



Close the Gap submission to the Health, Sport and Social Care Committee consultation on the National Care Service (Scotland) Bill

September 2022

Close the Gap is Scotland's policy advocacy organisation working on women's labour market participation. We have been working with policymakers, employers and employees since 2001 to influence and enable action that will address the causes of women's labour market inequality.

General questions

The Policy Memorandum accompanying the Bill describes its purpose as being "to improve the quality and consistency of social work and social care services in Scotland". Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

SOCIAL CARE: A GENDERED CRISIS

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.¹ 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.²

Care is as essential to our economy as bricks, steel, and fibre optic cable.³ 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.⁴ This research found that investment in care in the UK would produce 2.7 times as many jobs as an equivalent investment in construction.

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

² Close the Gap and Engender (2020) *Gender and Economic Recovery*

³ Ibid

⁴ 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>

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

The crisis in social care that a National Care Service is intended to solve is a gendered one.⁵ Evidence shows that pay is the primary determinant of care quality⁶, 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 average⁷ – 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.**⁸ Media coverage has highlighted social care workers leaving the sector to take up employment in Amazon warehouses for 30% higher pay.⁹ 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 BILL

As the Bill only creates the framework for the creation of a National Care Service it is difficult to interrogate whether it is able to deliver on its stated purpose of “improv[ing] the quality and consistency of social work and social care services in Scotland”. Most of the mechanisms that will drive proposed reforms to social care employment conditions, including on ethical commissioning and minimum employment standards, are yet to be brought forward. We appreciate it may not be possible for all of details of these to be contained on the face of this Bill and that this will come in the development of secondary legislation and policy. However, Close the Gap sees no reason why the Bill should not **include a commitment to tackle the gendered undervaluation of the social care workforce and to introduce national**

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

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

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

⁸ 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.ccpscotland.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*

⁹ <https://www.theguardian.com/society/2021/sep/04/care-workers-in-england-leaving-for-amazon-and-other-better-paid-jobs>

pay scales and minimum terms and conditions. Close the Gap calls for this to be incorporated into the Bill.

There is limited information on workforce issues in the accompanying Memoranda and impact assessments, and no mention of the gendered job undervaluation that underpins the workforce issues in social care, and therefore in 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.

Ensuring intersectional gender equality is integrated into the National Care Service and explicit in the aims and objectives of the Service is essential to ensure that inequalities faced by the female workforce are not sustained. This includes the Principles contained in the Bill, along with the Ministers' and new Care Boards' strategic plans and ethical commissioning strategies that flow from the Bill. The integration of gender equality aligns with wider Scottish Government ambitions on women's equality, particularly tackling the gender pay gap, and the legal requirement to mainstream gender equality into public sector policy. As such, this must be a priority in the development of the National Care System.

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"¹⁰. Close the Gap welcomes the explicit recognition, in the Bill's Principles, of social care as an investment in society and that it should be funded as such. However, given that the Principles are the foundation of Ministerial accountability and of the strategic plans and ethical commissioning strategies of Ministers and newly-created Care Boards, it is critical that they are fit for purpose. **The Principles must speak clearly to the challenges they seek to address and the constituencies to which they apply.** There is more detail on this in our response to the specific question on Section 1 of the Bill.

Relevant to the Bill, a key mechanism for embedding equality in public services is the public sector equality duty. Close the Gap is concerned that the Policy Memorandum makes no mention of making Care Boards subject to the public sector equality duty. Like the predecessor Integration Joint Boards, **Care Boards should be designated as listed public bodies so that they are covered by the Scottish-specific duties.**

¹⁰ <https://www.gov.scot/news/national-care-service-bill-published/>

Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

The creation of framework Bill to support the establishment of the National Care Service is a necessary step. However, to ensure the success of the Bill in improving the quality and consistency of social care services, **gender equality must be properly mainstreamed into implementation mechanisms that are to follow**. This includes:

- the presence of gender expertise in the national body that will enable 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 framework 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.

