

# Care After Covid

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UNISON Scotland's Fair Work Vision for a National Care Service

A submission to the Scottish Government Consultation



## UNISON Scotland's Fair Work Vision for a National Care Service

The submission follows the structure and section headings of the consultation without limiting comment to the specific questions. Each of our eight sections is preceded by a short summary.

### Preface: UNISON's engagement and evidence gathering

UNISON's submission is based on a series of seminars, surveys, events and focus groups during the pandemic and in specific response to the National Care Service consultation (NCS).

- UNISON surveyed and consulted private, community and voluntary sector (CVS) members about, exposure to Covid, staff shortages, unfair work, and their hopes for implementation of the Independent Review of Adult Social Care (IRASC)
- UNISON surveyed and consulted our reps in IJB governance roles on how the NCS needs to strengthen their oversight of design, commissioning, and service delivery.
- UNISON consulted with health and local government staff in local integrated services and embedded their observations into this submission.
- UNISON took specific guidance from our reps in the regulatory agencies about their encounters with the care crisis and their hopes for better regulation within the NCS.
- UNISON supported research (pending) on the link between job quality and care regulation and commissioned research (also pending) on the prevalence of tax evasion in Scotland's residential care sector.
- UNISON also engaged with the representatives from people with lived experience of social care, the Equality & Human Rights Commission (EHRC), Freedom of Information (FOI) researchers, academics, care contract managers, leaders from the regulatory community, tax evasion campaigners, the Fair Work in Care Group and Derek Feeley from the IRASC group.
- UNISON's member engagement closed with a conference of social care workers from contracted services. Their views addressed the full consultation while focusing on the Fair Work agenda set out in section 7 (below).

Given the breadth of engagement this document offers Government an informed and contemporary view from a diverse range of social care voices.

# 1. Improving care quality & access

- UNISON strongly endorses the central emphasis on improvement through empowerment within the IRASC report and regrets the apparent absence of an equivalent strength of commitment in the consultation.
- Care inequalities are profound, for service users and staff, and the empowerment required for reform therefore be a rights-based approach to promote equality and equity and human rights in social care. The equalities vision in the consultation document also falls short of that set out in IRASC.
- The crisis of unfair work cannot be averted without effective trade union voices underpinning a transformation to Fair Work. We welcome the commitment to Fair Work but there is growing ambiguity around arrangements for employee voice.

## 1.1 A rights-based response to failed care

UNISON's core submission to IRASC was that there is a major rights deficit in social care. Union rights, safety rights, equality rights, pay rights. The range of problems is considerable. It degrades and impedes all attempts to achieve the quality and capacity of social care that Scotland requires. In this paper we refer to this as the 'crisis of unfair work'.

That crisis was, and continues to be, a major factor in avoidable infections, deaths, poverty, adverse mental health outcomes and the more recent collapse of services during the pandemic. The equality, human rights and Fair Work failings in social care are systemic. They exist in institutional structures, commissioning and run from delivery through to outcomes.

Duty bearers escape scrutiny and challenge – on safety, equality, human rights, pay and Fair Work grounds. The absence of enforcement or effective remedy severely affects service users and workers. Arrangements for effective voice are equally ineffective. This leaves funders, commissioners, and providers with unfettered power to perpetuate unfair work, discrimination, and human rights failings. There can be no reliable care quality when these conditions prevail.

## 1.2 Priority Actions

All care related organisations must engage with a rights-based approach as recommended by IRASC. The weight attached to fundamental rights must be increased through Ethical Commissioning to enable the power transfer to service users and staff recommended by IRASC. Scrutiny and accountability require that FOI powers are extended to all care settings.

### 1.3 Effective voice

All social care providers and statutory agencies should be reviewed to include arrangements for employee and service user voice. As emphasised in IRASC, empowerment of service users and staff is of central importance to the improvement of care, however it is of particular importance in the co-design, co-production, and governance of social care.

Above all from a trade union perspective, social care needs a charter of employee voice measures to empower workers in the workplace and to underpin sectoral bargaining with robust workplace democracy.

Government accepts the Fair Work Convention recommendation that global evidence points to union voice as the most effective voice for Fair Work.<sup>1</sup> The Government's ambitious National Performance Framework expressly includes "Employee Voice" and commits to extend the coverage of collective bargaining by trade unions. Fair Work in Care will ensure success against that important measure and reverse the downward trend for employee voice in Scotland (see below).<sup>2</sup>

An independent effective voice for workers is the only route to job quality, and job quality is the only route to care quality. Care employers have spent decades running failed employee forums with no impact on the crisis of unfair work in care. Some employers have sought to use employer-controlled forums to drive unions from the workplace. They failed.

Our engagement with the Fair Work Convention, our partnership within IJBs and our drive to keep people safe through the pandemic illustrates the trade union role in social care. The time for an effective union voice in care is now.

### 1.4 Sectoral bargaining & Fair Work norms

A sectoral bargaining forum is needed to set equality, human rights, and Fair Work standards. These standards should then be embedded in National Care Standards and service contracts to enhance the quality of care.

As in other EU states, compliance with Fair Work minimum standards shall be mandatory in all commissioned services. The pretence that EU law prohibits commissioning and procurement on enforceable, minimum employment standards is unhelpful – it has facilitated undercutting by low paying providers.

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<sup>1</sup> [p5 Fair Work Convention-Framework 2016](#)

<sup>2</sup> [Scottish Government National Performance Framework: Employee Voice Performance Indicator](#)

The percentage of employees who report that their working conditions are set by collective agreement. Collective agreement is defined as an agreement between a trade union and employer that affects pay and conditions. The proportion of employees who have reported that they are part of a collective agreement which affects their pay and conditions has decreased from 38.1 per cent in 2019 to 33.7 per cent in 2020.

Scotland now has enforceable living wage obligations, and we will also have enforceable Fair Work standards in social care under the NCS.

## 1.5 Bringing human rights home

UNISON congratulates Scottish Government on the drive to implement UN Conventions including the Convention of Economic, Social and Cultural Rights (CESCR), the Convention on the Rights of Persons with Disabilities, (CRDP), and the Convention on the Elimination of Discrimination Against Women, (CEDAW) and other international human rights norms.<sup>3</sup>

The vision for Scotland as a leading member of the Global human rights community gives practical effect to the human rights commitments of the Scotland Act<sup>4</sup> and resonates perfectly with the IRASC view of a rights-based approach to care quality. The question is whether the NCS will also deliver?

## 1.6 Co-production & equalities

Co-production featured heavily in IRASC. UNISON fears this emphasis has been reduced in status in the NCS consultation. Co-production is the goal that social care partners attain when the engagement and empowerment of service users finally leads to joint reviews, co-design, delivery, joint monitoring, and enforcement.

Key interventions only drive quality improvements when staff and people with lived experience are in the room, holding power and changing the design, delivery, and monitoring of services.

Given the demographic and equalities profile of the lived experience population, co-production will be a lasting and transformational change in health equalities in Scotland. In recommending empowerment through a rights-based approach the IRASC offers Scotland the chance to be a global leader in social care reform. Now we must deliver on that chance.

## 1.7 A rights-based approach to access

The right of reasonable access to services for disabled people under the Equality Act 2010 derives from the work of Susan Archibald in her EHRC and UNISON-backed campaign for reasonable adjustments at Fife Council.

It is now 25 years since Susan's Supreme Court triumph, yet jobs and services remain remarkably inaccessible to disabled people. Employees are occasionally compensated for an employer's failure to make reasonable adjustments; however, it is alarming that there have been virtually no legal challenges to inaccessible care services or any other

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<sup>3</sup> [Scottish Government: Embedding Human Rights in the Business of Government](#)

<sup>4</sup> [s.57 Scotland Act 1998](#)

public service.

