Response to

Northern HSC Trust Consultation on proposals to purchase domiciliary care provided by non-statutory providers

November 2021

1.0 INTRODUCTION

UNISON is the leading trade union in Northern Ireland (NI), representing over 45,000 members, and is the largest trade union in the UK with over 1.3 million members. Our membership includes public service workers in health and social care; the education and higher education services; local government; youth justice; private companies providing public services; and the community and voluntary sector. 84% of our membership in Northern Ireland are women.

UNISON represents a clear majority of healthcare workers, clinical and non-clinical, in the Health and Social Care (HSC) framework, including those working in domiciliary care services across Northern Ireland. We have a duty to protect and promote their rights as workers and to act as advocates for their health, the health of their families, and public health in all dimensions of the population. All of our members are also users of HSC services. Consequently we respond in our capacity as representatives of both service users and the health workforce. This submission is made on their behalf.

UNISON currently chairs the Health Committee of the Northern Ireland Committee of the Irish Congress of Trade Unions. We represent the Committee on the Transformation Advisory Board established to act in an advisory capacity to the Minister, and oversee the direction of reform during the programme of transformation underway in relation to health and social care.

2.0 BACKGROUND AND CONTEXT

UNISON notes that currently within the Northern HSC Trust area domiciliary care services are delivered by both statutory and non-statutory providers, i.e. private companies and community and voluntary sector organisations. In addition, care is delivered by those directly employed by service users using the Direct Payments

model. There are currently 17 different non-statutory providers operating within the Trust who deliver over half of the hours of care provided each week to 3392 of the 5088 people currently receiving care in their own homes.[1] In 2020/21, around £32 million was spent by the Trust in paying non-statutory providers to provide this care.[2]

At both the regional level and within our UNISON Northern Health branch, a key priority over a number of years has been addressing the serious difficulties faced both by those who require domiciliary care and our members within the domiciliary care sector, particularly those working to provide care within non-statutory providers. Our key concerns have included:

- Significant underfunding within the system, a situation which will grow particularly acute as demand rises due to our growing ageing population;
- Privatisation and outsourcing of the system, not only to private companies, but also to the community and voluntary sector and social enterprises, which has led to inadequate and increasingly precarious provision and major concerns regarding capacity, quality of care, treatment of staff and medium to long term viability of services;
- The exploitation of the workforce, which experiences poor pay and terms and conditions of employment within the non-statutory sector in particular and which is under significant strain and pressure;
- Procurement processes which lack transparency and which facilitate a 'race to the bottom' approach where providers may win contracts by bidding at the lowest price, leading to cheaper care, poorer quality conditions for care users

[1] The Trust states that statutory and non-statutory services deliver approximately 59,528 hours of care per week. 36,083 are delivered by non-statutory providers (Consultation document, p.7). The proportion of domiciliary care delivered by non-statutory providers in the Trust has grown since the Trust previously consulted on this issue in 2017/18. The Trust estimated then that of the total of 51,200 hours delivered per week, 26,176 was delivered by non-statutory providers.

[2] Consultation document, p.7.

and which places providers and the workforce under pressure to deliver a service under low pay and in constrained time slots.

The Covid-19 pandemic has only served to further highlight both the importance of domiciliary care services and their precariousness. In setting the wider strategic context for these proposals, it is important that the Trust publicly acknowledges the validity of these concerns and undertakes to address them via any forthcoming procurement process.

In January 2018, UNISON previously responded to a similar consultation exercise undertaken by the Trust on proposals to purchase domiciliary care from non-statutory providers. We note the similarity between the proposals put forward then and the current proposals. Many of the substantive issues we raised in January 2018 remain.

