

SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE

**29th Meeting, 2022 (Session 6), Thursday 10
November 2022**

National Care Service (Scotland) Bill

1. At its meeting on [30 June 2022](#), the Committee agreed to scrutinise the Bill and to consider the social justice and third sector aspects of the Bill.

Bill documents

2. The [National Care Service \(Scotland\) Bill](#) was introduced on 20 June 2022, along with the following accompanying documents:
 - [National Care Service \(Scotland\) Bill as Introduced](#)
 - [National Care Service \(Scotland\) Bill Explanatory Notes](#)
 - [National Care Service \(Scotland\) Bill Policy Memorandum](#)
 - [National Care Service \(Scotland\) Bill Financial Memorandum](#)
 - [National Care Service \(Scotland\) Bill Delegated Powers Memorandum](#)

Written evidence

3. All published written submissions received can be found here: [Published responses for National Care Service \(Scotland\) Bill \(Detailed\) - Scottish Parliament - Citizen Space](#)
4. The submissions from those giving evidence on 10 November are attached in full:

Panel 1

[Age Scotland](#)

[Inclusion Scotland's and the People Led Policy Panel](#)

[Carers Trust \(Shared Care Scotland, on behalf of the National Carer Organisations\)](#)

[MECOPP \(Shared Care Scotland, on behalf of the National Carer Organisations\)](#)

Panel 2

[GMB Scotland](#)

[Volunteer Scotland](#) (they have also sent us an additional [written submission](#))

[Scottish Women's Budget Group](#)

[Social Work Scotland](#)

**Clerks to the Committee
2 November 2022**

Submitted to National Care Service (Scotland) Bill (Detailed)
Submitted on 2022-09-02 16:47:43

About you

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How your response will be published

I would like my response to be published in its entirety

What is your name?

Name:

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Email:

[REDACTED]

Are you responding as an individual or on behalf of an organisation?

Organisation

Organisation :

Age Scotland

Please tell us a little more about your connection to care services. Which of the following options best describes you. (Tick all that apply)

Other (please specify in the box below)

If you selected 'Other' please provide more information in the box provided.:

Older People's Organisation

Would you like to be involved in future engagement work?

General questions about the Bill

The Policy Memorandum accompanying the Bill describes its purpose as being "to improve the quality and consistency of social work and social care services in Scotland". Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

Please provide your response in the box provided.:

Age Scotland welcomes the opportunity to comment on the National Care Service Parliamentary Bill

We know that for far too people many across Scotland, including the many older people who currently use (or are waiting for) social care services, the social care system is not meeting their needs. Staggering waiting times, inadequate local capacity, coupled with unstable, overstretched and unfair working conditions are all resulting in people being let down, with catastrophic and shameful consequences. Older people who use or need care services are being denied the dignity, safety, comfort and freedom that is the right of everybody. The need for reform is crystal clear, and we welcome the ambition and intent of this Bill, particularly the responsibility and accountability that will fall to Ministers. At the moment we feel the lack of accountability for a system (or perhaps more accurately myriad of systems) that plays such a critical role in Scotland is a major problem. This was highlighted more clearly than ever during the COVID 19 pandemic when services ground to a halt.

As the Feeley review identified, there are many examples of high quality services to be found in Scotland – this is not about ignoring those, but given the scale of the issues, as set out in Feeley's Independent Review of Adult Social Care in Scotland, 'The answer to tomorrow's challenges in social care support is not more of the same'.

To the extent which is possible with high-level legislation such as this, the scene for positive reform is set out in this Bill. The principles highlighted in the Bill seem to capture the spirit of the social care review led by Derek Feeley well, however, there is no guarantee that these good intentions will translate to improvement in practice. The potential of the Bill to deliver its vision and meet the commitments made would be improved by embedding certain principles and commitments more overtly and concretely in the legislation. Specific recommendations are outlined under Question 3.

The task that lays ahead – introducing a National Care Service to fundamentally transform how Health and Social Care services are run in Scotland for the

better – is massive. It is vital that principles of responsibility and accountability deliver changes that allow our social care services to be sustainable, resilient and consistent, giving all people in Scotland the care they need when and where it is needed, and that dedicated focus is applied to ensure the principles and aims included in the Bill do become a reality.

Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

Please provide your response in the box provided.:

The bill has the potential to support improved quality and consistency of social work and social care services, and we recognise the need for change.

Age Scotland do have some remaining concerns relating to the size and scale of the task ahead, including risk of poor coordination, funding issues and resource gaps, the status and state of social care services during the transition and interim period, however we are broadly content with the intended process to introduce this new legislation, starting with this Bill.

Are there any specific aspects of the Bill which you disagree with or that you would like to see amended?

Please provide your response in the box provided.:

- We would like to see specific intersectionally disaggregated data collection, analysis and target setting commitments within the Bill, along with expectations and timeframes for publication of this information. This is one way through which the human rights and equality commitments and approach can be made tangible and measured over time. This is also essential for the accountability and responsibility for service delivery as outlined within sections 2 and 3 of this Bill – Responsibility of the National Care Service and Responsibility for Improvement. Consistency of data requirements across Scotland is key.

- Under section 7 on Strategic Planning of Care Boards, we wish to see commitment to co-design and meaningful inclusion of people with lived experience (including older social care users) embedded as a requirement, in line with the commitment to a human rights approach. Specific resourcing to fulfil this should be allocated.

- Language around 'seeking views' of stakeholders could be strengthened to ensure this is not simply nominal or performative.

