



Unite submission to the Department of Health and Social Care consultation - Fair pay agreement process in adult social care

Unite the Union is the largest trade union in the United Kingdom and Ireland, representing over 1.1 million members across both the private and public sectors. Our membership includes approximately 80,000 workers who are directly employed by local authorities or deliver services funded by local government. Additionally, a further 50,000 of our members work in the voluntary and community sectors, where many organisations are heavily involved with social care including in housing associations, hospices, drug and alcohol services, mental health and elderly care. Many rely heavily on local authority contracts and grants to function.

Consultation questions

- **ABOUT YOU**

What type of organisation are you responding on behalf of?

Trade Union

What is the name of your organisation?

Unite the union

Where does your organisation operate or provide services?

The whole of England, Wales, Scotland, Northern Ireland, Outside the UK (Republic of Ireland, Gibraltar, Channel Isles, Isle of Man)

● **ADULT SOCIAL CARE NEGOTIATING BODY**

To help negotiations go smoothly, the ASC Negotiating Body will need a secretariat function.

There are 2 options for how this secretariat function could be delivered:

- **option 1:** *staffed by civil servants seconded into the ASC Negotiating Body (if it is established as a non-departmental public body, as proposed). If the ASC Negotiating Body is an expert committee, it will be staffed by civil servants within the Department of Health and Social Care (DHSC)*
- **option 2:** *contracted out to an external delivery partner. This would involve a regular procurement exercise, where organisations could bid for the secretariat contract. The successful organisation would be accountable to the department through a contract management relationship. If we establish an advisory non-departmental public body, there will still need to be a small number of civil servants involved to oversee this operation*

Which option for delivering the secretariat function do you believe is best suited to the fair pay agreement process?

Unite support Option 1 - delivered by civil servants

Please explain your position and provide any supporting evidence. (Optional, maximum 250 words)

Unite believes that it is vitally important that the secretariat is delivered by the public sector and has a cross civil service relationship and oversight. For the ASC to function there must be strong links with the EHRC, the Low Pay Commission, HMRC and the Fair Work Agency, as well as local government and other enforcement bodies (e.g. Gangmasters and Labour Abuse Authority and the HSC). There must also be a role for appropriate devolved administrations.

If the ASC is to set in place nationally agreed rates of pay, terms and conditions within the social care sector there must be effective enforcement processes in place.

Option 2 would be a costly and bureaucratic process, bringing in unnecessary waste and potentially conflicts of interest to the process. It is also against the spirit of the ASC for those who are employed to administer the framework to be outsourced from the civil service and their respective terms and conditions.

We are proposing to establish the ASC Negotiating Body as a non-departmental public body, operating at arm's length from DHSC, overseen by an independent chair and supported by a secretariat function.

If you have further comments on the proposed approach to establishing the ASC Negotiating Body, please include them here. (Optional, maximum 250 words)

Unite membership embraces members throughout the public, private and not for profit sectors, including those working in care homes; supported housing and housing associations; Drugs and Alcohol services, charities, hospices, mental health services in adult social care and children's social service. While they work in different settings many of the structural problems within the system are common across all types of providers.

Unite has long called for the introduction of a national sector collective bargaining framework for Social Care so that the voices of all workers in health and social care can be heard and respected. Collective bargaining provides a mechanism for negotiating sector standards of pay, pensions, terms and conditions, ensuring a fairer share of productivity gains, better pay and terms and conditions and working practices.

Collective bargaining between employers and trade unions is the tried and tested way to deliver fair and equitable outcomes for all involved.

The social care sector is facing a deepening financial crisis, particularly since 2010, as sustained cuts to local government funding and increased demand have sharply reduced available resources. This funding squeeze has left providers unable to recruit and retain staff, contributing to a severe workforce shortage and increasing reliance on overseas workers, often working under insecure conditions.

Unite therefore welcomes the introduction of the national Fair Pay agreement for the sector. Unite cautions however that so far the funding pledged is insufficient. Any agreement must be properly funded in order to meet the high aspirations of the sector and be supported with real enforcement teeth and union access to deliver real change.