For the benefit of workers and service users UNISON has united with Susan Archibald to promote our “Be Reasonable” Campaign – the promotion of reasonable adjustments for workers and service users. Accessible jobs and services must be an embedded obligation at the heart of the NCS.

To achieve that goal, the legal system needs to focus on the removal of discriminatory social care barriers as distinct from compensating for detriment after the event. Compensation is often necessary and appropriate but, of itself, compensation does not change systems of care.

In addition to this submission, UNISON will bring forward further proposals to make reasonable adjustments more accessible to disabled people – service users and staff.<sup>5</sup>

## 1.8 Embed equalities in the care infrastructure

Every statute, regulation, policy, guidance, service specification, service contract, monitoring process and review criteria must have equalities embedded so robustly that oversight, ignorance, or evasion is impossible.

Social care service users and staff have the strongest possible concentration of intersecting equality rights. If the NCS is not the gold standard for embedded equalities, it will have failed to meet the first improvement objective set down by IRASC.

## 1.9 Data Data Data

It is a simple point but the level of non-compliance with mandatory recording of equalities data is overwhelming. Non-recording of data tends to be compounded by a failure to access, analyse and use equalities data to shape the review and re-design of high-quality services. Transformational change starts with monitoring and recording of the data required for lived experience engagement and evidence-based reform.

## 1.10 The benefits of the NCS taking responsibility for improvement

The possible benefit of a centralised improvement function would be the delivery of the core ambition in the IRASC Review – an equality and human rights-based approach. (as above). That requires a fundamental culture shift. That power shift can only be defined, created, and enforced through a system that has a strong national framework, BUT also has an irrevocable commitment to use that national framework to pass power ‘down’ to service users and staff, not ‘up’ to Government, commissioners, providers or

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<sup>5</sup> The Sheriff Court has jurisdiction over equal access to services such as health and social care. Although discrimination is common, the Sheriff Court rarely directs commissioning authorities or service providers to improve equality. It is quite common for a judicial year to conclude with no disability discrimination complaints to the Sheriff Court. UNISON has proposals for law reform and improved access to justice on equalities issues. This includes a strong emphasis on promoting equality as distinct from compensating for past discrimination.

tax exiles.

The IRASC recommendations and the drive for human rights incorporation are hugely positive developments. Less positively the NCS consultation does not capture the IRASC emphasis on rights-based empowerment. And the way PwC have been engaged is a concerning illustration of that point (see below).

If there is to be a strong national agency with a focus on improvement, the emphasis on rights-based empowerment must be retained, and consistently applied. We comment further on the lessons to be learned from the PwC episode, but the core message from UNISON on improvement is to retain and embed the IRASC emphasis of a rights-based empowerment of service users and staff. The consultation is **not clear** in its commitment to transfer power ‘down’ to service users and staff as recommended by IRASC. That requires clarification.

The consultation opens with an aspiration to tidy up “improvement methodology” and “implementation science”. This, and the PwC debacle, reflects the “capture” of the National Care Service project by a producer/provider perspective. We don’t doubt these techniques matter to service planners and managers, but they are not priorities for service users and workers.

Service users want trained staff in safe services with good infection controls and the resilience to remain open despite the crisis of staff shortages. We didn’t endure the infections and deaths of the pandemic to let tax advisers and technocrats re-model the care sector. The IRASC approach is the right approach, empowerment and job quality is the only road to care quality.

## 2.0 Centralising power with Scottish Ministers

- The actions of the integration partners are not consistently delivering job quality or care quality.
- UNISON welcomes a substantial degree of national intervention to create a strong infrastructure for improved care standards including Fair Work.
- UNISON stops short of endorsing a complete transfer of all power and accountability ‘up’ to Ministers. Power must transfer “down” and there is great value in local accountability.

Scottish Government already has a considerable degree of control over the social care experience of service users. The question properly put is whether there is a need for central government to play a more direct and powerful role in specific areas, and whether that should expand to include statutory accountability for the entire system



including social work? We say “yes” to more direct Government influence, but “No” to a total transfer of all power and accountability.

## 2.1 Is any intervention required?

Although UNISON is concerned at the degree of central power that Ministers propose to adopt, our IJB reps are informed observers and they do acknowledge that there are serious problems requiring action. Issues they observed in 2019 and again in 2021 include:

- Partner agencies actively resisting integration,
- Intentional fragmentation of budgets that should be integrated,
- Avoidable instability and uncertainty in finances and integrated budget setting,
- Variable and ineffective IJB leadership,
- Massive and constant churn in leadership roles,
- Slow progress towards person centred service review, re-design, and commissioning,
- A tendency to procure cheap external services rather than design and commission in-house in line with the vision for person centred care,
- Negligent contract monitoring that ignores quality standards and fixates on the two preoccupations of a cash starved system – capacity and price,
- A crisis of inequalities and unfair work that is nurtured and sustained by failed review, design, commissioning, and procurement systems, and
- Indifference and hostility to joint or partnership work with unions among outsourced or contracted services

Addressing these issues requires concerted Government action. However, UNISON favours the location of power and decision making in accountable forums that are as close to service users as possible. Traditionally that has been local authority social work. Local decision making and local accountability has a value that should not be discarded lightly.

## 2.2 Evidential Base

We have three concerns in relation to evidence to support the centralisation of power and accountability:

- UNISON accepts that social care is failing. However, one explanation to consider is that integration is largely hindered by partner agencies fighting over scarce resources within an underfunded system.
- UNISON is not convinced that there is an evidential base for the claim that a centralised system will be more effective in resolving specific difficulties in social care.

The question is the nature and extent of the power Ministers need to drive change in a failing system.



## 2.3 Balancing local and national roles

UNISON agrees with the IRASC Review – the care system should be designed nationally but delivered locally. Accountable local delivery is hard to imagine within a system heavily centralised in Edinburgh.

UNISON stands by the belief that there is distinct and irreplaceable value in the local accountability of services under the governance of elected councillors.

Having said that, UNISON is a strong supporter of reforms to empower service users, empower staff, build sector skills, enhance workforce planning, and generally build the national framework or infrastructure for higher quality care.

UNISON therefore supports a National Care Service covering:

- A suite of human rights provisions for social care – substantive rights and sector specific services or processes that harness rights for the empowerment of people and the improvement of services. The rights-based approach in social care cannot focus on compensating for service failure. Access to compensation is a legal right in specific circumstances, but a compensation culture will not empower elderly, disabled or otherwise disadvantaged people to influence the services they receive. An effective legal remedy is one that enables a service user to receive a service in a person-centred way, that dynamic of change must be the overriding goal. Rights-based care requires improved access to better justice.
- National standards across all relevant care sector functions and activities – engagement, empowerment, review, co-design, collaboration, commissioning, co-production, monitoring, quality assurance, review, enforcement
- National processes to ensure the required engagement, participation, design, and co-production rights of service users are made real
- Ongoing development of Fair Work in Care to tackle the crisis of unfair work, strengthen employee voice at all levels and build a stable workforce for skill investment and quality improvement.
- A joint council for social care as the negotiating body responsible for the sectoral bargaining of pay and working conditions. The occupational scope should be defined as all social care staff not otherwise conditioned to NHS or Local Government arrangements. As in other European nations with sectoral bargaining arrangements, all contractors must be compelled to follow sectoral agreements. This crucial national priority must be in line with Government's Performance Framework aspirations for trade union influence and ICESCR requirements for independent voice. The joint council must also develop the joint or partnership work envisaged by the Working Together Review, the Fair Work Convention, the Fair Work Action plan, and the commitment to deliver Fair Work in Care. Only joint or partnership work with union members will transform social

care.

