

Memo to Union Reps

Dear comrade,

(UNION NAME) GUIDANCE

(UNION NAME) ENDORSEMENT OF FAIR WORK FIRST REQUIREMENTS

Issue: How and when to agree or endorse Fair Work First requirements

Scope: All employers, all branches all union officials

This memo sets out the (UNIONS NAME) approach to Fair Work First

- It briefly summarises Fair Work First
- It draws attention to the importance of (UNIONS NAME) endorsement of Fair Work First criteria that employers require for Scottish Government funding
- It draws attention to the inclusion of both direct employment AND procured services within the guidance and any (UNIONS NAME) agreement
- It explains our four requirements for (UNIONS NAME) endorsement of Fair Work First criteria. And,
- It plots a way forward that clears a path to endorsing Fair Work First requirements by focusing on binding commitments to continuous improvement.

Attached to this memo are a template letter to open dialogue with employers, a list of our requirements for endorsement and an FAQ that addresses issues that may arise in dialogue with employers. We have a template agreement to conclude the process which you will receive if and when employers agree the four principles. This agreement addresses important issues such as the legal implications arising from such an endorsement.

Summary of Fair Work First

This is a short summary of key provisions. Please refer to the Scottish Government guidance for full information.

<https://www.gov.scot/publications/fair-work-first-guidance-3/pages/8/>

- All public bodies and their subsidiaries are required to comply with Fair Work First guidance published by Scottish Government
- The areas in which Fair Work is required include: real Living wage compliance, arrangements for effective workers' voice, workforce development, use of zero hours contracts, gender pay gap, diversity and inclusion, flexible and family friendly working practices, and, use of fire and rehire practices.
- Compliance with FWF criteria requires public bodies to provide **factual** evidence which **must be signed off by the recognised trade union(s)**

- Compliance with FWF criteria is also required from 3rd party employers where public bodies source services from the independent sector by commissioning, procurement or grant funding.
- Fair Work First criteria for all public authorities cover BOTH the working conditions of directly employed staff AND the arrangements for commissioning or procuring services from 3rd parties.
- Where unions are recognised, **FWF criteria must be agreed or verified by all recognised trade unions.**

There are important challenges we require to address and overcome when verifying the working conditions of (UNIONS NAME) members and/or arrangements for commissioning outsourced services.

- Addressing equality and inclusion brings all management practices into scope
- We cannot verify arrangements “sight unseen”
- Nor can we create the impression that every policy, practice and managerial decision is pre-approved by (UNIONS NAME)
- However, the requirement for rigor cannot be a complete barrier to the flow of funds to jobs and services in the public sector supply chain.
- The challenge is to balance these pressures in a progressive and productive way and to reach that position with sister unions.

We agree, in broad terms, with the view that verification requires commitments to make substantive and procedural improvements to Fair Work. We believe the following approach strikes an appropriate balance between transparency, improvement and effective voice.

Challenges to Verification

1. Transparency and Evidence

Public statements on Fair Work are important. They affect the perceptions and choices of workers, service users and the wider public. Any union endorsement of Fair Work status must be based on evidence, not just pledges and assurances. This is particularly challenging in relation to arrangements for commissioning and procurement of services where working conditions are concealed and often fall below the required standard.

2. Action on Unfair Work

Unfair work remains prevalent in some aspects of public sector employment and unfair work is endemic in outsourced or commissioned services. This will not change overnight. Nor can it be hidden behind aspirational PR statements about Fair Work compliance. Achieving Fair Work must be a process of continuous improvement. In addition to the requirement for transparency, trade union endorsement will require a commitment to continuous improvement and arrangements to be followed where unfair work comes to light.

3. Effective Voice

Effective Voice is a mandatory component of Fair Work First. It must, therefore, be seen as inherent to Fair Work First verification that workers and their representatives are actively engaged in the process of evaluating whether Fair Work standards are being met. We have to acknowledge that universal access to effective voice channels will not appear overnight. Initial endorsement of Fair Work must therefore include some agreement for continuous improvement in Effective Voice.

4. Resourcing

Although Fair Work First is a welcome initiative, the process of verification places an additional demand on over-stretched workplace representatives. We need agreement on how this activity is to be effectively resourced.

Moving Forward through a Joint Approach

Where there are multiple recognised unions, each union is required to agree a Fair Work statement. In response, (UNIONS NAME) intends to secure a joint trade union approach.

The (UNIONS NAME) proposal to partner unions is that we provide interim or initial verification of Fair Work statements. These interim arrangements are intended to meet the four key challenges listed above: evidence, continuous improvement, effective voice and resources.

Where meaningful commitments are agreed in this way, with all recognised unions, it is (UNIONS NAME) expectation that the task of delivering Fair Work can commence.

(UNIONS NAME) intends to advance this process through joint work with the partner unions, and we ask for your cooperation in that approach. As an absolute minimum, we require acceptance of the attached commitments to underpin any local agreement.

All local agreements require approval from the regional office and will be subject to annual review.