- **REPRESENTATION ON THE ASC NEGOTIATING BODY**

- **Worker representation**

The section 'worker representation' in the consultation document outlines a proposal developed by the Trades Union Congress, working with partner unions, for how workers could be represented in negotiations.

We propose that UNISON, GMB, Unite and the Royal College of Nursing, working with the Trades Union Congress as the convener, will form an adult social care fair pay agreements trade union group. This group will represent workers on the ASC Negotiating Body and will manage how worker representatives are co-ordinated and selected.

Do you agree or disagree with this proposal?

Strongly agree

Please explain your position and provide any supporting evidence. (Optional, maximum 250 words)

As the recognised social partner, the TUC is the appropriate body to manage this group. As the legitimate representative body for unions representing social care workers it should agree within its affiliate trade unions who will be on the negotiating body.

Unite is concerned that unscrupulous employers may seek to undermine this legislation by setting up bogus representative bodies in order to weaken protections for social care workers.

○ **Employer representation**

The consultation document outlines our proposal for employer representatives on the ASC Negotiating Body, including how representatives could be co-ordinated and selected.

Do you agree or disagree with our proposal for co-ordinating and selecting employer representatives?

Neither agree nor disagree

Please explain your position and provide any supporting evidence. (Optional, maximum 250 words)

This is not an issue for Unite the union as a worker representative organisation. It is up to the employers' side to decide who represents them in the ASC negotiating body.

○ **Role of local government**

The section 'the role of local government' in the consultation document proposes a package of measures to ensure local government has a strong role in the negotiation process. This includes the following:

- *specifying within the remit letter that the ASC Negotiating Body must consult with local government and consider their views*
- *building the role of local government into the terms of reference for the ASC Negotiating Body and the roles and responsibilities of the chair*
- *local government representatives will be able to provide the Secretary of State with a written assessment of the proposed fair pay agreement, which the Secretary of State must give due regard to when deciding whether to ratify an agreement*

Do you agree or disagree with our proposed approach for involving local government in the fair pay agreements process?

Agree

Please explain your position and provide any supporting evidence. If there are other ways you think that local government should be involved, please also state that here. (Optional, maximum 250 words)

While it is crucial that funders like local government and the NHS should have an input into the negotiations that input must come before the negotiations begin. Evidence of the funding available, future needs of the service and other developments should be included before negotiations begin to inform the discussions.

It is crucial though that there should be no veto on the outcome of those negotiations from funding bodies.

- **Other organisations**

Do you think that there are any other organisations who should be members of the ASC Negotiating Body, in addition to the proposed worker and employer representatives?

No

- **Others' interests**

How should the interests of people who pay for their own care be considered as part of the negotiation process? (Optional, maximum 250 words)

Unite believes that the ASC should be set up with a workers' side represented through their trade unions and employers' side as agreed by the employers (see above).

Other interested parties should be able to write to the ASC to provide evidence before negotiations where appropriate. This evidence can then be discussed during negotiations. This is particularly true for social care advocacy charities (e.g. Age UK), service users, funding and commissioning bodies (e.g. NHS commissioners).

There should be scope within this for care users to submit evidence to the ASC prior to negotiations. It maybe that in this case such users would be well served to have a representative advocacy body they can feed their views in through.

How should the interests of NHS commissioners be considered as part of the negotiation process? (Optional, maximum 250 words)

As above, Unite believes that NHS commissioners should be able to feed in evidence to the ASC prior to the negotiations beginning.

There may be scope for seminars to be set up in advance of negotiations in the same way that happens within the JNCHES negotiations to scope out challenges for the sector. Such initiatives should be agreed by the ASC negotiating body once it has been set up.

- **Membership criteria**

Are there any specific criteria that you think the Secretary of State for Health and Social Care should consider when appointing members to the ASC Negotiating Body?