- Government should ensure that sectoral bargaining becomes the mechanism for delivering a Pay Equality Action Plan for social care as envisaged by Governments national pay equality plan. The joint council should deploy an agreed job evaluation study to enable employers to ensure pay equality within workplaces and across the sector. This robust and evidenced based pay reward system will then enable Government to address the pay gap between social care and other sectors – a pay gap that is a known factor in the staff turnover problem that blights attempts to improve the quality and consistency of care.
- Transformed workforce planning including mandatory obligations on employers to record and share workforce data
- Transformed sector skills planning and skills development
- National procurement of equipment and supplies including PPE and related items to ensure security of supply and deliver savings through economies of scale for all providers.
- National commissioning of specific specialist services
- Revised and more effective regulation of services and corporate service providers with adequate resources for unannounced investigations, follow up investigations and effective enforcement.
- Revised and more effective workforce regulation including a review of ECHR compliance in SSSC processes, higher intervention thresholds, shorter investigation periods, use of online processes by consent, increased funding, collaboration with the Care Inspectorate to enforce the Code of Practice for Employers, and an equalities, human rights, and Fairer Scotland Duty review of the charging policy.

Beyond this comprehensive National Social Care Framework, UNISON asserts that the arrangements for the co-design, co-production and delivery of care should be local. Except for small, specialist services the default should be local.

There is widespread support for UNISON's view that social care is a community service, delivered in the community with the aim of supporting people to continue living independently in the community, linking with, and integrating with several community-based services such as housing, education, leisure, culture, community organisations, families, and neighbours. Centralising that under a national structure risks weakening these community connections.

If Government opts to reject 'local' as the default delivery option, UNISON foresees a long chain of accountability from contracted provider to IJB, to NCS, to Scottish Government, to Scottish ministers to Scottish Parliament. It is not clear to UNISON how

this improves accountability, and we foresee significant disruption costs and other adverse impacts linked to the time, effort and resources required.

There is clearly a need for a degree of national intervention. UNISON also supports decisive action in pursuit of Fair Work. The consultation might have been more helpful if the different options for intervention were all outlined and evaluated as an options appraisal.

UNISON's initial view is that the NCS, as envisaged, has several radically disruptive policy thrusts:

- Centralisation of NCS power with Scottish Ministers
- A radically wider project scope to embrace social work (see below)
- The significant degrading of social services as a locally accountable public service
- Revised arrangements for national accountability that appear more remote and less accessible than those with which service users and workers are familiar.

It appears that some of these changes are intended to advance agendas that are, at best, peripheral to higher quality social care. If the first seven years of integration has taught us anything it is that social care reform is slow, complex, challenging, and expensive. UNISON is not yet convinced that the ongoing project of social care reform is made more achievable by these four disruptive changes listed above

## 3.0 Scope of the National Care Service

- The NCS was proposed in response to the long-term crisis of unfair work in care leading to the avoidable infections and deaths from Covid
- There is no evidential basis to support expansion to include social work services and many specific services now face a home-grown disruptive threat
- Social care transformation was already a once in a generation reform – adding social work simply puts all social services at risk.

### 3.1 Integration with Social Work.

The NCS should not be expanded to become a National Social Work and Care Service. Looking back over the last 18 months. the collapse of a failed system and many avoidable deaths, Scotland needs a tight focus on social care reform.

UNISON's reasoning behind the position is as follows. Adult social care appears set for a centralising power shift. UNISON acknowledges that measures are needed to increase power and momentum behind integration and service user empowerment.

However, the proposal under consultation appears to shift power “up” to Edinburgh rather than “down” to service users, carers, and staff. Is that what IRASC really recommended? And would a similar change really benefit social work?

As with other proposals, there is no evidence to support the assertion that social work services are failing. Similarly, there is no evidence that social work services would overcome the upheaval of change and then be enhanced by integration with adult social care.

### 3.2 Children’s services & complexity

UNISON is not aware of robust evidence to suggest children and families face avoidable complexity as suggested by the consultation. If such complexity exists, then it is the first duty of Government to direct providers to clarify or signpost access points or pathways more effectively.

The disruptive change of a social work revolution is likely to cause dislocation and upheaval that dwarfs any marginal gains in service access arising from merging two services.

### 3.3 The Promise

The Promise aims to prevent children being taken into care and accommodated outwith their family home. It also seeks to ensure that the care experience better meets children’s needs for child centred care that listens to the voice of the young person and provides them with loving and continuing relationships. Work is ongoing in LAs to implement this. Any structural change arising from the NCS has the potential to derail this work.

UNISON has made the point that what is needed is proper investment in front-line social work services and community-based support services for children and their families. There is no evidence that the proposal for a National Care Service, including a National Social Work Agency, would lead to this and it would fracture key community relationships for example with education, early years, community learning etc.

UNISON is concerned that the delivery of The Promise has not been fully considered in this proposal and is likely to be undermined. We are concerned that the consultation references the Independent Care Review as a review of children’s services equivalent to the IRASC, which was not the case. The case for inclusion of children’s social work services has so far not been made. There has, for example, been no examination of the relative effectiveness of the 3 integration models for children’s services

### 3.4 Children’s alignment to paediatric health services

Pushing social work into the reformed IJBs might improve alignment with various services supporting children’s health. But it cannot be a binary question of “integration – good or bad”.

The question properly put is whether the gains derived from a closer alignment with

healthcare exceed the existing benefit of alignment to council services such as education. This is a very delicate and complex balance. Experiences will vary from family to family depending on the needs requiring support. Some social work clients need more health support, others require close contact with education. The relative merits of different models can be examined using factors such as the complexity, variance, frequency, and duration of support needs.

The consultation assesses children's services using classic producer-focused questions about service improvement – leadership, efficiency, consistency, complexity, access and so on. But behind the “metrics” of “improvement methodology” and “implementation science” are vulnerable and disadvantaged people with complex support needs. Government simply needs better evidence of the optimum way to support vulnerable children as they access services.

It may be that children's services can be improved through integration, but this specific proposal feels rushed and a slightly opportunistic “bolt-on” to the core IRASC project. UNISON will examine any hard evidence to back the change but, in the meantime, we should focus on improving adult social care.

### 3.5 Community health & GP services

There are benefits to be gained from closer integration with community health and GP services. Many are listed in the consultation. The IJB reform needed to enhance these service improvements need not be radical.

In addition to the benefits listed in the consultation, the vision of IRASC offers the hope that the newly empowered voice of service users, carers, families, and community health staff will enable innovative conversations about the design and delivery of community health and GP services in future.

However, Government must work with the reality of the pandemic response. Like all public service workers, staff within GP services are under immense pressure. The adverse, short term impact on service users of disruptive change should not be underestimated. As with other proposals, IRASC reforms are urgent, other reform proposal require more evidence, time and thought.

### 3.6 Nursing Directors and clinical governance

Although social care workers do not perform nursing tasks, as a rule, UNISON does recognise the benefits of the wider interim role played by Nursing Directors during the pandemic. The most obvious direct benefit has been enhanced infection control in social care settings. Looking to the future, providers delivering NCS services under contract will employ a number of nurses in residential settings. Clinical and care governance arrangements within the NCS must therefore be clear and effective.

