



# ENGENDER RESPONSE TO SCOTTISH GOVERNMENT'S CONSULTATION ON A NATIONAL CARE SERVICE FOR SCOTLAND

November 2021

## 1. INTRODUCTION

Engender is a feminist policy and advocacy organisation working to realise women's equality and access to rights, power, resources and safety in Scotland. We advocate for change to the gendered systems that serve to maintain women's inequality with men, by highlighting the impacts of sexist discrimination on women and on wider society. We welcome the opportunity to respond to this consultation on a National Care Service for Scotland.

**The provision of care, both paid and unpaid, is closely interlinked with systemic and harmful gender roles that constrain women's lives.** Yet this consultation document on proposals for a new National Care Service, which runs to 137 pages, is entirely gender blind. Women are the majority of social care service users,<sup>1</sup> the majority of unpaid carers,<sup>2</sup> and the vast majority of the social care workforce<sup>3</sup> in Scotland. Women's access to paid work, leisure time and power remains heavily constrained by the provision of care and gendered expectations around its value and delivery. Social care is vital infrastructure that supports people in Scotland to enjoy their right to participate fully in all branches of society and can prevent isolation, poor health and wellbeing, and poverty – all of which are gendered issues. **Care itself is undervalued culturally and financially precisely because it is associated with women.** In turn, this cultural undervaluation and the lack of investment attached to social care support perpetuate limited understanding of the role that it plays in the social and economic wellbeing of society.

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<sup>1</sup> 75% of social care clients are aged 65 or more, of whom 67% are women

<sup>2</sup> Census figures show that 59% of unpaid carers are women. As women are less likely to self-identify as carers the true extent of women's caring is unknown, although likely to be around 70%.

<sup>3</sup> Women are 83% of the social care workforce. Scottish Social Services Council (2021) Scottish Social Service Sector: Report on 2020 workforce data. Available at: <https://data.sssc.uk.com/images/WDR/WDR2020.pdf>.

It is widely recognised that Scotland's social care system faces a confluence of crises, with decades of underfunding and widespread under-staffing failing to meet existing demand, and the looming issues of demographic change and the effects of Brexit on the workforce. These are now being heavily augmented by Covid-19, which has increased demand and pressure on the system whilst displacing care away from the state onto the household, and largely women within it, further embedding women's poverty and inequality of resources, wellbeing and participation.

The creation of a National Care Service (NCS), alongside intermediary policy interventions, provide a welcome opportunity to address these crises. However, gender and women's equality have not been a prominent feature of discussions around reforms to social care, including in terms of policy coherence with substantial efforts elsewhere in Scottish Government to tackle women's inequality.<sup>4</sup> Failure to rigorously mainstream gender and other equalities throughout establishment of the NCS, from the very outset, would undermine its ability to meet the needs of those that access and provide social care support, as well as existing gendered policy commitments across government.

**Reform to social care must be rooted in a gendered analysis** of the impacts of the undervaluation and underinvestment in services, issues with the workforce and the needs of unpaid carers, in order to develop effective solutions. The stated ambitions of the National Care Service to provide human quality rights-based and person-centred care cannot be achieved without a targeted focus on women's equality and women's experiences and needs. As Engender is not involved in the delivery of care services, we are not best placed to comment on the technical detail of these proposals. But given the centrality of both paid and unpaid care to questions of women's equality and rights, our response is therefore focussed on the **significant gendered considerations that must underpin any and all changes to the system**. As the consultation questions posed do not reflect the range of systemic and gendered issues relevant to the establishment of a new system of social care support, our comments are broader in scope and are preceded by a section setting out critical intersections between social care and women's equality.

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<sup>4</sup> Key interventions and commitments include: First Minister's National Advisory Council on Women and Girls, reports available at: <https://onescotland.org/equality-themes/advisory-council-women-girls/>; A fairer Scotland for women: Gender pay gap action plan, available at: <https://www.gov.scot/publications/fairer-scotland-women-gender-pay-gap-action-plan/documents/>; Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls, available at: <https://www.gov.scot/publications/equally-safe-scotlands-strategy-prevent-eradicate-violence-against-women-girls/>

## 2. GENDER AND SOCIAL CARE

### 2.1 Women as carers and those that receive social care support

Social care policy and practice in Scotland are heavily gendered in three ways. Women are the majority of service users, the vast majority of social care workers, and the majority of unpaid carers, with gender shaping the profile of unpaid caring significantly.

#### Social care support

It is rarely recognised that women are the majority of those in need of social care support, at around 62% of those accessing services.<sup>5</sup> This disproportion increases with age - three quarters of social care clients are aged 65 or more, and 67% of this cohort are women.<sup>6</sup> Women are also more likely to be disabled or have long-term health conditions than men, with significant geographical disparities. In the most deprived areas of Scotland 44% of women are disabled compared with 26% of women in the least deprived areas.<sup>7</sup> This gender profile is not set out in the breakdown of demographics that set the scene for the consultation.

Despite this, research into women's particular needs and experiences when accessing social care support is rare. Recent research by the Health and Social Care Alliance (the ALLIANCE) and Self Directed Support Scotland found markedly gendered differences in women and men's access to SDS,<sup>8</sup> a set of findings that are unsurprising and shocking at the same time. **This emphasises the need for a gender lens to be a principal element in design and development of new social care structures and services.**

#### Social care workforce

The social care workforce is profoundly gendered, both demographically and experientially. Women account for around 83% of employees across the sector, men

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<sup>5</sup> NHS ISD (2019) Insights into social care in Scotland. Available at: <https://www.isdscotland.org/Health-Topics/Health-and-Social-Community-Care/Publications/2019-06-11/2019-06-11-Social-Care-Report.pdf>

<sup>6</sup> Scottish Government (2016) Social work and social care statistics for Scotland: A summary. Available at: <https://www.gov.scot/publications/social-work-and-social-care-statistics-for-scotland-a-summary/>.

<sup>7</sup> Scottish Government (2017) Scottish Health Survey. Available at: <https://www.gov.scot/publications/scottish-health-survey-2017-volume-1-main-report/>.

<sup>8</sup> Self Direct Support Scotland and the ALLIANCE (2020) My Support My Choice: Women's Experiences of Self-directed Support and Social Care in Scotland. Available at <https://www.alliance-scotland.org.uk/health-and-social-care-integration/wp-content/uploads/2020/12/ALLIANCE-SDSS-MSMC-Women-Report-Dec-2020.pdf>

just 15% and the remaining 2% are of unknown gender.<sup>9</sup> Older women<sup>10</sup> and migrant women<sup>11</sup> are over-represented within this. It is not a coincidence that these workers – accounting for around 8% of all employment in Scotland - are underpaid, undervalued and expected to put up with poor working conditions. The gendered profile of social care staff in part explains the unattractive wages and conditions that characterise the sector. Chronic issues with recruitment and high turnover of staff<sup>12</sup> testify to the clear **need for gender-sensitive investment in the workforce as part of any reform of the system.**

### Unpaid carers

Similarly, between 60% and 70% of unpaid care is delivered by women in Scotland,<sup>13</sup> care that is worth approximately £10.8 billion to the economy per annum.<sup>14</sup> Beyond this headline figure, the shape of women’s caring roles differs significantly from those of men. Women are twice as likely as men to give up work to carry out unpaid care,<sup>15</sup> and are much more likely to juggle caring with (often low-paid) employment, to hold multiple caring roles, and to provide care for more than 35 hours per week.<sup>16</sup> All of this must be well understood and integrated in order to make policy that works for women, and to achieve the ambition of a human rights-based and person-centred national system of social care support.

Unpaid carers have plugged gaps that have emerged throughout the pandemic, where social care services and support were withdrawn – sometimes overnight – and

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<sup>9</sup> Scottish Social Services Council (2021) Scottish Social Service Sector: Report on 2020 workforce data. Available at: <https://data.sssc.uk.com/images/WDR/WDR2020.pdf>

<sup>10</sup> Scottish Care (2018) The 4Rs: the open doors of recruitment and retention in social care. Available at: <https://scottishcare.org/wp-content/uploads/2019/11/The-4Rs-The-Open-Doors-of-Recruitment-Retention-in-Social-Care.pdf>

<sup>11</sup> Non-UK nationals make up 17% of the social care workforce in England (<https://link.springer.com/content/pdf/10.1007/s12134-021-00807-3.pdf>). This data does not exist for Scotland, but anecdotal evidence tells us that migrant women and BME women are over-represented in social care sectors

<sup>12</sup> Ibid. In 2020, 20% of the workforce had moved on from their post since the previous year. This improvement from almost a quarter in recent years may reflect the impact of the pandemic on the labour market.

<sup>13</sup> The last Census figure was 59%, however women are less likely to self-identify as carers due to cultural gender roles and carers organisations have estimated a figure of around 70%.