Yes

Please explain your position and provide any supporting evidence. If you answered 'yes', please also state the criteria you think should be considered. (Optional, maximum 250 words)

Unite believes that all members of the ASC Negotiating Body must be either legitimate representatives of workers through their trade unions (coordinated through the TUC) or social care employers with the authority to act on behalf of their representative employer organisations.

It is vitally important that any chair has the confidence of both sides.

There should also be due regard for diversity on the ASC negotiating body to make sure it is representative of this diverse sector.

The Secretary of State should set a process in place whereby the Employers and TUC decide who their sides are represented by. Particularly for the trade union side there should be some flexibility. Representation must be based on allocated seats for representative trade unions rather than specific named persons as particularly lay members circumstances may change along with their employment. The TUC must be empowered to convene this group to make sure that lay worker representatives are involved through their respective trade unions.

- **Negotiation process**

This section considers how the negotiation process could work. It proposes an approach and seeks feedback on whether this will help negotiations be successful.

- **How the negotiations would start**

The section 'How negotiations would start' in the consultation document outlines a proposal that the Secretary of State for Health and Social Care would issue a formal 'remit letter' to the ASC Negotiating Body to commence each cycle of negotiations. We propose that this letter sets out:

- *any priority areas that the government would like to be considered, which could include specific roles, or areas of pay or certain terms and conditions*
- *any other factors that the ASC Negotiating Body should consider, or conditions the agreement must meet. This includes specifying the amount of funding available for that round of negotiations, which the ASC Negotiating Body will need to work within*

- *the timelines by which the ASC Negotiating Body should aim to reach an agreement and submit this to the Secretary of State for Health and Social Care*

Is there anything else that you think a letter from the Secretary of State should set out?

Yes

Please explain your position and provide any supporting evidence. (Optional, maximum 250 words)

Unite believes that the letter must include an implementation date on the remit to avoid any lack of clarity that could undermine the process.

There should be no limits on the scope for negotiations. Any letter from the Secretary of State should only serve to highlight issues that the government believe need attention. Negotiations must not be dependent on these letters as this can put unhelpful political delays and obstacles into the negotiation process (as currently happens within pay review body process in other sectors).

Any Secretary of State letter should enable wide ranging and meaningful negotiations and there must be long term and sustainable funding in place to enable the ASC to deliver real positive change in the sector.

○ **How negotiations would work**

The section 'how negotiations would work' in the consultation document outlines the proposed negotiation process.

Do you agree or disagree with our proposal for how negotiations will work?

Strongly agree

Please explain your position and provide any supporting evidence. (Optional, maximum 250 words)

Unite believes that there must be wide ranging and meaningful negotiations on all terms and conditions that affect social care workers. There must be long term and sustainable funding in place to enable the ASC to deliver real positive change in the sector.

○ **How the ASC Negotiating Body reaches a decision**

The section 'how the negotiating body reaches a decision' in the consultation document outlines the proposed decision-making process.

Do you agree or disagree with our proposal that each of the bargaining sides manages their own voting system, with a requirement that each side simply informs the chair whether they can support a proposed settlement?

Strongly agree

Please explain your position and provide any supporting evidence. (Optional, maximum 250 words)

It is up to the Trade union side to manage their own voting system with a timeline that enables unions to consult members on a proposed settlement. The TUC has over a century of experience managing such activities and that experience should be respected and utilised.

○ **Timelines**

The section 'timelines' in the consultation document outlines the proposed timelines for the negotiating process.

Do you think 6 months is enough time for an agreement to be reached in negotiations?

Yes

Please explain your position and provide any supporting evidence. (Optional, maximum 250 words)

Unite believes that six months is a reasonable time period to deliver and manage changes. This will become easier once the ASC has embedded and employers and workers become more familiar with and used to the process. For that reason, Unite believes that there could be more flexibility in the first round of negotiations while the processes are bedded in.

Do you think 6 months is enough time for the sector to prepare for implementation of the pay agreement?

