

A Briefing:  
*Rolling out the Manifesto  
for Labour Law*

*September 2018*

## Background

The Institute of Employment Rights (IER) is an independent think tank for the labour movement established in 1989. It's new report *Rolling Out the Manifesto for Labour Law*, was collaboratively authored by 26 leading labour law experts and edited by Professor Keith Ewing, John Hendy QC and Carolyn Jones.

### The modern workplace is insecure, unsafe, low-paid, unequal, and a drain on the taxpayer

- **Median wage is £23,000 annually, 20% of workers earn £15,000 or less;** real wages have been falling for a decade and are not expected to improve for another ten years; 4.1 million children in working families live in poverty.
- **Most state benefit claimants are in work** and income tax receipts are lower due to a significant proportion of the workforce being on low pay, contributing to the deficit.
- **Inequality is higher than on the continent**, both economically and between genders. The proportion of GDP going to wages has fallen from 65.1% in 1976 to 49.5% in 2017.
- **Working conditions are poorer than on the continent**, with more workers in bogus “self-employment”, on zero-hours contracts, or forced into agency work (one in ten are in insecure work). The average Brit works more hours, for more weeks, and more years than Europeans.
- **Collective bargaining coverage is the second lowest in Europe**, higher only than Lithuania. The European average is 60+% and UK coverage has fallen from 86% in 1976 to about 25% today.
- **A third of successful employment tribunal claimants never receive the compensation they are owed** and one-half only receive partial compensation.
- **Health and safety inspections have fallen by 69%** since 2004 and **53% of fatalities occur at workplaces exempt from proactive inspection** because they are deemed ‘low-risk’. The average workplace can expect an inspection every 50 years.

### The Manifesto aims to shift the focus of labour law to collectively agreed labour standards rather than statutory minimums

- **Because we aspire to bring the UK up to the standard of our European peers**, where sectoral collective bargaining (SCB) is already the dominant form of industrial relations (particularly in the strongest economies such as Germany, Sweden and Norway).
- **Because research shows SCB is good for the economy** by stimulating demand through higher wages, which in turn helps to reduce the deficit by increasing tax receipts and reducing reliance on state benefits.

- **Because SCB boosts productivity** by removing the incentives for employers to compete on labour costs, encouraging them to compete on innovation instead. UK research and development investment - a key indicator of future prosperity - trails consistently behind both the EU and OECD average. Further, productivity is buoyed by a more committed and stable workforce (poorly paid workers have been shown to change jobs frequently) with better skills, as training and apprenticeships are included in collective agreements.
- **Because SCB is more efficient and cost-effective for both employers and unions** than enterprise bargaining.
- **Because SCB reduces the need for detailed legislation and costly litigation**, with more disputes resolved through internal procedures.
- **Because SCB offers more flexibility in a changing world**, providing workers and employers with the tools they need to work together to plan for novel industries, future challenges and technological advances.
- **Because recent OECD reports endorse SCB as the most effective way of increasing wages and boosting economic growth and productivity**

## 25 Recommendations

### To enhance democratic participation:

1. **A Ministry of Labour (MoL)** with a seat at the Cabinet table should be established to give workers a voice in Parliament. Such a department was historically a staple of UK governments until it was removed by Margaret Thatcher's administration. It continues to be central to the governments of developed economies across the world.
2. **A wide remit for the MoL**, including overseeing a new collective bargaining framework; ensuring full employment in secure, high-quality jobs; ensuring wages remain high enough to minimise reliance on state benefits; and developing strategies to provide appropriate training and education to fill present or future skills gaps.
3. **A National Economic Forum** should be established by the MoL on which workers, employers, government officials and independent academics would sit to plan for industrial challenges and scrutinise the impact of policy on all sections of society.
4. **National Joint Councils (NJs)** should be established and rolled out across all sectors, beginning with the lowest-paid, such as the adult social care sector. An equal number of employers' and workers' representatives should sit on NJs to negotiate sectoral collective agreements on everything from wages, to apprenticeships, to dispute resolution procedures. NJs should also represent the interests of their industry to government.

5. **Stronger trade union rights** to recognition, access and inspection of workplaces should be introduced to provide workers with a voice at work and a genuine choice as to whether they are represented by a union rather than forcing them to fight for the privilege.
6. **The repeal of the Trade Union Act 2016** to ensure workers can negotiate on a level playing field with employers.
7. **Enterprise bargaining** should build on sectoral collective agreements, falling below these only by agreement of the NJC.
8. **Enterprise governance and worker capital** – a minimum of two workers on boards, as well as votes at company general meetings, better representation of workers as pension fund trustees, and greater worker control over pension funds.