The expanded Nursing Director role is a pandemic response and, as with other partnership responses to Covid, it is essential that the learning is retained and

developed where successful. Staff have worked incredibly hard throughout the pandemic, demonstrating a strong commitment to deliver high quality care and their professionalism has been exemplary. Government must draw upon that learning and lead the conversation about where the care/clinical governance and professional accountabilities sit within the structure of the proposed care service in a way that ensures consistently high standards of care and clinical governance across all services.

### 3.7 Addiction and recovery

UNISON asserts that Drug and Alcohol services are a revealing area of failed integration. These services have been formally “integrated” for many years. ADPs meet and agree policy and funding for the sector. Yet the sector retains three distinct and often conflicting service cultures – health, local government, and voluntary sector. The budgets may have merged but the ethos has not.

Despite the rise in addiction deaths, Scottish Government’s “Road to Recovery” policy established and empowered strong “Recovery Communities”. These are new and powerful service user voices questioning policy and service delivery.

That is the broad context in which Scotland has experienced a rapid rise in drug and alcohol deaths. Recovery communities are central to the independent campaigning stance for a review of failed or failing service models. UNISON assumes this type of dynamic engagement by empowered service users is precisely the type of empowerment and co-design that IRASC recommends. If so, the essence of that IRASC approach has not survived the transition to the consultation.

The current reviews of drug and alcohol policy are strongly influenced by people with lived experience of addiction and recovery, and they are best placed to address the shortcomings of failed integration. Compressing health, local government, and voluntary services into one centralised model risks overriding a sector specific solution derived from the expertise of lived experience and dialogue with policy makers and service managers.

### 3.8 Mission creep and overreach

Before this social work revolution was first muted, it had already been widely acknowledged that adult social care reform is the boldest piece of public service transformation for a generation. Bold progressive reform is good news for social care service users and staff. With services collapsing due to staff shortages, the improvement of adult social care cannot come quickly enough. But is it realistic or wise to transform social work too?

On the specific issue of a National Social Work and Care agency UNISON is concerned about overreach or “mission creep” whereby the territorial ambition of civil servants exceeds their finite capacity to deliver. Scotland should focus on reform of adult social care and older people’s services. The original focus of this exercise.



### 3.9 Integration in statutory services – partial success

Although UNISON opposes a heavily centralised National Social Work and Care agency with mandatory, local integration, we can report some positive examples of voluntary integration.

Inter-agency relations within integrated services (NHS/local government) had initially been difficult but this has been largely resolved in most areas. Reps from councils within the NHSGGC tended to make that positive observation with some notable exceptions.

The common belief was that integration between health and local government was now effective in those areas where service integration had occurred. This was despite apparent dislocations in routine matters such as pay, conditions of employment, line management reporting etc. Staff “just got on with it”.

However, reps reported that integration with contracted services tended to be less well developed. Contracted services were poorly represented within integration processes and there was virtually no workforce voice or culture of partnership. In that culture of isolation and outsourced dislocation, unfair work tended to prevail.

### 3.10 Non-statutory integration

Reps were aware that a substantial minority of IJBs had extended integration to services such as children, addictions etc. The experience was mixed. Around one quarter of reps indicated that their IJB had included wider social work services some years ago and that they continue to plan and implement services across all aspects of social work.

Most reps from IJBs with a wider social work scope reported that this had become routine, and that councils and councillors retained a degree of influence over strategic decisions within IJB structures.

Accommodation to this change to social work services was quite marked and positive within those of the six local authorities represented at the focus group whose IJB fell within the jurisdiction of NHSGGC.

By contrast, one council rep was clear about the success of retaining funds from the IJB to preserve council control over children’s services.

In one IJB there was an unresolved clash of culture in addictions work between medical and person-centred approaches.

In children services, several reps reported the successful integration of mainstream children services. That integration was distinctive in that the collaboration extended across several councils under the “umbrella” of NHSGGC.

However, specialist children’s services had been disaggregated back to council control to respect variance in localised provision and to enable distinctive alignment to other



council-based services for children.

Overall, the evidence from UNISON reps was that the relatively positive experience in “Greater Glasgow” accounted for the bulk of those services in Scotland working to the wider remit. It wasn’t clear that the Glasgow approach was relevant or transferable to all services in all areas. More analysis is needed.

### 3.11 A phased approach

UNISON does not seek to be oppositionist on issue of transformation – the National Care Service is vital and deserves every effort to bring it to fruition. The key issues of concern are the breadth of change, the degree of centralisation and whether local autonomy over social work integration is a more sustainable path to follow

The most accommodating position we can accept is a two-stage process through which the acknowledged need for adult social care reform progresses at pace while social work services are reviewed. Such a review would address the various evidence gaps we highlight in this submission.

### 3.12 Specific issues relating to children

Any review should have regard to those areas where authorities have opted to integrate children’s service on a voluntary basis. It will be genuinely helpful to have a detailed appraisal of that option as compared to a thorough examination of alignment with council services such as education.

However, there are concerns regarding a separation of children’s social work from adult social work. These are regarding workforce development where there is a risk of professional social worker divergence. The specific is that separation could mean families dealing with a children’s social worker and an adult social worker regarding complex family needs.

It is therefore preferable that both services remain the responsibility of local councils with integrated social work departments and the Corporate integration with Education and other council services.

Similar, regard should be had to the pros and cons of the lead body approach to children’s services in the Highland Council area.

### 3.13 Conditions for a second phase of change

When the NCS is well established, and there is a body of reliable evidence that assesses the need for social work transformation, the evidential base for social work integration might be clearer. Furthermore, that review would reveal whether the centralisation and ministerial intervention proposed for social care is beneficial to social work service users.

Given the complexity of social work services, the vulnerability of clients, the risk of harm

arising from disruption, the pressures on capacity from the pandemic and the absence of sufficient evidence to justify change and steer reforms, UNISON recommends that the NCS should proceed as first proposed. Wider integration can be considered at a later date.

### 3.14 No road to the privatisation of social work?

Most focus group participants understand and accept that integration of social work within revised IJBs is intended to integrate and improve planning, service design and delivery. Participants therefore assume that references to future commissioning of social work services by IJBs refers to a revision in the established way that statutory agencies collaborate to integrate services.

UNISON Reps assume that commissioning of statutory social work services is not intended to lead to competitive tendering and privatisation of vital public services such as child protection.

However, there is no specific reassurance that social work is, and will remain, a public service, delivered by the public sector and accountable to democratically elected members of the community.

That commitment is required, and it must be made in law.

## 4.0 Reformed Integration Joint Boards

- UNISON has many reps on IJBs. They are committed to their role, they want to lead change in partnership, but their role needs transformed.
- Our reps are keen to support partnership approaches to the governance dimension of the following: service review, co-design, ethical commissioning, delivery, monitoring, and enforcement. UNISON is an ally in waiting.
- If the IRASC vision of empowerment and co-production through ethical commissioning is to work, the governance of IJBs must change to reflect that power shift.

### 4.1 IJBs need radical reform

All IJB reps consulted by UNISON agree that there are major problems in the IJBs as institutions. In summary:

- Full IJB meetings are a staged performance where pre-determined outcomes are rubber-stamped.
- The volume and complexity of papers actually hinders effective participation
- Union voices are frequently silent or actively silenced

- The voluntary sector “voice” is a managerial voice – not service users or staff.

## 4.2 Unaccountable governance – exclusion of union reps

Closely linked to system failures in commissioning (see below) is the way IJB structures superficially include union reps but exclude them from the key decision-making processes. Our reps know that IJBs regularly procure unsafe work with life threatening consequences but attempts to question or challenge unfair work tend to be blocked.

