

**Introducing sectoral bargaining in the UK:
why it makes sense and how it might be done**

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Summary

These are some thoughts prompted by the prospect that, if elected in July, a Labour Government will follow up on the party's 2021 Employment Rights Green Paper proposal to introduce (or, strictly speaking, reintroduce¹) sectoral bargaining in the UK - first in social care and, depending on the outcome, other sectors as well. Part 1 summarises the main benefits of sectoral bargaining, drawing on a range of international as well as UK sources. The underlying logic of sectoral bargaining is well known: establishing a minimum floor of rights that embrace all firms in an industry. It is to be preferred to legal regulation because it's more flexible, allowing adaptation to suit sector circumstances, and encourages participation and involvement. Less appreciated is that sectoral bargaining brings benefits to employers as well: 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. Sectoral bargaining also helps to diffuse good practice and so enable companies to improve their productivity and performance. The lessons of Western European countries where it is the norm is that sectoral bargaining brings wider benefits as well: it provides the platform for the involvement of both trade unions and employers' organisations in national level policy making. The result is an improved policy making process and better outcomes in terms of reducing inequality and securing better trade-offs between wages, inflation, levels of unemployment and rates of economic growth.

Part 2 of the paper focuses on the issues that will need to be resolved if sectoral bargaining is to be successfully introduced in the UK. A Labour Government, it argues, shouldn't be coy about extending sectoral bargaining beyond social care to other sectors in the 'foundational' or 'everyday' economy: not only do many of the structural features of these sectors lend themselves to sector treatment, the Covid pandemic confirmed that there's an on-going mismatch between the

¹ Multi-employer bargaining was the dominant level of collective bargaining in the private sector in the UK 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. Extended more or less across the board by government pressure after World War 1, it originated in industries such as printing and engineering 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 1897-98: 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. For further details, see Keith Sisson. 1987. *The Management of Collective Bargaining: an International Comparison*. Oxford: Blackwell.

importance of the services these sectors deliver and the poor terms and conditions of the workers they employ; there's also a serious lack of workforce planning for the future. Sectoral bargaining will require a statutory framework bearing in mind the weak organisation of employers and trade unions in these sectors. In particular, the Secretary of State will need powers to initiate proceedings and provisions made for tripartite sector forums or councils to reach agreements - third parties being necessary to help break any deadlock. The secondary features of the legislation implementing sector agreements, however, need not necessarily involve institutions such as a Labour Court, which are likely to be especially controversial as well as taking time to get off the ground. In terms of their scope, sector agreements need to cover much more than pay if they are to make a real difference to working lives: employee voice, security, training and development, and 'procedural fairness' all need to feature - indeed, as their Scottish and Welsh counterparts have been doing, a Labour Government would be advised to focus on 'fair work' rather than 'fair pay' to get the message across. Tripartite sector forums/councils also have key roles to play in developing the 'social dialogue' process so important in other countries where sectoral bargaining is the norm. The same goes for improving performance and productivity and so helping find the wherewithal to fund better terms and conditions of employment. There's also a key role for an incoming Labour Government itself in enabling 'social dialogue' to thrive.

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Part 1

Introducing sectoral bargaining in the UK: why it makes sense

1.1 Starting points

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 Allan Flanders² 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 pay³, 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 beings⁴.

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. It seems that debates about inequality, business strategy and economic performance, as the OECD's *Negotiating our way up: Collective bargaining in the changing world of work* most clearly shows, are changing minds. The same goes for reviews of the role of collective bargaining and 'social dialogue' in handling the impact of Covid such as the *Global Deal report, Social Dialogue, Skills and Covid-19*⁵.

² A. Flanders.1970 'Collective bargaining: a theoretical analysis' in *Management and Unions: The Theory and Reform of Industrial Relations*. London: Faber, p.215.

³ Much 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 R. E. Walton and R. B. McKersie. 1965. *A Behavioral Theory of Labor Negotiations*. McGraw-Hill, New York.