Are there any specific aspects of the Bill which you disagree with or that you would like to see amended?

See detail in specific sections.

Is there anything additional you would like to see included in the Bill and is anything missing?

See detail in specific sections.

The Scottish Government proposes that the details of many aspects of the proposed National Care Service will be outlined in future secondary legislation rather than being included in the Bill itself. Do you have any comments on this approach? Are there any aspects of the Bill where you would like to have seen more detail in the Bill itself?

Given the scale of the project of creating the National Care Service, it is understandable that the development process would necessitate this approach. Close the Gap accepts this process in principle, contingent on ongoing engagement with expert equality organisations.

As stated in our response to the first question in this consultation, we are disappointed that the Bill contains no substantive provisions on the social care workforce, ethical commissioning or proposed minimum employment standards. The Bill should **include a commitment to tackle the gendered undervaluation of the social care workforce and to introduce national pay scales and minimum terms and conditions.**

Further, the Financial Memorandum does not include estimates on the Scottish Government commitment to “increase pay and improve terms and conditions for adult social care staff in commissioned services, including establishing appropriate channels for workforce and trade union representation”. The Policy Memorandum states that the commissioning and workforce reforms committed to by Scottish Governments are policy decisions for the new framework, and not necessary consequences of the Bill provisions. This may be the case, however they are necessary for the Bill to be able to deliver on its purpose. This important work is being developed in tandem with and is essential to the creation of the NCS, and therefore this Bill. More information should have been included in the documents supporting the Bill at this stage in order to aid scrutiny and evaluation of the Bill’s merits. We look forward to further engagement on this work.

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

See response to the question on the Financial Memorandum.

The Bill is accompanied by the following impact assessments:

[Equality impact assessment](#)

[Business and regulatory impact assessment](#)

[Child rights and wellbeing impact assessment](#)

[Data protection impact assessment](#)

[Fairer Scotland duty assessment](#)

[Island communities impact assessment](#)

Do you have any comments on the contents and conclusions of these impact assessments or about the potential impact of the Bill on specific groups or sectors?

EQUALITY IMPACT ASSESSMENT

The equality impact assessment (EQIA) is not well-designed. It does not set out the three parts of the general duty it must speak to and there is minimal mention of these throughout. The purpose of an EQIA is to discover how a policy can be shaped to advance equality and tackle discrimination, alongside identifying any potential adverse impacts of the policy as proposed. This EQIA is mostly focused on avoiding adverse impacts rather than potential for positive impacts. This could lead to missed opportunities in the development of the Bill, and have a negative impact on work downstream of the Bill.

There is limited analysis of the equality data presented. The EQIA focuses on high-level numbers, often failing to identify equality impacts, while misidentifying others. For example, it states that, as women are a majority of care home residents, the “policy may have a larger impact on women than men”, however it does not state what impact this might be. The main positive impact of the Bill the EQIA identified relates only to the inclusion of lived experience in the design of the National Care Service. This is important, but it is not a panacea, nor indeed reflective of the wide range of potential impacts.

The EQIA misses several key equality considerations, in particular the gendered nature of the workforce challenges in social care. 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. There are more equalities data on the workforce in the Financial Memorandum than in the EQIA, which is unhelpful as this could have elicited greater analysis.

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 the work and skills are stereotyped as being innate to women and therefore low-skilled¹¹. It is of particular concern that this EQIA does not speak to gendered factors affecting the workforce, and fails to discuss the National Care Service’s potential to advance equality or tackle discrimination in for its majority-female workforce. While there is the opportunity for these factors to be discussed as part of EQIAs on legislation and policy development subsequent to the Bill, it should have formed a part of this EQIA as the framework for said development. As a result, the EQIA at this stage has largely overlooked the potential for the National Care Service to contribute towards tackling the undervaluation of women’s work, women’s poverty, child poverty, or the gender pay gap.

