Rebalancing Care and Support Programme

Consultation questions

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**About UNISON Cymru Wales**

UNISON Cymru Wales represents around 90,000 public sector workers across Wales, including thousands of social care workers. This response is shaped by their experience.

**Summary of UNISON position**

We support theintentions of Welsh government and its goal of improving social care through an integrated, preventative, and person-centred system and the creation of a National Care Service, free at the point of need.

The social care sector is broken, fractured into countless employers operating under a failed commissioning system that allows a great deal of money to be lost in private profit, money which should be reinvested for the public good.

Although Welsh government’s intentions to bring consistency are correct and will improve commissioning standards, retaining the wasteful commission model is a mistake and is a block on completely transforming the sector.

The obvious answer is for care to be mainly delivered directly by local government and to abolish commissioning. Direct delivery would improve the standard of care for service users as well as the pay and employment conditions of the care workforce and would ensure that every penny spent on social care goes towards those services.

Care workers and their trade union representatives want to do their bit to drive up standards and want to be involved in the design and planning of care, which can only benefit the sector.

At present, many private care providers are actively hostile to trade union recognition, and this means in workplaces fear is the dominant emotion and individual care workers are too afraid to raise concerns. Employers who recognise trade unions have safer working environments and happier employees. A more stable and engaged workforce means higher quality care for service users.

For that reason, we would like Welsh government to emphasise to employers throughout these proposals, the very positive role trade unions can and want to play.

**Consultation Questions – Chapter 1**

**Question 1.1**: Do you think the principles and standards set out in the Code will help to ensure Wales-wide consistency in commissioning processes and practice and reduce duplication and complexity?

We welcome the principles and standards and changing approach to delivery of social care that it signals. In particular, we support the change to outcome-based commissioning and the new emphasis on value not price.

However, the most important fact is the inclusion of fair work clauses in the commissioning process. This has the potential to directly improve the lives of thousands of care workers across Wales.

Recruitment and retention of staff is a key problem in the sector and the ability of commissioners to demand evidence of fair work practices from providers has the potential to drive up service quality and make the job more attractive to potential recruits.

Care workers have suffered poor wages and employment conditions for decades, as a direct result of the commissioning model and need to generate a profit or (for the third sector), compete with private providers. The changes could mean employers are forced to improve the package offered to care workers. However, we believe it would be far easier to ensure consistency and maintain higher standards if the wasteful commissioning model was removed altogether.

**Question 1.2** Do you think the standards set out in the Code will help to ensure Wales-wide consistency in commissioning processes and practice and reduce duplication and complexity?

On Standard 1, social partnership is missing from the list and ensuring workers’ voices are heard at every level is essential.

On Standard 4, the first point should be the presumption of direct provision as best guarantee of higher standards and consistency and improved pay and conditions.

We are opposed to the wasteful commissioning model and it should be removed. If it is to remain in existence, it should be clear that trade unions in local authorities and health boards are given the ability to scrutinise to who the contracts are awarded.

Evidence-based assessments are correct and here we suggest, trade unions have a crucial role to play as independent verifiers of whether an employer really promotes fair work, rather than one that presents as a fair work employer solely to win a contract. In effect, trade unions would have an active role, helping to verify, challenge and monitor the new standards and therefore driving up service quality.

One idea would be for trade unions to award an employer/provider a gold, silver or bronze standard measured against fair work criteria. The union assessment would then be placed before the local authority allowing it to make a better-informed decision, which has been verified by the provider’s own staff.

The onus would be on private and third sector social care employers to meet with trade unions to agree this certification and trade union recognition must be a given on awarding a contract.

Our proposal is in harmony with Welsh government’s fair work agenda and embeds social partnership in practice, at all levels.

We support standard 5.

Under standard 6, the wording should be ‘must’ rather than ‘should’, as it should be throughout the whole document.

Further, providers must adhere to and implement the pay and progression framework (when published), apply agreements to staff made at any collective bargaining mechanism and must recognise trade unions for the purposes of collective bargaining.