<sup>14</sup> Carers UK (2015) Valuing carers 2015. Available at: <https://www.carersuk.org/for-professionals/policy/policy-library/valuing-carers-2015>

<sup>15</sup> Skills for Care (2012) Carers Matters – Everybody’s business. Available at:

<https://www.skillsforcare.org.uk/Documents/Topics/Supporting-carers/Our-carers-matter-part-two.pdf>

<sup>16</sup> Engender (2016) Securing women’s futures: Using Scotland’s new social security powers to close the gender equality gap. Available at: <https://www.engender.org.uk/content/publications/Securing-Womens-Futures---using-Scotlands-new-social-security-powers-to-close-the-gender-equality-gap.pdf>

where assessments have been delayed.<sup>17</sup> By early stages of the pandemic, there were an estimated 1.1 million unpaid carers in Scotland, an increase of 34% percent as a result of the crisis.<sup>18</sup> The majority of these ‘new’ carers have been women.

## 2.2 The care economy

Underpinning all of this is the broader cultural undervaluation of care in Scotland, whether formal or informal, and the integral and cyclical link this has with women’s inequality. Both paid and unpaid care work are chronically undervalued by our society and by our economy, because it is work that has typically been undertaken by women, and is seen as ‘women’s work’. This drives ongoing occupational segregation and undermines Scottish Government’s strategic objectives to address the gender pay gap and other policies aimed at tackling women’s inequality.

Research shows that almost all countries that score highly across gender equality indicators provide more extensive systems of long-term care than in Scotland and the UK.<sup>19</sup> The creation of a new social care system in Scotland must therefore centralise gender equality, and embed equality concerns within the principles and objectives that will underpin the system.

**Scotland is sorely in need of a care service that sees social care support as an infrastructure investment in the social and economic wellbeing of society as a whole.** As the burden on the reproductive economy has increased as a result of the pandemic, responses that ease the (largely unrecognised) intensity of such work and stimulate demand from low paid workers are all the more imperative.<sup>20</sup> The Commission on a Gender Equal Economy’s report *Creating a Caring Economy* demonstrates that investment of 1% of UK GDP in the care sector would produce 2.7 times as many jobs in the economy overall as an equivalent investment in construction, in addition to being three times less polluting per job.<sup>21</sup>

Engender and other gender equality advocates have long called for social care to be made a key growth sector in Scotland’s economic strategy and for care to be framed

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<sup>17</sup> Glasgow Disability Alliance (2020) GDA’s COVID-resilience engagement and response: Interim report. Available at: [https://www.sdsscotland.org.uk/wp-content/uploads/2020/05/GDAs-Covid-Resilience-Interim-report-27April\\_alt-text.pdf](https://www.sdsscotland.org.uk/wp-content/uploads/2020/05/GDAs-Covid-Resilience-Interim-report-27April_alt-text.pdf)

<sup>18</sup> National Carer Organisations (2021) A manifesto for unpaid carers and young carers. Available at: <https://carers.org/downloads/scotland-pdfs/nco-carers-manifesto-for-scottish-parliament-election-2021.pdf>

<sup>19</sup> Rummery, K. et. al (forthcoming) What works for gender equality.

<sup>20</sup> Engender (2020) Gender and inclusive growth: Making inclusive growth work for women in Scotland. Available at: [https://www.engender.org.uk/content/publications/1591173199\\_Gender--Inclusive-Growth---Making-inclusive-growth-work-for-women-in-Scotland.pdf](https://www.engender.org.uk/content/publications/1591173199_Gender--Inclusive-Growth---Making-inclusive-growth-work-for-women-in-Scotland.pdf)

<sup>21</sup> Commission on a gender equal economy (2020) *Creating a caring economy: A call to action*. Available at: <https://wbg.org.uk/wp-content/uploads/2020/10/WBG-Report-v10.pdf>

as capital investment or infrastructure, as opposed to current consumption, in budgeting processes.<sup>22</sup> Individual recommendations from the Advisory Group on Economic Recovery and the Social Renewal Advisory Board have minimally engaged with the role of care in recovery from the pandemic. However, critical links with women’s equality have not been integrated in the work of these groups, despite the highly gendered nature of the Covid-19 crisis.<sup>23</sup> In response, the Scottish Government merely restates an existing commitment in the Gender Pay Gap Action Plan to “explore options” to treat investment in childcare and social care as infrastructure.<sup>24</sup> Development of the National Care Service presents an opportunity to transform how social care is perceived and valued, building on these limited existing commitments and high-level calls to address the undervaluation of care.

### 2.3 Social care and gender mainstreaming

Gender mainstreaming means ensuring that **intersectional gender perspectives are embedded within the development of a process, policy or programme from the very outset of thinking**, with a view to promoting equality between women and men, and combating discrimination. It is the critical methodology for ensuring that states, agencies, and public bodies integrate consideration of the differences between men’s and women’s lives into policymaking. Equality objectives can then be strategically worked towards as a central aim of the given work. In this instance, this requires that equality, and specifically gender, are clearly set out within the Bill and any secondary legislation that is introduced to establish the National Care Service and in the founding principles and strategic objectives of the organisation. It also means that intersections between women’s equality and social care should have been articulated in this consultation document.

In line with this, Scottish Government is committed to implementing the recommendations to come out of the Independent Review of Adult Social Care (IRASC). The very first of these is that ‘human rights, equity and equality must be placed at the very heart of social care and be mainstreamed and embedded’. However, equality is barely referenced in the consultation document<sup>25</sup> and the nature of mainstreaming appears to be not well understood. The intention to “carry

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<sup>22</sup> Engender (2020) Gender and economic recovery. Available at: <https://www.engender.org.uk/content/publications/Gender--Economic-Recovery---Engender-and-Close-the-Gap.pdf>

<sup>23</sup> Engender (2020) Women and Covid-19. Available at: <https://www.engender.org.uk/content/publications/Engender-Briefing---Women-and-COVID-19.pdf>

<sup>24</sup> Scottish Government (2020) Economic recovery implementation plan: The Scottish Government’s response to the Advisory Group on Economic Recovery. Available at: <https://www.gov.scot/publications/economic-recovery-implementation-plan-scottish-government-response-to-the-advisory-group-on-economic-recovery/documents/>

<sup>25</sup> Equality is only referenced five times in the document, three of which are external quotes

out a suite of impact assessments before finalising the proposals” belies a fundamental misconception of what equality impact assessment (EQIA) is for. EQIA is a mainstreaming tool that must be used in order to shape policy in the first place and therefore undertaken at the outset of thinking and development. **We note that an EQIA was not published alongside this consultation document.** Equality concerns must not be retrofitted around policy that has already been drafted. **Scottish Government must ensure that rigorous equalities mainstreaming and impact assessment inform design of the NCS,** in order to fulfil its obligations under the Public Sector Equality Duty and maximise the wide-reaching potential of a new social care system for women and girls in Scotland.

### 3. CONSULTATION RESPONSES

As a policy organisation, we do not hold a view on a number of areas in the consultation, other than to reiterate that robust equalities mainstreaming in order to inform decision-making is vital. Nor do we do not work directly with people supported by the care system or their carers, and do not attempt to answer questions directed at service users. Nonetheless many of these issues have broader relevance to women’s equality and it is essential that development of the NCS balances forms of expertise, including lived experience and structural analyses. Similarly, some issues that are fundamental to women’s needs and experiences of social care are not covered by the consultation document. Our comments are therefore broken down in line with headings in the consultation document, but not limited to the questions set out.

#### **Improving care for people**

In laying the groundwork for a National Care Service that can deliver improved care for people, significant work must be undertaken to understand women’s needs and experiences of social care support. Within this, there must be a focus on particular groups such as older women, Black and minoritised women, disabled women, LGBT women, pregnant women, women with insecure immigration status, and those in rural areas. An approach to improving care for women should be holistic and include gender analysis within the needs assessment framework, as well as training on the provision of gender-competent social care for all staff that pays attention to women’s specific and gendered experiences of accessing services.

#### **3.1 Access to care and support**

**Q3-8**



The following principles are crucial to a person-centred and human-rights based approach to social care support and should underpin any methodologies that are adopted.

### Universal access to quality care

The National Care Service must ensure universal access to quality social care that meets individual needs and enables full participation in society for those seeking support and their carers. Quality social care can also help to fulfil individual human rights set out in international law. These including the right to an adequate standard of living, the right to the highest attainable standard of physical and mental health, and the right to live independently and be included in the community,<sup>26</sup> as well as women's rights to equality with men enumerated in the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the rights set out in the Convention on the Rights of Persons with Disabilities (CRPD).

Structures and practices that limit the universality of quality social care must be identified and addressed as part of a robust equalities mainstreaming approach, including impact assessment, that informs development of the National Care Service. Primarily, equitable provision of social care support is undermined by restrictions caused by underfunding. **Income inequality should not play a role in mediating access to social care, as it presently does through care charging and eligibility criteria.** As women have less access to resources and are overrepresented in low paid employment and among social security claimants, **there are gendered inequalities in connecting care with income.**

We have previously called for urgent reform to eligibility criteria and for care charging to be abolished,<sup>27</sup> due to the impact on both those receiving support and the unpaid carers who are often responsible for managing restrictive budgets. These practices are damaging to women's social and economic equality, as the majority of those in need of social care support, of those living in poverty, and of those providing unpaid care for people unable to access the care services they need. Whilst we therefore welcome the commitment to reform eligibility criteria and focus on prevention and early intervention, we are disappointed that the IRASC's recommendation to remove the regime of non-residential care charges is not reflected in Scottish Government's proposals. Meanwhile, the new eligibility regime

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<sup>26</sup> SHRC (2020) Covid-19, social care and human rights monitoring report. Available at:

<https://www.scottishhumanrights.com/media/2102/covid-19-social-care-monitoring-report-vfinal.pdf>

<sup>27</sup> Engender (2020) Engender response to the Scottish Labour Party consultation "Time to care about care".