Yours sincerely

Template letter – Progress on Fair Work First

Dear [insert officer name]

(UNIONS NAME) Endorsement of Fair Work in Employment and Commissioning/Procurement

I am writing to update you on the work undertaken to agree endorsement or verification of Fair Work.

Fair Work First is intended to deliver improvement and not become another bureaucratic tick box endorsement of the status quo. While mindful of the benefits that accrue to the college from grant applications, (UNIONS NAME) is taking a diligent approach based on evidence and continuous improvement.

The (UNIONS NAME) approach is as follows.

1. Evidence Based

(UNIONS NAME) approach will be diligent to ensure our endorsement is evidence-based and accurate. We cannot proceed on a “sight unseen” basis. Nor can we risk misleading workers or the public as to the quality or consistency of the arrangements we endorse.

We have provided a list of documents we require as the evidence base for our decision (see attached). The list covers evidence of both working conditions and arrangements for procuring work from third parties. All of these documents should already exist, and access can be via online links or portals. We do not, therefore, see this as unduly onerous.

2. Continuous Improvement

(UNIONS NAME) approval will be framed in terms of a shared commitment to continuous improvement. Our endorsement cannot be read as an assertion that unfair work does not exist. All we can do is agree that arrangements exist to address unfair work where it comes to light. We do not expect working conditions to be perfect, nor do we expect change overnight. But we do require a meaningful commitment to realistic change.

Therefore, (UNIONS NAME) will endorse Fair Work with the caveats that:

- We reach local agreement on issues for review and improvement. This will cover three employment issues and three commissioning practice
- There shall also be a standing commitment to review and address instances of unfair work as and when they come to light.

3. Effective Voice

In addition to (2) above, (UNIONS NAME) expects a standing commitment to continuous improvement in effective voice. That might be the frequency of workforce contact by trade unions, the number and diversity of reps available to the workforce, or the range of issues we address in partnership. At this stage, it will be sufficient for the purposes of endorsement to agree a commitment to continuous improvement of Effective Voice. That commitment can be developed and delivered as we move forward.

4. Resourcing

(UNIONS NAME) interpretation of Fair Work is that dialogue about job quality should take place at or near the workplace in a participatory manner. Clearly there is no time to deliver that approach across all workplaces prior to the completion of funding applications that are pending.

So, our final requirement, links (1) (2) and (3) in a request for a commitment to resource a more participatory approach to this endorsement. Again, the detail of that can be discussed as we move forward, but it is likely to include such facility time as is necessary to improve Fair Work, in every workplace, in a meaningful way that is participatory, and evidence based.

Time limited Verification

Finally, given that Fair Work is a process of continuous improvement, any endorsement of Fair Work is time-limited and subject to review. We will include the review date and process in our formal substantive response.

I hope you agree that none of the above is onerous or contentious. While that does not conclude the agreement immediately, I hope it makes clear the path to resolution in the very near future.

Yours sincerely

[Insert name]

(UNIONS NAME) Branch Secretary

Appendix 1 – Verification Checklist for Public Authorities

Section 1 – Transparency

(a) Transparent – Evidence of Fair Work in Employment

The employer will publish or provide permanent online access to:

- I. The pay and grading structure with full salary details and pay points
- II. A list of occupations assigned to each grade
- III. A Gender Pay Gap Report
- IV. An Ethnicity Pay Gap Report
- V. An Equal Pay Statement
- VI. A full suite of terms and conditions of employment
- VII. All applicable HR, equality or employment policies

(b) Transparent Evidence – Fair Work in Procurement

The organisation will provide to the trade unions (either hard copy or online access):

- I. Evidence of standard contract terms relating to Fair Work as secured when contracting with providers for commissioned or grant funded services
- II. Evidence that staff in commissioned services have individual contracts that give effect to the rights described above
- III. Evidence of how these Fair Work requirements is included in the information provided to bidders or grant applicants
- IV. Evidence of how bidders are screened and excluded for previous failures to provide Fair Work
- V. Evidence of how the Fair Work commitments of bidders and grant applicants are evaluated and how Fair Work assessments are weighted in evaluation processes
- VI. Evidence of how procurement staff are trained in Fair Work requirements and the application of Fair Work criteria in bid evaluation processes
- VII. Evidence of the monitoring and reporting requirements placed on successful Bidders
- VIII. Evidence of how contract management process address Fair Work, evidence of the enforcement powers, and evidence these powers are being used.

Section 2 – Continuous Improvement

(a) Working conditions

- I. The employer will agree three areas for priority action in progress towards Fair Work
- II. The employer will agree defined objectives and clear implementation dates

(b) Commissioning & procurement

- (i) The employer will agree three areas for priority action in progress towards Fair Work in commissioning and procurement.
- (ii) The employer will agree defined objectives and clear implementation dates.

(c) General commitment to continuous improvement

The employer will agree to address instances of unfair work through agreed procedures as and when concerns arise.