¹¹ <https://www.gov.scot/publications/independent-review-adult-social-care-scotland/documents/>

Close the Gap is also concerned about the assumptions made about the effectiveness of existing procurement legislation and Scottish-Specific Duties in ensuring public bodies take account of equality in procurement. The 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 equality¹². 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 organisations¹³. 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. There are a number of ways public bodies could do this, including by:

- Incorporating gender equality in the **subject of the contract** itself, including the requirement of gender technical competence on the part of the contractors. This will enhance the gender-sensitivity of the goods and services themselves, as well as acting as a driver of gender competence in the goods and services providers.
- Fostering equality within the workforce of a specific contract, for example by including targets for the employment of women or men in works contracts.
- Including gender criteria for the **evaluation of the submitted tenders, which will award contracts to those evincing superior gender competence, and the most gender-sensitive product and service design.**
- Incorporating gender equality clauses into the **conditions for implementation** of the contract, and managing these during the delivery of the contract. This will ensure gender-sensitive monitoring, evaluation, and performance management.¹⁴

¹² E.K. Sarter (2016) *Public procurement and the public sector equality duty: equality sensitive tendering in Scotland*

¹³ <https://www.closesthegap.org.uk/content/resources/PSED-review-equality-stakeholders-common-concerns-April-2022.pdf>

¹⁴ Adapted from <https://eige.europa.eu/gender-mainstreaming/methods-tools/gender-procurement>

Integrating gender equality considerations into procurement may 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-skilling¹⁵. 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 duties¹⁶. In our most recent assessment we were only able to identify one public body that described an action they were planning to take on procurement, and it was assessed as poor quality. Local authorities were assessed as having the poorest performance: we were unable to identify any evidence of equality being considered in procurement.¹⁷ This is of particular concern given that local authorities are the biggest users of procurement in the public sector, with this procurement having the potential to influence significant inequalities, for example the undervaluation of women's work in social care and childcare. This issue was identified in the report of the Independent Review of Adult 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 approach¹⁸. Such an approach is an example of how the duties could meaningfully influence procurement and one of the most significant gendered inequalities in society.

Further, in its response to the Scottish Government consultation on a National Care Service, the Equality and Human Rights Commission (EHRC) highlights its 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 relations¹⁹. 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**

¹⁵ E.K. Sarter (2016) *Public procurement and the public sector equality duty: equality sensitive tendering in Scotland*

¹⁶ 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' 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

¹⁷ Close the Gap (2018) *Internal assessment of local authorities' performance of the public sector equality duty* (Not published)

¹⁸ Scottish Government (2021) *Independent Review of Adult Social Care in Scotland*

¹⁹ <https://www.equalityhumanrights.com/sites/default/files/consultation-response-a-national-care-service-for-scotland-26-october-2021.docx>

the form of Care Boards will require clear direction and support on delivering the equality requirements of ethical commissioning and procurement.

This is also a critical lesson for the creation of the National Care Service Bill and secondary legislation and 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 Care 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 **the need to ensure the Principles of the Bill are sufficient to secure accountability of Ministers and Care Boards on delivering well-gendered ethical commissioning and procurement standards.**

Financial memorandum questions

Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Close the Gap notes that estimated costs on improved pay and conditions for the social care workforce seem to have been separated out from the financial information provided in the Memorandum. This had made it difficult to fully interrogate the potential impact of the Bill. Given centrality of workforce issues to social care system, and therefore to the success of the National Care Service, this is a concern.

While lacking financial information on potential workforce changes, the Financial Memorandum sets out a number of assumptions on the potential impact of these changes. For example, it states that “investment in social care can help to reduce the gender pay gap”. This is certainly the case, but is **contingent on investment being directed towards tackling the gendered undervaluation of the workforce.**

Additionally, the Memorandum states, “in areas of economic disadvantage the sector can be a critical employer, particularly in areas with high youth unemployment” and may help tackle “inequalities” and “child poverty”. Again, this may be the case, but a positive impact is not a given without pay and conditions that reflect the true value of social care work.