Available at: <https://www.engender.org.uk/content/publications/Engender-response-to-the-Scottish-Labour-Party-consultation-Time-to-Care-About-Care-.pdf>



must be cognisant of women's economic inequality and ensure that income inequality is fully decoupled from access to social care.

### Choice and control

The IRASC report echoes what women told us throughout the collaborative development of our Gender Matters Roadmap: Scotland currently lacks a system of social care support that provides people with real opportunities to take control over their own lives.<sup>28</sup> Whilst Self-Directed Support holds potential to address this, effective implementation has not yet been realised,<sup>29</sup> and the Covid-19 pandemic has further exacerbated tensions between the aims<sup>30</sup> and delivery of SDS, with unpaid carers struggling to access flexibilities introduced to the guidance.<sup>31</sup> Furthermore, **women's access to SDS is unequal to that of men.** Research by the ALLIANCE and Self Directed Support Scotland indicates that women are less likely to be given access to information about their SDS and do not enjoy equal decision making regarding SDS.<sup>32</sup> Women are more likely than men to have had decisions made by a social work professional on their behalf, and considerably less likely to have been given information about their personal budgets. Women were less likely to have all four SDS options discussed with them in their needs assessment, or to have been given free choice over who manages their budgets.

Beyond this, however, there is limited available evidence that has comprehensively examined women's experiences in accessing choice and control in their social care provision. This is a gap that must be addressed in the creation of a new system. We note, for instance, that disabled women and girls in particular can be denied choice and autonomy in accessing healthcare, with particular impacts on access to sensitive medical services and appointments.<sup>33</sup> It would therefore be extremely surprising if disabled women's choice and autonomy in accessing social care support was **not** shaped by their gender, in ways that are as yet unknown and unexamined. Designing

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<sup>28</sup> Engender (2017) Gender matters roadmap: towards women's equality in Scotland. Available at: <https://gendermatters.engender.org.uk/content/care/>

<sup>29</sup> Scottish Parliament Health and Sport Committee (2020) Summary of Evidence - Adult Social Care and Support Inquiry. Available at [https://www.parliament.scot/S5\\_HealthandSportCommittee/Inquiries/AJ\\_Initial\\_Social\\_Care\\_Inquiry\\_Response\\_s\\_from\\_Organisations.pdf](https://www.parliament.scot/S5_HealthandSportCommittee/Inquiries/AJ_Initial_Social_Care_Inquiry_Response_s_from_Organisations.pdf)

<sup>30</sup> "To maximise flexibility and autonomy for the supported person in meeting agreed outcomes"

<sup>31</sup> Coalition of Carers in Scotland (2020) The use of SDS by Unpaid Carers during COVID-19. Available at: <https://www.carersnet.org/wp-content/uploads/2020/07/You-can-download-it-here.pdf>.

<sup>32</sup> Self Direct Support Scotland and the ALLIANCE (2020) My Support My Choice: Women's Experiences of Self-directed Support and Social Care in Scotland. Available at <https://www.alliance-scotland.org.uk/health-and-social-care-integration/wp-content/uploads/2020/12/ALLIANCE-SDSS-MSMC-Women-Report-Dec-2020.pdf>

<sup>33</sup> Engender (2018) Our Bodies, Our Rights: Identifying and removing barriers to disabled women's reproductive rights in Scotland. Available at: <https://www.engender.org.uk/files/our-bodies,-our-rights-identifying-and-removing-barriers-to-disabled-womens-reproductive-rights-in-scotland.pdf>.

a system of social care support must consider the gendered contexts within which choice and control are exercised for disabled women and girls, and for other groups. These include older women, learning disabled women, women with chronic conditions – including those that are experienced disproportionately by gender - and unpaid carers. Adequate time and resources must be invested to allow effective and participative processes that lend themselves to fully considering the needs of different groups. To date, this consultation has not created the conditions for such engagement.

In line with the importance of person-centred care that maximises choice, autonomy and flexibility, we support the advocacy of Inclusion Scotland and other disabled people’s organisations in calling for the right to independent living to be enshrined in legislation that establishes the National Care Service.

### **3.2 Rights to breaks from caring**

Unpaid caring can bring significant economic and social costs to those who provide it, reducing the capacity of informal carers to access good health and wellbeing, education, paid employment and leisure. Women are the majority of carers across all age groups, are particularly over-represented amongst those who undertake the most intensive forms of caring,<sup>34</sup> and are twice as likely to give up paid work in order to care. **Unpaid carers provide support worth an estimated £1.1 trillion, or around 56% of the UK’s GDP, in imputed economic value<sup>35</sup> and yet their own needs are routinely dismissed**, including in terms of economic support such as the value of Carer’s Allowance.

In this context, rights to breaks are not the only issue for carers that should be examined within this process of reform. As highlighted by the IRASC report:

“We also heard many carers reflect on the gender issue that also applies to the paid workforce. Many carers are women, and they told us they are often overlooked and disregarded.”

Carers’ organisations highlight that carers, as well as those who use services, must be at the heart of designing the new system, that a focus on making self-directed support work – for carers as well as those they care for – is maintained, and that the

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<sup>34</sup> Women are more likely to provide care for more than 35 hours per week, and to provide ‘sandwich caring’ for both children and older people

<sup>35</sup> Office for National Statistics (2016) Women shoulder the responsibility of 'unpaid work'. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/women%20shoulder%20the%20responsibility%20of%20unpaid%20work/2016-11-10#:~:text=Women%20carry%20out%20an%20overall,to%20cooking%2C%20childcare%20and%20housework.>

new system includes adequate and timely support for carers that is aimed at enabling them to lead their own lives as well as preventing negative outcomes.

**Q9: Which factors are most important in establishing a right to breaks from caring?**

Engender has advocated for minimum entitlements to breaks from caring since this emerged as a key concern for unpaid carers during the production of our Gender Matters Roadmap.<sup>36</sup> Access to short breaks has been shown to be ‘vital to sustaining the caring relationship, and the health and wellbeing of carers’.<sup>37</sup> However, the availability of short breaks is limited and varied across Scotland, and not viewed as an essential support service for both carers and those they care for.<sup>38</sup> The fact that only 3% of carers receive statutory support for breaks from caring, as highlighted in the consultation document, tells its own story.

We do not agree with the tensions identified in the consultation document between standardised or personalised support, universal access or specialist support, certainty or flexibility, and prevention or acute need. In order to create a system based on need and human rights, as opposed to a pre-conceived budget, the right to breaks from caring should incorporate a minimum entitlement upon which additional, specialist support is layered as needed. **Given the personal cost of caring for many unpaid carers, not to mention the economic value of their contribution to society and the economy, concerns about complexity should not prohibit a system that works for everyone.**

We therefore consider all the factors set out to be equally important, excepting the second point regarding thresholds for accessing support. In that regard, we believe that there should be a universal right to support for all carers.

- Personalised support to meet need **and** Standardised levels of support (**no preference**)
- **A universal right for all carers**
- Certainty about entitlement **and** Responsiveness and flexibility (**no preference**)
- Provides preventative support **and** Meeting acute need (**no preference**)

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<sup>36</sup> Engender (2017) Gender matters roadmap: towards women’s equality in Scotland. Available at: <https://gendermatters.engender.org.uk/content/care/>

<sup>37</sup> National Carers Organisations (2016) Manifesto for Unpaid Carers in Scotland. Available at: <https://www.carersuk.org/scotland/policy/policy-library/manifesto-for-unpaid-carers-in-scotland>

<sup>38</sup> Carers Scotland (2019) State of Caring in Scotland 2019. Available at: <https://www.carersuk.org/scotland/policy/policy-library/state-ofcaring-in-scotland-2019>.

### Q10: Of the three groups which would be your preferred approach?

- **Group C – Hybrid approaches**

Our preferred approach is a model consisting of a universal minimum entitlement that has been developed from a rights-based and preventative perspective, with additional personalised support tailored to meet needs that go beyond this. The consultation document suggests that universal entitlement and personalised support are in conflict with one another in terms of funding. We do not accept however that human rights and equality can be subjected to this type of cost-benefit analysis.

The Scottish Government is committed to incorporation of international human rights law and to radical action to address the chronic and systemic undervaluation of care that drives gender inequality in this country. If we are going to see meaningful progress emerge from the First Minister's National Advisory Council on Women and Girls, and substantial policy efforts to advance women's equality, **we must start treating carers like equal members of society** and recognising their invaluable economic and social contribution.

### 3.3 Using data to support care

#### Q11: To what extent do you agree with the following statements?

- There should be a nationally-consistent, integrated and accessible electronic social care and health record.
- Information about your health and care needs should be shared across the services that support you.

In principle we **agree** that consistent, integrated, and accessible data that is shared across services could improve standards of care. We are aware, however, of issues that may arise concerning data ownership, ensuring safety and privacy for victim-survivors of violence against women, and the sharing of sensitive information, for example regarding mental health or reproductive health. Clearly development of such a system would need to be thought through carefully and with due diligence to equality mainstreaming requirements.