We note that whilst reference is made to 'Health and Wellbeing 2026 – Delivering Together' (October 2016) within the consultation document, the document does not acknowledge that the Health Minister who launched this strategy (Michelle O'Neill MLA) was clear in doing so that addressing the difficulties faced by workers within the domiciliary care sector was a key priority. She identified that domiciliary care staff (mostly women) are amongst the lowest paid; that their work is often contracted out by Trusts; and that staff do not receive expenses such as their mileage which can drive wages down even further.[3] In addition, the 'Systems not Structures: Changing Health and Social Care' (October 2016) report of the Expert Panel led by Professor Bengoa upon which 'Health and Wellbeing 2026' is based was clear that social care was of vital importance in preventing hospital admissions and facilitating discharge, but that high levels of the domiciliary care workforce are employed in the private sector and that recruitment and retention difficulties may, in part, be due to terms of employment

[3] Statement to the Assembly, 25th October 2016.

including zero hours contracts and pay below the minimum wage.[4] The current pressures being experienced by acute hospitals during the pandemic are contributed to by the inability to discharge patients back into the community due to the lack of appropriate domiciliary care packages.

It is vitally important that in setting the context for any proposed new model of providing domiciliary care it is recognised by the Northern HSC Trust that dealing with the significant issues faced by those who work in the sector must be a priority. This in turn will lead to a much more sustainable and beneficial system for the public.

3.0 PROCUREMENT PROCESS – IMPROVING PAY AND TERMS AND CONDITIONS

Whilst we recognise that the current consultation proposals relate primarily to the allocation of defined geographical areas or 'lots' to non-statutory providers, the long-standing issues identified above within the system must be urgently addressed within the forthcoming Northern HSC Trust procurement exercise in order to ensure the sustainability of domiciliary care services moving forwards.

The Trust intends to proceed to tender in Summer 2022. **UNISON expects a commitment from the Trust that we will be involved in all stages of any tender process, including service review and options appraisals, the advertising of contracts and contract award, any transfer arrangements necessary and subsequent contract monitoring.[5]**

UNISON would urge the Northern HSC Trust to consider how the wider procurement process in relation to domiciliary care must be reformed in order to deal with the

[4] 'Systems, not structures: Changing Health and Social Care' (October 2016), p.27 – 28.
[5] Any references to involvement or engagement with UNISON made within this submission should be taken forward via the UNISON Regional Organiser within the Northern HSC Trust, Louise O'Hara – l.ohara@unison.co.uk

serious problems faced by the public and the workforce. The right conditions being attached to procurement contracts would lead to a quality care service, which meets future demands and which has a specialist workforce at its core. In our view, any reforms in the way in which the Northern HSC Trust procures domiciliary care services from the non-statutory sector as proposed here must be accompanied by commitments from the Trust that contractual requirements will be placed on non-statutory providers to:

- Pay workers, as a minimum, the real Living Wage, currently £9.90, and to review and increase pay on a regular basis to ensure it corresponds with real Living Wage rates. Companies seeking to obtain contracts should be accredited Living Wage employers – see further below in relation to the new NI Executive Scoring Social Value policy which requires the payment of the real Living Wage to be a condition of contracts for all tenders from June 2022;
- Ensure that workers have contracted hours, with the use of zero-hours contracts being prohibited;
- Ensure that workers receive allowances for mileage, are paid for travel time and do not have to pay for essentials such as uniforms or mobile phone usage;
- Ensure that workers have the opportunity to up-skill and access training and carer development opportunities;
- Ensure that care provided meets the requisite standards, such as the UNISON Ethical Care Charter and relevant NICE Standards. Workers must be given adequate time to carry out their work and meaningfully engage with their clients. Practices such as 'Time to Task' should be specifically prohibited and minimum visits of 30 minutes should be required. This corresponds with the feedback contained within the consultation document highlighting that 96% of service users or carers consider it very important or important to not feel hurried or rushed when being cared for. Further the Trust's own analysis of September 2020 that 51.8% of calls only lasted from 0-15 minutes is relevant here;

- Recognise UNISON and other trade unions and undertake to work in partnership with them in order to address issues of concern for both service-users and staff;
- Collect and submit data relating to the workforce to the Department of Health, which is then published and open for discussion. A fundamental issue affecting considerations relating to the workforce in these areas is the lack of data available in relation to the private sector.

These conditions should be accompanied by enhanced monitoring of the performance of contracts in order to ensure that providers uphold their contractual obligations. There should be penalties imposed where providers do not do so, including the potential for Trusts to revoke contracts and bring services back 'in-house' where providers are found to be in breach of their contractual obligations. We would welcome further discussion in relation to the authority monitoring officers will have and the guidance that they will receive as to when a breach of contract may occur.