The Financial Memorandum states, “In 2020 social services directly employed 209,690 people, approximately 8% of the workforce”²⁰ – it is clearly the case that there is huge potential for tackling women’s employment inequality and boosting Scotland’s economy. However, without action to address the gendered

²⁰ <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/national-care-service-scotland-bill/introduced/financial-memorandum-accessible.pdf>

undervaluation of social care work, including a commensurate pay rise, the impact may be the creation of more low paid jobs, which is likely to sustain women's inequality. This action is only possible with an adequate funding settlement.

Scottish Government commissioned research on the undervaluation of "women's work", which discussed the potential of the National Care Service to address this²¹. The research sets out the estimate in the Independent Review of Adult Social Care that it would cost of £15.5 million to pay the Real Living Wage of £9.50 to care workers and a further £4 million if applied to 'auxiliary staff' in the care sector. It also states that "It is likely that the pay of many care workers would fall above the Real Living Wage rate if properly evaluated to reflect pandemic and post-pandemic responsibilities, knowledge and skills by revised SJC or AfC job evaluation schemes. Indeed, any assumption that the Real Living Wage is the appropriate bottom rate of pay for care workers would need to be carefully scrutinised"²².

A national care service that simply 'shuffles the deckchairs' is unlikely to have any real impact on the low pay and poor conditions that characterise the sector and therefore is unlikely to deliver the changes necessary to tackle the crisis in social care. Fundamentally, **the social care funding settlement must recognise this and be sufficient to deliver equal pay for work of equal value for care workers.**

Questions on specific provisions

There is also the option to give your views on specific provisions in the Bill. There is no obligation to complete this section of the call for views and respondents can choose to restrict their comments to certain sections of the Bill.

In providing comments on specific sections of the Bill, please consider:

- Whether you agree with provisions being proposed?
- Whether there is anything important missing from these sections of the Bill?
- Whether there is anything you would disagree with or there are amendments you would wish to propose to these sections of the Bill?

²¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2021/11/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work2/documents/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work/govscot%3Adocument/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work.pdf>

²² Ibid

- Whether an alternative approach would be preferable?

National Care Service principles (Section 1)

The Principles are the foundation of Ministerial accountability, and of the strategic plans and ethical commissioning strategies of Ministers and newly-created Care Boards. They must speak clearly to the challenges they seek to address and the constituencies to which they apply. **Close the Gap believes it is necessary for the language of the Principles to be amended in order to ensure they give sufficient visibility and weight to the rights of social work and social care workers and can realise ambitious reform of pay and conditions for the workforce.**

At present, the Principles lack clarity on some critical points. A commitment to co-production is welcome, however it is not clear from 1(d) whether the social care workforce is included in the definition of “carers”. The Independent Review of Adult Social Care was clear that representatives of the workforce should be included in co-design, and Scottish Government accepted this. It is not certain that a co-design process that does not explicitly include workforce representation can deliver for care workers. **Close the Gap calls for 1(d) to be amended to ensure workforce representatives are to be included in the co-design process.**

Additionally, it is not clear from 1(e) if the principles of equality and non-discrimination apply to the social care workforce, as the language refers only to improving the “services provided”. This could give the impression of placing the equality and rights of care recipients and unpaid carers above the rights of social care workers, when in fact they are mutually necessary and reinforcing²³. Fundamentally, it is not possible to uphold one without the others. **Close the Gap calls for an amendment to the language of 1(e). This should explicitly include improvement of the employment conditions of the social work and social care workforce, as well as the services provided, in ways which promote the dignity of the individual, and advance equality and non-discrimination.**

Close the Gap is supportive of the inclusion of a Principle that is focused on the improvement of pay and conditions of the workforce, however the language of 1(g) is vague and open to interpretation in a number of ways. This could negatively impact the critical work downstream of the Bill, for example the development of ambitious and well-gendered ethical commissioning and procurement standards. It is not clear who this Principle is referring to in “the people that work for [the National Care Service], and the people that work on its behalf”. It is our assumption that this means the employees of the National Care Service, and the employees of the service

²³ <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-Consultation-on-a-National-Care-Service-for-Scotland.pdf>

providers to whom it contracts out, respectively. Our response to this question is based on this assumption, but it is necessary to clarify this definition in some way.