## 4.3 Positive perspective of NHS reps

Those reps who did secure access to decisions on strategy, workforce planning, commissioning and procurement tended to be NHS reps with adequate facility time to participate in IJB processes.

Those NHS reps also reported largely positive relationships with managers who welcomed joint or partnership dialogue. NHS reps from Grampian, Fife, Lanarkshire, and Glasgow gave balanced but positive observations about access, engagement, facility time, dialogue, and joint solutions. Frequently, but not always, the reps with positive experiences of engagement and partnership were non-executive NHS directors (staff reps) – a role that gave them enhanced status on the IJB.

When asked for their solution, NHS reps tended to favour the extension of their partnership experience to their local government colleagues and unrepresented members from the contracted services.

## 4.4 Negative experience of local government reps

Local Government reps tended to have less access, less facility time, poorer engagement and were generally more critical of a culture within which council procurement was used to drive costs down regardless of Fair Work impacts.

When asked for their solution, some council reps took the view that the scale of local government hostility to Fair Work required central government intervention. However, the majority preferred to retain and develop local solutions to failed procurement systems and to build joint relations and influence in line with the health model.

## 4.5 Outsourced staff are voiceless at IJB level

UNISON's IJB reps advocate powerfully on behalf of outsourced staff who are not directly represented in any IJB process.

UNISON reps are unaware of any direct IJB representation for, or engagement with, representatives from the frontline social care workforce employed by private, CVS or similar employers. These are the most vulnerable workers and those in greatest need of an effective voice at workplace AND IJB level.

IJB reps report that contracted services (private or CVS) are only ever represented by

senior management who tend to assume the right to speak on behalf of the whole sector – service users, families, communities, and staff.

Although IJBs, NHS, Councils and all contracted providers sign up to contracts based on human rights compliance, very few contracted employers have UN-compliant arrangements for the independent, collective voice of trade unions.<sup>6</sup>

Several IJB reps reported relying on considerable facility time and personal/private time to fulfil IJB commitments. They observed that it would be uncommon for private or CVS employers to permit facility time for that purpose.

No IJB rep reported the procurement of contracted services that included facility time to enable staff to participate in social care governance. One rep did report how pre-existing union arrangements had collapsed at one service provider and the IJB had intervened successfully to restore union recognition, facility time, joint working, and a mutual commitment to Fair Work.<sup>7</sup>

All focus groups observed that the absence of outsourced care staff within IJB partnership and governance tended to weaken the challenge to unethical procurement, weaken the challenge to monitoring of private contractors, undermine efforts to improve workforce data and workforce planning and make the co-design and co-production of quality contracted services an unlikely prospect.

## 4.6 Building a voice for contracted staff in IJB governance

IJB reps concluded that it is vital that staff employed in contracted services acquire an effective voice within the new review, planning, design, commissioning, monitoring, enforcement, and review functions of IJBs.

UNISON supports the Disability Movement principle – “nothing about us without us”. To meet that standard all IJBs must expand to include outsourced staff within revised governance. We need to be bold.

As with union reps from the NHS and local government, it is vital that new reps from contracted services are elected with a democratic mandate and accountability back to the constituency they represent. Only trade union representation offers this independent, democratic, and accountable mandate for IJB reps.

As in health and local government, reps from the contracted services require support and facility time to perform their role. It is not reasonable to expect one contracted service provider, perhaps a small non-profit charity, to shoulder the cost of representing the entire workforce of outsourced social care workers. The human rights obligation to support the independent voice of workers within the IJB rests with Government, the

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<sup>6</sup> [Submission-Human-rights-cttee-Covid19-Dec-20-1.pdf \(unison-scotland.org\)](#)

<sup>7</sup> [UNISON welcomes decision by Scottish care charity to pay staff full pay if shielding or self-isolating - UNISON Scotland \(unison-scotland.org\)](#)

NCS and IJBs. Suitable arrangements should be resourced accordingly.

UNISON's IJB reps were also very clear about the need to extend trade union input beyond passively observing the pageant of full board meetings. The improved design and ethical commissioning of contracted services is a key area for transformation, and this is the specific area where reps from contracted care services should be granted access, engagement, and influence if the IRASC vision of workforce empowerment is to be fulfilled.

## 4.7 Accountability for all IJB reps

UNISON reps want to improve and expand their IJB influence, but they also expressed various concerns about the role and function of the new CHSCBs and the NCS. Among those concerns is the composition of the various governance boards and the process by which board members are appointed in future. The consultation appears to suggest that all NCS board members and IJB members will be handpicked by Government. That is unacceptable.

UNISON's IJB reps are very clear that the strength of their democratic mandate is not matched by IJB members hand-picked to notionally "represent" other communities of interest. The nomination, appointment, and community accountability standards for IJB participation are a vital mechanism to ensure that IJBs are authentically rooted in the whole community rather than a small cabal of special interests. UNISON recommends that all IJB members meet minimum, verifiable standards for democratic representation.

## 4.8 Weak and unstable leadership

IJB reps commented that the sustained high turnover in IJB chief officers and the prevalence of interim appointments in senior roles has a marked and negative effect.

This churning leadership destabilises IJB operations, hinders the development of an effective leadership function, hinders high-level TU/IJB partnerships and tends to mitigate against the type of bold decision making required to effect change.

Action is required to bring stability, continuity, and more effective leadership to IJBs.

## 4.9 Positive partnership responses to Covid

In a few areas, IJBs became more inclusive in their relationship with Staff Side to share a response to Covid. The issues addressed were lack of PPE, staff becoming sick with Covid, self-isolating and deaths in care homes.

These partnership responses to Covid were reported in Grampian, North Ayrshire, South and North Lanarkshire. The driver tended to be pressure exerted by UNISON to COO's/Chief Financial Officers as more and more problems started to become public.

One Covid case study illustrates a number of wider points raised by IJB Reps. In one large area, two IJBs, two councils and the NHS Board united to create a Care Home

Assurance Group. Senior managers and union officials worked beyond normal processes, across council boundaries and outside usual timelines to rapidly create an integrated and effective Covid response. This included a rolling TU dialogue to identify emerging issues, creating PPE hubs, ensuring full sick pay, and wellbeing support for staff etc.

The reps involved stressed that these arrangements were not a planned emergency response and did not arise through normal IJB processes. They were improvised and based on pre-existing, high level partnership relationships.

#### 4.10 Recommendation

The experience of UNISON's NHS reps is the clearest possible indication of the dynamic, constructive, accountable and occasionally challenging role that union reps can fulfil within public service governance.

This submission has stressed the need for evidenced based policy and that same expectation applies to our own proposals.

We recommend that the role of senior TU reps within public service governance be examined in detail, with specific attention paid to NHS employee directors and IJB reps more generally. We anticipate that valuable indicators will show that deployment of health, local government and contracted service reps within those parts of the IJB structure that relate to Fair Work, will greatly enhance the pace, quality and impact of the drive to tackle the crisis of unfair work in care.

#### 4.11 Voting rights of IJB members

It is hard to commit to a position on voting rights when the final composition of revised boards has yet to be confirmed. There are, however, important principles we expect to be retained.

- The current 50:50 balance in voting rights should be retained
- Voting rights should be limited to those representatives of agencies that also carry statutory accountability.
- That said, the engagement between voting and non-voting members should be greatly improved.
- Better engagement must include arrangements to establish ongoing relationships with the lived experience community.

#### 4.12 Governance of a National Social Work & Care Service

UNISON reps already report that the scope and depth of IJB business make effective access to social care governance onerous and time consuming. This problem can only increase if the merger with social work proceeds.