Placing these contractual conditions on providers would not only improve the conditions for the workforce, but would also improve the standard and continuity of care received by service users. The desire of service users and carers to have continuity in their care workers is directly linked to the need for better pay and terms and conditions of employment under which the workforce within the non-statutory service are expected to deliver care.

UNISON seeks best practice in the operation of public procurement processes, protecting equality and promoting human rights by placing ethical procurement and the recommendations of the Northern Ireland Human Rights Commission on human rights and procurement[6] at the centre of this process. UNISON also believes that

[6] 'Public Procurement and Human Rights in Northern Ireland', Northern Ireland Human Rights Commission, November 2013.

regard must be shown to the Equality Commission and Central Procurement Directorate 'Equality of Opportunity and Sustainable Development in Public Sector Procurement' guidance. This outlines the steps that should be taken to embed equality of opportunity within the procurement process.[7] We seek fully transparent procurement processes, including the disclosure of all relevant procurement documentation and all potential transferring liabilities. We want to see an end to the creation of two-tier workforces and options appraisals being conducted which includes the benefits of the continued delivery of a service 'in-house' or of returning services 'in-house'.

We would ask for a commitment from the Northern HSC Trust that we will be involved via our Regional Organiser in the Trust area in the drafting of any prior information notice, contract notice or selection questionnaire before publication, which will provide for selection based on consideration of a bidder's performance against the conditions set out above.

In addition, we wish to be involved in deciding discretionary grounds for excluding bids, including evidence of breaches of National Minimum Wage legislation, or findings against the company at an Industrial Tribunal or Fair Employment Tribunal. Contracts must not be awarded solely on the basis of price and the Trust must undertake to develop award criteria and weighting alongside UNISON. In addition, the Trust should undertake to engage with us prior to decision and contract offer in relation to the selected providers, in order to receive submissions on any concerns we may have.

NI Executive Scoring Social Value policy: On 16th November 2021, the Finance Minister launched the NI Executive Scoring Social Value policy and stated that from

[7] 'Equality of Opportunity and Sustainable Development in Public Procurement' Equality Commission and Central Procurement Directorate, May 2008.

June 2022 any company delivering services for government will have to pay staff working on that contract the Living Wage as calculated by the Living Wage Foundation, rather than the National Living Wage. The current minimum real Living Wage hourly rate is £9.90, compared to the legal minimum of £8.91.[8]

The Scoring Social Value policy is a Northern Ireland Executive policy and is mandatory for Non-Departmental Public Bodies, including the Northern HSC Trust. The policy sets out that tenders for public contracts must be assessed on the basis of social value as well as cost and quality. It requires that social value must be explicitly evaluated as an award criterion together with cost and quality. From 1st June 2022 tenders must include a minimum of 10% of the total award criteria to score social value, with scoring for social value in advance of this date encouraged. Greater weight to social value over the 10% minimum can also be given. It is intended to increase the minimum award criteria from 10% to 20% from June 2023. How social value will be included in contracts should be considered at the earliest possible stage.

The policy is clear that some social value measures are mandatory. From the 1st September 2021 the following requirements should be incorporated into all government contracts:

- compliance with relevant employment, equality and health and safety law and human rights standards;
- adherence to relevant collective agreements; and
- adoption of fair work practices for all workers engaged in the delivery of the contract. Fair work is as per the Carnegie Trust definition and contains 7 measurements. They are (i) terms of employment, (ii) pay and benefits, (iii) job design and nature of work, (iv) social support and cohesion, (v)

[8] https://www.finance-ni.gov.uk/news/workers-should-be-paid-fair-wage-murphy

health, safety and psychosocial wellbeing, (vi) work/life balance and (vii) voice/representation.