More broadly, we are extremely supportive of initiatives to improve the collection, analysis and use of data in order to drive up standards and improve equality across provision of social care support. At present, in each and every policy area that we work in, a lack of gender-sensitive sex-disaggregated data<sup>39</sup> undermines the potential

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<sup>39</sup> See explanation of this term below, and in fuller detail at: Engender (2020) Covid-19: Gathering and using data to ensure that the response integrates women's equality and rights

for legislation and policy to improve women's equality and to meet women's needs. This includes a staggering data gap regarding women's different experiences of accessing social care, both broadly and for particular groups including learning disabled women, Black and minoritised women, women with different conditions, older women and unpaid carers.

We are also extremely supportive of the intention to improve data with a view to informing decision-making at different levels. Gaps in gender-sensitive sex-disaggregated data, alongside gaps for other equalities groups and the lack of intersectional data, undermine the ability of public bodies to complete equality impact assessments and fulfil their obligations under the Public Sector Equality Duty. A concerted effort to plug these gaps is vital. To enable effective wider spaces around policymaking and decision-making<sup>40</sup> it is vital that a focus on publishing data is also developed.

**Q12: Should legislation be used to require all care services and other relevant parties to provide data as specified by a National Care Service, and include the requirement to meet common data standards and definitions for that data collection?**

- **Yes – although the standards must include requirements around sex-disaggregated, gender-sensitive data**

We are supportive of legislation that will set out a requirement to meet common data standards and definitions. However, current common data standards do not work to meet the needs of women and are not orientated towards outcomes that advance equality. The collection, use and publication of gender-sensitive sex-disaggregated data should therefore be included in the duty that is developed.

A set of principles for gendered data, including those enumerated by the UN and European Institute of Gender Equality, needs to be operationalised in Scotland as the default, in order to assess and monitor differences in the experiences of women and men.<sup>41</sup>

### Gender-sensitive sex-disaggregated data

Gender-sensitive sex-disaggregated data is broken down by sex, so that it is possible to compare and contrast differences between women and men. It also means going

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<sup>40</sup> For example community-based activism, academic research, and third sector advocacy

<sup>41</sup> Engender (2021) Engender response to "sex and gender in data: collection and publication"; guidance from the Chief Statistician to Scottish Public Bodies. Available at: <https://www.engender.org.uk/content/publications/Engender-response-to-Chief-Statistician-working-group-consultation-on-sex-and-gender-and-data-FINAL.pdf>

beyond disaggregation by sex, ensuring that data is gathered on gendered issues and from a perspective that adequately reflects the diversity of women and men's lives. Gender-sensitive data comprises statistics and other information that adequately reflect gendered differences and inequalities.

Gendered stereotypes, roles, and norms permeate every aspect of life, including the clustering of women into undervalued, underpaid, and precarious work in occupational care sectors,<sup>42</sup> women's underrepresentation in senior, decision-making positions in Scotland, including within care sectors,<sup>43</sup> and women's overrepresentation as providers of unpaid care to children, disabled people, and older people. Black and minoritised, disabled, lesbian, bisexual, trans, older, younger, pregnant and rural women, women of different faiths, women with insecure immigration status, and unpaid carers all have specific experiences as a result of overlapping discrimination and inequality.

Gender-sensitive analysis and use of evidence must pay attention to these gendered differences in lived experience. This means that, in addition to breaking down data by sex, relevant information that captures women's experiences must be gathered.<sup>44</sup> Such data can then help us to interrogate how the design of care systems affects women's equality in terms of – for example – wellbeing, income and safety.

Finally, we note that the First Minister's National Advisory Council on Women and Girls recommended a regulatory requirement for public bodies to gather, publish and use data that is gender sensitive, sex disaggregated and enables intersectional analysis in its third report.<sup>45</sup> The Scottish Government is due to publish its response before the end of 2021.

### **3.4 Complaints and putting things right**

#### **Q14: What elements would be most important in a new system for complaints about social care services?**

- **Other**

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<sup>42</sup> Close the Gap (2019) Close the Gap Working Paper 20: Gender Pay Gap Statistics. Available at: <https://www.closesthegap.org.uk/content/resources/Gender-Pay-Gap-Statistics--Working-Paper-20-.pdf>

<sup>43</sup> Engender (2020) Sex and Power in Scotland 2020. Available at: <https://www.engender.org.uk/content/publications/Engenders-Sex-and-Power-2020.pdf>.

<sup>44</sup> Engender (2020) Covid-19: Gathering and using data to ensure that the response integrates women's equality and rights. Available at: <https://www.engender.org.uk/content/publications/Covid-19-Gathering-and-using-data-to-ensure-that-the-response-integrates-womens-equality-and-rights.pdf>

<sup>45</sup> First Minister's Advisory Council on Women and Girls (2020) 2020 Report and Recommendations. Available at: [https://onescotland.org/wp-content/uploads/2021/01/562006\\_SCT1120576152-002\\_NACWG.pdf](https://onescotland.org/wp-content/uploads/2021/01/562006_SCT1120576152-002_NACWG.pdf)

Engender advocates for an independent social care tribunal to protect the rights of carers and those to whom they provide care. This is a call that emerged from collaborative work to develop our Gender Matters Roadmap,<sup>46</sup> and the need for accountability and redress has remained a clear and consistent message from our engagement work with unpaid carers. Too often, carers feel ignored and unsupported by existing systems and practices, which is worsened by the lack of independent advocacy and barriers to justice.<sup>47</sup> **The current complaints process lacks scrutiny and undermines existing rights for those receiving social care support and their carers. As such it is entirely unfit for purpose.**

A single point of access for feedback and complaints would improve the current system, but would not go far enough in providing a redress mechanism that helps to ensure standards of support and equality of outcomes, and to uphold human rights. People with experience of the social care system should have a dedicated and independent space to challenge decisions and seek corrective action. In order to provide the “rapid recourse to an effective complaints system and to redress” recommended by the IRASC, such a body must also be empowered to take binding action in resolving contested decisions.

A Charter of Rights and Responsibilities could be instrumental within this, if co-produced with service users and carers, including diverse groups of women. In keeping with the IRASC recommendation that human rights, equity and equality must be placed at the very heart of social care, such a Charter must include a commitment to advance equality and tackle discrimination. However, without the ‘teeth’ of a tribunal or other mechanism within which these rights and responsibilities can be held to account, a Charter could well be entirely ineffective.

#### **Q15: Should a model of complaints handling be underpinned by a commissioner for community health and care**

- **Perhaps**

Properly empowered, the creation of a Commissioner could be a positive development. However, in itself, this would not address current issues with lack of accountability and the need for a body empowered to provide redress where people have been unable to access quality care. We advocate for an independent care tribunal to provide recourse to justice for those in need of social care support and

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<sup>46</sup> Engender (2017) Gender matters roadmap: towards women’s equality in Scotland. Available at: <https://gendermatters.engender.org.uk/content/care/>

<sup>47</sup> The Scottish Independent Advocacy Alliance (2017) Map of advocacy across Scotland: 2015-16 edition. Available at: [https://www.siaa.org.uk/wp-content/uploads/2021/02/SIAA\\_Advocacy\\_Map\\_2015-16-1.pdf](https://www.siaa.org.uk/wp-content/uploads/2021/02/SIAA_Advocacy_Map_2015-16-1.pdf)



their carers, many of whom are women. This would complement forthcoming incorporation of human rights law into domestic legislation. The rights of disabled people, older people, people with long-term conditions and their carers – the majority of whom are women - cannot be systematically upheld without access to independent arbitration.

### **3.5 Residential care charges**

#### **Q17-19**

Aside from our general position on the imperative that income does not mediate access to needed support, we do not have a view on specific costs that self-funding care home residents should contribute towards. Nor do we have capacity to address the gendered implications of residential care charges in full. It is vital, however, that development of this policy recognises the gender profile of care home residents and that the equality impact assessment that informs its development is premised on a gendered analysis of pension poverty.<sup>48</sup>

Whilst the number of men living in residential care has increased in recent years, **around 70% of care home residents are women.**<sup>49</sup> Older women experience significant income inequality with men, due to disproportionate provision of unpaid care, occupational segregation into low-paid and part-time work, and unequal access to occupational pensions and opportunities to accrue savings over the course of a lifetime.<sup>50</sup> Recent analysis from Age UK indicates that pension poverty amongst women has risen by six percentage points over the last ten years, with 20% of women of pensionable age now “living below the breadline”.<sup>51</sup> This shocking figure is even more acute for Black and minoritised women, one in three of whom experience pension poverty.

A National Care Service with human rights and equality at its heart must take this into account, in actively seeking to advance equality between women and men.