Yes

Please explain your position and provide any supporting information on what would be needed to make this possible. (Optional, maximum 250 words)

The key issue here is for bargaining timelines to fit neatly in with those of social care commissioners. Unite understands the budgets are usually set in December through to April – following the Autumn budget statements from central government.

Unite believes that, with the right will from negotiating parties, multi-year agreements could become an option. It's important that the remit from the Secretary of State does not limit this option should it be appropriate.

● **Coverage and remit**

This section seeks views on different areas of pay, terms and conditions, and wider employment policies. It also seeks views on who (what type of job roles, services and settings) the ASC Negotiating Body should cover.

- **Checking whether a worker falls within coverage of the ASC Negotiating Body**

It is the responsibility of the employer to check whether the majority of their workers' (or agency workers') time is spent on activities related to adult social care.

We think in most cases it will be straightforward to check. However, we understand that employers of workers in adult social care may sometimes find it difficult to check whether their worker fits within the definition of an adult social care worker, particularly if they work across different care settings or sectors such as education, health or children's social care.

Are there any roles, either in your organisation or that you employ, that you are concerned do not fit within the definition of an adult social care worker and would not be within coverage of the ASC Negotiating Body?

No

How can DHSC support you or your organisation to determine whether your workers will be within coverage of the ASC Negotiating Body? (Optional, maximum 250 words)

There must be strong statutory guidance that sets out criteria for coverage. Unite believes that any worker who works the majority of their time in a social care setting should be covered by this ASC agreement. As the ASC will largely be setting minimum standard conditions this will only be an issue for workers that feel they are not being treated fairly by their employers.

It is crucial that those groups that are currently the most vulnerable are included in this process. Specifically self-employed, personal assistants, shared lives, foster carers and domestic workers who are often currently the most exploited workers within the UK economy.

It is also important that there is clarity for any scenarios where cliff edges appear between agreements. For example, as in local government and the NHS, the existence of different pay scales in different UK nations has the potential to create cliff edges should those terms and conditions differ significantly.

Unscrupulous employers could exploit this situation to choose to pay the lower of the two agreements unless there is a consistent approach. The terms and conditions must therefore follow the work. There should never be a situation where a worker is working alongside a colleague that is on different terms and conditions due to the country they live in.

- **Excluded sections of the workforce**

The section on 'Excluded sections of the workforce' in the consultation document looks at which roles in the workforce should be included in the scope of the ASC Negotiating Body. We are seeking views on whether this

should include all adult social care workers or be limited to specific roles or professions, and whether any roles should be excluded from the ASC Negotiating Body's coverage.

Are there any settings, services or roles that you think should be excluded from the ASC Negotiating Body's coverage?

No

Are there any other settings, services or roles that you think should be included within the ASC Negotiating Body's coverage that have not been mentioned?

Yes

If you answered 'yes', please explain who should be in coverage and why. (Optional, maximum 250 words)

Unite believes that any worker who works the majority of their time in a social care setting should be covered by this ASC agreement.

Everyone and every relevant setting must be included to prevent loopholes or incentives to redirect work or outsource further in the sector. There must not be any carve-outs for certain categories or employers from the legislation similar to annex 1 definitions within Agenda for Change.

It is crucial that all workers are covered, especially those groups that are currently the most vulnerable are included in this process. Specifically self-employed, personal assistants, shared lives, foster carers and domestic workers who are often currently the most exploited workers within the UK economy.

It is also important that there is clarity for any scenarios where cliff edges appear between agreements. For example, as in local government and the NHS, the existence of different pay scales in different UK nations has the potential to create cliff edges should those terms and conditions differ significantly.

Unscrupulous employers could exploit this situation to choose to pay the lower of the two agreements unless there is a consistent approach. The terms and conditions must therefore follow the work. There should never be a situation where a worker is working alongside a colleague that is on different terms and conditions due to the country they live in.

Please share any thoughts on whether the ASC Negotiating Body could affect those that are self-employed or working under informal arrangements. (Optional, maximum 250 words)

It is crucial that self-employed workers are also covered by this agreement. If they were not covered there is a very real risk that employers will push increasing numbers of workers into self-employment to circumvent the ASC. This will likely create further

exploitation, greater bogus self-employment, tax avoidance and undermine the spirit and practice of the ASC.