The policy is also clear that, in line with the New Decade New Approach agreement, the payment of the Living Wage must be included as a condition of contract for all tenders from June 2022. Any additional costs arising from this condition should be built into business cases. The policy further requires continual monitoring of the delivery of the social value included in public contracts.[9]

We note with some concern the total absence within the consultation document of any reference to this policy, the real Living Wage or the use of social value criteria within the procurement process. This policy now forms part of the mandatory legal requirements that will be placed upon the Trust with regards to procurement by the NI Executive. Given this, we require urgent engagement with the Trust via our Regional Organiser as to how it intends to ensure that the procurement process it proposes in relation to purchasing domiciliary care from non-statutory providers corresponds to the letter and spirit of this policy. In particular we would seek urgent engagement in relation to:

- How the Trust intends to score for social value criterion as part of this procurement process;
- How the Trust will incorporate the mandatory social value requirements into contracts awarded, taking into the account the minimum requirements UNISON expects to see included as we have outlined above;
- Whether the Trust has included the cost of payment of the real Living Wage into any relevant business cases relating to this procurement. Given the proposed contract term here is 3 years, with an option of up to 24

[9] Procurement Policy Note PPN 01/21 'Scoring Social Value' Available at https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/PPN%200121%20Scoring%20Social%20Value%20%28pdf%20version%2015%20November%202021%29.PDF

months extension, and the real Living Wage rate is subject to change on an annual basis, what mechanisms will be put in place in regards to reflecting this in funding for providers;

- How the Trust will monitor the performance of contracts with regards to social value conditions;
- That the Scoring Social Value policy will be applied across any and all forms of contract model, including any spot purchase arrangements.

Implementation of 'Power to People' report: We note here the reference within the consultation document to the 'Power to People; proposals to reboot adult care and support in N.I.' report. In responding to the Trust's previous consultation in 2018, UNISON urged the Trust to consider how it would implement the report's findings, which vindicated our long-running campaign highlighting the mistreatment of workers within the private homecare sector. This report states clearly that workers within the sector are being underpaid, are undervalued and are being exploited by the system. It rightly recognises that a low-paid, high turnover and undervalued workforce is a poor way to ensure the quality of care the public demand. The report also correctly recognises the linkages between the nature of current procurement and commissioning processes and the exploitation of the workforce, with providers competing almost exclusively on the basis of cost, with their largest cost being the cost of staff, resulting in a downward pressure on wages.[10]

As we highlighted previously, the Northern HSC Trust has the opportunity through the upcoming procurement process for domiciliary care to begin to implement the Report's recommendation that pay within the sector must be at least a Living Wage and that pay and conditions should be equalised across the entire workforce.[11]

[10] 'Power to People: proposals to reboot adult care and support in N.I.' Expert Advisory Panel on Adult Care and Support, December 2017, Section 6.
[11] 'Power to People: proposals to reboot adult care and support in N.I.' Expert Advisory Panel on Adult Care and Support, December 2017, Proposal 6.

We are mindful however that following the publication of the 'Power to People' report, the Department of Health convened a Reform of Adult Social Care Project Board, on which UNISON has been represented, to examine how to implement the recommendations contained within 'Power to People' and advise the Department on the development of a public consultation document on the reform of adult social care. This process has yet to conclude and no period of public consultation has begun. In these circumstances, we believe the Trust could lead the way in developing new approaches around procurement in advance of any new regional policies that may impact here, particularly given the new Scoring Social Value policy. **However, we would suggest that the Trust include the ability to review any contracts after 1 years, rather than their current proposed 3 year term, in order to take account of new developments at the regional level. Similarly, any proposal to extend contracts by a further 24 months after their initial term should be subject to review and amendment based on any new regional policies.**

Social Care Fair Work Forum: In May 2021, the Health Minister announced that he intended to create a Social Care Fair Work Forum to include HSC bodies, trade unions and employers following on from representations UNISON had made and our longstanding campaigns on behalf of the workforce.

The Forum had its first initial meeting in October 2021 and it is our strong desire that the Forum will focus on approaches to improve pay and terms and conditions across the social care workforce (particularly for those working in domiciliary care) so as to ensure a high-quality service is delivered by a stable workforce. In order to do so, the Forum must focus on how procurement exercises, such as the one being proposed by the Northern HSC Trust, can deliver these outcomes and embed principles of fair work and social value. The Northern HSC Trust is represented on the forum alongside UNISON.