### **3.6 National care service**

#### **Q20-22**

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<sup>48</sup> WBG (2020) Pensions and gender inequality: A pre-budget briefing from the Women’s Budget Group. Available at: <https://wbg.org.uk/wp-content/uploads/2020/02/final-pensions-2020.pdf>

<sup>49</sup> Scottish Care (2019) Care homes: Then, now and the uncertain future. Available at: <https://scottishcare.org/wp-content/uploads/2019/11/Care-Homes-Then-Now-and-the-Uncertain-Future.pdf>

<sup>50</sup> WBG (2019) Pensions and gender: Briefings from the UK Women’s Budget Group on pension gender inequality. Available at: <https://wbg.org.uk/wp-content/uploads/2019/10/PENSIONS-2019-1.pdf>

<sup>51</sup> See: <https://www.ageuk.org.uk/latest-press/articles/2021/new-age-uk-analysis-finds-one-in-five-uk-women-pensioners-now-living-in-poverty/#:~:text=In%202019%2F20%2C%2019.98%25,were%20living%20in%20relative%20poverty.>

We are broadly supportive of a National Care Service that is accountable to Scottish Ministers and is conceived as being on an equal footing with the NHS. This holds clear potential to drive up standards of care and to address the chronic undervaluation of formal and informal care that undermines women's equality and rights. However, design of the NCS, from the legislation that underpins it to the establishment of the organisation itself **must** reflect ambitions to promote intersectional gender equality.

**We are concerned that the decision to pursue radical reform of the social care system has not adequately engaged with the needs of women** involved in its operation or reliant on the delivery of social care for economic or social participation. Failure to mainstream equality in the foundations of the NCS would be at odds with the recommendations of the IRASC and with wider Scottish Government policy. This includes the forthcoming incorporation of human rights law, the work of the First Minister's National Advisory Council on Women and Girls, and Scottish Government's commitment to develop an equality and human rights mainstreaming strategy. We are also concerned that many of the existing issues with social care in Scotland cannot wait for development of a new institution on this scale. **It is vital that short-term and intermediary interventions are developed to address current unmet needs and gaps in provision.**

### Principles

In our Gender Matters Roadmap, which was developed in collaboration with women across Scotland, we articulate the following ambitions for social care and unpaid care:

- By 2030 disabled people, people with long-term conditions and older people have real choice and control in all areas of their lives and in all parts of Scotland.
- By 2030 carers' rights in Scotland are respected and upheld, and care work is valued and recognised as contributing to Scotland's social and economic wellbeing.<sup>52</sup>

Within this, and alongside vastly increased investment in unpaid carers and the social care workforce, we advocate for the following core principles to be at the heart of delivery of social care support:

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<sup>52</sup> Engender (2017) Gender matters roadmap: towards women's equality in Scotland. Available at: <https://gendermatters.engender.org.uk/content/care/>.

- Universal access to free social care at the point of need;
- An intersectional approach to equality of outcomes for all;
- A gendered focus on choice and control;
- Rights-based and person-centred support;
- A preventative approach – including for carers;

These are critical elements of social care provision that is compatible with women’s human rights, wellbeing, security and equality. In order to create delivery mechanisms that support this within a National Care Service, groundwork to understand women’s needs and experiences of social care must be undertaken. Targeted evidence gathering and research should be commissioned on access and experiences for older women, disabled women, Black and minoritised women, LGBT women, pregnant women, women with insecure immigration status, women in rural areas, women with expertise of particular conditions, and unpaid carers.

### Care as vital infrastructure

Equally crucial to a valued system of social care support is an understanding of care as vital infrastructure. Our economic model is reliant on women’s unpaid and underpaid care work for its very functioning, just as it relies on physical infrastructure such as transport networks and fibre optic cable. However unpaid care, like other forms of reproductive labour, is rarely (if ever) recorded in national accounting systems. This is despite being worth an estimated £1.1 trillion, or around 56% of the UK’s GDP, in imputed economic value.<sup>53</sup> In terms of paid care work the situation is not much better. Scotland’s care sector is worth £3.4 billion (GVA) to our economy and provides employment to over 200,000 people,<sup>54</sup> yet Scotland’s economic strategies continue to exclude care and maintain a focus on areas such as construction and life sciences where men’s jobs dominate. Recent research has shown that there is a clear economic benefit in job creation from investing in care.<sup>55</sup>

Along with Scottish Women’s Budget Group and others, we have called for social care to be designated as a key economic sector and for care to be counted as capital investment in in budgeting processes. These actions would elevate the status of

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<sup>53</sup> Office for National Statistics (2016) Women shoulder the responsibility of 'unpaid work'. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/women-shoulder-the-responsibility-of-unpaid-work/2016-11-10#:~:text=Women%20carry%20out%20an%20overall,to%20cooking%2C%20childcare%20and%20housework.>

<sup>54</sup> Scottish Social Care Services Council (2018) Adult social care contributes £3.4bn to Scottish economy. Available at: <https://data.sssc.uk.com/data-news/15-announcements/175-the-economic-value-of-adult-social-care#:~:text=Adult%20social%20care%20contributes%20%C2%A3,of%20the%20sector%20has%20found.>

<sup>55</sup> Commission on a gender equal economy (2020) Creating a caring economy: A call to action. Available at: <https://wbg.org.uk/wp-content/uploads/2020/10/WBG-Report-v10.pdf>

social care, reflect its economic value and bring it within the scope of economic development, skills agencies and further investment. The Scottish Government's Gender Pay Gap Action Plan commits to develop an approach that will treat investment in childcare and social care as infrastructure,<sup>56</sup> however this is yet to be expanded upon. The report of the Social Renewal Advisory Board recommends that care sectors are designated key growth sectors in future economic strategies,<sup>57</sup> but the Scottish Government does not respond to this call to action in its response.<sup>58</sup>

The development of a National Care Service offers opportunity to work with users of social care, existing providers and gender experts to lead investment of resource and capital into a new model that demonstrates and remunerates value accordingly. However, this must be supported by further action to prioritise care in the budget and economic strategy. We recommend that this window for transformative change is maximised by pushing for these complementary changes in parallel to the reform process.

### Funding

There is a clear need to be explicit about the shortfall in funding for provision of high quality, person-centred and rights-based care. It is widely recognised that current levels of resourcing fall egregiously short of this standard. All too often choice and control are diminished by practical considerations around budget constraints. Delivering a person-centred and needs-led service cannot be divorced from questions about funding or the costs of developing a satisfied workforce that is trained and supported to provide quality care.

An appropriately funded system of social care support can prevent isolation, exclusion, illness, and poverty, as well as helping to reduce existing inequalities. This stands in stark opposition to the current model of underfunding that is exacerbating women's inequality in Scotland, and undermining the human rights of older women, disabled women and unpaid carers amongst others. Given the scale of disruption to the sector in recent years, chiefly due to the pandemic, it is also critical that

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<sup>56</sup> Scottish Government (2019) A fairer Scotland for women: gender pay gap action plan. Available at: <https://www.gov.scot/publications/fairer-scotland-women-gender-pay-gap-action-plan/>.

<sup>57</sup> SRAB (2021) If not now, when? Social Renewal Advisory Board report: January 2021 <https://www.webarchive.org.uk/wayback/archive/20210715100746/https://www.gov.scot/publications/not-now-social-renewal-advisory-board-report-january-2021/documents/>

<sup>58</sup> Scottish Government (2021) Scottish Government's response to the Social Renewal Advisory Board's Report 'If not now, when?'. Available at: <https://www.gov.scot/publications/scottish-government-response-report-social-renewal-advisory-board/documents/>

additional investment is secured now, and not delayed until or subsumed by the costs of establishing a National Care Service.

However, ambitions and proposals outlined in the consultation document – to provide human rights-based and person-centred care, to address the undervaluation of care and to support unpaid carers – are accompanied by incompatible framing regarding funding. The proposed 25% increase in spending is a welcome start, but the qualifying statement that “public resources are still limited” raises immediate questions around when and how this funding will be prioritised. A limited budget cannot deliver a rights-based and person-centred approach to everyone that needs it in Scotland. Nor is it compatible with the IRASC recommendation for “SDS support options that do not start from the basis of available funding”. References to “value for money”, a highly critiqued framework at the heart of the Conservative UK Government’s decision-making, and the prominent framing of “affordability” in the chapter on breaks for carers, further undermine the prospect of equitable access to additional resources. This investment must therefore be subjected to rigorous intersectional gender budget analysis, and Scottish Government must be clear and realistic about what can be expected from this and other investment in social care.

**In the context of a system that has been chronically underfunded and undervalued for decades, Scottish Government ultimately needs to go further than an increase in spending that amounts to £800m over the parliamentary term.** Given inflation, demographic change and the degree of current unmet need, this is likely to fall short of the financing recommendations outlined in the IRASC.<sup>59</sup> However, the report’s recommendation on finance is one main area that has been considered inadequate by stakeholders.<sup>60</sup>

Not only will projected levels of funding be inadequate to meet need, there is also a strong wider economic argument for spending on care. Investment in care has the potential to stimulate employment, reduce the gender employment gap and counter the impacts of the Covid-19 pandemic women’s job security. The Women’s Budget Group highlight that investment in care in the UK would produce 2.7 times as many jobs as an equivalent investment in construction and 6.3 times as many jobs for women.<sup>61</sup> Whilst investment has direct benefits for those who access social care and those who are directly employed to provide it, it also has positive impacts on poverty

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<sup>59</sup> See: <https://healthandcare.scot/default.asp?page=story&story=2588>

<sup>60</sup> Feedback at stakeholder events

<sup>61</sup> Women’s Budget Group (2020) A Care-Led Recovery from Coronavirus. Available at: <https://wbg.org.uk/wp-content/uploads/2020/06/Care-led-recovery-final.pdf>.

reduction, women's access to the wider labour-market and financial security, gender-based violence, wellbeing and sustainability.<sup>62</sup>

### **3.7 Scope of the National Care Service**

#### **Q23-57**

Engender does not hold a view on whether the National Care Service should incorporate the range of services set out in the consultation document. However, it is vital that Scottish Government fulfils its gender mainstreaming obligations in order to inform its decision-making in these areas. Gender mainstreaming means ensuring that intersectional gender perspectives are embedded within the development of a process, policy or programme from the very outset, with a view to promoting equality between women and men, and combating discrimination.