There is sufficient difficulty in the problems listed in the previous section to call time on

the wider scope of the agency. However, if additional argument is needed then the governance of the expanded agency will make effective governance and accountability very difficult.

#### 4.13 Transfer of staff

One of the areas of greatest unity among UNISON members was a clear rejection of the proposal that staff might transfer between IJB partners including transfers to an expanded IJB agency.

## 5.0 Commissioning of services

- The PwC episode highlights that, although Ministers have hailed the Feeley Review as a paradigm shift in policy, Scottish Government as an institution is still “on a journey” to accept and apply the values in IRASC.
- The crisis of unfair work is concentrated in contracted services that were purchased with a narrow focus on capacity and cost. This must change.
- Commissioning should focus on co-design through collaboration with ethical commissioning criteria tailored to job quality and care quality.

Much of the crisis of unfair work relates to employment conditions in outsourced or contracted services. Working arrangements in health and local government are imperfect but less problematic.

It is implicit within the consultation that the quality of procured services has been poor and must be improved. UNISON’s observations are as follows:

- It needs to be expressly stated that there is an enduring crisis of unfair work, it is concentrated in procured or outsourced services and, although the infections and deaths of the pandemic exposed the depths of the problem, the nature and existence of the care crisis has been known for some time.
- There is a dissonance between the IRASC vision of a rights-based empowerment of service users and an outsourcing culture which has an aggressive focus on capacity and price.
- To deliver its bold vision for Scotland, the NCS must either insource services to increase quality or drive a transformation in the culture, processes and outcomes of commissioning and procurement.

UNISON welcomes the interest in our proposal for ethical commissioning, but that enthusiasm has been diminished by the recent appointment of PwC to work on the outline design of the NCS.



## 5.1 Unethical procurement of services from PwC

Responsibility for the longstanding crisis of unfair work in care rests with the following organisations or agencies:

- those who have underfunded care
- those who have then procured services based on low paid work.
- those employers who seek to keep pay and terms and conditions low to secure contracts and protect profits.

Good care providers are undercut by the bad, and bad providers are undercut by the worst. It is the inevitable consequence of a race to the bottom.

The workforce and service users have different expectations for the future:

- We expect funding that reflects the needs of service users and the skills required to meet those needs
- We expect pay and working conditions that reflect the skills required for complex and important work; and,
- Where work is procured externally, we expect service users and staff to be involved in co-design of the contract specification to ensure service needs are embedded within contracts.

This third point is simply an articulation of the Ministerial Equality Duty as required by regs 5 and 9 of the public sector equality duty.

In that context, UNISON is shocked by the Government's decision to outsource NCS design to PwC, and the process by which that decision was executed.

- UNISON condemns the decision to outsource any aspect of the NCS development process as opposed to identifying the required skills from within the social care community
- UNISON condemns the absence of consultation over the decision to privatise that work
- In addition to the decision in principle, UNISON also rejects the failure to consult any of the NCS partners over the terms of the contract specification used in the tendering process.

This third point is 'entry-level' public sector procurement. Providers only deliver all that the purchaser requires when that activity or service has been specified and costed within the contract. Post tendering adjustments to the specification are limited by procurement and competition rules and, if lawful, attract additional charges that can be punitive.

As the IRASC observed, the priority issue is to design systems, processes and

partnerships that empower service users to overcome disadvantage through a rights-based approach. How does Government know it has bought the skills and services required for that task if there has been no dialogue or consultation with unions and service user reps prior to the procurement exercise?

It is UNISON's experience that there are people throughout the commissioning and purchasing community who are ideologically or institutionally committed to outsourcing. Furthermore, they are committed to outsourcing on capacity and price. They are either unaware of, or disinterested in, the need to engage on equalities issues early in order to negotiate contrast that are fit for purpose from an equalities perspective.

By contrast, UNISON has faith in the ability of public sector workers and service users to design and deliver efficient and effective services on an accountable and not-for-profit basis. If initial proposals need to be revised or enhanced there are no issues of procurement challenge or penalty charges arising from that improvement process. Only private companies levy repeated penalty costs on a process of continuous improvement – hence the need to consult stakeholders and get the spec “right first time”.

The PwC decision creates concern amongst all those who place people over profit in the delivery of care. Our reps raised the following questions:

1. Why would any of the IJB partners and private providers take their post IRASC obligations for engagement, co-design and partnership seriously when Government does not appear to work to those standards?
2. How does Government expect service users, families, communities, and workers to have faith in the promise of better outcomes derived from dialogue, partnership, and co-design when remote unaccountable officials pass key bits of strategic work to private sector tax advisers who lack demonstrable expertise in the equality, equity, human rights, and empowerment priorities of IRASC?
3. In very practical terms, will Government promptly publish all documentation (with pricing redacted) so that all social care partners can comment on the equality, human rights, Fair Work and empowerment provisions of the contract specification offered to PwC and suggest any post-tender adjustments required to mitigate the harm arising from the failure to consult?

UNISON see this decision as early and unwelcome evidence of key weaknesses in the Government's approach:

- The decision speaks to a misplaced confidence in the relevance, competence and ethos of the Big Four accountancy firms discredited by historic events including, but not limited to, the near collapse of the global financial system.
- The decision speaks to the Government's enthusiasm for outsourcing.
- The absence of engagement over the contract specification suggests that

Government and senior officials do not understand or value the mandatory equality and human rights consultation requirements that were prioritised by IRASC and apply as strongly to government as they do to IJBs and IJB partners when they procure services under contract.

- For those in social care who welcome Government's commitment to transform unfair work through the NCS it is very unhelpful to see the integrity of the core values of the project undermined at such an early stage in the process.

## 5.2 Weak IJB oversight of commissioning and procurement

Turning to the development of the wider NCS, the consultation does not fully grasp the intrinsic relationship between failed commissioning and the crisis of unfair work in care.

IJB reps were unanimous in their observation that weak infection controls and the current staffing crisis are both attributable to commissioning, procurement, and governance processes that have failed:

- Most union reps at IJBs are limited to observer status. IJB boards simply rubber stamp pre-determined decisions. Rep's report being aggressively blocked when attempting to question or challenge agenda items relating to outsourced services.
- Most reps reported that they were powerless to influence commissioning strategies, and, in some areas, the default commissioning option was outsourcing to employers who are renowned for unfair and unsafe work.
- IJB reps report that core obligations, such as workplace safety and infection control, are notionally assessed at procurement and embedded in service contracts but then routinely ignored.
- All reps reported that IJB monitoring, review, and enforcement of Fair Work obligations such as health and safety were non-existent. This includes monitoring and enforcement of infection control.
- UNISON has very direct experience of procurement staff visiting bidders to review and degrade pay and conditions thereby reducing contract price at the expense of Fair Work standards.
- UNISON also has direct experience of procurement staff reviewing and modifying bid evaluations to remove higher quality bidders and re-direct contract awards to low-cost providers.
- Reps report IJB monitoring of contracts during service delivery were exclusively focused on capacity and price and, thereby, IJBs effectively designed and commissioned care services that had poor safety and infection controls deeply embedded in an unfair work culture.

## 5.3 Hostility to Fair Work from council procurement managers

Several reps reported that, while the NHS were active supporters of Fair Work in commissioning, many local authorities expressly refused to commission and monitor services using UNISON's Ethical Care Charter.

One rep quoted a specific exchange where UNISON Ethical Care Charter was blocked on the basis that it would deter low cost private and charitable providers.

This is reflective of the pressure on Councils to keep costs down and the general underfunding of social care and councils.

