Protection Act 1975. The Employment Act of 1980 terminated them.

³¹The TUC (2022) lists the main examples of what it terms 'employment charters' including national-level initiatives in both Scotland and Wales. As Kessler et al. (2022) remind us, the government retains considerable regulatory power over the performance of providers in social care through a variety of arms-length bodies, for example, the Care Quality Commission and the NHS Standard Service Contract. They add that the last Labour government applied a 'Two Tier Code' to outsourcing contracts in the NHS and local government to close a loophole in the TUPE Regulations. In effect, it required all subcontractors to offer employment conditions 'no less favourable' than public sector conditions. They maintain that it was widely viewed as successful, especially for outsourced hospital cleaners, porters and others under PFI (Private Finance Initiative) contracts.

³²Following the recommendation in 2018 of David Metcalf, the then Director of Labour Market Enforcement Strategy, a single enforcement agency was proposed in the Queen's Speech in 2019. A proposal to do so followed in June 2021. These plans were scrapped, however, in December 2022.

Living Wage; the Gangmaster Licensing Authority, which has responsibility for the conduct of licensed gangmasters; the Employment Agency Standards Inspectorate, which deals with the conduct of employment agencies; and the Health & Safety Executive, which enforces the right not to have to work more than 48-h. As Wieltschnig (2023) points out, as well as a lack of clarity over roles and responsibilities, the work is significantly underfunded:

The UK falls seriously short of international good practice on labour inspections. The International Labour Organisation's Convention includes a benchmark of one labour market inspector per 10,000 workers. The UK has just 0.29 labour inspectors per 10,000 employees, ranking 27th out of 33 OECD countries.

3.3 | Sectoral bargaining to be about much more than pay

As Gallie et al. (2017) confirm, there's a considerable body of research evidence explaining why fairness is a 'central determinant of employee well-being,' with positive links to organisational performance. It has two dimensions: 'an adequate balance between effort and reward' and 'procedural fairness or fairness in the way decisions are taken'—which affects 'the extent to which employees feel protected from arbitrary decision-making and hence insecurity in their jobs'.³³

In the circumstances, it's not altogether clear why the authors of the Labour Party's Green Paper opted for 'fair pay' as their focus rather than the 'fair work' being favoured by the Scottish and Welsh governments—perhaps they shared the widespread equation of collective bargaining with pay bargaining or perhaps it was because New Zealand's Fair Pay Act was being formulated at the time. Yes, to go back to the beginning of Part 1, pay is fundamentally important, but there's a lot more to the employment relationship besides needing urgent attention—in particular, greater security, employee voice, opportunities for training and development, along with 'procedural fairness'. The danger of focusing on pay is that issues such as these get sidelined because they don't lend themselves to the 'distributive bargaining' too often equated with collective bargaining.³⁴ Focusing on pay is also unlikely to encourage the

³³Also, as Hyman and Brough (1975, p. 1) put it, 'the arguments of those involved in industrial relations are shot through with essentially moral terminology ... In particular appeals to the idea of fairness abound'. The authors remind us that 'fairness' has 'entered the terminology of labour law on both sides of the Atlantic, specific acts by employers or trade unions being defined as "unfair practices"'.
³⁴One of the main reasons for the decline of sector agreements in the United Kingdom in the 1950s and 1960s was that they mostly made little provision for the substantive terms and conditions of employment—even treatment of pay, the overriding focus, was often limited to just one or two basic rates. Essentially, unlike countries where they remained the norm, sector agreements were based on procedures rather than a code of substantive rules in force for a set period. As the eminent labour lawyer Kahn-Freund (1959, p. 263) put it: 'A very firm procedural framework for a very flexible corpus of substantive rules, rather than a code laid down for a fixed time—such is the institutional aspect of much collective bargaining in this country'. This was above all true of the-then-highly influential engineering sector. A major consequence was that a form of workplace bargaining developed in the 1950s and 1960s that was, in the words of the Royal Commission on Trade Unions and Employers' Associations (1968, p. 18), 'largely informal, largely fragmented and largely autonomous'. At the time, many trade union officials prided themselves on the support and encouragement they gave to the shop stewards involved. Although advancing the pay and conditions of some members, this form of two-tier bargaining did little for the workforce as a whole, however. Larger employers increasingly questioned their involvement in sectoral bargaining, seeing company bargaining allowing agreements to suit their particular circumstances as much the better option. Public policy was also a factor. Although the Royal Commission on Trade Unions and Employers' Associations (1968, p. 46) saw a continuing role for sector agreements (the 'formal system') in

development of the ‘social dialogue’ process so important in widening the agenda of collective bargaining in western European countries where sectoral bargaining is the norm.