It is outwith the scope of this consultation response to go into any detail regarding equality concerns here. However, a cursory glance at the list of services that are being considered for inclusion in the NCS reveals a set of highly gendered areas across which women's inequality is sustained. For instance, women's experiences of the criminal justice system and detainment differ vastly from those of men, and there are significant differences in how women and girls experience mental health and are treated when accessing treatment and services. All of this must be analysed in the impact assessment process, which is yet to be undertaken.

Under the Public Sector Equality Duty, equality impact assessment must be undertaken to evaluate the implications of including certain services under the auspices of the National Care Service for people with protected characteristics. Crucially, this analysis must be **done at the start of the process** and **used to inform decisions**.

### **3.8 Reformed Integration Joint Boards: Community Health and Social Care Boards**

#### **Q58-66**

Engender does not hold a view on whether Integration Joint Boards should be replaced by Community Health and Social Care Boards (CHSCBs). As with all aspects of reform, however, the creation of CHSCBs must be comprehensively explored from an intersectional gender perspective with a view to ascertaining impacts on women and other marginalised groups.

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<sup>62</sup> Commission on a Gender-Equal Economy (2020) Creating a Caring Economy: A Call to Action. Available at: <https://wbg.org.uk/commission/>.

To succeed for women, CHSCBs boards will need to have gender-competent governance, and explicitly include ambitions around equality within their founding principles and objectives. Integrated Joint Boards have not systematically engaged with the question of gender equality, including the highly relevant issues of occupational segregation and women's propensity to engage in unpaid care. This gender blindness is also reflected in the core suite of integration indicators<sup>63</sup> and the lack of equality outcomes within the Strategic Plans of IJBs.

**Q62: Who else should be represented on the Community Health and Social Care Boards?**

Gender expertise should also be represented on the CHSCBs. Lived experience is crucial but this must sit alongside participation by equalities experts that bring a structural analysis of health and social care. One person's experience is informed by structural oppression but is not alone reflective of it. Integrating and balancing forms of expertise is vital, as one individual may not identify their own experience as gendered, racialised or marginalised in a given way.

Equality of access should also be taken into account. Participants not contributing in a professional capacity should be remunerated for their time, in addition to expenses incurred. Inclusivity issues including timings, venues, and duration of meetings should be taken into account.

**Q63: Should all Community Health and Social Care Board members have voting rights?**

Yes

### **3.9 Commissioning of services**

#### **Q67-72**

Commissioning is described in the consultation as developing a vision, strategy, policy, forward plan and monitoring programme to meet a set of identified needs. If the needs of women are to be incorporated within this, a gendered approach must be adopted. The consultation envisages ethical commissioning for social care as driving up quality, securing person-centred outcomes and fair work practices, and having a human rights approach at its core. Likewise, these aims and principled

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<sup>63</sup> Scottish Government (2015) Core suite of integration indicators. Available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2015/04/health-social-care-integration-core-suite-indicators/documents/core-suite-integration-indicators/core-suite-integration-indicators/govscot%3Adocument/00475305.pdf>



approaches cannot be delivered successfully unless the needs of different groups of women are fundamentally taken into account.

The procurement landscape in Scotland is summarised within context setting for this section on commissioning, however the procurement duty within the Public Sector Equality Duty (PSED) is a notable omission. Health and social care partnerships are already obliged to use procurement to advance equality and reduce discrimination under the Scottish Specific Duties of PSED. However, available evidence suggests that, despite this standalone requirement, very few public bodies have taken action to consider gender equality in their use of procurement.<sup>64</sup>

### **Q70: Would you remove or include anything else in the Structure of Standards and Processes?**

We welcome the proposal that the NCS will develop and manage a National Commissioning and Procurement Structure of Standards and Processes for social care services and supports. In line with our comments above, **the draft structure should include a principle to advance equality and non-discrimination.**

#### Procurement and women's equality

Procurement that takes account of gender equality considerations has long been the cornerstone of thinking about how to use equality duties to drive better practice in the private sector. The scope for procurement to leverage public spending to buy gender-sensitive goods and services and mandate gender-sensitive employment practice is significant.

Gender mainstreaming has never been systematically applied to procurement processes in Scotland, although toolkits for doing so have been developed at the European Institute for Gender Equality and elsewhere.<sup>65</sup> Integrating gender equality considerations into procurement may enable public bodies to mitigate some of the disproportionate negative impacts of competition-based tendering on women. As a result of occupational segregation, where women and men are clustered into different types of work, this contributes to the undervaluation of women's work and de-skilling.<sup>66</sup> The Fair Work Convention has also noted that the impact of competitive tendering based on non-committal framework agreements has been responsible for

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<sup>64</sup> E.K. Sarter (2016) Public procurement and the Public Sector Equality Duty: equality sensitive tendering in Scotland. Available at: <https://researchonline.gcu.ac.uk/en/publications/public-procurement-and-the-public-sector-equality-duty-equality-s>

<sup>65</sup> See: <https://eige.europa.eu/gender-mainstreaming/methods-tools/gender-procurement>

<sup>66</sup> E.K. Sarter (2016) Public procurement and the Public Sector Equality Duty: equality sensitive tendering in Scotland. Available at: <https://researchonline.gcu.ac.uk/en/publications/public-procurement-and-the-public-sector-equality-duty-equality-s>

transferring the risk of demand and cost onto the workforce.<sup>67</sup> Close the Gap describe the impacts of this one-sided flexibility as a “race to the bottom” which drives down pay, terms and conditions, and entrenches women’s inequality in the labour market.<sup>68</sup> Because of women’s far greater likelihood of being employed in social care, the impacts of increased vacancies, poorer conditions and low pay also have wider impacts for women’s equality and wellbeing. Reforms to commissioning and procurement through a national commissioning model present an opportunity to drive up standards including with regards to the prevalence of temporary and zero hours contracts, low rates of overnight pay, long working hours and unpaid overtime.

Procurement can also play an active role in achieving a person-centred care that is tailored to the gendered needs and experiences of different groups of women, for instance through purchasing of services that have mandatory gender-sensitive training for social care practitioners. Workforce planning must also, as part of such an approach, engage effectively with questions of gender equality including occupational segregation and women’s greater provision of unpaid care and childcare.

### Gendered procurement principles

We have called for reform of the Public Sector Equality Duty to include a revised duty on procurement that would require public bodies to produce a statement that sets out how they have:

- Involved the users of goods and services and/or other data and analysis to identify potential gendered impacts and advance women’s equality;
- Incorporated gender equality in the subject of the contract, including the requirement of gender technical competence on the part of the contractors;
- Advanced equality within the workforce of a specific contract, for example by including targets for the employment of women or men in works contracts;
- Included gender criteria for the evaluation of the submitted tenders, which will award contracts to those who can demonstrate superior gender competence, and the most gender-sensitive product and service design;

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<sup>67</sup> Fair Work Convention (2019) Fair Work in Scotland’s Social Care Sector 2019. Available at: <https://www.fairworkconvention.scot/our-report-on-fair-work-in-social-care/>

<sup>68</sup> Close the Gap (2020) Health and Sport Committee Social Care Inquiry Submission From Close the Gap. Available at: <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-Health-and-Sport-Committee-inquiry-into-social-care.pdf>.

- Incorporated gender equality clauses into the conditions for implementation of the contract, and will manage these during the delivery of the contract.

We recommend that the Structure of Standards and Processes includes a similar mechanism to increase implementation of and accountability for a gendered ethical commissioning in social care. Without a requirement to proactively engage with these issues, the experience of procurement within the PSED indicates that change may otherwise be extremely limited.

### The proposed Structure of Standards and Processes

With regards to the proposed framework for the Structure of Standards and Processes for ethical commissioning, we make the following points.