- **AREAS OF THE WORKFORCE TO NOTE**

The government's policy intention is to unite the adult social care workforce by giving this fragmented sector a much-needed national infrastructure, providing the opportunity to standardise existing best practice and formalise routes for the workforce to access better pay, terms and conditions, and career and development opportunities.

However, it may not be appropriate for the ASC Negotiating Body to cover some areas of the workforce because of unique factors. Here, we are seeking views on whether adult social care workers employed directly by local authorities or the NHS should be covered by the ASC Negotiating Body.

Do you agree or disagree that workers covered by the National Joint Council should be in the ASC Negotiating Body's coverage?

This question is specifically in relation to adult social care workers employed by local government.

Neither agree nor disagree

Please explain your position and provide any supporting evidence. (Optional, maximum 250 words)

Unite believes that it is important that the ASC does not create cliff-edges or bogus incentives to outsource or undermine current national collective agreements. For this reason, Unite believes that workers currently covered by the NJC agreement could potentially be covered by the ASC, but we would not support this happening in the first instance.

Any change to workers terms and conditions needs to be covered by strengthened TUPE plus arrangements, the implementation of a robust two-tier code and enforcement against employers that seek to outsource workers in order to undermine the collective agreement.

The ASC should pay close regard to the other collective agreements currently closest to the sector (i.e. the NJC and the Agenda for Change agreement) so as to avoid these scenarios.

Once functioning the ASC could look closely at how to interact with these other national agreements in order to support careers development and portability of workers across the various sectors.

Do you agree or disagree that workers covered by the Agenda for Change contract should be in the ASC Negotiating Body's coverage?

This question is specifically in relation to adult social care workers employed by the NHS.

Neither agree nor disagree

Please explain your position and provide any supporting evidence. (Optional, maximum 250 words)

It is important that the ASC does not create cliff edges or bogus incentives to outsource or undermine current national collective agreements. For this reason, Unite believes that while workers currently covered by the AfC could potentially be covered by the ASC, we would not support this happening in the first instance.

Any change to workers terms and conditions needs to be covered by strengthened TUPE plus arrangements, the implementation of a robust two-tier code and enforcement against employers that seek to outsource workers in order to undermine the collective agreement.

The ASC should pay strong regard to the other collective agreements currently closest to the sector (i.e. the NJC and the Agenda for Change agreement) so as to avoid these scenarios.

Once functioning the ASC could look closely at how to interact with these other national agreements in order to support careers development and portability of workers across the various sectors.

● **Informing the remit of the ASC Negotiating Body**

The Employment Rights Bill sets a remit for the ASC Negotiating Body to negotiate matters that relate to:

- *the remuneration (pay) of adult social care workers*
- *the terms and conditions of employment of adult social care workers*
- *any other matter related to employment of an adult social care worker, which must be specified in regulations*

This section of the consultation seeks views on different elements of pay and terms and conditions, as well as other employment policies (such as training and development, policies on people and culture, and additional benefits and financial incentives) that could be part of the ASC Negotiating Body's remit.

Pay priorities

Low pay is a contributing factor to poor domestic recruitment and retention. By improving pay, we can support the delivery of high-quality care for people, leading to a more skilled, experienced and productive workforce.

We have set out a more up-to-date assessment of possible fair pay agreement settlements and outcomes in the impact assessment that accompanies the consultation document. You might want to refer to this when considering the next few questions.

Out of the following areas of pay, which do you think should be a priority for the Secretary of State's first remit letter to the ASC Negotiating Body? Select up to 3 priorities.

- Setting a pay floor (a sectoral minimum wage) above the National Living Wage
- Setting pay bands linked to career progression
- Introducing qualification or skills-linked pay
- Bonuses (for example, seasonal bonus payments)
- Pay supplements (for example, for unsociable hours or to support recruitment and retention)
- Other, please specify: The agreement's contents must be decided by the ASC body itself. It should cover all of the above terms and conditions with no limits to the remit.