A narrow focus on pay could even result in working conditions in SMEs deteriorating rather than improving. Achieving significant pay increases above the statutory National Living Wage will be no easy matter in the ‘foundational/everyday economy’ because of Churchill’s ‘unhealthy conditions for bargaining’. Instead of moving on to the OECD’s ‘high road’ where skills are viewed as integral to competitive advantage, the danger is many SMEs will simply double down on their labour costs by reducing headcount and expecting remaining employees to work harder. The result could be disappointment and disillusionment rather than the uplift that people are being encouraged to expect.

3.3.1 | Contents of agreements: A mix of procedural and substantive

The Green Paper has little say about the contents of sector agreements other than pay. True, it suggests sectoral bargaining would have a ‘broad scope’: but it just lists ‘work organisation, new technologies and diversity and inclusion, in addition to the topics of pay, hours and holiday currently required under the default method of statutory recognition’.

Two frameworks will be drawn on here to illustrate what the contents of sector agreements might look like. One appears in the Fair Work Wales report (2019, pp. 18–23). The second is proposed in the TUC (2019, p. 23) ‘A stronger voice for workers’ mentioned earlier.

The Fair Work Wales report discusses the characteristics of fair work and explains the fundamentally important roles they play in working lives. It organises the subject matter under these six main headings:

- Fair reward
- Employee voice and collective representation
- Security and flexibility
- Opportunity for access, growth and progression
- A safe, healthy and inclusive working environment
- Legal rights respected and given substantive effect

Each might be an appropriate theme or title of an agreement chapter, helping to give sector agreements an ‘educational’ as well as ‘workers’ rights’ dimension.

Drawing on the TUC’s proposals, there might additionally be two sets of schedules dealing with the detail of ‘workers’ rights’. The first set might cover substantive matters such as pay and overtime rates, sick pay and pension arrangements, hours of work and holidays, and maternity and parental leave. The second might deal with procedural matters and give ‘effect’ to relevant legal rights, namely essential information and consultation requirements, time off for trade union duties and disclosure of information, flexible working, health and safety arrangements, grievance and discipline processes, redundancy procedures, transfer of undertakings and supply chain due diligence.

‘providing guidelines for company and factory agreements’, it put most of its emphasis on the reform of the ‘informal system’ of workplace bargaining. At the same time, the then Labour Government’s incomes policies also encouraged the development of ‘productivity bargaining’ allowing above the norm pay increases—which inevitably meant more workplace and/or company level activity.

Specific details will obviously differ from sector to sector. At the risk of repetition, sector agreements will need to cover issues like these if they are to bring about improvement in the quality of working lives being looked for: this is because, to put it simply and bluntly, workers in SMEs will lose out if an issue is not covered in the sector agreement. Nonpay and hours issues may be picked up in local negotiations in larger companies—and probably already are—but it is unlikely they will in the great majority of SMEs.

3.3.2 | ‘Organised’ rather than ‘disorganised’ ‘decentralisation’

Those responsible for drafting the final set of proposals will do well not to ignore the relationship between sector and workplace. Two-tier bargaining sounds very attractive: sector agreements deal with basic terms and conditions, with company and/or workplace agreements enhancing and supplementing them. It's a case of being careful of what you wish for, however. Unless carefully handled, the authority of the sector agreement will be undermined to the detriment of workers in SMEs as in the 1960s and 1970s.

The reason is that not only does two-tier bargaining call into question much of the rationale of sector agreements for employers touched on earlier: the saving of time and effort spent on negotiations and the avoidance at local level of the conflict that can arise from distributional bargaining over pay. It's also highly likely that, if they come under pressure to engage in two-tier bargaining, employers will seek to minimise what's offered at sector level as they did in the 1960s.

Obviously, implementing the terms of sector agreements will take place at the workplace. It will also involve some form of ‘negotiation’ at this level - be it between management and trade union representatives or individual managers and workers. There is no ‘right’ way to handle this: much will depend on the sector. Important is that sector agreements ensure that, as far as possible, the process of this ‘decentralisation’ is ‘organised’ rather than ‘disorganised’.³⁵

Depending on the specific circumstances of the sector, for example, agreements need to be clear whether key provisions are to be regarded as ‘minimum’ or ‘standard’. Rates of pay, for example, might be expected to be ‘standard’ in a sector like social care or engineering construction, whereas they are likely to be ‘minimum’ in hospitality and retail reflecting the sizable number of large multichain companies.

