



**Close the Gap submission to the Health, Social Care and Sport Committee  
call for views on the National Care Service (Scotland) Bill  
draft stage 2 amendments**

**September 2024**

**Introduction**

Close the Gap is Scotland's policy advocacy organisation working on women's labour market participation. For more than two decades, we have been working with policymakers, employers and employees to influence and enable action that will address the causes of women's labour market inequality.

Care is profoundly gendered. Women do the bulk of unpaid and informal care and comprise 85% of the social care workforce in Scotland, and a higher proportion of frontline care workers in residential and domestic settings.<sup>1</sup> Social care is vital to women's lives, as workers, carers and care recipients, and to the functioning of Scotland's economy. Investment in the workforce is core to providing high quality personalised care. Despite this, the social care workforce remains underpaid, undervalued and under-protected.<sup>2</sup>

Care is as essential to our economy as bricks, steel, and fibre optic cable.<sup>3</sup> Research by the Women's Budget Group has found that investment in care is an effective way to stimulate employment, reduce the gender employment gap and to counter economic recession.<sup>4</sup> This research found that investment in care in the UK would produce 2.7 times as many jobs as an equivalent investment in construction. Furthermore investment in care is greener than investment in construction and more of its costs would be recouped in increased income tax and National Insurance

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<sup>1</sup> Scottish Social Services Council (2021) *Scottish Social Service Sector: Report on 2020 Workforce Data*

<sup>2</sup> Close the Gap and Engender (2020) *Gender and Economic Recovery*

<sup>3</sup> Ibid

<sup>4</sup> Women's Budget Group (2020) *A Care-led Recovery from Coronavirus: The case for investment in care as a better post-pandemic economic stimulus than investment in construction* <https://wbg.org.uk/wp-content/uploads/2020/06/Care-led-recovery-final.pdf>

contributions. Care is the foundation of a social infrastructure that supports a green economy.

### **Answers to questions**

#### **1. What is your view of the proposed National Care Service strategy (see proposed new sections 1A to 1E)?**

As we set out in our previous response to the Committee, **the crisis in social care that a National Care Service is intended to solve is a gendered one.**<sup>5</sup> Evidence shows that pay is the primary determinant of care quality<sup>6</sup>, and **the poor pay and conditions in the sector are caused and sustained by the gendered undervaluation of social care work.** Rising demand requires expanded provision, which can only be delivered with an expanded workforce. The recruitment and retention challenges – in a sector with an overall vacancy rate of almost twice the Scottish average<sup>7</sup> – are primarily driven by the **poor pay and conditions of social care work, which care workers cite as a primary reason for leaving their job.**<sup>8</sup> A recent Accounts Commission report on the financial health of Integration Joint Boards found that **nearly half of services report vacancies, a quarter of staff leave jobs within their first three months, and there is continued turnover in senior leadership.**<sup>9</sup>

The Independent Review of Adult Social Care explicitly identified that social care work is low paid because the vast majority of the social care workforce is female, and called for “a national job evaluation exercise for work in social care, to establish a fair and equitable assessment of terms and conditions for different roles” which takes account of skills, qualifications, responsibilities and contribution.<sup>10</sup> However, as the development of the National Care Service has progressed, the gendered inequalities named by the Independent Review, and by the Fair Work in Scotland’s Social Care Sector report, have become increasingly invisible. As at Stage 1, there is no mention in the accompanying Memoranda and documents of the gendered job undervaluation that underpins the workforce issues in social care, and therefore in

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<sup>5</sup> <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-Independent-Review-of-Adult-Social-Care.pdf>

<sup>6</sup> Rubery, J. and Urwin, P. (2011) *Bringing the employer back in: why social care needs a standard employment relationship*

<sup>7</sup> NHS Scotland and COSLA (2019) *An Integrated health and social care workforce plan for Scotland*

<sup>8</sup> Implementing the Scottish Living Wage in adult social care: An evaluation of the experiences of social care partners, and usefulness of Joint Guidance – CCPS and University of Strathclyde (2018)