Please explain your position and provide any supporting evidence. (Optional, maximum 250 words)

All of the above.

Unite strongly believes that the priorities for negotiation must be set by the ASC negotiating body itself.

Unite believes that negotiations should not be limited by the legislation and the ASC should be enabled to develop a broad and comprehensive set of pay, terms and conditions should it agree to do so. This is a matter for the ASC to discuss once it is up and running.

○ **Terms and conditions priorities**

Workers in adult social care are often employed on statutory minimum terms and conditions, including statutory sick pay and annual leave entitlements. This is often an important reason workers leave their roles or are not attracted to the role in the first place.

The Employment Rights Bill delivers an improvement in employment rights for all workers, including strengthening statutory sick pay and introducing rights to guaranteed hours which are particularly relevant for adult social care workers. The following questions are not about those changes. Instead, they focus on how a fair pay agreement could go further.

Out of the following terms and conditions, which do you think should be a priority for the Secretary of State to consider as part of their remit letter to the ASC Negotiating Body? Select up to 3 priorities.

- Pay for time and costs of travelling between visits (in addition to the statutory minimum of National Living Wage)
- Pay for sleep-in or night shifts
- Hours of working week, including guaranteed hours and zero-hours contracts
- Overtime pay
- Enhanced sick pay or sick leave
- Paid holiday or annual leave
- Pension contributions and conditions
- Injury allowance
- Other, please specify: The agreement's contents must be decided by the ASC body itself. It should cover all of the above terms and conditions with no limits to the remit.

Please explain your answer and provide any supporting evidence. (Optional, maximum 250 words)

All of the above.

Unite believes that negotiations should not be limited by the legislation and the ASC should be enabled to develop a broad and comprehensive set of pay, terms and conditions should it agree to do so. This is a matter for the ASC to discuss once it is up and running.

The aim of the ASC is to improve the wellbeing, pay, terms and conditions and recruitment potential within the social care sector. Unite is supportive of negotiations on any subject matter that will support these aims.

- **Wider employment matters**
- **Training, development and career progression**

It might be appropriate to include training, development and career progression within the ASC Negotiating Body's remit.

Which, if any, of the following areas within training, development and career progression do you think should be included within the ASC Negotiating Body's remit? Select all that apply.

- Training entitlements (for example, include annual training days, access to a training budget, the right to request training)
- Specialised training (for example, dementia training, artificial intelligence training, delegated healthcare tasks)
- Policies to support career progression for the workforce
- Policies to support development opportunities for the workforce
- Policies to support specific qualifications for the workforce

- Other, please specify: The agreement's contents must be decided by the ASC body itself. It should cover all of the above terms and conditions with no limits to the remit.

Please explain your answer and provide any supporting evidence. (Optional, maximum 250 words)

Unite believes that negotiations should not be limited by the legislation and the ASC should be enabled to develop a broad and comprehensive set of pay, terms and conditions should it agree to do so. This is a matter for the ASC to discuss once it is up and running.

The aim of the ASC is to improve the wellbeing, pay, terms and conditions and recruitment potential within the social care sector. Unite is supportive of negotiations on any subject matter that will support these aims.

Specialist training must be valued and remunerated properly and there must be no undermining of current professionally regulated roles and activities by introducing these tasks to the care workforce without proper training and qualifications.

- **People and culture**

It might be appropriate to also include people and culture policies within the ASC Negotiating Body's remit.

Which, if any, of the following areas within people and culture policy do you think should be included within the ASC Negotiating Body's remit? Select all that apply.

- Equality, diversity and inclusion policies
- Wellbeing policies
- Dignity at work (including bullying, harassment and discrimination) policies
- Family-friendly or balance between work and personal life (including flexible working) policies
- Health and safety in the workplace (including preventing violence in the workplace) policies
- Whistleblowing and speak up schemes
- Other, please specify: The agreement's contents must be decided by the ASC body itself. It should cover all of the above terms and conditions with no limits to the remit.