- The 'inclusive communication' point at 10f should be expanded to cover the need to avoid digital exclusion (in both development and delivery of the National care Service) by ensuring accessible non-digital communications. This aligns with the needs identified in the equality impact assessment relating to age

- We would welcome expansion of the section on Care Homes to improve Security of tenure for care-home residents. Currently, notice requirement for eviction is just 28 days – we do not feel this is acceptable as it is shorter than many private rented tenures, and not in line with a human-rights approach to the provision of social care.

- Section 36 on Care records should be expanded. As set out in Age Scotland's response to the recent Scottish Government consultation on the new proposed Data Strategy for Health and Social Care, we believe people should have access to their own health and social care record. The following factors are important for consideration when developing the records and sharing access:

- Context and clear explanations – including appropriately qualified people to explain information.

- Supported access, including a range of different and appropriate channels and options (including non-digital means).

- Service users' privacy remains important. We continue to advocate for introduction of an access log that records who has accessed an individuals' data, when and for what purpose.

- Under Section 18 - Transfer of care board's functions in an emergency – the Bill should specify what is defined as an emergency for the purposes of this Bill. The human rights approach should be upheld in such a situation. During the COVID 19 pandemic many older people in Scotland who were reliant on Social Care services experienced related rights-violations, and the introduction of the National Care Service should serve to prevent this happening again in future.

- Training for Care Boards on the principles of the National Care Service, including the human rights approach, should be resourced by the Scottish Government, with a requirement to deliver training to defined standards included in legislation to ensure all National Care Service staff are aware of and equipped to deliver services that uphold the principles and standards of the National Care Service at all times.

Is there anything additional you would like to see included in the Bill and is anything missing?

Please provide your response in the box provided.:

We feel some areas which are currently planned for secondary legislation (or are included less specifically in the principles) should be included in primary legislation (outlined above). We further feel, and are therefore concerned, that the Scottish Government is now left with an enormous task and has a huge amount of detail to develop, in partnership with stakeholders including those with lived experience.

We would like to understand the rationale for exclusion of the 'other planned reforms' set out in the Financial Memorandum from this primary legislation – and feel these should be more firmly embedded in the proposed legislation and associated budgets.

Future secondary legislation

Please provide your response in the box provided:

We feel some areas which are currently planned for secondary legislation (or are included less specifically in the principles) should be included in primary legislation (outlined above). We further feel, and are therefore concerned, that the Scottish Government is now left with an enormous task and has a huge amount of detail to develop, in partnership with stakeholders including those with lived experience.

We would like to understand the rationale for exclusion of the 'other planned reforms' set out in the Financial Memorandum from this primary legislation – and feel these should be more firmly embedded in the proposed legislation and associated budgets.

Transfer of services to the National Care Service

Please provide your response in the box provided:

The consultations concerning these areas are a critical opportunity to allow experts and professionals along with service users to join the discussion around particular areas. With every extra area included in the NCS will come huge amount of bureaucracy and administration as well as cost. The focus must therefore be on those areas where there is clear value to add by including them, and this should be informed by meaningful inclusion of relevant expertise - both of service providers and service users with lived experience.

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

Please provide your response in the box provided.:

Impact assessments

Please provide your response in the box provided.:

Questions about the Financial Memorandum

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Please provide your response in the box provided.:

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

Please provide your response in the box provided.:

Did you have sufficient time to contribute to the consultation exercise?

Not Answered

If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

Please provide your response in the box provided. :

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

Please provide your response in the box provided. :

We would welcome further explanation on the rationale for exclusion of 'other planned reforms' from the legislation and associated costs. We feel the information provided with the financial memorandum should provide more detailed information, particularly regarding the approaches to human rights delivery, ethical commissioning and fair work, to ensure that it is feasible and suitably resourced in practice.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Please provide your response in the box provided. :

Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Please provide your response in the box provided. :

The information provided in the Financial Memorandum is not suitably specific or detailed to answer this question positively and does not include clear provisions for important areas such as data collection, monitoring and evaluation – which will be essential for assessing and understanding how Care Boards are performing.

Submitted to National Care Service (Scotland) Bill (Detailed)
Submitted on 2022-09-20 10:08:38

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[REDACTED]

Are you responding as an individual or on behalf of an organisation?

Organisation

Organisation :

Inclusion Scotland's and the People Led Policy Panel

Please tell us a little more about your connection to care services. Which of the following options best describes you. (Tick all that apply)

If you selected 'Other' please provide more information in the box provided.:

Would you like to be involved in future engagement work?

Yes, I would like to be involved in future engagement work and agreed to be contacted by the Committee in the future.

Organisation details

What is your job role?

Please provide answer in box provided:

Head of Leadership and Civic Participation

Information about your organisation

Please add information about your organisation in the box below:

We are responding as an umbrella Disabled People's Organisation representing disabled people and their organisations from across Scotland, but the majority of the engagement work that has been used to inform this response has happened with our People Led Policy Panel made up of people who need/ use social care support, including unpaid carers as well as supported people, from across Scotland and a diverse range of backgrounds. We have worked with them to build their knowledge and skills around the area of reform of adult social care support.

Inclusion Scotland believes in and is founded upon the social model of disability, we are disabled by the barriers we face rather than our impairments themselves. Using the social model, we work to achieve positive changes to policy and practice, so that disabled people are fully included throughout all Scottish society as equal citizens.

We do this by:

Influencing decision-makers, ensuring that disabled people are involved in developing effective solutions for policy and practice, that reflect our expertise by experience and meet our needs and aspirations.