Further to our comment above with regards to the implementation of the 'Power to People' report, the Northern HSC Trust has an opportunity to lead the way with regards to delivering the kinds of outcomes that the Fair Work Forum has been established by the Minister to ensure. The Trust should consider how evidence of engagement with and implementation of actions arising from the Fair Work Forum by prospective providers will be included within any new procurement process, particularly given the requirements of the Scoring Social Value policy we have highlighted above.

We would also strongly caution the Trust against proceeding with any procurement process that is not being undertaken to deliver the kinds of outcomes the Minister has signalled a move towards via the creation of the Fair Work Forum.

4.0 PROPOSED NEW MODEL FOR DELIVERY OF DOMICILIARY CARE BY NON-STATUTORY PROVIDERS

We are disappointed to note here the many similarities between the proposed new model for the delivery of domiciliary care by non-statutory providers within the Northern HSC Trust and the proposals previously consulted upon, given the extensive comment we provided in 2018. If the current consultation exercise is a genuine one we fully expect to see these proposals amended to reflect our feedback. We have responded to specific aspects of the model outlined within sections 5, 6 and 7 of the consultation document below:

Mixed economy: UNISON notes that the new model for delivery of domiciliary care proposes to continue the mixed economy of both statutory and non-statutory provision of care. In general, we are opposed to the use of the non-statutory sector to deliver domiciliary care services, believing that it has led to inadequate and increasingly

precarious provision and major concerns regarding capacity, quality of care, treatment of staff and medium to long term viability of services.

Privatisation and the use of the private sector in delivering public services does not increase efficiency, raise the quality of care or improve the quality of services and leads to staff becoming under-paid, casualised, deskilled and in a service which is not fit for purpose. It opens up the potential of a 'race to the bottom' where private providers may choose to make savings and bear down on labour costs, under investing and over-straining the workforce.

Despite repeatedly bringing evidence to the attention of Government and Trusts with regards to deficiencies in the delivery of private homecare services, we have remained concerned by the lack of a strategy to address these issues. These issues have included clients not receiving the quantum of care allocated to them in their care plans and care workers effectively being paid below the minimum wage, as travel time is not factored into their rotas and paid accordingly;

It is critical that these vital services are delivered by publicly accountable and directly employed public workers, rather than being subjected to outsourcing and privatisation. UNISON wishes to see the current trends being reversed, including within the Northern HSC Trust, where it appears that the proportion of non-statutory provision has only grown in recent years. Our general view is that privatisation and outsourcing should cease and that services should brought back 'in-house'. We consider this as the best route to improve the care and support received by clients, their families and carers, whilst also improving the conditions of the workforce.

Given that the stated reasons within the consultation document for moving towards this new model include improving the consistency and continuity of care and ensuring the delivery of an equitable service across the entire Trust area, we

would urge the Trust to recognise that this can best be delivered by strengthening the role of statutory services, reversing the outsourcing which has occurred. This process can be initiated whilst still relying on some non-statutory provision in the short-term.

In general, we are concerned that continuing the mixed economy using this new model will not leave room for statutory services to grow. Assuming however that the Northern HSC Trust decides to continue with a mixed economy of care within the Trust, as is stated within the consultation document, it is of vital importance that the Trust does not proceed to further privatise or outsource any domiciliary care services that are currently provided by the statutory services.

We would seek unequivocal assurances from the Trust in this regard. We would seek clear assurances that statutory provision will continue to be available across the whole Trust area, regardless of any introduction of 'lots' for non-statutory providers. We are concerned that the introduction of this contract model may weaken the provision of care by statutory services over a period of time and would welcome assurances from the Trust that this will be prevented.

During the previous consultation process, UNISON had understood from discussions with the Trust that were it to attach the kinds of conditions relating to pay and terms and conditions of employment that we have suggested above to contracts with non-statutory domiciliary care providers, this would narrow the gap in cost per worker to around £5 pounds, with the private sector continuing to pay less overall. Subsequently domiciliary care workers employed directly by the Trust were moved to Band 3. We require further updated information in relation to the gap between workers employed in statutory and non-statutory services and how this may be affected by the introduction of enhanced pay and terms and conditions within non-statutory providers. We would repeat our view that workers within the non-statutory sector should see

their pay and terms and conditions being equalised upwards to match their colleagues in the statutory sector. The movement of statutory sector workers to a higher banding should display the importance of the domiciliary care workforce and the pressure and responsibility on the workforce.