- Core criteria: We agree that an emphasis on workforce terms and conditions is vital, including in terms of valuing staff. Gendered employment practices, such as rights for part-time workers, parental policies and carers' leave should also be made explicit within these.
- Minimum quality outcome standards: The development of minimum quality outcome standards established for social care services must also include a focus on women's equality. Current inequality of access is reflected in research into women's experiences of Self-Directed Support.<sup>69</sup>
- Co-production: We agree that unpaid carers must be included in the co-production of the process. Co-production should also include input from equalities experts, in order that structural analyses and lived expertise are able to complement one another.
- People standards: Activity to 'benchmark people standards (skills, capabilities and capacity) required to commission and procure quality services' must include gender competence<sup>70</sup> within its understanding of skills, capability and capacity.
- Professional development programme: Likewise, creation and management of a professional development programme to build 'appropriate skills to

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<sup>69</sup> Direct Support Scotland and the ALLIANCE (2020) My Support My Choice: Women's Experiences of Self-directed Support and Social Care in Scotland. Available at <https://www.alliance-scotland.org.uk/health-and-social-care-integration/wp-content/uploads/2020/12/ALLIANCE-SDSS-MSMC-Women-Report-Dec-2020.pdf>

<sup>70</sup> Gender competence is individual and organisational capacity to apply gender analysis to policy or programme development with the aim of advancing gender equality. It refers to the skills, knowledge and analytical capability to develop statistics, data, policy, or programmes that are well-gendered; that take account of the socially constructed difference between men's and women's lives and experiences.

effectively implement ethical commissioning and procurement' must include a focus on gender and gender competence.

### **3.10 Regulation**

#### **Q73-86**

We are supportive of the setting of national care standards, which holds clear potential to help establish equality of care across the National Care Service. Clearly, it is also appropriate for this framework to be monitored independently of the NCS. For this potential to be realised the set of standards, core principles for regulation and scrutiny, the oversight bodies responsible for regulating them, and any market oversight function that is developed must be well gendered. This includes training to build gender competence and on equality mainstreaming for officials working across respective public bodies.

#### **Q73: Is there anything you would add to these core principles?**

We agree that a person-centred and human rights-based approach should be at the heart of the principles and guide their design. An explicit focus on equality should be added to this. National care standards that aim for a parity of provision across services and areas of Scotland should also be geared towards equality of access and provision for individuals. This cannot be achieved without an explicit focus on the forms of discrimination that marginalised groups experience in accessing health and social care, and on the intersectional needs of those with protected characteristics, including women.

We therefore recommend the following amendments and supplementary analysis guide finalisation of the draft principles and/or secondary materials that sit alongside them.

Number 1: Scrutiny and assurance should support human-rights based care **and equality of access to quality care**, focus on outcomes for people, and the positive impact community health and social care services are making to their lives, including the relationships that staff have with them.

Number 4: There should be a strong link between regulation of the workforce and their professional standards and the inspection and scrutiny of the services they work in.

- This should be linked to a gender analysis of the undervaluation of care and the paid workforce.

Number 5: Overall national scrutiny should involve the regulator working collaboratively, where possible with other professions and agencies and continue to be informed by lessons learned and good practice arising from the experience of the pandemic.

- This should include collaboration with equalities experts and be informed by the egregious rollback on women's equality and rights as a result of the pandemic.

Number 6: Regulation is fundamental to ensure a qualified and skilled social care workforce which enables employers to deliver high quality, responsive care and support **based on principles of equality and human rights**.

Number 7. Regulation is a key element in ensuring the safety of vulnerable people, ensuring high standards for practice, conduct, training and education across the workforce.

- Materials for this must be based on a gendered understanding of safety and of violence against women and girls as a cause and consequence of women's inequality.

Number 8: Scrutiny and assurance should aim to reduce inequalities **between people with protected characteristics, including women and men, and to eliminate discrimination**, and include an emphasis on people, prevention, partnership and performance.

- The current draft of this principle is too broad to have meaning for women and others who experience structural inequality when accessing social care support.

Number 9: Where possible, regulators should involve people in the development and delivery of scrutiny approaches and amplify the voice of people experiencing care.

- Within this scrupulous care should be taken to ensure a full diversity of women's voices are included,<sup>71</sup> including those of unpaid carers, and that these opportunities are accessible<sup>72</sup> and remunerated.

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<sup>71</sup> Black and minority ethnic, disabled, lesbian, bisexual, trans, older, younger, pregnant and rural women, women of different faiths, women with insecure immigration status, and unpaid carers all have specific experiences as a result of overlapping discrimination and inequality.

<sup>72</sup> Accessibility includes timings, venues and approaches that work for disabled people, carers, parents, women who have experienced gender-based violence, people of different faiths, people with ESL and others groups.

Number 10. ~~Where appropriate,~~ [S]crutiny and assurance should take account of legislative requirements, Scottish Government policy, national standards and codes of practice.

- These include the Public Sector Equality Duty, A fairer Scotland for women: gender pay gap action plan, Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls, and the Child Poverty Delivery Plan. The forthcoming incorporation of human rights law should also be taken into account.

### **Q76-77: Strengthening regulation and scrutiny of care services**

We are not in a position to comment on the detail of how powers to oversee care services should be enhanced. In principle, however, we are in favour of strengthened regulations. Our engagement with unpaid carers over many years is in line with findings from the IRASC and many other sources that standards of care are not of sufficient quality and consistency. Clearly a regulator empowered to enforce change could help to address this. As throughout this paper, it will be essential that proposals developed are subject to rigorous equality impact assessment from the outset, and that different groups of women with experience of receiving social care support, the unpaid carers who support them, and equalities experts are involved in the design of a new regulatory regime.

### **Valuing people who work in social care**

Work to tackle the chronic undervaluation of social care workers in Scotland cannot be understood without an intersectional gender analysis of the care economy. It is disappointing that this chapter of the consultation fails to make the crucial and causal link between 'women's work' and the neglect of the social care sector. As stated in the IRASC report:

"The social care workforce in Scotland is so notably disadvantaged because it is highly gendered. The sector is about 83% female. Were it 83% male, it simply would not be marginalised and undervalued as it is."

The undervaluation of care is not incidental but actively stems from and maintains women's inequality, poverty and poorer wellbeing. It also contributes to the invisibility of women's skills and emotional labour. The wages and status attached to social care are low because caring is seen as 'women's work', and sit alongside the provision of unpaid care that undermines women's access to (good) paid work, education and wellbeing. The presumption that care is a product of inherently

‘female’ traits and preferences continues to influence how we think care work should be assigned, and what it is worth.<sup>73</sup>

UNISON has noted that the staffing crisis has a direct impact on quality of care.<sup>74</sup> In turn, reduced quality in response to increased demand and inadequate spending are likely to have particular impacts on the women who are a majority of older and disabled people, as well having lesser resources to fund private care.

Assuming that gender and equality concerns would be embedded in the approach, we therefore welcome the focus on longer-term system change needed to support the workforce. Our comments here are also aimed at the more radical reforms that will be needed in order to achieve the transformation in how care is valued that we so urgently need. Valuing people who work in social care cannot happen without broader investment and reform across the care economy, including in terms of how it is perceived.

### **3.11 Fair work**

#### **Q87-90**

We are taken aback that the Fair Work section of the consultation document does not acknowledge the gendered profile of the social care workforce. Caring is seen as ‘women’s work’ and as such it is chronically undervalued. This is such a fundamental part of the problem that it must be made explicit in any policy response aimed at tackling the well-rehearsed issues within the sector. Work in this area must also be well linked to relevant initiatives across Scottish government, including the gender pay gap action plan and wider policy development regarding income inequality, access to social security, health and wellbeing, or issues for particular groups of women, including migrant women, Black and minoritised women and unpaid carers.

We are also surprised at the extent to which issues for the social care workforce are downplayed in comparison with context setting elsewhere in the consultation document. It is widely recognised that the sector is facing a staffing crisis due to poor pay and conditions, access to training and support, increasingly precarious forms of employment and, in the context of the pandemic, a lack of protection. This is in spite of the vital nature of social care support, and the responsibility and highly-skilled

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<sup>73</sup> Engender and Close the Gap (2020) Gender and Inclusive Growth. Available at: [https://www.engender.org.uk/content/publications/1591173199\\_Gender--Inclusive-Growth---Making-inclusive-growth-work-for-women-in-Scotland.pdf](https://www.engender.org.uk/content/publications/1591173199_Gender--Inclusive-Growth---Making-inclusive-growth-work-for-women-in-Scotland.pdf).

<sup>74</sup> Unison Scotland (2020) Health and Sport Committee Social Care Inquiry Submission From Unison Scotland. Available at: [https://yourviews.parliament.scot/health/social-care-inquiry/consultation/view\\_respondent?show\\_all\\_questions=0&sort=submitted&order=ascending&q\\_text=Unison&uuld=837194726](https://yourviews.parliament.scot/health/social-care-inquiry/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&q_text=Unison&uuld=837194726)



work inherent in its delivery. Nor does the framing for Fair Work recognise that ongoing challenges with recruitment and retention are likely to be exacerbated by Brexit, given the sector's reliance on migrant workers,<sup>75</sup> as well as older women,<sup>76</sup> or refer to impacts of the pandemic on the workforce.