⁴ A. Flanders, 'What are trade unions for?' in *Management and Unions, The Theory and Reform of Industrial Relations*. London: Faber, p.42.

⁵ It is not just in the UK policy makers are beginning to look again to sector bargaining for help in solving their problems. In 2022 *Australia* introduced the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act incorporating new provisions

1.2 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: collective bargaining, in other words, is not just the preserve of larger companies but covers 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 - he was President of the Board of Trade at the time. The 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 explains the logic 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. 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 degeneration⁶.

Why are self-regulatory mechanisms like sector agreements to be preferred to legal regulation of the employment relationship? There are two main reasons. One, which will be expanded upon below, is that it encourages participation and involvement. Inasmuch as large numbers of people are typically involved the outcome enjoys greater commitment and legitimacy.

The second is the much greater ability of collective bargaining to adapt

for multi-employer bargaining. In the same year, 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 percent: it does specifically prioritise sector bargaining, but it is difficult to see how the Central and Eastern European member states will get anywhere near the target without doing so, given collective bargaining is presently limited to a few companies. There has also been growing interest and support in [Canada](#) and the [USA](#) for 'broad based bargaining', which is roughly equivalent to sector bargaining.

⁶ The immediate source is [Wikipedia](#).

regulation to circumstances. In the words of the OECD's 2019 *Employment Outlook Facing the Future of work: How to make the 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 is performance and hiring and firing decisions.

Ironically, it might be added, the decline of sectoral bargaining in the UK has not given employers the flexibility that they might have expected. On the contrary. It has meant more 'juridification', i.e. the greater involvement of the law and the courts in employment relations. 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 individual and/or groups of workers. But 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.

1.3 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 commitment⁷. Not for nothing did many of the pioneers of employment relations study in the UK and the USA talk about 'private systems of governance', 'industrial jurisprudence', 'industrial self-government', 'secondary systems of industrial citizenship', 'industrial democracy' and the like⁸.

There is little doubt that workers in the UK have lost out as a result of the decline of sector bargaining and the joint regulation it enables: below inflation pay rises and greater insecurity (arising particularly from uncontrolled outsourcing) being but two considerations. Less commented on, though, is that

⁷ The CIPD offers some up-to-date examples in its 2020 *Collective Employee Voice*.

⁸ See S. Slichter, J. J. Healy and R. E. Livernash, *The Impact of Collective Bargaining on Management* (Brookings Institute, New York: 1960); T. E. Marshall, *Citizenship and Social Class*, ed. T. B. Bottomore (Pluto Press edition: 1991). J. T. Dunlop, 'The Social Utility of Collective Bargaining', in L. Ulman (ed.), *Challenges to Collective Bargaining* (Prentice-Hall, Englewood Cliffs, NJ: 1967), p. 173. Ackers, 'Collective Bargaining as Industrial Democracy', *BJIR*.

society at large is also suffering from the halving of trade union membership since the 1970s⁹. David Coats 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 outcome¹⁰.

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 arguments have been made more recently in the discussion and debate about the need for a new social contract in the light of increasing concern about the rise in inequality featured below¹¹.

1.4 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 to employers are that sectoral bargaining saves on the management costs of dealing with employment issues independently - in particular, businesses are able to avoid the time and potential 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. The 2014 Mather report for the Scottish Government offers 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

⁹ Peak trade union membership was 13.2 million in the late 1970s. It was around 6.25 million in 2022 or 22.3%.

¹⁰ D. Coats, *Speaking Up! Voice, Industrial Democracy and Organisational Performance* (Work Foundation: 2004), p.11.

¹¹ For example, Joseph Stiglitz, 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’. For further details, see his 2017 *Roosevelt Working Paper Markets, States and Institutions*.

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 training¹².

One of the few surviving private sector multi-employer agreements¹³ 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*:

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
- (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.

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')¹⁴. 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 are virtually impossible - arguably, a major gap in the UK's institutional policy making framework and a contributing factor to its poor productivity record.

¹² J. Mather. 2014. *Working Together Review: Progressive Workplace Policies in Scotland*, para 4.2, p. 34.