Gateway (Short-term) and Long-term service provision: We note the proposal to create a service model whereby all new service users are provided with an initial short-term service for up to 6 weeks. During this time their care needs will be reviewed to determine their long-term needs. Service Users with long-term needs would then transfer to a long-term service. The Trust states that short-term and long-term services would have differing service requirements and be purchased separately by the Trust.

The basis for this proposal is unclear. Given that the feedback referred to from service users in section 4 of the consultation document highlights the importance to service users of having the same, or a small, number of carers such a proposal appears contradictory.

We require further engagement via our UNISON Regional Organiser with the Trust in relation to any differing service requirements. We note the reference to providers being involved in planning and review processes. We would seek assurances that the Trust does not intend to delegate its functions with regards to care planning to non-statutory providers here.

We further require information from the Trust as to the impact that a move to separate short-term and long-term service provision will have on statutory services.

Creation of 'lots': We note that the Trust has revised its approach to the creation of 'lots' compared to its proposals in 2018. It is now proposed that there will be lots created in 10 areas based on the historic largest towns in the Trust area. The Trust

intends to award at least two contracts per lot, one long-term and one short-term, compared to the previously proposed one contract per lot. Providers will not be prohibited from holding contracts across a number of lots, in a departure from the previous proposal to cap the number of contracts at a maximum of two lots. The Trust does indicate that is considering a cap on the number of contracts awarded however. It is stated that the number of contracts/providers will range from 20 – 40, a significant increase both on current levels and on previous proposals where it was stated that the number of providers would range from 4 – 8.

An increase in the number of non-statutory providers operating in the Trust raises further concern that these proposals will result in further privatisation and outsourcing of domiciliary care services.

What is also unclear at this stage is whether the Trust is proposing to permit sub-contracting under this model. **We would strongly urge the Trust to prohibit sub-contracting.** Sub-contracting will lead to a continuing multiplicity of non-statutory providers in each lot, and will only result in continuing concerns around the turnover and treatment of staff and the continuity of care for clients, as standards and contractual conditions may not be adhered to where sub-contracting takes place. Sub-contracting will impede the monitoring of contractual performance by non-statutory providers, which must be a vital part of this model for the reasons we have set out above.

Cost/Volume contract: We note here that, as within the 2018 consultation, the preferred contract model is a Cost/Volume contract, with both a guaranteed number of hours for non-statutory providers and the remaining percentage being spot purchased from the provider. The contracted provider would be required to accept all referrals.

As we highlighted previously, we would have some concern as to how the number of agreed hours may be met in circumstances where demand may shift quickly, particularly in rural areas. Whilst we are aware that at the Trust macro level, overall levels of demand will likely rise, this may not always be reflected in day-to-day operations. We are particularly aware that certain parts of the Trust area will have smaller levels of non-statutory hours currently being delivered than others. If the number of service-users fluctuates within that area, we do not wish to see such a situation being addressed by the reallocation of work from statutory to non-statutory services. We consider this to be a particular risk in circumstances where the Trust is proposing that the number of hours will be guaranteed per week, making demand even more of a factor. We would welcome an assurance from the Trust that if this takes place, service users being dealt with by statutory services will not be reallocated to the non-statutory sector in order to meet a guaranteed number of hours.

In addition, we would welcome an assurance that in allocating the domiciliary care service-users within each area between statutory and non-statutory providers, non-statutory providers in each area will not be allowed to simply choose groups of service-users who are all in close proximity to each other, leaving statutory services with a much more spread out and diffuse group. This approach would increase pressure significantly on workers within the statutory sector in terms of increasing travel time and distance. The division of clients between the statutory and non-statutory providers should be fair and equitable, considering all the local circumstances.

We would further raise concerns about spot-purchasing being built into these contract models. If demand outstrips contracted hours, the Trust should have in place sufficient statutory provision to take up this growing demand, otherwise statutory services will not grow.