Supporting disabled people to be decision-makers themselves, promoting the equal representation of disabled people as policy-makers and our right to make decisions about our own lives.

Developing capacity, awareness and engagement, of disabled people, disabled people's organisations and the organisations and institutions that affect our lives.

People Led Policy Panel (PLPP or 'the Panel')

The People-led Policy Panel is made up of people with a wide range of experiences of using adult social care support, both as supported people and unpaid carers. There are people in the Panel who have never given their views and ideas before, as well as people who are already very experienced in giving their views. Panel members come from across Scotland and from different backgrounds.

The People-Led Policy Panel has worked with the Scottish Government and other stakeholders since 2018 to co-produce the reform of Adult Social Care. The main aim is to ensure that the experiences and views of disabled people and unpaid carers are at the heart of shaping policy.

General questions about the Bill

The Policy Memorandum accompanying the Bill describes its purpose as being "to improve the quality and consistency of social work and social care services in Scotland". Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

Please provide your response in the box provided.:

Inclusion Scotland and disabled people generally support the development of a National Care Service, as recommended in the Independent Review of Adult Social care led by Derek Feeley. In fact, it was one of the first things a new member of the PLPP asked for in 2018 when the panel was established. To quote our response to the Scottish Government's consultation on a proposed national care service:

'We strongly support a National Care Service

We believe our experiences and views were well reflected by the IRASC; and we fully support its recommendations. As we all know the current local authority-based system is broken. We need a new system, with national accountability and consistency, that takes a Human Rights-Based Approach. We want accountability sitting with Scottish Ministers, ring-fenced funding for social care support and an independent complaints process. We believe this is the best way to achieve our human rights to independent living. Many of us feel abused and traumatised by the current local authority-based system. This has never been clearer than during the pandemic when many disabled people have been left abandoned (This is evidenced in our survey report, "' We have been completely abandoned": Experiences of social care during the 2020 lockdown <https://inclusionscotland.org/get-informed/research>), without access to even the most basic human rights. Change is long overdue, and the PLPP are ready and willing to be equal partners in co-designing a new National Care Service.'

The history of delivery of social care support is well established; it grew out of the 1597 (Scotland) 'Poor Law', whose legacy ensured that from 1948, the same principles of the local authority overseeing the 'gift' of social care support, and the need to 'plead' for that gift, within a system of over-intrusive assessment, remained.

For the bill to be successful in its purpose, we agree that all of its aspects need to be designed from the bottom up, in co-design with supported people and their unpaid carers, then with the involvement of providers, commissioners, etc. In particular, the Self-Directed Support (Social Care) (Scotland) Act 2014 had good policy intentions and, with input from disabled people and our organisations, referenced the human right to independent living.

However, when it was enacted, it did not have the resources needed to meaningfully implement it; it was not co-designed or co-produced; and it failed to deliver meaningful change for a significant proportion of its users (see, Self Directed Support Scotland and the Alliance 2020 'My Support My Choice: People's Experiences of Self-directed Support and Social Care in Scotland'

<https://www.sdsscotland.org.uk/wp-content/uploads/2020/10/MSMC-Scotland-Report-2020.pdf>). The Scottish Government, following from Feeley, are correctly calling this the 'implementation gap'.

In order to remove this gap, we think that everyone involved in the potential delivery of a National Care Service needs to be actively brought with the process of setting it up, buying into its values and co-producing methods of delivery that only go to strengthen the human rights of those who need to use it, i.e. a Human Rights Based Approach. There is a real fear among those who support the bill that its detractors will resist co-operation in its development. In many ways, this is one of the main things that could defeat its success so it needs to be handled sensitively.

To go into further detail, the policy memorandum states that it is around 20 years since the first attempts to integrate health and social care services, and more recently a more fundamental shift towards this came via the Public Bodies (Joint Working) Act (2014). The National Care Service proposed in this bill is seen as a further development of integration having an increased focus on national as well as local integration. Having engaged with disabled people and come up with our own asks of that Bill, we found that disabled people's (and our movement's) voices were quickly drowned out around concerns about structure and culture; and by an overriding focus on the role of the NHS while social care support continued to be seen as its poor cousin.

At that time, a coalition of Disabled people's organisations asked for that new health and social care integration to ensure it addressed our concern that the proposed bill would 'place greater emphasis on the professionals' roles and organisations rather than outcomes that prioritise service users [and supported people]'. A key concern and one that appears to be addressed with the bill's focus on filling the gaps with co-design, but that risks again being side-lined, is that by focussing on structure, the focus on the supported person and their own aspirations/outcomes for what they need from their support becomes secondary. It all needs to be considered together.

In 2015 Inclusion Scotland embarked on a Scottish Government funded pilot project to find out what involvement disabled people and their organisations were having in local decision making around the integration of health and social care services and the implementation of the 2014 act. It worked in 3 diverse areas in Scotland together with a range of stakeholders and offered financial resources to improve that involvement and engagement. One of the project's findings was that:

'On the whole, disabled people and their organisations felt excluded and ignored by the various consultations and events that took place leading up to the establishment of the Integration Authorities . They were unclear as to how they would be engaged in future plans and engagement activities.

Furthermore, they reported a great deal of concern that this lack of consultation has resulted in HSCI being a very health-dominated process that excludes the principle of independent living for disabled people and would reduce them to passive recipients of health-focused care.