<http://www.ccpsscotland.org/wpcontent/uploads/2018/11/Univ-of-Strathclyde-Living-Wage-implementation-research-November-2018.pdf>; and Ekosgen (2019) *The Implications of National and Local Labour Markets for the Social Care Workforce: Final Report for Scottish Government and COSLA*

<sup>9</sup> [https://audit.scot/uploads/2024-07/nr\\_240725\\_ijb\\_performance\\_analysis.pdf](https://audit.scot/uploads/2024-07/nr_240725_ijb_performance_analysis.pdf)

<sup>10</sup> <https://www.gov.scot/publications/independent-review-adult-social-care-scotland/documents/>

the wider system. **Given that addressing the undervaluation of the social care workforce is critical to the ability of the National Care Service to deliver on its mission, aims and principles, this is concerning.**

It is impossible to resolve the social care crisis while maintaining low pay in the sector. Social care work cannot continue to be paid at close to the wage floor if it is to be appropriately valued. **Delivering high quality pay and conditions to the social care workforce is a necessary precondition to delivering quality social care and ensuring provision can meet demand.** The National Care Service cannot succeed in its mission without this.

### The updated National Care Service Bill

We welcome the new addition 1.1.h. on valuing the workforce and the expectation that their employers are exemplars of Fair Work. However, given that the Principles are the foundation of Ministerial accountability, and of the National Care Service Strategy, we do not think this goes far enough. **The Principles must speak clearly to the challenges they seek to address and the constituencies to which they apply.** The Bill as presented is not sufficient to secure well-gendered solutions to the challenges it seeks to address, nor to “ensure fair employment practices and national pay bargaining for the social care workforce”<sup>11</sup>.

The National Care Service Strategy is *the* opportunity to explicitly set out the gendered undervaluation of the social care workforce as a key challenge that National Care Service institutions must focus on addressing. **Close the Gap has repeatedly called for an explicit commitment on this to be incorporated into the Bill.**<sup>12</sup> If the Bill, particularly the Principles, does not clearly name the gendered nature of the undervaluation of the workforce, it is highly likely that the Strategy will also fail to name it. If the Strategy does not direct National Care Service institutions to act to address the gender inequalities embedded in the social care workforce, then these inequalities will go unaddressed, as the evidence shows that employers will not take action to address inequality unless compelled to.<sup>13</sup> As we have stated, **the crisis**

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<sup>11</sup> <https://www.gov.scot/news/national-care-service-bill-published/>

<sup>12</sup> <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-HSCS-Committee-consultation-on-the-National-Care-Service-Scotland-Bill.pdf>

<sup>13</sup> <https://www.kcl.ac.uk/giwl/assets/gender-pay-gap-reporting-a-comparative-analysis.pdf>, Winterbotham et al (2014) *Company Reporting: gender pay gap data*, Government Equalities Office: London, and IFF Research (2015) *Company Reporting: Gender pay data*, Government Equalities Office.

in social care that a National Care Service is intended to solve is a gendered one, and nowhere more acutely than in its workforce.<sup>14</sup>

## **2. What is your view of the proposal to create a National Care Service Board, and the provisions about the role and functions of the Board (see in particular new Chapter 1B of Part 1, and new schedule 2C)?**

A key mechanism for embedding equality in public services is the public sector equality duty. Close the Gap is concerned that the Bill and associated memoranda makes no mention of making the National Care Service Board subject to the public sector equality duty. The National Care Service Board must be designated as a listed public authority so that it is covered by the Scottish-specific duties.

The stage 2 policy intention memorandum states that “The National Care Service Board is intended to provide a national oversight and improvement role for those social work services, social care support and community health services which fall within the scope of the National Care Service.” In order to deliver on this, the National Care Service Board must ensure that **gender equality is properly mainstreamed into implementation mechanisms that are to follow the Bill**. This must include:

- the presence of gender expertise in work to develop collective bargaining and improved pay and conditions in the sector,
- a gender-sensitive ethical commissioning and procurement framework that mandates minimum pay and conditions as a contractual requirement of provider funding, and
- a national job evaluation exercise using an evaluation framework that is free from gender bias.