Section 3 – Effective Voice

The employer will agree three areas to strengthen the Effective Voice of trade union members to make verification a broad-based participatory process.

Section 4 – Resourcing

The employer will agree an effective plan to resource the activities listed in sections 1 to 3 above.

Frequently Asked Questions

Fair Work First

(UNIONS NAME) Response to standard employer questions and comments.
Confidential guidance for use by reps and staff. Do not share.

Q. This is about council funding of social care. It doesn't apply to NHS, NDPBs etc.

A. Clearly not true. The guidance makes clear that Fair Work first applies to the entire public sector supply chain – all public authorities and every external provider.

Q. UNISON has already agreed Fair Work statements

A. Fair Work is a process of continuous improvement. (UNIONS NAME) reserves its unlimited discretion to grant or withdraw endorsement or verification at any time to ensure that standards are improving continually and consistently across public services. All endorsements or agreements will be revised to ensure compliance with this policy.

Q. (UNIONS NAME) has applied a different standard at other public authorities.

A. It is our aim that continuous improvement is defined by employers and trade unions in response to the particular circumstances they face. This flexibility is provided to promote pragmatic joint working. A degree of variation is inevitable and desirable. UNISON reserves its unlimited discretion to grant or withdraw endorsement or verification at any time to ensure that standards are transparent and improving continually and consistently across public services.

Q. Will (UNIONS NAME) be liable if we endorse unfair work, or unfair procurement?

A. There is no legal risk, but there is reputational risk. We cannot give workers and service users false comfort about working arrangements. UNISON is only endorsing a commitment to continual improvement. It is inevitable that concerns over “unfair work” will come to light and require attention. We are not endorsing every policy or management decision, but we can endorse an employer on the basis of a meaningful commitment to transparency and continuous improvement if and when concerns arise.

Q. This organisation is a Fair Work employer, we have positive union relations. Why will (UNIONS NAME) not just endorse the status quo?

A. The status quo is not an option. Fair Work is about continuous improvement. We have no evidence that Fair Work has been achieved consistently across all workplaces and in all commissioned services. Any suggestion that a union rep and an HR manager can sign-off Fair Work agreements, sight unseen, in a single meeting or an exchange of emails will be rejected.

Q. Government funding has been placed at risk. Why is this taking so long?

A. The lack of consultation or an implementation period was unfortunate, but the scheme itself is strongly welcomed. (UNIONS NAME) approach is diligent as regards evidence and continuous improvement. We are taking the new responsibility very seriously. Endorsement cannot be given “sight unseen”. The evidence we require is standard documentation. It should be immediately available to employers. In terms of action on Fair Work, the focus is on continuous future improvement. That enables Fair Work statements to be rapidly endorsed where reasonable improvement plans are agreed for the future. This approach of transparency and continuous improvement enables unions and employers to make a start in a way that balances improvement with pragmatism.

Q. The range of documents (UNIONS NAME) requests is too onerous.

A. We disagree. All the documents requested should be readily available and many are already provided online or in hard copy form. If the employer does not possess a listed document, we will listen to the reason given, and respond.

Q. The range of documents (UNIONS NAME) requests is wider than the range of issues covered by the Government guidance.

A. We disagree. For two reasons. First, the range of issues covered by Government guidance is broad. Second, the Government guidance applies to the employer's action on equalities in employment and commissioning. Discrimination occurs in every aspect of public sector employment and commissioning in Scotland.

There can be no endorsement of equality policies and impacts if (UNIONS NAME) is denied evidence that antidiscrimination practice is effectively embedded in all the policies listed.

Q. Some of the commissioning or procurement materials requested are confidential or commercially sensitive.

A. We disagree. We are content for any specific pricing data to be redacted. With that exception, commissioning documents must be provided in full. Withholding or concealing commissioning or procurement materials is evidence of unfair work and will lead to (UNIONS NAME) endorsement being delayed or withheld.

Q. Some of the commissioning or procurement materials requested must be withheld for GDPR compliance.

A. We disagree. Nothing in the evidence request is intended to recover personal information relating to data subjects. Any personal data attached to relevant documents should simply be redacted.

Q. It is not clear how issues will be identified for continuous improvement or the actions that will be required.

A. Given the pressure on time and the impact on grant funding, (UNIONS NAME) is content to take a pragmatic and informal approach to both the identification of issues and the agreement on actions. Branches have full discretion to conclude this requirement in response to employer-based issues and on terms that leave scope for more formal arrangements in year two.

Q. If Scottish Government had intended public authorities to adopt a participatory approach to Fair Work First they would have provided additional funding.

A. We disagree. Everything in the output of the Fair Work Convention and Scottish Government is geared towards Fair Work being continuously improved through workplace discussion in a participatory way. Government routinely places demands on public bodies without providing additional funds. We are happy to make an approach for specific additional funds in year two, but the initial work will promote participation and the resource must come from public authorities. (UNIONS NAME) invests heavily in supporting reps for this work and we can look at additional funding through Union Learning funds if required. If there is a burden arising from this work, it falls on us all.