Standard 7 and the importance of understanding all costs is vital. We would highlight here the report we commissioned in November 2021, produced by the Association for Public Service Excellence (APSE), [*A National Care Service for Wales*](https://cymru-wales.unison.org.uk/content/uploads/sites/9/2022/11/APSE-report-A-National-Care-Service-for-Wales-PRINT-19.10.22.pdf).

The [Centre for International Corporate Tax Accountability and Research (CICTAR)](https://cictar.org/) report [*Extracting Profits Through Care Home Real Estate*](https://publicservices.international/resources/publications/cictar-report-extracting-profits-through-care-home-real-estate?id=13685&lang=en)is an essential read when considering the money extracted from the sector, which should be reinvested for the public good.

**Question 1.3**: Do you think the requirements in relation to Welsh Language will help to bring about consistency around the provision of Welsh language services and the active offer?

We agree with Welsh government’s assertion that when people are receiving or trying to access care, it is usually when they are at their most vulnerable, so being confident in their own language is important and we support the efforts to bring consistency in Welsh language services.

**Question 1.4:** Do you think the requirements in relation to Equalities will help to promote and improve the rights of individuals receiving care and support and carers?

Yes. Person-centred care is essential and Welsh government is right to emphasise work around equalities.

**Question 1.5**: Do you think the statutory requirements and guidance in the Code will help to reduce complexity and bring about national consistency in the commissioning of care and support?

Please see our response to question 1.1. Again, local authority direct provision of care would be an easier way to reduce complexity and bring consistency. The commissioning model is wasteful and inefficient.

**Question 1.6:** Do you think the statutory requirements and guidance in the Code will help to improve outcomes for individuals receiving care and support and carers?

Yes. All care workers belonging to UNISON tell us they are committed to their work and are desperate to see improvements that would benefit their service users. Corners must never be cut to boost profit margins.

UNISON has developed an Ethical Care Charter to establish a minimum baseline for the safety, quality and dignity of care by ensuring employment conditions which:

a) do not routinely short-change clients and

b) ensure the recruitment and retention of a more stable workforce through more sustainable pay, conditions, and training levels.

A link to our Charter is included here and we would like all local authorities to sign up. <https://www.unison.org.uk/content/uploads/2015/06/On-line-Catalogue23258.pdf>

**Question 1.7**: Do you think the statutory requirements and guidance in the Code will help to refocus the fundamentals of the care market away from price towards a value measure based upon service quality and overall cost?

It’s a welcome step in direction in signalling the end of the race to bottom in terms of cost. Its success, however, will depend on increased funding.

**Question 1.8:** Do you think the statutory requirements and guidance in the Code will help to facilitate the provision of a seamless health and social care service, reducing barriers to joint planning and delivery.

The social care market is fractured, complex and wasteful. Welsh government estimates there are 1,500 providers and 29 statutory commissioning bodies. It is therefore wrong to further encourage the proliferation of care social enterprises above direct provision by local authorities.

Direct provision by councils of most social care would be more efficient and would remove unnecessary duplication.

A significant barrier to successful integration of health and social care has been the fact that staff work for different organisations with different sets of terms and conditions and different management structures. If we are to overcome current problems and make the sector more seamless, there needs to be workforce voice within RPBs through trade unions.

**Consultation Questions- Chapter 2**

**Question 2.1** The principle of the pay and progression framework is to offer a national framework that can support the principles of fair work. Do you believe it can support that ambition and the benefits outlined above?

Yes, but only if it is supported by extensive unionisation of the workforce and social partnership at all levels.

We would highlight a pertinent example here of poor employer practice and why trade union access is essential to support workers. UNISON members at Integra Community Living Options Ltd. successfully campaigned to receive the Welsh government funding for the Real Living Wage uplift. For over a year, Integra made excuses and refused to pass on the funds. This employer withheld and stalled payment of the Real Living Wage to care workers on the National Minimum Wage during a cost-of-living crisis. Managers repeatedly dismissed concerns raised by staff, and it was only when UNISON became involved that members were able to collectivise around the issue and convince their employer to U-turn.

