

September 2015

Introduction

UNISON is Scotland's largest public sector trade union. UNISON members deliver a wide range of services in the public, community and private sector. UNISON Scotland welcomes the opportunity to submit evidence to the Economy, Energy and Tourism Committee.

Many UNISON members are low paid, particularly our women members who work in occupations, such as domestic staff, clerical and administrative staff, home care, etc. We have highlighted the pay and conditions of home care staff in our Time to Care report, and in our Ethical Care Charter.

We are also campaigning for the full implementation of the Scottish Living Wage which will benefit many of our low paid members. [The living wage was raised in November 2014. Outside London it rose from £7.65 an hour to £7.85 an hour.] This should not be confused with the Chancellor's announcement of a National Living Wage. This is in effect a top up of the National Minimum Wage and has no relation to any calculation of a 'living wage' that we are aware of. It also discriminates against young workers by starting at 25 years of age.

Ethical Care Charter

In 2012 UNISON conducted a UK wide survey into the working conditions of homecare workers, entitled "Time to Care". The responses showed "a committed but poorly paid and treated workforce which is doing its best to maintain good levels of quality care in a system that is in crisis". The comments from workers illustrated the correlation between poor terms and conditions and lower standards of care for the clients they serve.

Based on the responses to the questionnaire, the Ethical Care Charter was developed. The intention behind the Charter was to seek to persuade councils to become Ethical Care Councils, commissioning services on the basis of the aims of the Charter. The principal objective was to provide for the quality and dignity of care by ensuring a more stable, well paid and trained workforce.

The Charter was structured in 3 stages.

Stage 1 called for:

- Care based on client need, not minutes or tasks;
- 15 minute visits should not be used;
- Homecare workers to be paid for travelling time, travel costs and other necessary expenses;
- Visits to be scheduled based on need;

- Eligible workers should be paid statutory sick pay.

Stage 2 sought to ensure that:

- Clients would be allocated the same worker/s wherever possible;
- An end to zero hours contracts;
- A clear procedure for following up staff concerns about their clients' wellbeing;
- Proper training to provide a good service (paid for and in work time);
- Homecare workers to be able to meet co-workers to share best practice and limit their isolation;

Finally, Stage 3 sought to ensure that:

- Homecare workers to be paid at least the Living Wage and where they are paid above this rate any outsourced workers should be required to maintain that rate throughout the contract;
- An occupational sick pay scheme should cover all staff who should not be pressurised to work when ill, to continue to care for their vulnerable clients.

At the end of 2013 UNISON Scotland surveyed Scottish homecare workers and published its own report entitled, *Scotland: It's time to Care* in February 2014. A similar set of questions was asked of Scottish homecare workers and the results showed similar responses to the UK wide survey. We found that the majority of workers believed that the service was not sufficient to meet the needs of the elderly and vulnerable people they cared for. This covered both the time they could spend with them and the quality of care they could give them. Almost half (44%) said that they were limited to specific times on their visits; half were not paid travelling time for travelling between visits and 75% expected the situation to get worse.

Since the time of the UK survey and especially following on from the Scottish survey, UNISON branches have been urged to meet with their employers to ask them to sign up to the Charter and implement its objectives. We wished to ensure that councils should not seek to make savings based on cutting the terms and conditions of workers and cutting back the services provided to their clients, but to provide a proper service to those clients based on need, delivered by a properly paid and trained workforce.

There has been a very limited take up of the Charter in full. Renfrewshire has formally signed the Charter and others have agreed in principle to adopt it. There are ongoing discussions with other councils who have adopted many of its provisions. The constraints have been uncertainty over the legal issues surrounding procurement and budget cuts.

Living Wage: Freedom of Information Survey

UNISON at UK level sent Freedom of Information requests to all public sector employers in local government, NHS trusts, universities, further education colleges, sixth form colleges and police forces over May and June 2015. The survey covered a short set of questions that sought to establish a comprehensive picture of living wage payment across the public sector employers where our membership is concentrated. The survey uncovered where the living wage was paid to directly employed staff, where employers placed some kind of requirement on contractors for payment of the living wage, and where employers stated an aspiration to pay the living wage to directly employed or staff engaged in delivery of public services through contractors.