¹³ As well as 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 (BECTU) and the Writers' Guild. The [Independent Theatre Council](#) also conducts sectoral bargaining with a range of trade unions.

¹⁴ 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. For more on these terms, see M. Simms and A. Charlwood, 'Trade Unions, Power and Influence in a Changed Context', in T. Colling and M. Terry (eds), *Industrial Relations: Theory and Practice* (3rd edn, Wiley, Chichester: 2009), p. 128.

1.5 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 - especially, 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 in its 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* put it like this in discussing the debate taking place over the EU's minimum wage directive in 2020: 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’¹⁵.

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 is widely seen as one of the fundamental issues that need to be tackled to improve the UK's growth performance. In as much as they take the easy “low road” option off the table, sector agreements not only increase pay levels, but also help to tackle the chronic problems of low skill and low productivity that typically go with them.

A good illustration is to be found in another of the UK sectors where multi-employer bargaining is the rule: electrical contracting. The Joint Industry Board (JIB) involving the Electrical Contractors' Association and Unite, which

¹⁵ Coincidentally, the introduction of sector bargaining in the UK 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’.

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.

1.6 Sector agreements contribute to better policy making

One fundamentally important dimension that rarely gets any attention in the UK is that sectoral bargaining creates the platform for the involvement of *both* trade unions and employers’ organisations in economic and social policymaking¹⁶. Indeed, in several countries sector agreements have been supplemented by cross-sector ‘social pacts’, reflecting the value policy-makers 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 policy making are increasingly recognised. In its 2019 *Employment Outlook* chapter, *Facing the Future of work: How to make the most of collective bargaining*, the OECD 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 is again very complimentary. To paraphrase Veronica Nilsson’s 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.

¹⁶ Needless to say, there is no such platform in the UK. 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'¹⁷ is recognised to make for better decision-making in such instances because people with intimate knowledge are involved. But that is not all. 'Social dialogue' combines two of Walton and McKersie's 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 policy makers, 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.

1.7 Sector agreements help to achieve better macroeconomic outcomes

a) A better 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 - and, 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

¹⁷ In the words of the *International Labour Organisation*, '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.

considerable technical debate going back over three decades¹⁸.

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:

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.

¹⁸ For an up-to-date review of the debate and the issues involved, see Bernard Brandl. 2023. 'Everything we do know (and don't know) about collective bargaining: The Zeitgeist in the academic and political debate on the role and effects of collective bargaining'. *Economic and Industrial Democracy*, 44 (3), 660-678. See also Chiara Benassi and Chris Wright. 2023. 'Improving pay and productivity with sector collective bargaining: a review of the international evidence. *King's Business School Research Impact Papers*, No. 2.

b) *Reducing inequality*

One of the main reasons for the growing interest of policy makers in 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 Bank¹⁹. Especially worrying for many commentators have been the political as well as economic implications of inequality. In the words of *The World Bank*,

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.

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*: 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*. 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 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.

¹⁹ See, for example, the International Monetary Fund (J. D. Ostry, A. Berg and C. G. Tsangarides), 'Redistribution, Inequality, and Growth', *Staff Discussion Note* (2014) available at www.imf.org; Organisation for Economic Co-operation and Development, *Focus on Inequality and Growth* (2014), available at www.oecd.org; United Nations Development Programme (UNDP), *Human Development Report 2005. International Cooperation at a Crossroads: Aid, Trade and Security in an Unequal World*, ch. 2 'Inequality and Human Development' (United Nations, New York: 2005); *idem*, *Inequality Matters: Report on the World Social Situation* (2013), available at www.un.org.

It will be seen that, on all three measures, inequality is greater in the UK and the US 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 USA was ranked 5th and the UK 8th. 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 only²⁰.

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 sectors²¹.

²⁰ Based on an international review of collective agreements and practices in some 80 countries, the ILO’s *Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery* argues that, the higher the coverage of employees by collective agreements, the lower the wage differences are. Collective bargaining, it argues, 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.