Please explain your answer and provide any supporting evidence. (Optional, maximum 250 words)

Unite believes that negotiations should not be limited by the legislation and the ASC should be enabled to develop a broad and comprehensive set of pay, terms and conditions should it agree to do so. This is a matter for the ASC to discuss once it is up and running.

The aim of the ASC is to improve the wellbeing, pay, terms and conditions and recruitment potential within the social care sector. Unite is supportive of negotiations on any subject matter that will support these aims.

The ASC will be supported by union access legislation and recognition agreements with employers.

- **Additional benefits and financial support**

It might be appropriate to also include additional benefits and financial support within the ASC Negotiating Body's remit.

Which, if any, of the following areas within additional benefits and financial support do you think should be included within the ASC Negotiating Body's remit? Select all that apply.

- Travel to work schemes (for example, travel season ticket loans, discount for transport, free parking schemes)
- Tailored financial support (for example, financial coaching, student loan assistance)
- Travel and expenses (for example, subsistence allowance, reimbursement of travel costs)
- Other incentives (for example, staff counselling, wellbeing schemes)

Please explain your answer and provide any supporting evidence. (Optional, maximum 250 words)

Unite believes that negotiations should not be limited by the legislation and the ASC should be enabled to develop a broad and comprehensive set of pay, terms and conditions should it agree to do so. This is a matter for the ASC to discuss once it is up and running.

The aim of the ASC is to improve the wellbeing, pay, terms and conditions and recruitment potential within the social care sector. Unite is supportive of negotiations on any subject matter that will support these aims.

If there are any additional areas that the ASC Negotiating Body should consider or have in its remit, please outline them here. (Optional, maximum 250 words)

The ASC should be empowered to set its own agenda and consider any issues it feels relevant to its core task of improving terms and conditions of employment within the Adult Social Care sector.

- **Dispute resolution**

This section considers what happens if the ASC Negotiating Body fails to reach an agreement and seeks views on how disputes should be resolved, to support the ASC Negotiating Body to successfully reach an agreement. We

have developed a proposal through collaboration with the fair pay agreement working group and task and finish groups with unions, providers, local government and others which is outlined in detail in the 'Dispute resolution' section of the consultation document.

Do you agree or disagree with our proposed approach to dispute resolution, where disputes are triggered by the chair and referred to Acas for independent resolution? (Optional)

Disagree

Please explain your answer and provide any supporting evidence. (Optional, maximum 250 words)

Unite believes that this section is far too prescriptive. There should be much more scope to resolve disputes through consensus. Unite believes that there should be separate discussions with the government on this issue once the ASC is set up.

- **Implementation**

This section sets out what happens once the ASC Negotiating Body has reached an agreement. It seeks views on what we can do to support the sector to be ready.

What do you think should be included in guidance and communications to support you to implement fair pay agreements? (Optional, maximum 250 words)

The ASC is a new initiative with the potential to reshape the experience of over 1.6m social care workers in the UK. It is vital therefore that employers are supported with appropriate guidance and enforcement to make this successful. Unite believes that there should be statutory guidance and codes of practice introduced supported by both ACAS and the EHRC. This guidance must help employers to understand the ASC and prevent unlawful working practices and bad actors entering the sector. There need to be clear definitions to avoid people getting redesignated through loopholes that allow bad actors to avoid the legislation.

Given the prevalence of insecure and vulnerable employment and the prevalence of migrant workers currently within the sector, there must also be substantial and accessible guidance and support for workers within the sector to understand their rights and how to enforce them.

Trade unions are well placed to provide this support, but the legislation should help enable this by giving trade unions a central role, through workplace access, recognition and third-party reporting for enforcement purposes.