FAIR WORK

Scottish Government's commitment to delivering fair work in Scotland is critical, and to ensuring "social care is central to this"²⁴, particularly in the current economic context. Its inclusion in the Bill is positive. However, fair work must also mean fair work for women, who are the overwhelming majority of social care workers.

In the Bill, it is not clear what "an exemplar in its approach to fair work" constitutes. While the Scottish Government has set Fair Work First criteria, in practice this is open to interpretation in a number of ways, and guidance on fair work in procurement is insufficient to secure meaningful change for workers. Currently, Scottish Government's *Procurement of care and support services: best practice guidance* states that "a provider's approach to fair work practices would normally be expected to include a commitment to progressing towards adopting the Fair Work First criteria". This language is very weak: providers can meet this requirement by doing very little, with no parameters or expectation of when a provider should achieve this.

It also states "Where a provider does not pay its employees the real Living Wage, however, it does not necessarily mean that its approach to its employees fails to satisfy the Fair Work First criteria." This is a significant concern. Pay is a primary concern of social care workers, and the majority of responses to the Scottish Government consultation on A National Care Service rated improved pay as the most important means of valuing the workforce²⁵. If "an exemplar approach to fair work" does not include a requirement for providers to pay social care workers a wage that reflects the value of their work, it will not address the current workforce crisis.

Close the Gap is also concerned that Fair Work principles are not enough to secure such a wage, as it does not speak to the root causes of low pay in social care. At present, Fair Work is not well-gendered. The Scottish Government's Fair Work Action Plan is characterised by a lack of gender analysis and it also does not make use of gender-disaggregated data²⁶.

The Fair Work First initiative aims to improve employment practice by applying fair work criteria to grants, other funding and contracts being awarded by and across the public sector "where it is relevant to do so". The criteria includes "action to tackle

²⁴ Scottish Government (2021) *A National Care Service for Scotland - Consultation*

²⁵ Scottish Government (2022) *National Care Service Consultation: Analysis of responses*

²⁶ Close the Gap (2019) *Close the Gap briefing for Scottish Government debate: Fair Work Action Plan* available at <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-briefing-for-Scottish-Government-Debate---Fair-Work-Action-Plan.pdf>

the gender pay gap and create a more diverse and inclusive workplace". The melding of a specific requirement on the pay gap with a more generic ask on a diverse and inclusive workplace diminishes the effectiveness of the criterion. It dilutes the original intention of the requirement to take action on the pay gap, and will very likely confuse employers. The Fair Work First guidance lacks the detail that is needed to enable employers to take action on women's equality at work. In Close the Gap's experience, employers respond to specificity, not generic asks on diversity and inclusion. A focus on generic equality and diversity for all does not benefit any women or any other protected group.

The specific reference in Fair Work First to the gender pay gap is welcome, however we know that employer action on the gender pay gap is weak. Public sector employers covered by the Scottish-specific duties routinely fail to analyse and use their gender pay gap information to develop action to tackle it, and private and third sector employers covered by the UK gender pay gap reporting regulations are failing on the same front²⁷. Employers must take action on the causes of the gender pay gap if they are to tackle it. This includes action to tackle occupational segregation, which is a particular issue in the heavily female-dominated social care workforce.

In the case of social care, this would necessitate substantially improved pay in order to attract more men into the profession, and action to tackle the feminised view of social care work itself and improve its status. Men will not enter a sector where they may easily secure better paid, higher status work in other sectors. Evidence shows that employers are unlikely to take such action unless compelled through legislation or contractual requirements²⁸, therefore attempts to simply 'encourage' a fair work approach will be insufficient.

