

## SUBMISSION FROM UNISON SCOTLAND

### **Introduction:**

UNISON Scotland has over 160,000 members in Scotland, Our members are people working in the public services, for private contractors providing public services and in the essential utilities. They include staff and managers, working full or part time in local authorities, the NHS, the police service, colleges and schools, the electricity, gas and water industries, transport and the voluntary sector. Over 70% of our members are women; many are low paid or work part time.

UNISON Scotland welcomes the opportunity to respond to this inquiry.

Our response is based on evidence we have gathered to date, based on feedback from members; Freedom of Information requests; long term campaigns such as equal pay; collective bargaining and data gathered on a day to day basis.

### **Workforce Issues:**

#### **Flexible Working:**

The introduction of the Flexible Working Regulations in 2002 was designed to allow new parents and existing parents the legal right to request more flexibility in their working hours.

The business case for flexible working arrangements enabled employers to retain skilled staff and reduce recruitment costs, to decrease absenteeism, and to be more effective at reacting to changing market conditions. At the same time it has helped workers achieve a better work-life balance.

It is important to remember that there is only a **right** to apply for flexible working, and not a right to flexible working, so getting it implemented relies on negotiation and the employer accepting the benefits it will bring to their organisation.

The biggest problem with the current Flexible Working Regulations is that they currently give employers the right to refuse on the following grounds:

- a) burden of additional costs
- b) detrimental effect on ability to meet customer demand
- c) inability to re-organise work around existing staff
- d) inability to recruit additional staff
- e) detrimental impact on quality
- f) detrimental impact on performance
- g) insufficiency of work during the periods the employee proposes to work
- h) planned structural changes

Many of our members reported that they were having requests to work flexibly refused. Consequently, UNISON undertook a Freedom of Information request to try and establish a clearer picture of what was happening.

.Whilst we are still assessing the information submitted, the initial findings suggest that the picture is patchy. There appears to be no consistent pattern of recording requests and refusals. Disappointingly, no health authority was able to provide any data on the grounds that requests are dealt with at local level and therefore only recorded locally and also due to the number of variable working arrangements which makes recording difficult.

Whilst UNISON has some sympathy with the challenges of recording such information, we, nevertheless, believe that establishing robust recording systems can only contribute positively to the requirement of public authorities in relation to their duty to publish equality outcomes and report on progress as required under the The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 No. 162.

The UK Regulations promote equality of opportunity in the work place by allowing predominantly women to maintain employment while meeting their caring responsibilities. Therefore the Scottish Parliament should look for evidence of public sector employers accommodating flexible working as a way of meeting their equality duty. They can only do that by demonstrating their response to requests, either under the regulations or otherwise.

In preparing this response, UNISON would refer the Committee to a comparative review prepared by the Institute for Women's Policy Research for the Equality and Human Rights Commission (EHRC) in 2008.

[http://www.equalityhumanrights.com/uploaded\\_files/research/16\\_flexibleworking.pdf](http://www.equalityhumanrights.com/uploaded_files/research/16_flexibleworking.pdf)

The Institute was asked to examine the impact of the UK 'Right to Request, and Duty to Consider, Flexible Working' on gender equality and the access to quality flexible working for both men and women. It was asked specifically to compare this with the impact of flexible working statutes in other countries. Of particular interest are the experiences of countries such as Belgium, France, Germany and the Netherlands where flexible working rights are open to all employees and are not, as in the UK, targeted at employees with childcare or care-giving responsibilities.

In her conclusions, the author makes reference to the fact that her comprehensive study was hampered by the lack of research in relation to the consequences of refused requests, a more detailed analysis of reasons for rejections by gender, the seniority and pay consequences of accepted requests, and requests for increased working hours, unlike in Germany and the Netherlands where such data is available.

There is no data on the consequences of refused requests for flexible working, either for men or women. A Dutch survey found that following a refusal, three-quarters of employees left their job, and a fifth of those who stayed, performed worse. Likewise, there is little data on the consequences of a successful request (or indeed an

unsuccessful one) in terms of level of seniority, career advancement, job content or pay.

### **Shift Working:**

1. Many public authorities could not function without the need for shift working. People working in the “personal services” employee group are the most likely to work shifts. Over a third of employees in this group are shiftworkers. Many of them work as care assistants, homecarers or nursing auxiliaries and assistants.

Almost a quarter of women (24%) working in the “associate professional and technical services” employee group work shifts, almost two thirds of whom are nurses. Manual workers are far more likely to work shifts than non-manual employees.

For many women, shift work represents an opportunity to work and organise caring responsibilities. Whilst for many this is an option for work life balance, it should not be seen as a substitute for other acceptable alternatives such as comprehensive childcare and other flexible work arrangements.

Single status terms and conditions have eroded the right to shift premia and have lengthened the standard working day, thereby cutting unsocial hours allowances. These measures have led to a double wage cut for some women. In addition, we have experienced the situation where the employer compensates men for changes in shift patterns, but expects women to be 'flexible.'(Renfrewshire Council changing from 5 in 7 to 4 on 4 off working pattern. We need to call for employers to equality impact assess proposed changes to terms and conditions and avoid further discriminating against low paid women.