Do you agree or disagree that DHSC and the ASC Negotiating Body should co-author and publish guidance? (Optional)

Strongly agree

Please explain your answer and provide any supporting evidence. (Optional, maximum 250 words)

As above, Unite believes that there should be statutory guidance and codes of practice introduced, supported by both ACAS and the EHRC. This guidance must help employers to understand the ASC and prevent unlawful working practices and bad actors entering the sector. There need to be clear definitions to avoid people getting redesignated through loopholes that allow bad actors to avoid the legislation. Co-authored and published guidance from DHSC and the ASC Negotiating Body is the best approach to support this.

- **Compliance and enforcement**

This section sets out how the fair pay agreement will be enforced and seeks views on how we can support employers and commissioners of care to comply with the agreement.

What do you need guidance on to help you or your organisation to comply with a fair pay agreement? (Optional, maximum 250 words)

Please share any other views or comments about how the department can support providers and commissioners of care to comply with a fair pay agreement. (Optional, maximum 250 words)

Unite strongly advocates for strong and well-resourced monitoring of compliance and no levelling down to support the worst providers. There should be reporting obligations on all commissioners and clear processes intervening where employers do not meet the required standards.

There must also be robust reporting of equal pay considerations, strict implementation of TUPE plus agreements, and the two-tier code for any worker who is transferred between employers due to changes to funding or contracts.

The legislation must enforce clear records of employment for workers including pay slips and contractual terms. Failure to provide this should be clear evidence of fault for employers.

Enforcement bodies must be well resourced, and local authorities should have a role in addition to national enforcement bodies such as the fair work agency.

From experience in other sectors such as agriculture, there must be a system of third-party referral where trade unions can instigate enforcement against employers on behalf of workers or groups of workers. We know that many vulnerable workers are too scared to report their employer particularly in cases where their work visa is at stake or worse where they are victims of trafficking.

- **Equalities impact**

We are interested to know what impact this policy could have on groups of people who have protected characteristics. The protected characteristics are:

- *age*
- *disability*
- *gender reassignment*
- *marriage and civil partnership*
- *pregnancy and maternity*
- *race*
- *religion or belief*
- *sex*
- *sexual orientation*

We are also interested to hear about other groups you think might be positively or negatively impacted by the proposed policy.

Are there any groups of people, such as (but not limited to) those with protected characteristics, who you believe would be positively impacted by the proposals in this consultation?

Yes

If you answered 'yes', please select the characteristics of the groups that you think will be positively impacted by the proposals. (Optional)

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation
- Other group, please specify (Migrant workers)

If you answered 'yes', why do you think these groups will be positively impacted? (Optional, maximum 250 words)

Improving employment standards is good for equalities, helping to tackle pay gaps, exploitation and unfairness for groups with protected characteristics.

The sector is overwhelmingly staffed by women and disproportionately by ethnic minority and migrant workers. Raising standards for these groups will therefore make a big difference to the wider labour market and benefit the whole economy.

The treatment of migrant workers must be added to this list. Domestic workers and other predominantly migrant roles currently face the dual concerns of exploitative

working conditions and the hostile environment due to their migrant status, which is often tied to their visas and therefore their employer. Such a system is immoral and wrong, creating a bonded relationship for many of the most exploited and vulnerable.

To be successful the ASC must enforce the independence of migrant status from employment rights within the sector. UK borders have no place within the workplace and actively disincentivise workers from enforcing and exercising their rights. This is a gift to bogus actors and employment rights should never be used to punish the victims of exploitation or trafficking.

Unite demands better rights, safety, and recognition for domestic workers, pushing for UK ratification of ILO Convention 189 to secure decent work and protections against abuse-rights already afforded to other workers but denied to domestic workers. Reintroducing domestic workers' rights will protect the most vulnerable and exploited people in the sector, including undocumented and trafficked workers. There must be strong enforcement mechanisms, as exploitation often occurs behind closed doors.

Are there any groups of people, such as (but not limited to) those with protected characteristics, who would be negatively impacted by the proposals in this consultation?

No

If you answered 'yes', please select the characteristics of the groups that you think will be negatively impacted by the proposals. (Optional)

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

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This evidence was submitted on behalf of Unite the Union by:

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