²¹ Perhaps one of the best known proponents of the view that trade unions and collective bargaining help to reduce inequality is Robert Riech, 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 USA 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, here is a link to his testimony before the US Senate Budget Committee Hearings on *Widening Inequality of Income and Wealth in America* in 2021.

Part 2

Introducing sectoral bargaining in the UK: how it might be done²²

2.1 Target the 'foundational economy'

Along with the Scottish and Welsh governments, the Labour Party 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, for reasons outlined in Part 1, sectoral bargaining is the most effective way of dealing with the terms and conditions of employment in need of urgent policy attention. As well as issues of ownership structure²³, there are major problems of recruitment and retention among the predominantly female workforce - women account for around 8 out every 10 employees - reflecting poor levels of pay and considerable insecurity of employment. The result is the sector is unable to fulfil its essential role in enabling the NHS to look after an increasingly ageing population²⁴.

As for extending sectoral bargaining, the Labour Party is being unnecessarily cautious. It may be true, in the words of the Green Paper's latest iteration, *LABOUR'S PLAN TO MAKE WORK PAY*, that sectoral bargaining isn't 'the best solution for many parts of our economy'. But it surely is for most sectors in the 'foundational economy'²⁵: examples include child care, cleaning services,

²² The Labour Party's 2021 Green Paper *New Deal for working people* is pretty light on the issues needing to be resolved in introducing sectoral bargaining in the UK. There are, though, several major reports referring to them to be consulted. In year date order, these are the Mather Report. *Working Together Review: Progressive Workplace Policies in Scotland*, for the Scottish Government (2014); the Institute of Employment Rights' *A Manifesto for Labour Law: towards a comprehensive revision of workers' rights* (2016) and *Rolling out The Manifesto for Labour Law* (2019); the Fair Work Wales Commission's *Fair Work Wales* for the Welsh Government (2019); the TUC's *A stronger voice for workers* (2019); and the Resolution Foundation's *Putting Good Work on the table* (2023).

²³ Ian Kessler and his colleagues 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. For further details, see Ian Kessler, Stephen Bach, Richard Griffin and Damian Grimshaw. 2022. *Kings Business School Covid-19 Research Impact Papers, No. 1* King's Business School.

²⁴ For even more reasons for focusing on social care, see Linda Hayes. 2019. '8 good reasons why adult social care needs sector collective bargaining'. *Institute of Employment Rights Journal*, 2 (1), 4-27.

²⁵ The term has come to be associated with *The Foundational Economy Collective*, 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

hospitality, retail, and warehousing and logistics²⁶. As Rachel Reeves (a Labour Government's likely Chancellor of the Exchequer) recognised in *Everyday Work*²⁷ 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 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

employment, it provides two types of essential services: the 'material', e.g. the utilities, banking, food etc; and the 'providential', e.g. care, education and health.

²⁶ In *Putting Good Work on the table*, the Resolution Foundation highlights two sectors for attention following social care: cleaning and warehousing.

The IERs' *Rolling out The Manifesto for Labour Law* 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 RPI. 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.

²⁷ Top of the list for Reeves and Reader in *Everyday Work* published by the GMB in early 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 2019 Jon Cruddas, 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.

issues independently and a level playing field making ‘undercutting’ and ‘poaching’ of skilled workers more difficult.

2.3 Don't over complicate the statutory framework

In social care, the government has a considerable degree of influence because it holds some of the purse strings in the form of grants made to local authorities for statutory-required services. The same is true in child care, where it helps to fund the ‘approved childcare’ scheme. In sectors like hospitality or warehousing, however, the government has little or no influence. 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. But they may not and/or be unable to. 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 non-existent 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 and little or no experience of collective bargaining²⁸. Where there is low trade union density and lack of employers’ organisations, says the *Fair Work Wales* report, 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. The secondary would deal with the legal status of agreements and securing adherence to them.