Another factor that affects women shift workers is the rise of a move to annualised hours and zero hours contracts amongst home carers.

In addition many homecare workers are only paid for client contact time, they are not paid for travel time between clients. This arrangement is more and more common place and puts a great strain on service delivery.

A number of reports from client organisations, consumer groups, and homecare providers have recently been produced which have been highly critical of the state of homecare services in the UK. Little consideration however has been given to the views of homecare workers themselves as to why there are so many problems in this sector.

UNISON conducted a national (UK) survey of homecare workers entitled “Time to Care” to help address this imbalance and to illustrate the reality of homecare work. The online survey which was open to homecare workers who were either UNISON members or non-members attracted 431 responses between June and July of 2012.

The responses showed a committed but poorly paid and treated workforce which is doing its best to maintain good levels of quality care in a system that is in crisis. The report highlights how poor terms and conditions for workers can help

contribute towards lower standards of care for people in receipt of homecare services.

In light of UNISON's findings, we are calling for councils to commit to becoming Ethical Care Councils by commissioning homecare services which adhere our Ethical Care Charter. <http://www.unison.org.uk/acrobat/21049.pdf>

We would strongly urge the Committee to call on the Scottish Government to ensure all Scottish Local Authorities sign up to the Charter.

2. The Scottish Government also needs to take into account the growing number of reports outlining potential health risks associated with shift work. According to a report in Personnel Today, produced in 2011, the Government is being urged to limit the length of night shifts to eight hours, after a study warned that a growing number of people working through the night face increased health risks.

Working at night potentially exposed staff to greater risk of cancer, pregnancy problems and poor mental health, which links to social and family life being disrupted, according to the "social innovation" think tank the [Young Foundation](#).

### **Childcare:**

UNISON believes that we need a mixture of high quality care and education for all children from birth to school age, childcare provided by trained and valued staff; in a way that suits the working lives and pockets of parents.

Free childcare could boost the economy and support families to lift themselves out of poverty according to a report by the IPPR *Making the Case for Universal Childcare*. This long-standing UNISON policy could pay for itself through the increased tax income from more mothers working.

Making childcare free at the point of use would make sense for families. What the IPPR research shows is that it also makes sense for the public finances. They calculate that universal childcare would bring a net return to the government of £20,050 over four years for every woman who returned to work after one year of maternity leave.

UNISON Scotland agrees that the earliest years of life are crucial to a child's development and that universal public services are the key to supporting children's development and supporting those children most at risk of not achieving their true potential. It is the delivery of the framework, the funding available and the development of the skills of staff and their terms and conditions that will be the key to achieving these laudable aims.

### **Equal Pay and Occupational Segregation:**

UNISON has been pursuing mass litigation for local government workers for the last eight years and reports regularly to Parliament on the progress of these claims. While some responsible authorities have paid compensation, a significant proportion are seeking to evade liability by arguing that women can only compare pay rates with colleagues actually employed at their workplace, or with male colleagues who would retain their preferential benefits in the hypothetical event of them being re-located to

the claimant's workplace. Many claimants are employed at gender segregated workplaces where few, if any, men are employed.

In practical terms this requires our legal team to engage in bizarre and surreal debates where appeal court judges assess whether, for example, a refuse collector would still receive his bonus if he were relocated from a depot to a nursery. This charade has continued for eight years and will finally be resolved in the UK Supreme Court in May 2013 when the court hears the UNISON appeal in *North v Dumfries and Galloway*.

It is clear from numerous decisions of the European Court of Justice, the Court of Session and the Employment Appeal Tribunal in Edinburgh that women employed by local authorities can pursue claims based on comparison with any male colleague, regardless of their work location. In fact, the nature of occupational segregation is such that equal pay law would be rendered useless if women in female dominated workplaces could only seek equality within workplaces where no men are actually employed. Only social attitudes to work will reduce the physical segregation of women and men, but equal pay law will only tackle the pay inequality linked to segregation if pay comparisons are permitted to transcend the physical boundaries of workplace segregation.

Members of the Scottish Parliament might recall that Holyrood's Local Government Committee (2006 and 2009) and the Equal Opportunities Committee (2009 and 2010) have addressed this issue directly and repeatedly instructed local authorities to expedite the settlement of these claims. The trade unions remain open to negotiation to promote early settlement of claims but comprehensive settlement remains elusive.

The refusal of some employers to respond to settlement offers recently drew stinging criticism from the Court of Appeal in England. This begs one important question, why do Scottish Councils pursue this strategy in the face of heavy judicial criticism and in defiance of the Scottish Parliament? The answer appears to be a deliberate intention to discriminate. The employer's position before the Supreme Court is founded directly on the extreme gender segregation of certain public sector jobs.

