



**Scottish Parliament COVID-19  
Committee: The Social Care Staff  
Support Fund (Coronavirus)  
(Scotland) Regulations 2020**

**UNISON Scotland Response  
July 2020**

UNISON is Scotland's largest trade union. We have many members working delivering care across the public, private and third sectors. We welcome the opportunity to respond to the questions asked by the committee and the opportunity to respond.

**The scheme is necessary because the care home workforce is treated so badly by employers**

UNISON were strong advocates of setting up the scheme and welcomed the Scottish Government's acceptance of the amendments to the Coronavirus (Scotland) (No2) Act which set it up. We are however concerned and disappointed that it took from an announcement on April 9<sup>th</sup> until the 25<sup>th</sup> June before the scheme went live. All through this period the lives of staff and residents were being put at risk. We are further concerned that in many instances money is still not reaching the low paid and mainly women workers whom the scheme is meant to benefit.

There can be no denying that the scheme was and is necessary. Nor that this necessity stems derives from a pre existing crisis in Scottish care homes. Poor staffing practices are still widespread in the sector – this mean that large numbers of staff have no access to proper sick pay protections. This in turn meant that staff if they either believed themselves to ill with Covid -19, or that they had been in contact with those who were, had the choice between taking a risk in going to work, or feeding their families. Were fair work principles applied consistently throughout the care home sector – particularly but not exclusively in the privately operated homes the scheme would not have been necessary. This almost certainly would also have saved lives. Ia lack of decent employment practices has mean that Government has had to intervene to provide a basic safe working measure – standard in the NHS and far beyond - that care home operators refused to.

**Many employers are not operating the scheme properly – leaving staff in financially precarious position.**

The purpose of the fund is that care workers should not find themselves losing out financially if they are ill or having to self isolate. Employers pay staff what they would have expected to earn but for Covid -19. The employer is then reimbursed from the fund. This is not a

procedure that is difficult to grasp. Nor is it one which it is difficult to extrapolate from the regulations – these are short and straightforward.

It is therefore a signal failing that so many employers are still denying staff the payments which make the difference between having to risk their own and their clients health.

That this failing is so widespread, and whilst more prevalent in the private sector, it is not unique to it, is another symptom that our fractured market driven care home system is unfit for purpose.

Roughly speaking employers divide into three groups. Those who are implementing the scheme as intended. Those who are paying staff contractual rather than 'normal' pay. And those who are claiming not to be able to interpret the regulations at all and as such not paying out under the scheme. The final group are disproportionately to be found in the private care home sector.

To explain the latter two groups more fully. Care homes are rife with the practice of workers having a relatively small number of contracted hours in a week (say 6 -10) but routinely employed for many more (35 - 40+). This in itself is a tool used to discipline the workforce – the threat of a drop down to contracted hours on what is already a low wage is an effective method of encouraging workers not to raise complaints or concerns

Some employers are using the narrow definition of the contractual hours rather than the normal hours worked as the basis to claim on the scheme – and hence pay for care staff. This means staff losing out on anything up to 2/3ds of the wage they would normally receive – as they don't get paid either for the hours they would usually work, regular overtime payments or payments for overnights shifts. This obviously leaves workers considerably out of pocket. This is in contravention of both the the spirit and letter of the regulations which specify that the fund should be concerned with workers 'expected income '

*...the maximum amount to be paid from the Fund to each relevant social care worker in respect of each period that the worker meets all the conditions in regulation 3 is the difference between*

*— (a) that worker's expected income from health and care work in respect of that period, and*

*(b) their actual income from health and care work (including any sick pay) in respect of that period."*

That the principle involved is that workers should receive the same amount they would have is reinforced in the statutory guidance accompanying the regulations where employers are referred to the definition of expected earnings in the Employment Rights Act – which is about earnings over a period of time, not simply bare contracted hours. This is also the principle which determines holiday pay entitlement as was established by UNISON in an Appeal Court judgement in 2019.

The third group of employers are simply refusing to make payments to staff at all. Most in this group are saying they will not make payments until they are confident they have a guarantee that they will receive reimbursement from the fund from bodies which are

commissioning care. Often this is accompanied with an, at face value implausible, claim that the regulations are such that who does and doesn't qualify isn't clear.

That such prevaricating book keeping exercises are holding up this measure; introduced only because we are in a life or death situation is completely unacceptable. We would hope that the strongest possible signals will be sent about the absolute urgency of getting the payments needed to make our care homes safe places for staff and residents.

### **Conclusion**

The regulations are a tragic necessity because our market driven care home system treats its staff so poorly that one of the most basic conditions to ensure safe and healthy working is absent. Given the urgency and seriousness of the outbreak in care homes it should not have taken two and a half months between the announcement of the scheme and it's going live. It is a disgrace that even now the scheme is in many cases still not fully functional – that this is the case is another sign that our care home system is not kfit for purpose and needs radical reform.

### **UNISON Scotland**

**May 2020**

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