**Question 2.2** Do you have any suggestions about how the framework might be improved to help meet its ambitions?

In time, pay and progression should be incorporated into social care bargaining mechanisms.

**Question 2.3** What may be the barriers to the framework achieving its ambitions?

There are three chief barriers: the fragmented nature of the sector and multiple employers (some of whom will be focused on making a profit and extracting money from the sector), a lack of trade union recognition with many private care providers actively hostile to unions, and the need for significant funding.

**Consultation Questions- Chapter 3**

**Question 3.1:** Do you agree with the design for the National Office? If not, what design would you suggest?

Yes, as a step towards a National Care Service.

**Question 3.2:** Do you agree with the vision for the National Office? If not, what vision would you suggest?

Yes.

**Question 3.3:** Do you agree with the proposed functions for the National Office, and the relationship described with key statutory organisations, particularly local authorities, Social Care Wales, and NHS Wales? If not, what functions do you disagree with and why?

We believe absorption of Care Inspectorate Wales into the new Office would help ensure inspections are carried out in the name of the National Office and going forward, a National Care Service.

If care was directly publicly delivered by local authorities, UNISON anticipates that much of the monitoring of standards and quality could be achieved by the local authorities themselves so there wouldn’t be the need for such a big inspection regime.

The Care Inspectorate arm of the National Care Service could be mainly an advisory body and could function as a monitoring body for local authorities, act on concerns raised by the public, workforce, clients and their families. A small inspection function could remain mainly for third sector providers- although we think local authorities would have the first line of responsibility for inspection.

**Question 3.4:** From the proposed functions of the National Office, do you envisage any duplications of work already carried out by other national bodies or organisations and are there further opportunities here for simplification?

It is possible, once the National Care Service is created, that Social Care Wales and Care Inspectorate Wales could be much smaller divisions of the National Care Service itself. The inevitable duplication of two separate organisations, could be eradicated meaning savings which could be invested directly into the service.

Question 3.4a: If yes, how do you propose this is resolved? For instance, would you support certain functions being absorbed by the National Office?

In challenging times resources could be streamlined if the proposal above were made earlier and SCW and CIW were merged to be two distinct arms of the National Office. However, whilst the complexity of the commissioning process and the fragmented natures of care provision remains, this may not be advisable.

**Question 3.5:** In its positioning within the Welsh Government and providing for a ‘bird’s eye view’ of the social care system, what are the main opportunities, working with local authorities, Social Care Wales, and other key partners, to drive service change and improvement? Please give reasons for your answer.

UNISON’s motion passed at the Welsh Labour conference in March called for:

* Increased funding for direct local authority provision, including recommendations from the Expert Panel report to set up central budgets so that local authorities can apply for to bring care contracts back in house, purchase care facilities etc.
* Support for pilot local authorities which provide care directly, to create ‘a critical mass of publicly employed care workers’ as ‘the best way to push up the terms and conditions of this neglected section of the workforce, without creating an immediate crisis for front line care companies’

These were also proposals included in the Expert Panel Report

**Question 3.6:** What do you see as the specific opportunities for the National Office to lead culture change in relation to Welsh language? In particular, the ‘More than just words’ five-year plan (2022-27).

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**Question 3.7:**  What practical steps can the National Office take to ensure equality of opportunity through social care? Noting the diversity of Wales’ communities and people’s own circumstances, how can it add value at a national level to ensure people’s wellbeing outcomes are consistently met?

The June 2022 Equality and Human Rights Commission report, *Experiences from health and social care: the treatment of lower paid, ethnic minority care workers,* specifically highlighted the outsourced commissioning model itself as negatively impacting disproportionately on Black care workers. So, removing profit and as UNISON recommends, the commissioning model, would be in line with the *Race Equality Action Plan: An Anti-Racist Wales.*

We know those in receipt of direct payments are more likely to employ someone who looks like them. Personal assistants should be recruited and employed directly by local authorities to ensure transparency, day-to-day management of personal assistants. The design of the support they wish to receive can reside with service users, in co-production and supported by local authority contracts. This doesn’t inhibit a service user’s individual control and freedom and ensures fairer employment practice.