Contingency: We further note that the Northern HSC Trust is proposing that part of the contract model will provide for a contingency where the provider of the lot is unable to fulfil their contract terms in delivering the service. However, unlike the proposals made in 2018, it is now proposed that the second non-statutory provider within a lot area will act as a contingency for the first provider. What is not clear is whether the provider awarded the contract for short-term services in an area will be expected to act as contingency for the longer-term provider. Given that these will be differing services, with differing levels of need and complexity, we would question whether this would be a viable approach.

Whilst we appreciate the rationale behind establishing a contingency system, UNISON would submit that the contingency provider in these circumstances should be statutory services. Given the clear issues that currently exist within the non-statutory sector in terms of their ability to recruit and sustain a workforce, as a result of the poor terms and conditions within the sector, we would be concerned at the ability of non-statutory providers to act as an effective contingency where another non-statutory provider has already failed to meet their contractual obligations. **As we previously requested in 2018, we would call on the Northern HSC Trust undertake a review of existing statutory services and put forward options as to how they could provide a contingency for non-statutory providers and meet any additional demands outside of contracted hours.**

On a related issue, we note the Trust's intention to remark lots on the basis of pricing where a provider has been removed from consideration once a provider has won the maximum number of contracts available within a lot. We are concerned by this approach, as a significant problem within current procurement processes is the awarding of contracts on the basis of price, which has created the 'race to the bottom' approach that has been to the detriment of those receiving care and which has led to poor conditions for the workforce. **In all circumstances contracts should be awarded**

only to those providers who can satisfy the conditions highlighted by UNISON earlier in this submission. Contracts must not be awarded solely on the basis of price.

Electronic Call Monitoring System: We note the proposed introduction of a Electronic Call Monitoring System, which we assume is designed to replace manual recording of the time spent by care workers in the home. Given that the consultation document states that this is not dependent on the procurement process itself, we would welcome clarity in relation to whether it is also intended to roll this service out amongst statutory workers. We would welcome further discussion with the Trust about how this system will operate, but believe at this initial stage that any new monitoring system must be accompanied by contractual requirements on providers to ensure that workers are given adequate time to carry out their work and meaningfully engage with their clients. As the Trust has highlighted within this consultation document, over half of current calls (51.8%) are currently 0-15 minutes.

TUPE arrangements: In terms of proposed transition when new contracts have been awarded and are being put in place, we note that the Trust has highlighted that it will request TUPE information from existing providers as part of the procurement process, with a 6 month to 1 year period for transfer of work suggested within the consultation document. UNISON would request that the Trust specifies the following requirements as part of any TUPE process which may occur here:

- Where a contract award is made that requires a transfer of staff under TUPE, the information and consultation requirements specified under TUPE will commence at the earliest possible opportunity;
- All staff will have the same terms and conditions of employment, reflecting the conditions put in place through the procurement that we have recommended above. New starters engaged in delivery of the contract will have the same

terms and conditions as transferred staff, therefore ensuring that a two-tier workforce does not emerge;

- Any variation to conditions of service will only be introduced following a collective agreement with the appropriate trade unions;
- Staff will have the option of remaining within or joining the new pension scheme;
- Any trade union recognition agreement with UNISON will be maintained for the duration of the contract;
- The new employer will provide a check-off facility for the deduction of trade union subscriptions;
- Noting our objection to the use of sub-contracting and our view that it should not occur, any sub-contractor commissioned to run any of the services included in the contract will be required to adopt the same commitments set out above;
- Where TUPE does not apply by law, transfer will nonetheless take place as if it did, in accordance with the best practice set out under the Cabinet Office Statement of Practice (COSOP).

5.0 COMPLIANCE WITH EQUALITY LEGISALTION AND POLICY

UNISON notes that the policy proposals regarding the purchasing of domiciliary care services from non-statutory providers have been screened and will be subject to on-going screening throughout their implementation process. **In our view, the Trust should review the screening decision which has been reached here and immediately proceed to carry out a full Equality Impact Assessment (EQIA) in relation to the proposed new model for purchasing domiciliary care services.** A full EQIA can only be of benefit to the Trust in developing the new model and in undertaking the wider procurement process. An EQIA will improve policy making in relation to the new procurement model by adding to the evidence base available.

UNISON would submit that the equality screening which has been undertaken is incomplete and has underestimated the potential impact that a new model could have on the promotion of equality of opportunity for the nine categories of persons provided for under section 75 of the Northern Ireland Act 1998.