These are as, if not more, important as the Bill itself in achieving transformative change in the delivery and quality of social care in Scotland, and delivering on the intention of the Independent Review of Adult Social Care recommendations.<sup>15</sup>

However, this new version of the Bill represents a weakening of strategic and accountability mechanisms that can secure a substantive improvement in pay and conditions for the social care workforce. The move to a guidance-based approach to ethical commissioning and the weakness of the Principles leaves the National Care

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<sup>14</sup> <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-Independent-Review-of-Adult-Social-Care.pdf>

<sup>15</sup> Scottish Government (2021) *Independent Review of Adult Social Care in Scotland*

Service Board with no clear driver on embedding gender inequality in the National Care Service.

Section 12(K).1. of the Bill states that the National Care Service Board is to “monitor the services provided by the National Care Service”, but says nothing about monitoring ethical commissioning or employment practices. Section 102 of the Policy Memorandum states “It would be for Ministers to set out, in their strategy or in separate guidance for the Board, additional requirements for the National Care Service Board to set out a strategic plan and ethical commissioning strategy for nationally commissioned services.” This again demonstrates the central role of the Principles and Strategy in setting a clear directive on action to improve pay and conditions and tackle the undervaluation of the social care workforce.

If the Strategy set by Ministers does not specify tackling the gendered undervaluation of the social care workforce as a key challenge that National Care Service institutions must focus on addressing, it is highly likely that the National and local boards will fail to prioritise, or indeed take, action on this. **This leaves the National Care Service with a single point of failure in its potential to tackle the severe gendered undervaluation of the social care workforce**, and therefore its ability to deliver on its purpose and aims. **The problem is a gendered one, and if the solutions are not gendered, they will not solve the problem.**

The substantive points made in our previous submission still stand.<sup>16</sup> In its current form, this Bill is a backwards step for gender equality. **Close the Gap therefore calls for an explicit reference in the Principles to tackling the gendered undervaluation of the social care workforce, and for Ministers to designate this as a key challenge in the National Care Service Strategy.**

### **3. What is your view of the proposal to establish National Care Service local boards and to remove other integration models (see in particular Chapter 1A of Part 1, and new schedules 2A and 2B)?**

Like the predecessor Integration Joint Boards, Care Boards must be designated as listed public authorities so that they are covered by the Scottish-specific duties. However, the duties alone are not sufficient to secure action to tackle the gendered inequalities in social care. Our responses to questions 1 and 2 set out the need for

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<sup>16</sup> <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-HSCS-Committee-consultation-on-the-National-Care-Service-Scotland-Bill.pdf>

explicit commitments within the Bill itself to embed equality in the design and delivery of the National Care Service.

An example of why this is necessary is found in the Equality and Human Rights Commission (EHRC) work to assess the performance of IJBs on meeting their legal obligations under the Public Sector Equality Duty (PSED) to help eliminate discrimination, advance equality and foster good relations.<sup>17</sup> The EHRC found significant gaps in their performance and as a result are undertaking further work on this concern. **The poor performance of IJBs on meeting their obligations under equality law demonstrates that reformed IJBs in the form of local boards will require clear direction and support on delivering the equality requirements of ethical commissioning and procurement.**

This is a critical lesson for the creation of the National Care Service Bill and secondary legislation and guidance that flows from it. Public bodies require clear direction and support on matters of equality in order to ensure they can meet their legal duties under PSED. It follows that local boards will need clear direction on matters of equality in order to deliver on their legal duties under PSED, and under this Bill. This lesson also reinforces our calls in our answer to question 2, and **the need to ensure the Principles of the Bill are sufficient to secure accountability of the National Care Service Board and local boards on developing and delivering well-gendered ethical commissioning and procurement standards.**

#### **4. What is your view of the proposed new provisions on monitoring and improvement (see new sections 12K and 12L) and on commissioning (see new section 12M)?**

In our previous submission to the Committee we expressed disappointment at the lack of detail on ethical commissioning principles, and called for explicit standards to be included. **Close the Gap is therefore deeply concerned that ethical commissioning has been removed from the Bill entirely.**

The move to a guidance-based approach to ethical commissioning risks more of the same decision-making, with cost the primary driver. The requirements of boards to “have regard to” guidance is insufficient. The failures of public bodies to comply with legal due regard duties under the public sector equality duties is evidence of this.