Furthermore, the council's defence seeks to fossilise the pay inequality linked to segregation by restricting the claims of women to locations where men don't work.

It is important to note the council is not denying the existence of a pay gap between male and female employees in Dumfries. Nor are they trying to justify that pay difference by reference to business needs that are not tainted with discrimination. Those defences have been tested and failed in other claims. In *North v Dumfries* the employer is relying on the existence of female-dominated work and to use that segregation to block the application of equal pay law.

The EHRC intervened in the case and argued that, given the gender segregated nature of the labour market across public, private and voluntary sectors, the Dumfries and Galloway position risks substantial damage to the equal pay rights of women throughout the UK.

It is hard to see how this legal strategy complies with the Public Sector Duty to promote equality and eliminate discrimination as required by the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, adopted by this committee in May 2012. Enforcement of this duty rests with the Equality and Human Rights Commission and we would encourage the committee to hear evidence from the Commission on this point. A failure to have due regard to the promotion of gender equality is also a potential breach of the Local Government Scotland Act 2003 and might be an issue the committee would wish to receive evidence on from the local authorities pursuing this strategy. If, having heard the council's position, the committee had concerns in relation to the equality duty within the 2003 Act it would be open to the committee to raise the matter with the Accounts Commission via the Controller of Audit.

### **Post Single Status**

The position of council workers following the implementation of Single Status could best be described as unclear. In the absence of collective agreement on Single Status pay systems, revised terms were imposed on workers in the overwhelming majority of Scottish Councils.

The revised pay system in Glasgow is the subject of a long running investigation by the EHRC. The inquiry was triggered by concerns over the impact on Classroom Assistants and it is likely that this investigation will have a bearing on the future pay of many women in gender segregated jobs.

The revised Glasgow pay system is also being challenged at Employment Tribunal by UNISON. The "family" of Arms Length Companies and Trusts that deliver Glasgow services is heavily gender segregated and UNISON believes that this segregation, and the desire to block equal pay claims influenced the decision to adopt this method of service delivery. However, UNISON has succeeded with a legal challenge to the Glasgow "family" and re-established the right of Glasgow workers to compare wages across the segregation within the ALEO system.

UNISON is also pursuing a direct challenge to the revised pay system or Workforce Pay and Benefits Review on the basis that it is "discriminatory or otherwise unsuitable" as defined by equal pay law. A preliminary hearing on this point has been adjourned after 27 days of evidence, with more than 30 days of hearings still to come.

UNISON is also challenging the Single Status arrangements in South Lanarkshire on the basis that the measurement of jobs and the progression through long pay scales is "discriminatory or otherwise unsuitable".

In autumn 2009 the EHRC wrote to local government employers expressing concern over the single status outcomes in councils using the Scottish Job Evaluation Scheme (JES). In response, the employers agreed to conduct a comprehensive review of the Scheme. UNISON has representatives on a working group tasked with reviewing the 2002 scheme. Terms of reference have been jointly agreed and we await the findings of the analysis of the application and impact of the scheme.

Given the age of the Single Status Agreement (1999); the delay in implementation; the volume and cost of litigation and the numerous interventions by committees of the Scottish Parliament it would be safe to say that local government workers are losing faith in the ability or willingness of the entire equality apparatus to deliver the basic entitlement to equal treatment at work.

### **Conclusion:**

UNISON Scotland welcomes the Scottish Government's initiative of launching, in partnership with the STUC, the Women's Employment Summit in September 2012. We also welcome the opportunity to contribute to this enquiry.

As recognised by the Government and many economists, women's participation in the labour market contributes significantly to the Scottish economy. Nevertheless, that participation can only become economically successful if the current obstacles that prevent a real and positive contribution are removed.

Many of the points we have raised in this submission are ones that we have made over the past ten years to the committee. The fact that we are still making them and raising significant concerns tends to reinforce our view that women's inequality is no further forward than when the Parliament opened in 1999. If anything, we have seen retrograde steps that have significantly worsened the position of women in employment.

The committee should also not assume that being an employee in the public services is a guarantee of good pay and conditions.

UNISON appreciates the time and interest devoted to the issue of equal pay over recent years. However, we are keen to discuss how we move from a shared concern to a process where the committee uses its power and influence to effect change and convert the rhetoric of equality into money for underpaid women

We would, therefore, argue that the following steps are required to address the current imbalance that continues to discriminate against women in the workplace and in accessing the labour market:-

- Establish through comprehensive research the current obstacles to flexible working;
- Free and comprehensive childcare;
- Addressing the universal health concerns relating to women and shift working;
- Take steps to ensure that **ALL** public authorities meet their obligations under the Equal Pay provisions of the Equality Act 2010;
- Take steps to ensure that all public authorities have in place robust recording systems in order to fulfil their obligations under the The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 No. 162.

- Call for employers to equality impact assess proposed changes to terms and conditions and avoid further discriminating against low paid women.

Mike J Kirby  
Scottish Secretary  
UNISON Scotland,  
7 February 2013