In Scotland almost all public sector employers pay the Scottish Living Wage and have a mechanism for uprating it. This is a significantly better position than the rest of the UK.

The results relating to questions on payment of the living wage to staff employed by contractors delivering public services on behalf of the public sector body found that just over 10% of public sector employers in the UK placed some kind of commitment on the contractor to pay the living wage to their lowest paid staff when a new contract was signed or a contract was up for renewal. Among those employers who made no such current commitment, 23% indicated that they aspired to establish such arrangements among contractors within the next two years. In Scotland, only one local authority indicated that they required contractors to pay the living wage when new contracts were negotiated.

The survey also sought to ascertain whether employers who did not pay the living wage saw the huge cuts to public sector budgets and the government's pay cap as a decisive reason for not introducing the living wage. A large proportion did not express an opinion, but among those employers who did three-quarters stated that they would be minded to introduce a living wage if it was not for these government policies.

Procurement

Procurement is a very important lever in securing the living wage and providing more secure employment. We have a statutory framework for achieving this, although the detailed regulations are not yet in place.

Procurement Reform (Scotland) Act 2014

This legislation enables public bodies to spread the benefits of the Living Wage through procurement.

S.15(5)(b) now requires public bodies to set out their general policy on the living wage in their procurement strategy. This means that public bodies can evaluate bids against that policy and confirm in the contract. This will then become an enforceable performance clause.

S.29 (2)(b) says that this will include the recruitment, remuneration (including payment of a living wage) and other terms of engagement of persons involved in producing,

providing or constructing the subject matter of the regulated procurement, and employee representation including trade union recognition.

S52 Guidance

The Local Government in Scotland Act 2003, Section 52 provides that the Scottish Ministers may issue guidance on contractual matters to which local authorities must have regard when entering into contracts. They issued guidance in 2006 and the primary aim was to ensure "that the terms and conditions of service of new employees appointed by contractors to their workforces post-transfer, should be such as to eliminate the scope for the creation of so-called 'two-tier' workforces".

While this guidance wasn't intended to deliver the Scottish Living Wage, its provisions now has that effect. This is because it applies to any exercise which involves the consideration of a change of service provider or where the transfer of local authority staff is at issue.

The provisions of the s52 guidance require local authorities to ensure that new starters, or existing contractor staff allocated to a contract, should be employed on terms and conditions "which are no less favourable overall". As all council staff are now paid the Scottish Living Wage, this means all contractor staff must be paid the same.

The s52 guidance is not well known or well understood, but its requirements are clear and local authorities must specify its provisions in contracts. It applies not only in the rare circumstances when staff transfer, but also when an existing outsourced contract changes. While s52 only applies to local authorities, there are equivalent provisions in the PPP Protocol that covers Public Private Partnerships in all services.

New evidence that councils are ignoring the requirements of s52 comes in *The Third Annual Report Scottish Local Government Benchmarking Framework*. S52 is supposed to end the two tier workforce yet they report an 8% increase in privatised social care services and say that this, "*has contributed to reduced costs through lower salary and pension costs*". There could not be a clearer admission of unlawful procurement in an official report.

Regulations and Guidance

We had expected the Procurement Reform Act statutory guidance on the living wage to be in place by now. However, this was delayed and as an interim measure a Scottish Procurement Policy Note, '*Evaluating employment practices and workforce matters, including living wage, in public contracts*' has been published. While this is not as good as statutory guidance and has some omissions, it does explain how public bodies can legally ensure the living wage and other employment matters are included in contracts.

A number of our branches have reported that, in local authorities in particular, legal and procurement advice has persisted with the erroneous position that the living wage and other workforce matters cannot be included in contracts. This policy note is helpful in

challenging that advice and includes a practical case study piloted by the Scottish Government and model specifications.

The Scottish Government has also published a consultation on the transposition of the latest EU Procurement Directive into Scottish procurement regulations. There are a number of options available to ministers and UNISON has pressed for a much more radical approach in line with the 'Ten Asks' we promoted with a network of civil society partners during the Procurement Reform Act's legislative journey.

The statutory guidance on workforce matters has recently been the subject of consultation and we understand it should shortly be ready for publication. We hope this will end any remaining excuses for not adopting the living wage and broader workforce matters in procurement.

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