THE GENDERED UNDERVALUATION OF SOCIAL CARE WORK

²⁷ Close the Gap (2020) *One year on and little change: An assessment of Scottish employer gender pay gap reporting* <https://www.closesthegap.org.uk/content/resources/One-year-on-and-little-change---An-assessment-of-Scottish-employer-gender-pay-gap-reporting.pdf>; and Close the Gap (2018) *A Road to Change? An assessment of Scottish employer reporting of the UK gender pay gap regulations* <https://www.closesthegap.org.uk/content/resources/The-Road-to-Change.pdf>; and 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' 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

²⁸ Close the Gap (2013) *Missing out on the benefits: Summary of research on the reporting of the gender pay gap in Scotland*; and IFF Research (2015) *Company Reporting: Gender pay data*, Government Equalities Office

The gendered undervaluation of social care work is the key driver of the crisis in the system. The concept of undervaluation underpins gendered experiences of low pay, occupational segregation and the gender pay gap.²⁹ In economics, the undervaluation of ‘women’s work’ means that there is evidence of lower returns to women’s productive characteristics.³⁰ Practically, this means that women will receive lower pay from investing in education or from their own work experience. The undervaluing of ‘women’s work’ contributes to women’s higher levels of in-work poverty; two-thirds of workers earning below the Real Living Wage are women.³¹

The undervaluation of the social care workforce is sustained by stereotypes around gender roles and assumptions and women’s and men’s capabilities and interests. There is a widespread assumption that caring and other unpaid work done in the home is better suited to women because historically it has been their role. This drives the undervaluation of this work when it is done in the labour market, with jobs such as cleaning, catering, childcare and social care paid at, or close to, the minimum wage as a result. In addition, the idea that women are intrinsically more caring is used to justify the low pay attached to care work in the labour market, with perceived job satisfaction a substitute for fair pay.³² The designation of care as low-skilled contributes to the economy-wide undervaluation of care work more broadly.

A key factor in the sector is that **women’s work in social care is often seen as unskilled, despite increasing professionalisation and responsibility for complex and skilled tasks.** For example, social care staff are increasingly being expected to dispense medication, with no corresponding uplift in pay or status.³³ The invisibility of women’s skills is a major cause of undervaluation³⁴ and this is particularly the case for homecare workers, whose work is carried out in the service users’ homes rather than in a workplace, and often alone rather than in front of or while working with colleagues. The emotional labour required of care workers is especially undervalued, and rarely is it adequately captured in pay and grading systems, where these exist.

JOB EVALUATION AS A SOLUTION

This leads back to job evaluation, which is the critical tool to make women’s skills valued and visible. Analytical job evaluation free from sex bias ensures that pay is determined by objective factors such as the skills, knowledge, effort and

²⁹ Grimshaw, Damien and Jill Rubery (2007) *Undervaluing Women’s Work*, Equal Opportunities Commission

³⁰ Ibid.

³¹ Scottish Parliament Information Centre (2017) *The Living Wage: Facts and Figures 2017*

³² Folbre, N (2012) *Should Women Care Less? Intrinsic Motivation and Gender Inequality*

³³ Hayes, L.B.J. (2017) *Stories of Care: A labour of law – gender and class at work*

³⁴ Grimshaw, Damien and Jill Rubery (2007) *Undervaluing Women’s Work*, Equal Opportunities Commission

responsibility associated with the job. However, not all job evaluation systems are analytical and free from sex bias, with many characterised by in-built assumptions around the value of one job relative to another based on gender stereotypes and norms.

Fair Work First does not reference equal pay or job evaluation, which is the method for addressing the gendered undervaluation of jobs typically done by women. The Independent Review of Adult Social Care called for a national job evaluation exercise to adequately revalue social care work. Since then, discussion of job evaluation has been increasingly invisible in the discourse on social care. This is a significant concern, as it indicates a stepping away from the recommendations of the Independent Review and the Fair Work in Social Care report.

Research on undervaluation which looked at job evaluation as a mechanism for addressing, commissioned by Scottish Government, sets out some key considerations on how this may proceed in a National Care Service³⁵. As set out in our response to the question on the Financial Memorandum, this research notes that it is likely that the pay of many care workers would fall above the Real Living Wage rate if properly evaluated.