However, there are other more positive examples of Councils adopting UNISON's Ethical Care Charter and utilising it in the procurement process

## 5.4 More positive experiences in the NHS

It should be stressed that some reps described their ability to use strong partnership relationships with chief officers to by-pass IJB procedures and improvise effective Fair Work measures during the pandemic (see below).

However, in observing the flexibility and success of those high-level trade union partnerships, it should be noted it was partnership relationships rather than the systems that enabled an improvised local Covid response. Those successful interventions were not universal across Scotland and those interventions would not have been required had Fair Work and safety been effectively embedded in social care procurement prior to the pandemic.

## 5.5 Ethical Commissioning

UNISON has summarised its vision for Ethical Commissioning that is sustained through contract award and performance. The details are set out in an appendix to this submission.

It is important to note that UNISON's proposal relies heavily on the following linkages:

- a co-design approach to review and planning prior to commissioning
- a co-production and joint monitoring/enforcement role during service delivery;
- and effective union voice in IJB governance to ensure that the planning and commissioning function designs, commissions and delivers the quality that service users and staff require.

## 5.6 Tax evasion - People Before Profit

UNISON has commissioned an analysis of tax evasion within UK social care including Scotland. We will share the findings of that research at the earliest opportunity. What we say now is as follows:

- Scotland can neither afford nor tolerate the social care investment lost to tax

evasion

- The opaque and complex corporate structures of many private providers are designed to facilitate tax avoidance and evasion and Scotland's social care rules must be stronger.
- The loss of care investment is substantial. In addition to the harm arising from financial "leakage", experience links this type of corporate structure to a history of instability, corporate collapse, unfair work, poor care standards and poor infection controls.

### 5.7 Ethical Commissioning should be used to put people before profit.

The ban on companies receiving Covid cash bail outs was a step in the right direction. However, the EU list of tax havens is soft on UK and EU countries. For full UN human rights compliance, the NCS rules should exclude all companies with links to tax havens as defined by the UN.

### 5.8 Priority Actions

Extend full Freedom of Information reporting obligations to all care providers receiving public funds. Embed robust transparency obligations in service contracts. Apply ethical commissioning processes and ensure strict monitoring and enforcement of tax, transparency, equality, fair work, safety and human rights obligations.

## 6.0 Regulating for Fair Work and better care

- With more regulatory power and resources Care Inspectors could have tackled some of the problems that lead to avoidable infections and deaths. They need that support within the NCS.
- The inspectorate might not be the Fair Work enforcement agency but could and should highlight unfair work through inspections.
- The SSSC requires review to ensure ECHR compliance as regards the number and duration of investigations

### 6.1 Proposed core principles of regulation

UNISON's members in regulation agree with the core principles but with the following major caveats:

- Inspectors encounter a reluctance to use enforcement powers to full effect. That needs to be addressed and resolved. If anything, the powers of inspectors should be extended and assertive use of powers should be supported. The evidence of our members is that greater power, resource and support would have better addressed service failings that led to avoidable infections and deaths in care.

- Given the link between Fair Work and care quality it is vital that care standards and Quality Frameworks used in inspection are amended to include job quality
- Inspection powers and processes should be expanded to have due regard to Fair Work within the context of care quality inspections
- Findings from inspection should be more effectively used for reviews and service improvements within IJB commissioning
- All of the above require investment in training and staff development well beyond the budgets and plans of the current agency
- The funding deficit at the Care Inspectorate must be addressed. There is a mini crisis of unfair work at the Inspectorate. Salaries and working conditions are such that turnover is high and vacancies are hard to fill.
- The pandemic experience shows that a strong inspectorate is vital to ensuring service users' safety.
- The voice of trade unions is a vital source of evidence during service inspections and a vital protection for workers who fear victimisation when engaging with Care Inspectors.
- Engagement with trade unions during inspections should be mandatory, whistleblowers must be protected and victimisation should be treated as a serious contract breach.
- The IRASC will require further investment if the Fair Work and empowerment cultures of employer-providers are something that inspectors are required to verify, assess and possibly enforce. Inspectors welcome that role but need the powers and resources.

## 6.2 Additional powers

Unlike the protracted and oppressive investigations that accompany staff registration at the SSSC, the registration of employer services is more benign. Inspectors complain that they lack the resources, powers, and wider regulatory culture to challenge and follow-up on examples of failed care.

The motive behind the decisions and culture that retains poor services on the register is not clear, but the staff position is robust – inspectors expect the power and resources to challenge both unfair care and unfair work.

## 6.3 Inspecting corporate failure as well as local services

Covid revealed that some providers have systemic problems. The key issue is to create the power to inspect corporate providers as opposed to individual services. The experience of inspectors, particularly in the pandemic, is that there are companies who display systemic failures that impact directly on safety and wider care quality. These systemic failings can be identified readily, and it is illogical to leave other localities operating when the evidence points to corporate failings to meet minimum standards.

## 6.4 Market Oversight

The creation of a Market Oversight Function to monitor for the failure of care providers pre-supposes that the NCS retains unstable or unreliable corporate care agencies in the system. On one analysis the NCS should be based on robust and accountable, not-for-profit agencies whose efficiency and probity are very public.

Scotland should certainly not retain contracted provision with agencies who conceal their financial position behind opaque corporate structures designed to conceal true asset values and revenue flows. The scope and power of FOI rights must be expanded to challenge these opaque and unstable private providers of care.

Finally, if commissioning and procurement functions are radically improved, we would expect a greatly improved screening function that prevented unstable businesses from bidding for care contracts, while also screening for enhanced Fair Work compliance.

If insourcing, FOI reforms and procurement screening are insufficient to ward against market instability then the Care Inspectorate might be in a position to deliver such a function, but the additional funding would be needed to reflect the true costs of providing meaningful protection.

A more efficient, elegant and cost-effective solution would be to stop buying poor quality, life threatening care from opaque and unstable companies.

## 7.0 Valuing people who work in social care

- There is no road to care quality without job quality
- The current system has unfair work baked in to commissioning assumptions, procurement processes, employer cultures and failed enforcement,
- It will take a sustained and determined drive to transform the assumptions, culture and conduct of multiple “stakeholders” with a vested interest in unfair care.

### 7.1 Fair Work

UNISON supports an accreditation scheme for Fair Work, both to screen out ineligible unfair work providers, and to offer an enhanced accreditation for those employers with a proven Fair Work record.

### 7.2 What makes social care workers feel more valued in their role?

Our social care members discussed a list of Fair Work factors that would improve fulfilment and counter staff turnover:

- Improved pay



- Improved terms and conditions, including issues such as improvements to sick pay, annual leave, maternity/paternity pay, pensions, and development/learning time
- Removal of zero-hour contracts where these are not desired
- More publicity/visibility about the value social care workers add to society
- Effective voice/collective bargaining
- Better access to training and development opportunities
- Increased awareness of, and opportunity to, complete formal accreditation and qualifications
- Clearer information on options for career progression
- Consistent job roles and expectations
- Progression linked to training and development
- Better access to information about matters that affect the workforce or people who access support
- Minimum entry level qualifications

### 7.3 How to incentivise and reward supervisors and managers

- Improved pay
- Improved terms and conditions
- Improving access to training and development opportunities to support people in this role (for example time, to complete these)
- Increasing awareness of, and opportunity to complete formal accreditation and qualifications to support people in this role

### 7.4 National Sectoral Bargaining

The consultation uses vague and unclear language when referring to a “forum” for discussing working conditions in social care. We prefer Governments pre-existing commitments as set out in the National Performance Framework – improve Employee Voice by supporting the extension of collective bargaining.