²⁸ As the authors of a very recent and comprehensive overview of the activities of employers' organisations in the UK put it, 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. For further details, see ‘A review of employer membership organisations’. *ReWage information paper*: it was published in 2023 and its authors are Ed Heery, Leon Goberman and Marco Hauptmeier.

a) *Process and key institutions: update Wages Council arrangements*

The main features of the process, along with the key institution that legislation would need to provide for, shouldn't be too controversial: the long-standing Wages Council arrangements are the obvious starting point²⁹. To paraphrase the Institute of Employment Rights' *Rolling out The Manifesto for Labour Law*, statutory responsibility for initiating proceedings would rest with the Secretary of State. After consultation with the parties, they would make provisions for establishing a National Joint Council (NJC) where they were satisfied that either: 'no effective collective bargaining takes place at sector level; or such collective bargaining as takes place in the sector is not sufficient to establish minimum terms and conditions for the sector as a whole in relation to the mandatory matters [specified later]'

Councils would be composed of equal numbers of worker and employer representatives nominated by trade unions and employers' organisations - with the Secretary of State deciding whether it was desirable to include three independent members consisting of a chair and two assessors - one representing the employers and one the workers and the chair being drawn from a panel jointly agreed by the two sides. Independent members would have a vote in the event of deadlock between members of the council - they would, in effect, offer 'a form of arbitration' to resolve all disputes at sector level.

Tripartite arrangements would be more or less essential as they were in the case of Wages Councils: the presence of independent members offers the most

²⁹ Churchill's trade boards became Wages Councils in 1945; by 1954 3.5 million workers were covered. In the words of IER's *Rolling out The Manifesto for Labour Law* (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.

The last 26 UK Wages Councils were controversially abolished in 1993. As Richard Dickens and his colleagues reported at the time, there was little evidence for the Major Government's case; (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'. See Richard Dickens, Richard, Gregg, Paul, Machin, Stephen, Manning, Alan and Wadsworth, Jonathan. 1993. 'Wages councils: was there a case for abolition?' *British Journal of Industrial Relations*, 31 (4). pp. 515-530.

practical means of resolving deadlocks should trade unions and employers be unable to reach agreement. In the event of employers in any sector refusing to cooperate, suggests the IER, the Secretary of State could be empowered to appoint persons considered representative of employers. It goes on: 'It is unlikely' that employers would refuse to take part in a process where the alternative was the imposition of terms and conditions over the content of which they had no say'³⁰.

b) Sector agreements to be codes rather than contracts?

It is often claimed that one of the reasons why sector agreements declined in the UK was that they lacked legal status: they were regarded as 'gentlemen's agreements' 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 UK 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 case³¹, 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: 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

³⁰ At first sight the Resolution Foundation's proposals in *Putting Good Work on the table* look very different. The Foundation eschews a general application of sector bargaining in favour of a 'incremental but steady approach' starting with social care and moving onto other sectors. It 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 to the DBT for a 'Good Work Agreement' on the basis that there were material problems in labour standards in the sector. It would then be up to the Government to approve.

³¹ Under 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.

As a matter of interest, there used to be provisions for extending the terms and conditions of collective agreements in the UK, 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.

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 UK.

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 would be legally enforceable contracts. The Resolution Foundation 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 is more explicit. 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 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 UK 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’, which would be an offence not to abide by, and workers would also be able to make a civil claim for failure to pay the appropriate rates.

Another, and compatible, 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 1992³², 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, HR processes and good practice at work could be referenced and/or annexed, along with their associated

³² The 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.

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 extending the joint regulation process in this way may appear far-fetched. As pointed out in Part 1, there is nevertheless an excellent UK example. It’s the electrical contracting sector where the Joint Industry Board involving the Electrical Contractors' Association and Unite dates back to the late 1960s. It will be recalled that the JIB 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’. In its own words, the JIB’ aim 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.

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 also be expressed in the language of employment relations rather than of lawyers and the courts.