Only 12% of those who responded to the project's baseline survey felt that their [Integration Authority (IA)] was in a position to understand the needs of disabled people in their area, or that feedback from disabled people would be used by the IA to focus on their needs within the local area and the way that services will be delivered. The primary reason given for this low figure was a lack of direct engagement with disabled people. A secondary reason was a general lack of satisfaction with the quality of engagement that had taken place'.

Our collective '5 asks from the Scottish Independent living coalition had included a request that 'disabled [and other supported] people are involved in leading, not just on the principles of an integrated system, but on how money within it is spent, including: eligibility to access it, assessment for it, and principles for its use'. It was very clear at the start of this pilot project that none of this had happened. We therefore urge that at all levels and in all planning stages of this proposed service, that disabled people and other supported people are effectively and accessibly included through rights-based co-design, not just at the start but throughout all areas of planning for and in the National Care Service.

In its response to the Scottish Government's consultation on a NCS last year, COSLA claimed that the establishment of a national care service would drive a focus on structure to the detriment of service improvement. While we agree this is a risk a narrow focus on structure was the result of the current arrangements and any focus on people using/ needing Social Care Support was never in place. This may have happened 'because two powerful entities were struggling over the retention of their power bases' (policy memorandum); but a brand-new service could avoid such struggles by adopting the ILFS model of empowering recipients' independent living.

By contrast, the establishment of the national Social Security Scotland has focussed on delivery of entitlements to social security assistance which are determined at a national level, as necessary to ensure rights-based equitable treatment. In that respect it is a national 'top-down' system, and recipients can spend the funds they are entitled to however they choose. In that essential respect to equate a national system of entitlement and rights with top-down imposition, as COSLA is doing here, is false.

Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

Please provide your response in the box provided.:

We (Inclusion Scotland and the People Led Policy Panel) believe that a focus on national consistent quality and all the structures and culture change necessary for that with that clear focus on meeting people's outcomes and improving experience of access to social care support and social work, is needed to address the rising levels of inequality and unmet needs among supported people.

We have been calling for change in the way that social care support is planned and delivered for a long time. This change is long overdue and, as we have seen, that delay has led to the near collapse of services during the pandemic, at a time when so many supported people needed that support most; and when the National Health Service was least able to cope with the rising number of patients in crisis because basic and preventative (as well as higher level) support needs were not being met.

The Convention of Scottish Local Authorities and many local authorities have been critical of the proposals in last year's NCS consultation and consequently the bill under scrutiny. They, and others, argue that local democratic accountability must be a central aspect of any system of adult social care. But the PLPP have asked, why can't national democratic accountability be a central aspect of adult social care support; especially one which is in partnership with those with lived experience of service provision? Now, their participation in the local decision-making is generally ignored or so tokenistic as to be almost meaningless; and such decision-making is left to those who may have their main interests lying elsewhere.

The lack of transparency and accountability mechanisms, and the adverse consequences for those relying on Social Care Support, were graphically illustrated by the fact that no one was able to account for where £100million emergency funding allocated by Scottish Government to enable the continuance of care packages during the COVID pandemic went. This was never seen by third sector providers or users of Social Care Support who, instead, experienced care packages being cut or withdrawn altogether, without consultation, sometimes overnight. Unsurprisingly the consequences were devastating. If ever a neat illustration was required of this utterly dysfunctional, unaccountable system, this is it.

COSLA said its vision is of a system that's person centred, puts communities at its heart and...is built around the human rights of people that use it; and states that early intervention and prevention has long been the central plank of public services across Scotland and remains so now and into the future. PLPP members have found this could not be further from the truth of their experiences of accessing social care support from COSLA's members. Many disabled people are, on the contrary, traumatised from their experiences of attempting to access social care support local authorities: of ever tightening eligibility criteria cutting them off from having needs met to inconsistency between different local authorities, preventing disabled people from moving from one area of Scotland to another for work, education and/or to be with family.

Evidence shows certain local authorities have redistributed resources within the protected groups of the equality legislation, rather than between such protected and non-protected groups; thereby diminishing the relative outcomes of the entire protected group. There is little evidence of local authorities' proposed shift to preventative measures, as budgets are still mainly spent on the highest level support need cases.

To reiterate, we need to move away from the current way that people's support is decided and put in place a consistent, human rights based service.

Are there any specific aspects of the Bill which you disagree with or that you would like to see amended?

Please provide your response in the box provided.:

The principles of the bill set out broadly what its aims are, and we are pleased to see the 'realisation of human rights' in the very first clause. However, we are concerned there is no specific reference to disabled people's human rights, and particularly article 19 (Independent Living) of the United Nations Convention on the Rights of Disabled People (UN CRPD) as it most closely relates to the experience of social care support. This has been explored in more depth – in particular the definition of independent living and why it is so important to disabled people in regard to social care support- in response to the questions on the principles of the bill and the proposed charter.

There needs to be more emphasis on ensuring that there are multiple representatives of lived experience (supported people) on care boards and any sub-groups, that they are supported with capacity building and access requirements to be involved, and that they be involved in decision making at every level. They should have full voting rights and meetings should only be considered quorate if there are enough such representatives present. We cannot see why this basic commitment to co-production/ co-design is not in the bill, with further detail coming from current and future co-design in regulations on how other aspects of it will work.

Another point made by a PLPP member is that individual disabled people who are funded under option 1 and hire Personal Assistants should be viewed as professional and be part of an ethical commissioning process as well as through consideration of Fair Work. They should be provided with enough funding to be trained as employers, and for this to be updated on any duties they have to their (sometimes up to 5) PA employees. Their funding should also include training for PAs.