Scottish Government's commitment to increase pay for social care workers is welcome, but may not address the underlying undervaluation of social care work relevant to other jobs. Without a national job evaluation backed by gender expertise a pay rise risks being arbitrary, and has the potential to sustain the gendered undervaluation of social care work. **Close the Gap has called for an immediate pay rise for social care workers while a full job evaluation exercise is undertaken in order to properly revalue social care work.**

Therefore, without clear definition, Principle 1(g) could be interpreted in such a way that enables continued undervaluation of the workforce, and is difficult to secure accountability of Ministers. Given that the parameters of the ethical commissioning framework and other action to improve pay and conditions are to flow from the Principles, it is essential that they are clear in how they will facilitate their aims for the workforce. **Close the Gap calls for tackling the gendered undervaluation of**

³⁵ <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2021/11/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work2/documents/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work/govscot%3Adocument/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work.pdf>

social care work to be embedded in the Principles of the Bill. This is essential to ensure the social care workforce is properly valued for the first time, and to ensure the Bill is able to deliver on its purpose.

Accountability to Scottish Ministers (Sections 2 and 3)

Ministerial accountability for the delivery and improvement of social care is welcome, but this must include accountability for workforce reforms, such as the delivery of objectives on tackling the gendered undervaluation of social care work. At present, the language in Section 2 states that the National Care Service should be “designed to secure improvement in the wellbeing of people in Scotland”. This does not explicitly speak to the workforce. **Close the Gap calls for a commitment to secure improvements in conditions of employment in social care to be included in this section.** Further, Section 3, refers only to the “monitoring and improvement of services provided by the National Care Service”. Service provision and quality cannot be improved without addressing the gendered issues affecting the social care workforce. Close the Gap therefore calls for the Bill to incorporate explicit accountability for the monitoring and improvement of employment conditions in the sector.

Strategic planning and ethical commissioning (Chapter 2)

It is a concern that the Bill has set out no principles for ethical commissioning. As set out earlier in this response, the overarching Principles 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.

The Independent Review of Adult Social Care recommended the introduction of such minimum terms and conditions. It is difficult to see how this could be secured without being an explicit requirement of ethical commissioning and procurement. A “Fair Work Accreditation Scheme” as referred to in the Policy Memorandum will not be sufficient to achieve this. The Scottish Government consultation on A National Care Service proposed a “National Commissioning and Procurement Framework of standards and processes for social care”, however this specified an “emphasis” on workforce terms and conditions that are as yet undefined. Additionally, it proposed “the creation of a National Job Evaluation framework/scheme which providers can opt into”³⁶. Close the Gap is concerned that the workforce proposals thus far have been couched in ‘optional’ and ‘encouraging’ terms. We know employers will not

³⁶ Scottish Government (2021) *A National Care Service for Scotland - Consultation*

voluntarily deliver high quality pay and conditions. 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.

The lack of detail on an ethical commissioning framework is unhelpful at this stage. Such a framework must be firmly bounded to ensure procurement requires service providers to meet minimum pay and employment standards as a condition of funding. Funding must be set at a level that enables this. Ethical commissioning standards should also include equality objectives designed to realise the rights of social care workers, people receiving care, and carers. Equality should be weighted within the procurement decision-making process such that it has a meaningful influence on the scoring of tenders³⁷. Equality considerations should also apply to procurement under the Light Touch Framework. A framework that simply “encourages” employers to provide fair work will not deliver pay that reflects the true value of social care work, nor result in an exemplar approach.

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.

National Care Service Charter (Sections 11 and 12)

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, 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 National Care Service the Scottish Ministers consider it appropriate to summarise in the charter”. If a Charter is developed, Close the Gap calls for the workforce to be included as a beneficiary. 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 if a Charter is created.

³⁷ E.K. Sarter (2016) *Public procurement and the public sector equality duty: equality sensitive tendering in Scotland*