Either way, there are also the several forms of ‘social licensing’ that might be employed in helping to secure adherence to sector agreements - businesses enjoying contracts delivering essential services being required to fulfil a number of social obligations in return. It therefore has the potential to make a very significant difference to the terms and conditions of workers in the ‘foundational/everyday economy’ in particular³³.

³³ The TUC lists the main examples of what it terms ‘employment charters’ in its 2022 *Linking employment charters to procurement. Opportunities and the challenges*. In particular, it reports that there have been national-level initiatives in both Scotland and Wales such as the Code of Practice dealing with ‘Ethical employment in supply chains’ in the latter.

A final point needing to be emphasised is that a properly resourced enforcement agency will be essential whatever arrangements for securing adherence are decided on³⁴. Currently, there are no fewer than four separate bodies offering alternatives to the employment tribunal route: HMRC, which enforces the National 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-hours. As the *Free Movement* website 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.

2.3 Sectoral bargaining to be about much more than pay

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'³⁵.

As Kessler and his colleagues remind us, in the case of social care, the government retains considerable regulatory power over the performance of providers through a variety of arms-length bodies and mechanisms, e.g. the Care Quality Commission and the NHS Standard Service Contract. They also add that the last Labour government applied a 'Two Tier Code' to outsourcing contracts in the NHS and local government in order 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. For further details, see Ian Kessler, Stephen Bach, Richard Griffin and Damian Grimshaw. 2022. 'Fair care work A post Covid-19 agenda for integrated employment relations in health and social care'. *Kings Business School Covid-19 Research Impact Papers*, No. 1 King's Business School.

³⁴ Following 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.

³⁵ For further details, see Gallie, D., Felstead, A., Green, F. and Henseke, G. 2017. *Fairness at work in Britain. First findings from the skills and skills survey 2017*. (p. 2).

Also, as Richard Hyman and Ian 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 also 'entered the terminology of labour law on both sides of the Atlantic, specific acts by employers or trade unions being defined as "unfair practices"'.

The prioritisation of ‘fair pay’ is more questionable: it would better to focus on ‘fair work’ as the Scottish and Welsh Governments have been doing³⁶. 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’ many equate with collective bargaining³⁷. Focusing on pay is also unlikely to encourage the 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 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

³⁶ See the Scottish Fair Work Convention’s *Fair Work Framework* and the Welsh Government’s *A guide to fair work*. In the circumstances, it is not altogether clear why the authors of the Labour Party’s Green Paper opted for ‘fair pay’ as their focus. Perhaps they share the widespread equation of collective bargaining with pay bargaining in the UK or perhaps it was because New Zealand’s Fair Pay Act was being formulated at the time.

³⁷ One of the main reasons for the decline of sector agreements in the UK 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 rather than a set of differentials. 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 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’ (in ‘Labour Law’. *Law and Opinion in England in the 20th Century*. Ed, M. Ginsburg. London: Stevens, 1959: 263). This was above all true of the-then-highly influential engineering sector. Reflecting past compromises touched on earlier, the lynchpin of the sector’s arrangements were the ‘Provisions for Avoiding Disputes’ dating from the 1897-98 lockout.

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: 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. Indeed, it led larger employers to increasingly question their involvement in sectoral bargaining. Company bargaining allowing agreements to suit their particular circumstances came to be seen as much the better option.

Public policy was also a factor. Although the Royal Commission on Trades and Employers’ Organisations (1968: 46) saw a continuing role for sector agreements (the ‘formal system’) in ‘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 various phases of the then Labour Government’s incomes policy also encouraged the development of so-called ‘productivity bargaining’ allowing above the norm pay increases - which inevitably meant more workplace and/or company level activity.

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.

a) 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 like³⁸. One appears in the 2019 *Fair Work Wales* report (pp. 18-23). The second is proposed in the TUC's *A stronger voice for workers* (p. 23) published in the same year.

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 'employee rights' dimension.

³⁸ The IER's *Rolling out The Manifesto for Labour Law* has a list of some 40 proposed 'mandatory' contents on pp. 23-24. *The National Agreement for the Engineering Construction Industry* is also available for reference as is the *Handbook* of the Joint Industry Board in electrical contracting.