There is recognition that a NCS is needed to realise human rights but not how human rights can be embedded in the delivery of social care support. We cite the SILC paper penned by Dr Jim Elder-Woodward: A right to need satisfaction is described as a 'composite right' that would give rise to a list of duties that could better realise a process of human rights recognition and realisation in the process:

'[The Right to Need-satisfaction] should be a composite right, covering the following seven sub-rights:

□ To have, pre-assessment, fully accessible information, interpreted to the person's situation ("What does it mean to me?")

Presently, people are often at the mercy of the assessor's knowledge base and willingness to share such. They may need to have the independent (peer) support to understand information/ situations and have that interpreted to the person's own position.

□ To have independent pre-assessment (peer) advocacy

Often people need someone to help them gather their thoughts to argue for that which will meet their needs, fully.

□ To have the presence of independent (peer) advocacy during the assessment period

Presently, although independent (peer) advocacy is generally welcomed during assessments, the lack of a right to have such means they are not available on a universal basis.

□ To produce one's own self-assessment, with assistance from an independent (peer) advocate

Self-assessments should be enabled by an independent (peer) advocate to allow the person freedom of expression and to generate their own solutions to their needs.

□ To be present, with an independent (peer) advocate, if required, when decisions about resource allocation are made

There needs be the right to freedom of self-expression, and the right to be present when decisions are made which affects the freedoms and quality of life of the person in need: 'Nothing about us without us'

□ To appeal to an independent appeals process

Presently, there is no independent authority to challenge the decision of the resource allocation process. The Local Authority Ombudsman can only make judgements on the processes undertaken.

□ To record any 'unmet need' whether acknowledged or not, at both local and national level

At present, there is no record of 'unmet need', as only resource led acknowledgement of need is recorded. This means there is no recognition of unmet presented need. This lack of necessary information merely serves to cloud the statistical and policy basis for future funding and strategic development.' This approach would put people in a stronger position during the assessment process (if that is kept) and allow them to fully secure in full their rights to independent living.

With its strong focus on strengthening structure this lack of focus on process also fails to reform how assessments will be done within a new service. This will need to be given careful consideration if this service is to address the 'postcode lottery', and implementation gap, described in the Independent Review of Adult Social Care. Specifically, it is the current focus on resource allocation and eligibility criteria which would prevent any meaningful attempt to prioritise early intervention and preventative support.

Panel members and Inclusion Scotland recently joined together with social workers, council officers, unpaid carers, etc to look at different possible approaches to eligibility criteria. One of the presenters wrote a blog about their approach which asks, 'what if we just turn [eligibility criteria] off?' (<https://www.changingfuturesnorthumbria.co.uk/eligibility-criteria-what-if-we-just-turned-them-off>) which was precisely what they had done – on a fairly small scale for piloting - at Northumbria Council. The author states, 'Eligibility criteria are one of the most damaging features of the current design of public services. They create more demand, introduce waste/non-value work and stymie creativity'. The author goes further to argue that assessments are service driven in order to assess eligibility and screen out people who have lower levels of need. He recommends 'bespoke by default' enabling a nuanced understanding of each person's situation so that the right levels of support can be put in place:

'People are stories, and knowing these stories gave more agency and currency to help than any assessment I'd ever seen in my whole career. People were helped out of decades-long slumps because they were understood, and time was invested in them'.

Supported people need to be involved in commissioning if it is to be ethical in a supported and accessible way. Consultation is not always enough and is not always fully accessible (as seen during engagement on local planning on the Public Bodies (Joint Working) (Scotland) Act 2014; and indeed, during last year's NCS proposal consultation). Supported people and unpaid carers need to be given good quality, accessible training, and capacity building (Community Learning and Development) if they are to be involved in decision making on ethical commissioning. Supported people should also be allowed and supported to monitor and assess commissioned services.

Part 7 of chapter 2 describes how strategic planning will be done by care boards. Despite the Policy memorandum's statement that "...the Bill creates a framework for the National Care Service, but leaves space for more decisions to be made at later stages through codesign with those who have lived experience of the social care system, and flexibility for the service to develop and evolve over time", co-design is conspicuously absent from the bill with regards to future care board strategic planning. In subsection 3, the bill specifies only that 'the board must seek views on a draft of the plan from—

(i) its community planning partners, and

(ii) in the case of a local care board, any other local care board whose area of responsibility borders its own,

(b) then, having taken their views into account, the board must seek views on a draft of the plan from—

(i) in the case of a local care board, the residents of its area of responsibility,

(ii) in the case of a special care board, the public in Scotland'.

This focus on local residents for local care boards and the public for special care boards has potential to remove disabled/ supported people from the consultation process if local care boards feel it adequate to simply publish a public consultation, without ensuring that this group of stakeholders is adequately and accessibly involved and consulted. We would therefore suggest that this subsection is amended to say:

(i) in the case of a local care board, supported people and their families, supporters/ unpaid carers

(ii) in the case of a special care board disabled people including mental health survivors and their organisations, their families, supporters/ unpaid carers and their organisations.

We fear that without that specific focus, anyone could input to strategy that will have zero impact on them at that time, and they may do this with poorly informed views. We also worry that without support from their organisations, neither disabled people nor unpaid carers will be able to fully access local strategy consultations.