### **Q88: What would make social care workers feel more valued in their role?**

#### Improved pay

Pay that reflects the social and economic contribution of quality preventative and early intervention care is essential. The recent announcement that wages of those on the lowest pay bands will be pegged to that of new NHS Band 2 staff – a pay rise from £9.50 to at least £10.02<sup>77</sup> - is welcome and builds on the previous Scottish Government and COSLA commitment to ensure that all workers receive at least the Real Living Wage. Monitoring work should now be undertaken to ascertain the extent to which this has been delivered. In 2019, the **average** hourly pay across the sector sat at only £9.79,<sup>78</sup> and as the UK entered the pandemic the median wage for social care workers sat below the UK Government's definition of the 'poverty line.' Many of the lowest paid workers are migrant women and women from Black and minoritised communities, who are not earning enough to qualify for Statutory Sick Pay.<sup>79</sup> However, we do not believe that a wage set just above the minimum needed to afford the most basic standard of living adequately reflects the work undertaken by those caring for our population. Engender has called for Scottish Government to explore a **£15 an hour minimum wage for social care workers**.<sup>80</sup>

The consultation document also identifies an issue with stagnating pay for higher pay grades, as a result of introducing the Real Living Wage for those on lower bands. Clearly, investment throughout the sector is needed, to ensure that career progression is both desirable and linked with a co-ordinated agenda to increase social perceptions around the value of care. We now need to see Scottish Government use public sector wage setting powers to address the underpay of the

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<sup>75</sup> Fair Work Convention (2019) Fair Work in Scotland's Social Care Sector 2019. Available at: <https://www.fairworkconvention.scot/our-report-on-fair-work-in-social-care/>.

<sup>76</sup> Scottish Social Services Council (2019) Scottish Social Service Sector: Report on 2018 Workforce Data. Available at: <https://data.sssc.uk.com/images/WDR/WDR2018.pdf>.

<sup>77</sup> Scottish Government (2021) Adult social care winter preparedness plan 2021-22. Available at: <https://www.gov.scot/publications/adult-social-care-winter-preparedness-plan-2021-22/>

<sup>78</sup> Fair Work Convention (2019) Fair Work in Scotland's Social Care Sector 2019. Available at: <https://www.fairworkconvention.scot/our-report-on-fair-work-in-social-care/>.

<sup>79</sup> WBG: <https://wbg.org.uk/blog/it-is-women-especially-low-paid-bame-migrant-women-putting-their-lives-on-the-line-to-deliver-vital-care/>

<sup>80</sup> Engender (2021) Vision for a feminist recovery: Engender manifesto for the Scottish Parliament election 2021. Available at: <https://www.engender.org.uk/content/publications/Vision-for-a-feminist-recovery---Engender-manifesto-for-the-Scottish-Parliament-Election-2021.pdf>

whole social care workforce. We support the IRASC recommendation that a mechanism for national sector level collective bargaining should be established.

Meanwhile, the gender pay gap in health and social care, which sits at 27.8%,<sup>81</sup> is significantly higher than the national figure of 10.4%<sup>82</sup> pointing at the need for concerted efforts to tackle vertical occupational segregation in the social care workforce. The annual Scottish Social Services Council Report on Workforce Data provides sex-disaggregated figures across subsectors, but not within its analysis of 'job functions' including managerial roles. A similar bulletin on the English social care workforce, however, indicates that whilst 83% of the workforce are women, only 67% of senior positions are occupied by women.<sup>83</sup>

### Terms and conditions and job precarity

More and more frequently women in social care are reliant on the workings of the so-called 'gig economy' with high rates of zero-hours contracts, and lower levels of protection and access to employment rights including sick pay.

With a period of sharp economic disruption on the horizon it is concerning that across the UK personal care services have experienced job losses second only to cleaning - another sector dominated by women.<sup>84</sup> Additionally, women providing care in home and clinical settings seem highly likely to be exposed to extended trauma as a consequence of managing, treating and caring for those with Covid-19, with lower levels of wellbeing during and after the pandemic is over.

Comprehensive action to provide women with job security and employment conditions that protect their rights is therefore urgently needed. Within development of the National Care Service, the Scottish Government should explore measures such as developing gender sensitive pay and grading systems and

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<sup>81</sup> Close the Gap (2020) Disproportionate Disruption: The Impact of Covid-19 on Women's Labour Market Equality. Available at: <https://www.closesthegap.org.uk/content/resources/Disproportionate-Disruption---The-impact-of-COVID-19-on-womens-labour-market-equality.pdf>.

<sup>82</sup> Close the Gap (2021) Close the Gap working paper 22: Gender pay gap statistics. Available at: <https://www.closesthegap.org.uk/content/resources/Working-Paper-22---Gender-Pay-Gap-Statistics-2021.pdf>

<sup>83</sup> Skills for care (2020) The state of the adult social care sector and workforce in England. Available at: <https://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/documents/State-of-the-adult-social-care-sector/The-state-of-the-adult-social-care-sector-and-workforce-2020.pdf>

<sup>84</sup> Abi Adams-Prassl et. al (2020) Inequality in the impact of the Coronavirus Shock: Evidence from real time surveys. University of Cambridge. Available at: <http://ftp.iza.org/dp13183.pdf>.

strengthening the right to flexible working<sup>85</sup> as part of its action to tackle the undervaluation of care and create a more gender-equal economy.<sup>86</sup>

### **3.12 Training and development**

#### **Q92-93**

Opportunities for training and professional development should be consistent across all areas of Scotland and provided at no cost to social care staff. At present, many care staff are required to organise and cover costs for their own training, feeding into systematic gendered barriers to employer training.<sup>87</sup>

Quality training, geared at improving standards of care, would have positive impacts on both the wellbeing and job satisfaction of the workforce, as well as for those receiving support and their carers. A significant programme of training and development, including on equalities and human rights issues, would support broader initiatives to change perceptions around social care support and to address the occupational segregation that drives current undervaluation of the sector. Along with improved pay, investment in appropriate workforce development could help to prevent current high levels of staff turnover, seeking to retain workers who can currently access jobs in other sectors for the same wages and considerably less responsibility. Such action would also build on commitments to advance women's labour market equality set out in the gender pay gap action plan.

Engender is not placed to comment on whether the National Care Service or another body should set training and development requirements, nor on how the training and development is provided. Wherever responsibility lies however, it is essential that opportunities are gender-sensitive, standardised for workers across Scotland, and accessible for all women, including the older women, migrant women and Black and minoritised women who form a significant part of the workforce.

## **4. CONCLUSION**

The establishment of a National Care Service must take account of women's lives and experiences if it is to succeed in improving outcomes for people in Scotland. Women

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<sup>85</sup> Close the Gap (2020) Close the Gap response to Scottish Labour's consultation on the National Care Service. Available at: <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-response-to-Scottish-Labour---National-Care-Service-August-2020.pdf>.

<sup>86</sup> Engender and Close the Gap (2020) Gender & economic recovery. Available at: <https://www.engender.org.uk/content/publications/Gender--Economic-Recovery---Engender-and-Close-the-Gap.pdf>.

<sup>87</sup> Close the Gap (2020) Close the Gap submission to the Independent Review of Adult Social Care. Available at: <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-Independent-Review-of-Adult-Social-Care.pdf>

are the majority of those receiving social care support, the majority of unpaid carers – especially those providing the most intensive forms of care<sup>88</sup> - and the vast majority of the paid social care workforce. It is essential that this profoundly gendered profile of care is explicitly recognised as the reason that social care is chronically undervalued in Scotland, both culturally and economically. **We agree with the Independent Review of Adult Social Care report – if the tables were turned and 83% of the workforce were men, “it simply would not be marginalised and undervalued as it is”. This conclusion can be applied more broadly to the whole system of social care support.**

Tackling this gendered undervaluation should be at the heart of the National Care Service, including realistic conversations about funding. Engender supports the ambitions for a person-centred and human rights-based approach to social care support that are outlined in the consultation. Further to this, we advocate for a social care system that is based on the principles of universality, and choice and control. Quality care must be universally accessible and free at the point of need, and individuals must be able to exercise autonomy and be afforded flexibility in meeting their needs.

As recommended by the IRASC, it is also crucial that equality is embedded as a key principle and objective in founding the National Care Service. Intersectional gender mainstreaming will be critical in creating a system of social care support that works for different groups of women, and in the revaluation of care work and skills to create better conditions for both paid and unpaid carers. Black and minority ethnic, disabled, lesbian, bisexual, trans, older, younger, pregnant and rural women, women of different faiths, women with insecure immigration status, and unpaid carers all have specific experiences of the social care support system, as a result of overlapping discrimination and inequality. These must be centralised in the reform of structures and services, or else it will not be possible to deliver the human rights-based and person-centred care that has been pledged.

**Given the profoundly gendered profile of care and social care support, it is extremely disappointing that this consultation is entirely gender blind.** This is in contrast with the IRASC report, which found that “equality – and inequality – were raised with us again and again”, and the Fair Work Convention strand on social care, and offers little reassurance that reforms will deliver meaningful change for women as staff, users of social care and carers. Ongoing development must expressly adopt a

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<sup>88</sup> Women are much more likely to hold multiple caring roles, to provide care for more than 35 hours a week, to juggle unpaid care with low-paid employment, and to claim social security for carers.

strategic focus on gender at all levels, including gender-competent design and governance, and meaningful consultation with women with lived experience of the system and experts in gender and care. This will ensure that the National Care Service is capable of delivering equality of access to person-centred care and that this crucially important agenda is in step with wider Scottish Government strategies to advance women's equality and human rights.

#### **FOR FURTHER INFORMATION**

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#### **ABOUT US**

Engender is Scotland's feminist policy and advocacy organisation, working to increase women's social, political and economic equality, enable women's rights, and make visible the impact of sexism on women and wider society. We work at Scottish, UK and international level to produce research, analysis, and recommendations for intersectional feminist legislation and programmes.