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.

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. Non-pay 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.

b) 'Organised' rather than 'disorganised' 'decentralisation'³⁹

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

³⁹ These terms were coined in the 1990s to describe the different types of decentralisation to company and workplace level taking place in western European countries where sectoral bargaining was the norm. Much of it was described as 'organised decentralisation' as opposed to the 'disorganised' variety associated with the UK because it largely took place within guidelines in the sector agreement. Also critical is that, unlike in the UK, the framework of inclusive sector agreements has been maintained, along with provisions for their extended coverage. For more on these terms, see F. Traxler, 'Farewell to Labour Market Associations? Organised versus Disorganised Decentralisation as a Map for Industrial Relations', in F. Traxler and C. Crouch (eds), *Organized Industrial Relations in Europe: What Future?* (Avebury, Aldershot: 1995), pp. 3–21.

For an up-to-date overview of the situation in western European countries, see Chiara Benassi and Chris Wright. 2023. 'Improving pay and productivity with sector collective bargaining: a review of the international evidence.' *King's Business School Research Impact Papers*, No. 2.

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'⁴⁰.

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 multi-chain companies.

Some issues, by contrast, might be deemed 'standard' and so, effectively, 'non-negotiable' 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' Organisations' recommendations. For example, it might be expected there would be a

⁴⁰ These terms were coined in the 1990s to describe the different types of decentralisation to company and workplace level taking place in western European countries where sectoral bargaining was the norm. Much of it was described as 'organised decentralisation' as opposed to the 'disorganised' variety associated with the UK because it largely took place within guidelines in the sector agreement. Also critical is that, unlike in the UK, the framework of inclusive sector agreements has been maintained, along with provisions for their extended coverage. For more on these terms, see F. Traxler, 'Farewell to Labour Market Associations? Organised versus Disorganised Decentralisation as a Map for Industrial Relations', in F. Traxler and C. Crouch (eds), *Organized Industrial Relations in Europe: What Future?* (Avebury, Aldershot: 1995), pp. 3–21.

For an up-to-date overview of the situation in western European countries, see Chiara Benassi and Chris Wright. 2023. 'Improving pay and productivity with sector collective bargaining: a review of the international evidence.' *King's Business School Research Impact Papers*, No. 2.

requirement for arrangements enabling employees to 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.

c) 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 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.

There's also a key role for an incoming Labour Government. In its 2023 [*Strengthening social dialogue in the European Union: harnessing its full potential for managing fair transitions*](#), the European Commission 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 one of the missing pieces in the UK's policy making framework. 'Enabling social dialogue to thrive' would be a significant step in improving matters.

2.6 Make improving productivity and performance 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.

The assumption, presumably, 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 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 UK's low growth. 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 here⁴¹. It suggests that many SMEs not only struggle to keep up to date with employment legislation and find difficulty in implementing complex statutory provisions⁴². 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 different forms of 'team working'. 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.

Such is the size of the problem, however, that Acas is never going to 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 Fair Work Councils in the 'foundational/everyday economy'

⁴¹ See, for example, Keith Sisson. 2014. 'The UK Productivity Puzzle - is employment relations the missing piece?' *Acas Policy Discussion Papers*. See also John Forth and Alex Bryson. 2015. 'Building Productivity in the UK - (Acas) Policy Paper'.

⁴² On this point, see the detailed case study evidence described in Monder Ram and Paul Edwards. 2010. 'Industrial Relations in Small Firms' in Trevor Colling and Mike Terry (Eds), *Industrial Relations: Theory and Practice*, 3rd Edition. Blackwell: Oxford.

sectors, 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 inter-agency 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. As the *Productivity Institute* emphasises, along with an absence of joined-up policy-making and underinvestment, inadequate diffusion is one of the fundamental issues needing to be tackled urgently to close the gap relative to the UK's growth performance.

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.

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 is alive to 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, to put this another way, is capable of making a significant contribution to achieving the Labour Party's mission of economic growth.