The Fair Work Convention did global research which found that trade unions were the most effective form of voice for workers. Why would Scotland opt for anything below the global norm for good practice?

Scottish Government accepted the Fair Work Convention’s recommendations including the observation about the primacy of unions as an effective and constructive voice for the workforce.

UNISON welcomes Government’s enduring commitment to promote the extension of

unionised negotiations through collective bargaining coverage. Progress here is measured and recorded in Government's National Performance Framework and we are confident that social care will make a significant contribution to that particular Government "KPI".

Of course, the incorporation of UN human rights through ICESCR will help underpin that process and we see a joint council for social care as a forum that will raise standards, but also bring the power of joint working to more intractable problems such as staff shortages, workforce planning and sector skills development.

## 7.5 Workforce planning

Reps reported that workforce planning in the NHS is reasonably good. Demographic and skill profiles are known. Problems relate to recruitment and retention in relation to known challenges.

By contrast, "we know nothing meaningful" about workforce planning in CVS and private sector – the people we employ, the skills they have and the gap between existing skills and projected skill needs.

There can be no quality improvement without skills development. Training a transient and unstable workforce is to build on a foundation of sand. So, there can be no quality based on skills and learning without job quality and an end to unfair work.

In addition, there is no good reason for the lack of data required for workforce planning in the contracted sector. Existing care contracts require that workforce data is gathered and shared with commissioning bodies. As with equalities, human rights and Fair Work obligations in existing contracts, the appearance of competent service management is an illusion.

The absence of consistent recording and reporting by employers is only one part of the problem. If IJBs and the sector skills body lack access to the data they require, then remedial action should have been taken.

Whatever the authority structures within the NCS there must be action to ensure that workforce data is gathered, aggregated, and analysed to transform the skills development process for the mutual benefit of workers, service users and the sector as a whole.

## 8.0 The hidden care agenda

- There are key questions government has not asked stakeholders to consider because they are assumed to be integral to future care delivery
- The hidden agenda issues are privatisation, tax avoidance and employer sanctions
- IRASC suggests that service users, families and workers should be engaged on all key service issues, yet those traumatised or bereaved during the pandemic cannot use this consultation to challenge the assumption that private companies are an appropriate, effective, and safe way to provide care.

### 8.1 The list of hidden issues

There are several controversial issues that Government has chosen not to address within the consultation. Within that list there are three that are closely linked to aspects of the care crisis and should be discussed:

- Should the NCS work with companies making a profit from care through privatisation?
- Should the NCS work with companies who evade or avoid tax?
- How should the NCS deal with companies whose conduct falls below agreed standards.

UNISON says that we cannot competently discuss a better future for social care without addressing these issues. UNISON has addressed various aspects of privatisation and the excesses of private companies as they arose in answer to consultation questions (above). Nevertheless, it is vital to draw attention to that part of the care reform discussion that remains hidden – the conduct of private care providers and the way it undermines job quality and care quality.

### 8.2 Making a profit from care

Although some IJBs have a strong ethos of public sector delivery of vital public services, other areas are heavily reliant on outsourcing. There are major fears among IJB leaders in those areas committed to public sector delivery, that the Government commitment to outsourcing will force a race to the bottom.

Where services are already delivered under contract, many providers are private, profit making enterprises. Although the consultation does ask how the NCS might better manage contracted providers, Government ducks the big question familiar to the

Scottish electorate – is privatisation good for the quality of public services?

UNISON says that private companies have a long history of failure to deliver quality public services. In some cases, care businesses have completely collapsed creating huge distress and uncertainty for service users and families. That cannot recur when Government has the power to remove that risk from the system.

The NCS consultation does recognise the instability of private care. However, rather than ban providers backed by opaque and elaborate private equity schemes, Government propose a “look-out” system. A market surveillance function to give Government advance warning that care companies might collapse. UNISON proposes a more elegant and effective solution than corporate surveillance. Simply remove the profit motive from social care.

However, if private companies are retained, it is vital that we can all do our own surveillance as and when required. Scotland’s Freedom of Information rights must be expanded to lift the lid on all the affairs of all contracted providers. Profit and non-profit. Scotland should not tolerate attempts by any employer to use “privacy” arguments to conceal unfair work or poor care quality. We know from Covid that the price for unsafe care that goes unseen is simply too high.

### 8.3 Tax avoidance and evasion

- Scotland has a substantial problem with tax avoidance and evasion in private care.
- Such companies use opaque global structures to conceal real profits, and then declare cash surpluses in low tax jurisdictions overseas.
- Tax evasion and tax avoidance drain scarce resources from vital public services.
- Scotland has had to pass legislation for the specific purpose of protecting social care budgets from companies linked to tax evasion.
- The UN position on tax evasion is that a country is failing to meet its human rights obligations if it assists or enables tax evasion when that money could have helped to achieve a higher standard of human rights compliance in care.<sup>8</sup>
- This issue of tax evasion as a human rights abuse will come to the fore more frequently, especially now that the G20 are aligned behind a tax justice position. Scotland wants to remain on the correct side of that global issue

UNISON sees the issue of tax avoidance as one that is clear cut. Taxation is the vital

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<sup>8</sup> [General comment No. 24 \(2017\) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities](#)

foundation of public services. Developing job quality and care quality are UN protected human rights. Tax evasion is incompatible with both international human rights, and the ethos of public service delivery in Scotland.

We also stand with the rights of service users and families to be offered the chance to engage meaningfully with government on the question – tax evasion, yes or no?

## 8.4 Corporate misconduct

Having presumed, without consulting, that private companies will remain within the NCS, the consultation then lays out some of the proposed changes to the framework for Fair Work in Care.

The key question the consultation does not ask is whether sanctions should be used against companies who undermine their rivals and don't play by the Fair Work rules. Without sanctions the good companies are undercut by the bad, and the bad are undercut by the worst? What do we do about corporate misconduct?

Government has wrongly argued for some time that EU law prevents any attempt to make requirements like the Living Wage mandatory and enforceable in social care settings. Looking to countries ahead of Scotland in the use of sectoral bargaining to ensure Fair Work, minimum standards can be mandatory and enforcement action can be taken.

When unions, Government and independent reviewers have agreed that job quality is the road to care quality it makes no sense to tolerate the crisis of unfair work in care. Rather than coax bad employers to be better, Scotland should only commission from Fair Work employers and move swiftly against all non-compliance. Where procurement is the preferred option, it must be made crystal clear to all bidders that:

- Fair Work standards and sectoral bargaining outcomes are mandatory,
- Contract compliance will be monitored and enforced; and,
- Failure to ensure full contract compliance will be treated as a serious breach.

## 8.5 No hidden agendas

This section has laid out substantive concerns about Scotland's exposure to the unreliable and frequently exploitative conduct of private care providers. The final point relates to process.

UNISON has already observed that the consultation has lost the transformative vision of

the IRASC report. The consultation reflects the needs and interests of the producer perspective. These “hidden” agenda items reflect that narrower vision.

Rather than assume that service users and workers are content to retain private care companies within the NCS, the questions should have been raised. In Portree, the local care home was taken over by NHS Highland because Care Inspectorate reports identified failings in care standards. Ten residents died from Covid before the NHS took over control of the facility.

Service users, families and staff are entitled to ask the question in the context of care sector reform – would the Portree care home have been safer if it had always been run by the NHS? Or, is there a link between profit seeking and poorer standards of care? The question simply doesn’t get asked and that is not consistent with the empowerment and engagement commitments set out in the IRASC report.

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