If our suggestion, to replace 'residents' with 'those with lived experience', etc, is not considered acceptable, then there needs to be some weighting towards the latter group. Otherwise, future developments, strategies etc, will be based on misinformation and existing prejudices of the general public rather than the real knowledge of those with lived experience. And in addition to potentially excluding people with lived experience, relying on residents in regard to local care board planning or the general population in consultation on the strategic direction of special care boards could also result in expensive mistakes being incurred.

Is there anything additional you would like to see included in the Bill and is anything missing?

Please provide your response in the box provided.:

Data collection and analysis

There is no clear commitment within the bill to collecting national data on people's experiences of social care support, though it's mentioned in research

and care records. It will be crucial (and to take a 'right to need-satisfaction approach) to collect data on any and all unmet need, both nationally and locally, in order to plan for meeting it and realising human rights. Accurate and intersectional, aggregated data, as well as (co-designed) qualitative responses monitoring the experience of accessing and receiving support, are not only essential to planning based on lived experience, they are also essential to meeting article 31 of the UN CRPD. This right is also clear that any statistics collected and used should be made publicly available (including how those metrics are created, not just the outcomes of those metrics) in accessible formats that disabled people need to access them.

Connected Functions Research and Training

The current approach to meeting the aims of this bill, adding the detail to the secondary legislation and improvement of current services is co-design. This approach should not be one off but be embedded into local and national planning. This means it is essential to state that people with lived experience will be supported in to be involved in both research and delivery of training through all the means mentioned in sections 23 and 24. In addition there should be financial and other supports to remove barriers to/ provide reasonable adjustments for involvement. There is legislative precedent within the Community Empowerment (Scotland) Act (2015) to include communities of identity and interest as well as place within the scope of research and training. Inclusion Scotland has years of experience of supporting and empowering disabled people to be equal partners in research (e.g. in the DRILL research we supported and delivered); and to deliver training (for example, to other PLPP members) and would be happy to provide advice to Scottish Government using the learning and evaluation we undertook.

PLPP members also said that 'People involved in this research need to knowledgeable about equality legislation (the Equality Act 2010), the independent living movement and be accountable to disabled people'. All research and training should take a human rights approach using PANEL principles (participation, accountability, non-discrimination and equality, empowerment and legality).

Peer training is indeed essential for supporting both PA employers and their Personal Assistance. PA employers should receive funding to provide appropriate (and often tailored to the employer's needs and aspirations) training for their personal assistants, and that training should be made available through Centres for Independent Living.

Ethical Commissioning

We are pleased to see that ethical commissioning is included in the Bill but the definition of ethical commissioning set out in section 10 of the bill is very unclear. A definition of commissioning is given in the policy memorandum but there is not a definition of ethical commissioning there either. The definition should include what is practically meant by this concept, who would be involved in delivering it and the processes that set it apart from traditional commissioning and procurement.

Prevention

It would be worth setting out in more detail in the bill (or in secondary legislation so it is done by co-design) what is meant by preventative approaches. These should be about the person (person-led), of course, but is the focus on wellbeing, reducing isolation and resulting stress, or preventing a condition or impairment getting worse? Could it include prevention of homelessness, and if so where is the link to housing? Without an inclusive definition of prevention there is a fear that some outcomes and needs would be excluded and thus go unmet and unrecorded; and that it might continue to contribute to the perception of a post-code lottery.

Care charges

We are aware that the Scottish Government is currently modelling how they will pay to remove social care charges and we are pleased that this is a commitment from Scottish Government. Meanwhile, however, people in receipt of social care support will continue to pay this 'care tax', which merely allows them to enjoy the same rights as people who do not need social care support. We fully support the following call made by the Scotland Against the Care Tax campaign in its submission:

'The National Care Service needs to include an additional "principle" in line with the aims of this statement. We recognise the complexities of current social and residential care provisions but believe it is still possible to deliver a "free at the point of delivery" principle.

We would suggest the following wording...:

"Services, provided by the National Care Service, are to be free at the point of delivery, and the National Care Service will work to achieve this over time."

This should include all services associated with social care support including provision of aids and adaptations if withholding them would impinge on a person's rights to independent living or rehabilitation.

Fair Work

There is too little detail of what is meant by fair work in this bill. We are fully aware that social care and personal assistance work is predominantly a female occupation. It is devalued for this reason and also because it is not considered of as high a value as healthcare. There should be more focus on professional development for all levels of work in social care support, to ensure that it becomes a more attractive occupation and to remove inequality within the workforce/ to tackle the gender pay gap.

Employers of personal assistants should also be recognised as having a managerial role and be given appropriate supports and training for that role, preferably from Centres for Inclusive Living.

Future secondary legislation

Please provide your response in the box provided:

Members of the PLPP thought that the bill as it currently is, is too vague, and as raised above, it is hard to see what rights would be in the bill because of this. One member said, 'a National Care Service should enable people to fulfil their human rights and participate as equal citizens in society'. They are keen to be included in co-design to get the details right but perhaps more headlines could be included. We have set out above in answers 3 and 4 what we think should be added to the bill to 'give it more teeth'.

Transfer of services to the National Care Service

Please provide your response in the box provided:

Inclusion Scotland and the PLPP generally support the transfer of social care support, social work and community health functions to the National Care Service using future legislation. There has long been an ambition for more joined up services and this is still what most people using them would like to see. They also support section 30 of the bill which is (along with justice social work) to move childrens' social work services and social care support into the National Care Service, following consultation, which has the potential to improve transitions from child to adult social care support.