If most social care was provided directly by local government, this would ensure decent employment conditions and a more diverse and better trained workforce.

**Consultation questions – Chapter 4**

**Question 4.1:** Do you have any comments on the detail of the revised draft Code, including any suggestions about what is missing, what could be omitted or where wording could be improved?

We oppose the revisions in Chapter 4 and the promotion of alternative forms of delivery. We support directly provided services by local authorities.

**Question 4.2:** In particular, do the revisions to Chapter 4 help clarify the duty on local authorities to promote social enterprises, co-operatives, user-led services and the third sector? Is anything missing or unclear?

Alternative delivery models are never preferable to direct service delivery. Outsourcing services is a disaster for local communities and the workforce.

Inevitably, the new company would look to make savings by sacking workers or not replacing staff who leave and squeeze wages and employment conditions — that means cutting the pay of people who live in the local community.

In this way the new organisation creates a “two-tier” workforce. TUPE legislation can offer some limited protection for staff transferred to an outsourced contract, but staff recruited by the contractor after transfer have no such protection. These inferior conditions can translate into lower costs for contractors, which plays a crucial role in offering a cheaper tender and winning contracts.

Outsourcing is a short-term economic fix and cannot benefit people in the long term. If the council is outsourcing to a private company, it would have a free hand on profits, money that would otherwise have been reinvested in the community for the public good. Councils are left with no power to intervene to positively shape the lives of their citizens.

The Westminster government wants to see public services ‘spun out’ into employee-led mutuals and co-operatives as part of their vision for ‘open public services’.

UNISON is very concerned the move to ‘spin-out’ public services, stems from an ideologically driven desire to shrink the state and cut public spending, rather than a genuine desire to maintain strong public services, empower workers and improve service quality.

There is a long and positive history of small organisations like mutuals and co-operatives operating to complement public services. But this has predominantly been in niche areas, through grant funding. Many have struggled to survive in the long-term once financial and technical support has been withdrawn. Much of the UK government’s current agenda is about outsourcing mainstream public services.

UNISON’s concern is that most will look to reduce costs at the expense of the workforce and ‘soften up’ public services for privatisation.

Councils have sought to outsource services to make cost savings. The ‘austerity narrative’ adds a new level of urgency to making short-term financial decisions. Many people feel that co-operatives, mutuals and social enterprises are simply a ‘more acceptable face’ of outsourcing.

Claims about increased employee control and empowerment will be made, alongside the case for savings and efficiencies.

Local authorities should be challenged to provide evidence on the following points:

* Is setting up a whole new structure, with all the associated costs, the best use of public funds?
* How will a co-operative, mutual or social enterprise be able to deliver a service better than the local authority?
* If the council wants to empower employees, why not think about working more effectively and co-operatively in-house and devolving more responsibility to employees?

Keeping a service in-house does not mean keeping the status quo. UNISON supports our local branches to pushing for an in-house service improvement plan to be considered as a viable option.

The experience of UNISON branches across the UK with mutuals is not a positive one. They report there is no engagement or consultation with trade union reps; poor business planning and almost always cuts to budgets. There is no legal form or structure, and employee ownership is often a small stake and easily outvoted.

Under EU procurement law and the revised Public Contracts Directive, councils can permit competition for certain contracts to be reserved to organisations such as mutuals and social enterprises. But after three years, these highly desirable contracts need to go out to tender and community run groups can struggle to bid for services again once large private companies enter the bidding process. These companies are experienced at submitting bids and have legal and financial expertise at their disposal.

Procurement is a complex and costly process, and once the contract is awarded, the cost of monitoring it continues. These are additional costs that will have an impact on the council’s planned savings.

When a council proceeds to outsource a service, has it made an equality impact assessment of the proposal? A co-operative, mutual or social enterprise will not be covered by the public sector equality duty as it is not a public body, but only the general equality duty. There are questions the diverse needs of the local community will be met.

Local authorities need to be made to think about all eventualities when planning to spin-out services.