Some issues, by contrast, might be deemed ‘standard’ and so, effectively, ‘nonnegotiable’ at the workplace. Examples might be the differentials in the pay grade structure or notice of work schedules, variation in hours and working time or the procedures for handling discipline, dismissal and redundancy or health and safety requirements.

There might also be a third category in which the sector agreement explicitly delegates the handling of an issue to the local level within guidelines along the lines of the Royal Commission on Trade Unions and Employers' Associations' recommendations. For example, it might be expected there would be a requirement for arrangements enabling employees to

³⁵These terms were coined in the 1990s to describe the different types of decentralisation to company and workplace level taking place in western European countries. Much of it was described as ‘organised decentralisation’ as opposed to the ‘disorganised’ variety associated with the United Kingdom, because it largely took place within guidelines in the sector agreement. Also critical is that, unlike in the United Kingdom, the framework of inclusive sector agreements has been maintained, along with provisions for their extended coverage. For more on these terms, see Traxler (1995, pp. 3–21). For an up-to-date overview of the situation in western European countries, see Benassi and Wright (2023).

express their views and have them listened to and addressed. The larger companies might be prompted to respond with some form of committee structure. SMEs might be encouraged to set aside specific times for direct dialogue between managers and employees.

3.3.3 | Encourage ‘social dialogue’

There are several things the parties can do themselves to develop ‘social dialogue’ in their sector. Having a statement of the sector agreement’s overall objective, as in electrical contracting and engineering construction, is one: there can be an explicit reference to the issues expected to be addressed. Another is to make provision for quarterly meetings of the tripartite forum/council, with joint working parties set up to investigate and report on key issues facing the sector and perhaps drawing on the help and advice of third parties: an obvious example would be the sector’s future skill requirements and their provision.

There’s also a key role for the Labour Government. In its ‘Strengthening social dialogue in the European Union: Harnessing its full potential for managing fair transitions’, the European Commission (2023) spells out what national governments can do in ‘enabling social dialogue to thrive’:

- ensure the consultation of social partners on the design and implementation of economic, employment and social policies according to national practices
- encourage social partners to look at new forms of work and atypical employment, and to communicate widely about the benefits of social dialogue and on any collective agreements put in place
- enable an increase in workers and employers’ organisations’ capacity, for instance ensuring they have access to relevant information and ensuring support from national governments.

Arrangements for ‘social dialogue’, at sector and cross-sector levels, are another of the missing pieces in the UK’s policy-making framework. ‘Enabling social dialogue to thrive’ would be a significant step in improving matters as well as emphasising the importance of sectoral bargaining.³⁶

3.3.4 | Make improving performance and productivity a priority

In discussions about introducing sectoral bargaining, little or no attention has been given to how the expected improvements in pay and conditions will be paid for. In the social care sector, where much of the funding comes from cash-strapped local authorities, there is a not unreasonable assumption that money will come from the national government and take the form of an investment in the workforce. Indeed, this has already happened in Wales with the implementation of the ‘real living wage’. In other sectors, however, no such funding looks on the cards given the expected pressures on public spending.

Presumably, the assumption is that better pay and conditions will be paid for out of profits. There may be some businesses where this is possible. But there are likely to be many

³⁶For recent developments in social dialogue, see European Foundation for Living and Working Conditions (Aumayr-Pintar, et al., 2023).

for whom it will be a struggle because they are locked into the ‘low pay, low skills and low productivity’ trap at the heart of the United Kingdom’s low growth problems. Bearing in mind the limited scope to distribute from the higher paid to the lower paid within the sector, these businesses will need help to improve their productivity and performance. Taking the low pay option off the table is but the first step in moving them on to the OECD’s ‘high road’. In the words of the National Agreement for the Engineering Construction Industry cited earlier, a ‘modern, robust and fit-for purpose structure’ is needed that ‘establishes a sound foundation for further improvements to industry productivity, resourcing and employment relations’.