Housing

In engagement over the years the link between housing and social care support has always been made. In particular, provision of accessible or adaptive

housing, social and sheltered housing all input to the preventive agenda in social care support; the opposite is true if someone is living in inaccessible housing with no adaptations – more social care support could be required. It is surprising that given the continued mixed economy of care support within the bill, that housing is not referenced.

Integration Authorities currently have the duty set out under the 'Scheme of Assistance' for Housing Adaptation (previously with local authorities). Key responsibilities are:

1. The duty to assess for an adaptation
2. Planning for and resourcing adaptations.
3. The duty to provide grants of 80% or 100% for those living in the private sector, who are assessed as needing adaptations.

If this is left out from the purview of the National Care Service it will continue to be delivered inconsistently throughout Scotland as it is now; with different Integration Authorities providing different levels of funding for aids and adaptations in the home.

Calls for standardisation across different tenures have also been made since 2011 (first by the Independent Adaptations Working Group, Equality and Human Rights Commission, Scottish Human Rights Commission and Hanover Housing). Piecemeal changes have since been made to policy but inclusion of this in the bill would finally roll out consistency.

We agree with the Health and Social Care Alliance that Equality and Human Rights Impact Assessments (EQHRIAs) developed by the Equality and Human Rights Commission and the Scottish Human Rights Commission 'should be used both at the early stages to inform policy, and after the policy has been implemented to assess its impact'

(<https://www.alliance-scotland.org.uk/wp-content/uploads/2022/08/ALLIANCE-National-Care-Service-Scotland-Bill-response-draft-with-invitation-to-comment.pdf>).

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

Please provide your response in the box provided.:

We believe that Disabled People's Organisations, particularly those with a focus on doing SDS brokerage and providing services and advice for disabled people on social care support, need to be better funded at a national level and through a national care service. Centres for Inclusive living should form the basis of such services and yet they have faced cuts to their funding over recent years and are overstretched. Indeed, there are far fewer CILs in Scotland than was ever envisaged. However, there exist disabled people's organisations throughout Scotland doing peer support work on SDS access, information, human rights etc., that could be funded to become full regional CILs to support all these plus other aspects of the National Care Service delivery for disabled people.

To commit fully to the realisation of human rights and fair work the national care service should be seen as an ongoing investment. This may have implications on the costings listed in the memorandum and should be something the committee may wish to focus on.

Concerns raised during last year's consultation with Scottish Government was that the widening of services provided by a NCS might divert attention and much needed funding and resources from social care support. This has for years been the poor cousin of health despite its clear role in improving wellbeing and so it's not hard to see where this concern has come from. For example, in terms of funding, one panel member was concerned that social care support would be deprioritised:

'I fear of lack of parity. If it provides all care services, there is a danger that a person with a clinical need may get care in front of a disabled person with social care needs. What is seen as essential? Are we not going to end up with different professions fighting over same budget?'

The Independent Review of Adult Social Care estimated the cost of its recommendations would amount to additional expenditure of £0.66 billion, around 4% of the Scottish GDP. However, this wasn't accounting for the widening of functions that the Scottish Government has proposed will be transferred. The Feeley review recommended 'careful consideration of options for raising new revenues to increase investment in adult social care support.'

(<https://www.gov.scot/publications/independent-review-adult-social-care-scotland/>)

For supported people and unpaid carers to be involved in all areas of the NCS, including ethical commissioning and governance within care boards, we think the Scottish Government needs to include the costs associated with that inclusion at local and national levels, alongside estimated costs for equal access and support and training to be on a level playing field with professional decision makers. Inclusive and accessible communication at all stages should also be costed at the same time.

Impact assessments

Please provide your response in the box provided.:

We are pleased to see that this range of impact assessments has been achieved by Scottish Government. We are particularly impressed by the inclusion of an island communities' impact, which shows that Scottish Government has taken note of those panel members who access social care support in island/ remote and rural locations where privacy is hard won and the workforce is limited by low population levels/ the ageing population. We would like to see the findings of the Equality Impact Assessment used in planning for things like intersectional inclusion of people with lived experience in governance and consideration of what information is needed in the charter and in how it is displayed.

It will be crucial that impact assessments are continued to be maintained during development of secondary legislation and as the new structures are developed. It is also vital, as always, that people with lived experience and their organisations are involved in monitoring the impact of policies through these means.

Questions about the Financial Memorandum

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Please provide your response in the box provided.:

We consulted the People Led Policy Panel and submitted a joint response to the 2021 Scottish Government consultation proposal for a National Care Service. In this we asked that funding for social care support be ring-fenced – members of the panel were concerned and remain concerned that the NCS, as proposed in the Feeley review, would not be implemented and funded properly and could be subject to 'dilution'. PLPP members talked about the need for more transparency in relation to funding and where money is being allocated. One member said, "COSLA and local authorities have not been forthcoming in setting out spend. NCS should help with this, but this will be a very complex undertaking, taking in all 32 local authority areas]. It was

hoped that the NCS would reduce duplication and free up resources but there was a "fear organisational interests will prevail".

We are pleased to see the economic benefits of establishing a national care service and particularly to see the value that the Scottish ILF brings back into the Scottish Economy. However, we note that there is still no firm financial commitment in this bill to reopen this valuable fund to new applicants.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

Please provide your response in the box provided.:

We also supported calls from others including Engender, EHRC and SHRC to urgently implement the Fair Work Convention in social care support and we believe this would help achieve equality for the workforce. Engender called for links to be made to other Scottish Government initiatives such as 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, women of colour, and unpaid carers. Although the gender pay-gap is referenced twice in the financial memorandum in reference to general savings made through investment and to the right to breaks for carers (which also assumes that carers will use that time to do paid work and not, for example, just take a well earned break), it has not been done to look at all aspects of the system.