### **To strengthen statutory rights:**

9. **A real living wage** to replace the National Minimum Wage and the National Living Wage.
10. **Equal rights from day one for all workers**, through a new universal status of ‘worker’, replacing the current division that makes ‘workers’ eligible for fewer rights than ‘employees’ and removes the confusion over employment status in the gig economy. Where contractors are genuinely self-employed, the onus will be on employers to prove this, rather than the current situation where workers must prove they are not self-employed.
11. **A minimum number of guaranteed hours for all workers and a premium rate for overtime.** Employers should be able to indicate a limited number of hours in addition to regular hours, allowing them to retain flexibility of the workforce, thereby replacing zero-hours contracts with a fairer alternative.
12. **Stronger protections against discrimination and harassment** including a new duty to provide harassment-free workplaces and the inclusion of socio-economic status in protected characteristics.
13. **Stronger rights for families** including one month paternity leave on full pay and two-three months leave to be shared by the parents flexibly, which can be shared when the child is slightly older. Flexible working will also become a day one right, allowing parents to better arrange balancing work and family life.

### **To ensure the law is enforced:**

14. **In-house dispute resolution procedures** agreed by NJCs should be the first port of call to reduce the need for litigation.
15. **An independent Labour Inspectorate** should be established with the power to enter workplaces, issue enforcement notices and reinstate unfairly dismissed workers. Where

the dispute cannot be resolved, the Inspectorate will have the power to bring legal proceedings on behalf of workers and criminal prosecutions against the worst offenders.

16. **An improved Labour Court system** the first tier of which will consist of the Central Arbitration Committee and Employment Tribunals, which will be given greater powers to investigate and resolve disputes. Claims can be appealed to the Labour Court, and the Labour Court of Appeal.
17. **Tougher penalties** for those who break the law, including compensation that is commensurate with the losses suffered by the victim.
18. **Serious consequences for ignoring court orders.** Failure to pay compensation should be treated as an aggravated breach, attracting criminal sanctions for the worst offenders.
19. **Criminal sanctions** for blacklisting, and a new unit of the Crown Prosecution Services to investigate cases of corporate manslaughter.
20. **Personal liability** for directors and shareholders where their actions have caused or contributed to harm.
21. **Supply chain leaders should face joint liability for labour law breaches made by their suppliers including** health and safety regulations and minimum labour standards applied either in law or agreed by NJCs in any jurisdiction including domestically and abroad. This will ensure that UK profit cannot be based on exploitation, including of those in other nations.
22. **New powers for health and safety officers to stop the job** when danger is imminent or serve provisional improvement notices for lower-risk breaches.
23. **More health and safety inspections** and the return of proactive inspections in all industries, not just those deemed “high risk”.

#### **To promote best practice:**

24. **Being a good employer should be a requirement of winning public contracts and licenses.** This includes not engaging in blacklisting or other serious labour law breaches, recognising and negotiating with trade unions, and practising due diligence when it comes to protecting workers throughout its supply chain - both in the UK and abroad.
25. **Repeal laws that prevent contracts from stipulating trade union involvement,** such as the legislation that makes void terms in contracts that require recognition or negotiation with a union, and legislation that prohibits the refusal to deal with suppliers that do not recognise or negotiate with unions.

# Rolling out the Manifesto for Labour Law

## Contributors

Richard Arthur (*Thompsons Solicitors*)  
Alan Bogg (*Professor, Bristol University*)  
Nicola Countouris (*Professor, University College London*)  
Ruth Dukes (*Professor, Glasgow University*)  
Keith Ewing (*Professor, King's College London*)  
Sandy Fredman QC (Hon) (*Professor, Oxford University*)  
Michael Ford QC (*Professor, Bristol University*)  
Mark Freedland QC (Hon) (*Emeritus Professor, Oxford University; University College London*)  
Lydia Hayes (*Reader, Cardiff University*)  
John Hendy QC (*Hon Professor, University College London*)  
Phil James (*Professor, Middlesex University*)  
Carolyn Jones (*Director, Institute of Employment Rights*)  
Aristea Koukiadaki (*Senior Lecturer, The University of Manchester*)  
Aileen McColgan (*Professor, King's College London*)  
Ewan McGaughey (*Senior Lecturer, King's College London*)  
Sonia McKay (*Visiting Professor, University of Greenwich; University of the West of England*)  
Virginia Mantouvalou (*Professor, University College London*)  
Andrew Moretta (*PhD candidate, Liverpool University*)  
Tonia Novitz (*Professor, Bristol University*)  
Colm O'Cinneide (*Professor, University College London*)  
Steve Tombs (*Professor, Open University*)  
Peter Turnbull (*Professor, University of Bristol*)  
Sarah Veale (*Executive Committee, Institute of Employment Rights*)  
David Walters (*Professor, Cardiff University*)  
David Whyte (*Professor, Liverpool University*)  
Frank Wilkinson (*Emeritus Reader, Cambridge University*)