The evidence from ACAS surveys and advisory workplace projects is particularly instructive here.³⁷ It suggests that many SMEs not only struggle to keep up to date with employment legislation and find difficulty in implementing complex statutory provisions.³⁸ They are also unfamiliar with the many ways in which relatively simple changes in working practices can make a contribution to improving performance. It could be a case of information and consultation arrangements, for example, that help to reduce the time spent on ‘fire fighting’. Or changes in working time arrangements, in which the business moves to new shift patterns with provision for higher basic rates and ‘reserve hours’ rather than low basic rates and excessive overtime. Or different forms of ‘team working’.

Such is the size of the problem, however, that ACAS will never be able to do enough on its own to raise awareness of the need for performance improvements and show how to make them. If it was able to work in cooperation with the tripartite councils/forums in the ‘foundational/everyday economy’; however, the opportunities to make an impact would be very considerably increased. For example, as well as giving a focal point for more ‘joined up’ government (greater interagency cooperation and coordination), such tripartite bodies might take on responsibility for gathering and sharing good practice information throughout the sector; they might also organise benchmarking exercises and run training programmes to the same end. In these ways, the tripartite bodies could make a significant contribution to tackling the inadequate diffusion of best practice that the Productivity Institute (2024) cites as one of the fundamental reasons for the UK’s poor growth.

The thinking here is also very much in line with Ewart Keep’s (2023) ‘An industrial strategy for the everyday economy’ written for the Chartered Institute of Personnel and Development. Key recommendations are that the UK should broaden its current approach to economic development and innovation to embrace improving productivity and performance in the ‘foundational/everyday economy’. As well as closing off access to employment practices that undercut employment standards, there is an urgent need to improve managerial capacity, along with the quality of ‘everyday’ jobs by developing the skills involved and their utilisation. Integrated packages of diagnostic help and increases in support services to aid business improvement and workplace innovation have especially important roles to play, together with the ‘learning’ that comes from carefully evaluated pilot projects testing out different approaches at local and sector level.

These activities may not bring the adrenaline rush that many people get from pay bargaining. Along with the promotion of ‘social dialogue’, they could nevertheless make a big difference to the success of sectoral bargaining.

³⁷See, for example, Sisson (2014). See also Forth and Bryson (2015).

³⁸On this point, see the detailed case study evidence described in Ram and Edwards (2010).

4 | CONCLUSION

It is to be hoped that a Labour Government will introduce legislation providing for sectoral bargaining in the ‘foundational/everyday economy’. Hopefully, too, it will focus on ‘fair work’ rather than ‘fair pay’. Sectoral bargaining may not be able to achieve the level of pay increases that some supporters are looking for because of Churchill’s ‘unhealthy conditions of bargaining’. It is nevertheless an institution capable of bringing about considerable improvement in working lives. It can extend joint regulation both in terms of the range of employment issues and their coverage of workers and businesses. In the first case, it can embrace greater security and flexibility, employee voice and collective representation, opportunities for access, growth and progression, and a safe, healthy and inclusive working environment. In the second, it can extend these enhanced terms and conditions throughout a sector to include SMEs—these terms and conditions will no longer just be the preserve of large companies.

Sectoral bargaining can also bring wider benefits if a Labour Government makes the most of the opportunities. It can offer an alternative to the one-size-fits-all of legal regulation and so be used to find tailored solutions to suit sector circumstances. It can encourage participation and involvement and so help to channel people’s widespread discontent with the status quo into vigorous discussion and debate about ways of improving matters. It can help to diffuse good employment relations practice and so improve productivity and performance. It can give greater ‘voice’ to trade unions and employers’ organisations and so increase their membership, status and authority. Perhaps most fundamentally, it can offer a platform for the involvement of these ‘social partners’ in an ongoing process of ‘social dialogue’ and so help to improve policy making more generally. Sectoral bargaining, in short, is an institution capable of making a significant contribution to achieving the Labour Government’s mission of promoting economic growth.

ACKNOWLEDGEMENTS

I’m extremely grateful to the people listed below for generously giving their time to comment, criticise and make suggestions on earlier drafts of this paper. This final version, I can’t emphasise enough, is immeasurably better as a result. Deborah Dean, Linda Dickens, Gill Dix, Tony Dobbins, Tony Dundon, Paul Edwards, Manuela Galetto, Howard Gospel, Ed Heery, Ewart Keep, Ian Kessler, Hubert Krieger and Paul Marginson.

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How to cite this article: Sisson, K. (2024). Introducing sectoral bargaining in the United Kingdom: Why it makes sense and how it might be done. *Industrial Relations Journal*, 1–26. <https://doi.org/10.1111/irj.12444>