We note that in screening these proposals, the Northern HSC Trust has relied upon no data or information whatsoever in relation to the workforce, on the basis that it states that Trust staff are not affected. This is a significant shortcoming in the screening document and is in breach of the commitments made within the Trust's approved Equality Scheme which states in order to answer the screening questions, the Trust will gather all relevant information and data, both qualitative and quantitative and that the screening decision will be informed by this evidence.[12] The Trust should seek equality monitoring data from all of its current non-statutory providers. It also should use this submission and other relevant data and information, including the findings of the 'Power to People' report referred to within this submission, to inform its screening of these proposals. If it did so, it would clearly see the need to ensure that the upcoming procurement process improves conditions for the workforce, as we have highlighted throughout this submission.

The section 75 duties apply in this scenario regardless of whether staff affected are directly employed by the Trust or work for non-statutory providers. Non-statutory providers will be operating under a contract with the Trust to provide services. It is for the Trust to determine the conditions contained within that contract, including the conditions that the workforce providing domiciliary care services will operate in. These are clearly policy decisions within the scope of the

[12] Section 4.8.

section 75 duty, as defined under the Trust's approved Equality Scheme,[13] and so must be assessed for their impact on the promotion of equality of opportunity for the workforce, regardless of whether staff are directly employed by the Trust or not.

In addition, the data collected in relation to the potential patients/clients affected by the introduction of the new model is limited, with no data having been collected in relation to 6 of the 9 of section 75 categories. This makes assessing the likely impact of these proposals on the promotion of equality of opportunity for patients/clients very challenging and this should be rectified through a full EQIA.

We are also challenged as to how the Trust has concluded at this stage that the level of impact on equality of opportunity for those affected by these proposals can be categorised as 'none' within the equality screening. It is clear that the forthcoming procurement process and the development of a new model of 'lots' for the provision of domiciliary care by non-statutory providers has major potential to impact on the promotion of equality of opportunity for patients/clients, carers and workers within the sector.

For service users, the procurement process must be designed to promote equality by ensuring that they receive a high quality and consistent service, rather than services which are delivered within constrained time slots and by a workforce with a high turnover of staff. For workers, who will be predominantly female, the forthcoming procurement process must promote equality of opportunity by leading to improved

[13] The approved Equality Scheme states that policy is very broadly defined and covers all the ways in which the Trust carries out or proposes to carry out functions in relation to Northern Ireland. The term policy is used for any (proposed/amended/existing) strategy, policy initiative or practice and/or decision, whether written or unwritten and irrespective of the label given to it, eg, 'draft', 'pilot', 'high level' or 'sectoral'. In making any decision with respect to a policy adopted or proposed to be adopted, the Trust undertakes to take into account any assessment and consultation carried out in relation to the policy, as required by Schedule 9 9. (2) of the Northern Ireland Act 1998 (Section 4.1 – 4.2).

pay and terms and conditions of employment. By contrast, a failure to implement the proposals put forward by UNISON within this response will continually to adversely impact on the promotion of equality of opportunity for the workforce. Given the significant potential impacts on the promotion of equality of opportunity that could occur as a result of these policies, the Northern HSC Trust should proceed to conduct a full EQIA without delay and its results should inform the forthcoming procurement process.

Under the Northern HSC Trust approved Equality Scheme it states that if a consultee raises a concern about a screening decision based on supporting evidence, the Trust will review the screening decision.[14] We would at this stage request that the Northern HSC Trust reviews the screening decision reached here and proceeds to carry out a full EQIA, including direct engagement with UNISON via our Regional Organiser in the Northern HSC Trust area, in order to ensure that this policy actively promotes equality of opportunity for both patients/clients and staff.

CONCLUSION

Given the issues highlighted within this submission UNISON would welcome a clear commitment on the part of the Northern HSC Trust to involve us at all stages of the forthcoming procurement process. We believe that direct engagement is the most valuable form of engagement in relation to these proposals. UNISON anticipates a detailed response to our comments which demonstrates that they have been given proper consideration in advance of any further engagement with the Trust.

For further information, please contact:

[14] Section 4.14.

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