* What happens to service users if the co-operative or mutual goes bankrupt? This is a particular concern for services which deal with vulnerable members of the community, such as children or older people.
* If a service fails, will the council commit to taking it back in-house? If so, this commitment should be clearly stated within the spin-offs governance documents.
* What will be the financial and political cost to the local authority of stepping into pick up the service if it fails?

Outsourcing removes direct accountability and councillors are relegated to the position of distant scrutineers when a service is privatised. If a co-operative, mutual or social enterprise is just another form of outsourcing, how will this be any different? Furthermore, to be a true co-operative the enterprise must comply with the principle of ‘autonomy and independence’ – therefore it must be free from local authority control.

**Question 4.3:** Does the new Chapter 5 give the right messages about the duty on local authorities to promote the involvement of service users and carers? Is anything missing or unclear?

It is important service users are fully involved in in design and delivery of personalised care. Care workers too want to be involved and there should be a duty to include their voices as well. Their inclusion will improve the quality of care provided.

**Consultation Questions- Chapter 5**

**Question 5.1:** Do you agree with our proposals to amend the Partnership Arrangements Regulations 2015, and to the Care and Support (Area Planning) (Wales) Regulations 2017? Are there any other amendments you feel we need to make?

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**Question 5.2:** Have you any comments on the proposed revisions to the Part 9 Statutory Guidance, including any suggestions about what is missing, what could be omitted or where wording could be improved?

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**Question 5.3**: Do you agree that the proposed amendments to the regulations and statutory guidance will help to strengthen regional partnership arrangements and the role of Regional Partnership Boards? Do you have any other suggestions about what could be included?

A glaring omission in paragraphs 50-59 that there is no voice for the workforce and trade union membership of RPBs is critical to ensure social partnership at the design level of local services.

Decisions made which impact on the employees of health boards, local authorities, or other bodies within RPB must be consulted on with trade unions.

**Consultation Questions- Chapter 6**

**Question 6.1**: Are there any barriers in implementing the new guidance for the production of the Local Authority Social Services Annual Reports?

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**Question 6.2:** What support/training is required in implementing the new guidance?

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**Question 6.3:** What outputs or analysis of the Local Authority Social Services Annual Reports would you want to see undertaken?

The proposals and therefore the outputs/analysis, need to take full account of the well-being of care workers and the crucial role of trade unions. To that end we propose a revised wording “…the well-being for people who need care and support and carers AND CARE WORKERS” (new addition in capitals).

In the summary of the Code under the reporting process, we suggest the addition of 3. (b) “trade unions”

**Question 6.4:** Do you consider that the combination of the Performance and Improvement Framework, National Outcomes Framework and Local Authority Social Services Annual Reports provides sufficient guidance and structure for local authorities in achieving the outcomes?

Please see answer to 6.3

**Consultation Questions- Chapter 7**

**Question 7.1:** We would like to know your views on Sections 1 and 8 of the Integrated Impact Assessment. Are there any specific areas where you feel further detail is required, or any specific issues you wish to highlight which may have an impact on a specific group?

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**Consultation Questions- Chapter 8**

**Question 8.1**: We would like to know your views on the effects that any of the products presented within this rebalancing consultation would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?  How could positive effects be increased, or negative effects be mitigated?

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**Question 8.2**: Please also explain how you believe the products presented within this rebalancing consultation could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

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**Question 8.3**: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

There is a duty on Welsh government to do everything it can to lift its citizens our of in-work poverty and promote equality. Thousands of the mainly female care workforce would be lifted out of in-work poverty if Welsh government actively promoted and funded the direct delivery of care services by local government.

Throughout this response, we have emphasised the importance of a collective worker voice as a force for good, acting to improve care standards and employment conditions.

Welsh government’s fair work objectives for social care can only be achieved if there is far wider employer recognition of trade unions.

No employer should win a social care contract if they do not recognise trade unions and in fact, they should be competing to prove their fair work credentials.

It is important the fair work pledges made by providers at the time of procurement are monitored throughout the whole life cycle of the contract.