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<sup>17</sup> <https://www.equalityhumanrights.com/sites/default/files/consultation-response-a-national-care-service-for-scotland-26-october-2021.docx>

The National Care Service Board must be able to ensure that ethical commissioning standards are robust and meaningful, and that local boards take steps to mainstream gender equality into their commissioning strategy. As set out in our response to question 2, it remains the case that the Principles in the Bill are insufficient to ensure ethical commissioning frameworks and guidance achieve gender-competent minimum terms and conditions and pay that reflects the value of social care work.<sup>18</sup>

The introduction of such minimum terms and conditions was an explicit recommendation of the Independent Review of Adult Social Care. It is difficult to see how this could be secured without being an explicit requirement of ethical commissioning and procurement. The proposal that Scottish Government will develop a package of guidance and tools for ethical commissioning and procurement will not be sufficient to achieve this, nor will a “Fair Work Accreditation Scheme” We know employers will not voluntarily deliver high quality pay and conditions.<sup>19</sup> They will of course need adequate funding to do so, however they will also need to be required to do so as a condition of funding.

If the gendered undervaluation of social care work is not acknowledged and tackled in future development work on ethical commissioning there is a significant risk that the structure of the Service will simply recreate and sustain gender inequality in the social care workforce, limiting the ability of the Service to address the wider social care crisis.

**Close the Gap therefore calls for provisions on ethical commissioning to be reinstated, and indeed strengthened** in line with our recommendations as set out in our previous submission to the Committee.<sup>20</sup>

## **8. What is your view of the initial draft of the National Care Service Charter?**

As set out in our previous submission to the Committee, Close the Gap is not convinced of the ability of a National Care Service Charter to provide a framework through which care recipients, unpaid carers and social care workers may secure their rights. The Bill states that nothing in the charter is to give rise to any new rights,

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<sup>18</sup> <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-HSCS-Committee-consultation-on-the-National-Care-Service-Scotland-Bill.pdf>

<sup>19</sup> <https://www.kcl.ac.uk/giwl/assets/gender-pay-gap-reporting-a-comparative-analysis.pdf>, Winterbotham et al (2014) *Company Reporting: gender pay gap data*, Government Equalities Office: London, and IFF Research (2015) *Company Reporting: Gender pay data*, Government Equalities Office.

<sup>20</sup> <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-HSCS-Committee-consultation-on-the-National-Care-Service-Scotland-Bill.pdf>



impose any new responsibilities, or alter in any way an existing right or responsibility. It is therefore difficult to see how a Charter adds anything to the proposals.

In addition to this, we note that the Bill does not explicitly apply the Charter to the social care workforce. The Bill explicitly includes care recipients and carers, and “any other category of person whose rights and responsibilities in relation to the services provided by the National Care Service the Scottish Ministers consider it appropriate to summarise in the charter”. **If a Charter is retained, Close the Gap calls for the workforce to be included as a beneficiary in the Charter.** The rights of care recipients, unpaid carers and care workers are intersecting and mutually reinforcing. **The NCS cannot realise the rights of one group without realising the rights of another: the workforce merits explicit inclusion.**

## **9. Do you have any other comments on the Scottish Government’s proposed draft Stage 2 amendments to the National Care Service Bill?**

### Equality impact assessment

As set out in our previous submission to the Committee, the equality impact assessment (EQIA) on the Bill is not well-designed.<sup>21</sup> **It is disappointing that no new or updated EQIA appears to have been carried out.** The lack of attention to the gendered undervaluation of the social care workforce, and the potential for the National Care Service to address this, is evidence of the impact of a poor quality EQIA and suggests a failure to meet the legal duty to mainstream equality in the development of policy, as set out in the Scottish-specific duties of the public sector equality duty.

The EQIA misses several key equality considerations, in particular the gendered nature of the workforce challenges in social care. Data on this is widely available, and referenced in the Scottish Government consultation, the report of the Independent Review of Adult Social Care, and the reports of a wide range of organisations working on social care and gender equality.<sup>22</sup> Although the Bill contains only limited provisions on the workforce, these challenges underpin the issues the Bill seeks to address. It is therefore reasonable to say that information on gender inequality in social care work is relevant to the development of the Bill and should have been contained in this EQIA.

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<sup>21</sup> Ibid

<sup>22</sup> <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-Consultation-on-a-National-Care-Service-for-Scotland.pdf>



## Procurement

As set out in our previous submission to the Committee, Close the Gap is concerned about the assumptions made about the effectiveness of existing procurement legislation in ensuring public bodies take account of ethics and equality in procurement. The Bill EQIA sets out a positive picture of the effects of existing provisions on equality in procurement, which conflicts with research on the extent to which the duty has been used to advance equality<sup>23</sup>. Close the Gap is not aware the Scottish Government has done research to gather and analyse evidence of the impact of the procurement duty, a concern already raised by a coalition of equality organisations<sup>24</sup>. We are also not aware of evidence of the success of the sustainable procurement considerations of the Procurement Reform (Scotland) Act 2014 in delivering Fair Work. It is therefore very concerning that the EQIA states that “No changes to the policy were considered necessary as a result of the EQIA process, which did not identify any group that would be adversely affected by new legislation or policy on commissioning or public procurement.” This is a significant concern and does not align with the potential for procurement to deliver equality, nor the evidence of existing policy shortcomings.

Integrating equality in procurement has the potential to ensure public expenditure on goods and services is used as a lever to achieve women’s equality.<sup>25</sup> It may also enable public bodies to mitigate some of the disproportionate impacts of competition-based tendering on women’s employment. As a result of occupational segregation, where women and men are clustered into different types of work, this contributes to the undervaluation of women’s work and de-skilling<sup>26</sup>. This is particularly relevant in social care.

Close the Gap’s public sector equality duty assessment work found that procurement has always been one of the weakest areas in public bodies’ performance of the duties<sup>27</sup>. This issue was identified in the report of the Independent Review of Adult

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<sup>23</sup> E.K. Sarter (2016) *Public procurement and the public sector equality duty: equality sensitive tendering in Scotland*

<sup>24</sup> <https://www.closesthegap.org.uk/content/resources/PSED-review-equality-stakeholders-common-concerns-April-2022.pdf>

<sup>25</sup> E.K. Sarter (2016) *Public procurement and the public sector equality duty: equality sensitive tendering in Scotland*

<sup>26</sup> E.K. Sarter (2016) *Public procurement and the public sector equality duty: equality sensitive tendering in Scotland*

<sup>27</sup> Close the Gap (2018) *Internal assessment of local authorities’ performance of the public sector equality duty* (Not published); and Close the Gap (2015) *Making Progress? An assessment of public sector employers’ compliance with the public sector equality duty* <https://www.closesthegap.org.uk/content/resources/Making-Progress---An-assessment-of-employers-compliance-with-PSED-November-2015.pdf>; and Close the Gap (2014) *Monitoring public bodies’*

Social Care, which was highly critical of local authorities' approaches to commissioning and procurement in relation to social care and made recommendations to address this through the development of an ethical commissioning approach<sup>28</sup>. Such an approach is an example of how the duties could meaningfully influence procurement and one of the most significant gendered inequalities in society.

**This underscores the need for a strong accountability mechanism for the delivery of ethical commissioning and procurement, alongside guidance to support implementation, in the National Care Service.**

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*compliance with the public sector equality duty*

[https://www.closesthegap.org.uk/content/resources/1450180414\\_CTG-Working-Paper-12---Monitoring-Scottish-public-bodies-compliance-with-the-public-sector-equality-duty.pdf](https://www.closesthegap.org.uk/content/resources/1450180414_CTG-Working-Paper-12---Monitoring-Scottish-public-bodies-compliance-with-the-public-sector-equality-duty.pdf)

<sup>28</sup> Scottish Government (2021) *Independent Review of Adult Social Care in Scotland*