In addition, and noted later in the section on Breaks for Carers, budgets also need to be put in place to ensure there are enough high standard and fully accessible respite centres for those disabled people to go to, or the breaks for carers will remain theoretical and not offer much in terms of breaks to people that really need them.

If this bill is to include a commitment to a service that is 'free at the point of use' as we have proposed earlier in this consultation, this will also need to be costed. As the Scottish Government has committed to removing social care charges, we would like to see this given long-term commitment within the NCS bill and consequently for this to be costed within the financial memorandum.

As we said in response to last year's consultation, we want to see the Independent Living Fund reopened to new applicants. This model has been proven to work for disabled people and is an ideal model for a NCS based on dignity, equality, and human rights. Re-opening of the ILFS was recommended by the IRASC:

The Independent Living Fund Scotland should form part of the suite of services supported at national rather than local level and become part of the National Care Service (Independent Review of Adult Social Care, p40

<https://www.gov.scot/publications/independent-review-adult-social-care-scotland/documents/>) This has, again, been agreed in principle by the Scottish Government, yet no budget or timetable has been announced. Despite free personal care for those under 65yrs being standard practice within local authorities, the ILFS still charges for such provision. This is iniquitous and should cease. Despite this iniquity, the ILFS (which had been called for by the Movement, itself) has proven to be a great success story, offering thousands of disabled people flexible opportunities to have greater choice and control over their much fuller lives. As the FM correctly states, every £1 invested in it has been demonstrated to show a return of nearly £11 in terms of social impact on the family and community-at-large (<https://ilf.scot/news-post/northern-ireland-evaluation-report-launched/>) It makes neither practical nor economic sense to delay re-opening it or at least committing to this and putting a plan in place within this bill and its FM.

Did you have sufficient time to contribute to the consultation exercise?

No

If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

Please provide your response in the box provided. :

Did you have sufficient time to contribute to the consultation exercise?

No, we did not. It was overly long and inaccessible. We had to challenge Scottish Government to produce more accessible and relevant easy read information. Once again, though, this is also a long consultation with insufficient time and insufficient easy read information explaining the bill proposals and consultation questions. What was produced was published after the bill consultation was published. This means there was inequality in access to the bill consultation for particular groups. Also, the consultation was introduced during the summer recess and this has made it challenging both for organisations and people who want to engage with it.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

Please provide your response in the box provided. :

We agree with the statement in the financial memorandum that considerable savings may be made by increasing early intervention and prevention and supporting unpaid carers to protect their health and wellbeing. We have argued this for a long time and this point was also well made in the Christie Commission recommendations made ten years ago.

However, this financial memorandum has failed to adequately address some of the costs of the service and the context in which this bill is being introduced.

One of the failures of implementation of good policy such as the Self-Directed Support (Scotland) Act 2014 has been its introduction to an existing system that had already been defunded due to the UK Government's disastrous policy of austerity resulting in real term cuts to public spending. Continued austerity has also been a backdrop to the current crisis following Brexit and the Covid Pandemic.

We are very concerned that the cost of living crisis and upcoming recession is not considered within the financial referendum aside from reflection on the current inflation (which is incorrectly recorded at 6.2%; the latest inflation rate in June was 9.4%, although the former figure may have been correct at the time of publication). Although it recognises that general investment in social care support will have a positive impact on local economies, there is generalised fear at the moment that local economies are failing due to the ever-increasing cost of living.

The direct recipients of social care support are also likely to be the most impacted by the cost of living crisis. Nearly half (49%) of all those living in poverty in the UK are either disabled people or live in a household containing a disabled person (Joseph Rowntree Foundation (JRF) Poverty in Scotland 2021), and the majority of those in receipt of social care support are disabled people.

The official measure of poverty (households living on less than 60% of median income) fails to take into account the additional costs associated with

disability. In 2018 Scope found that Scots disabled people spent on average £632 a month on disability-related expenses (e.g., taxis, increased use of heating, necessary specialist equipment, care costs, etc.) (Scope 2018 The disability price tag Technical report). Disabled people are still charged for their social care support and aids and adaptations they need to meet their equality and human rights, and some have continued to be charged for care they did not receive during the pandemic.

No one can say with certainty for how long these impacts will take hold, but we do know that poverty and health inequality go hand in hand and if poverty is going to get worse this FM needs to set out the personal costs people being transferred to the NCS will have already faced and how this bill will help to offset them.

This was, and still is, also an opportunity to introduce human rights budgeting (see <https://www.ohchr.org/sites/default/files/Documents/Publications/RealizingHRThroughGovernmentBudgets.pdf>) given the timing of the bill coming through parliament concurrent to the discussion of incorporation of several UN conventions into Scots Law, including the UN CRPD. Again, this puts an onus on the Scottish Government to consider taxation and revenue raising powers it has to fully fund a service that can afford both the progressive realisation and non-regression of human rights.

As already stated, budget for fully accessible participation has not been considered. This should include budget for accessible communications for meetings such as BSL and electronic note taking for deaf/ hard of hearing people, or support for deaf blind people; support for attending meetings (such as PA support); and information in accessible formats that people need. It should also account for the training (community learning development) costs to ensure that people with lived experience have all the learning, tools and information they need to participate on an equal basis. Inclusion Scotland is in a position to provide advice on both cost and content of this as we run lived experience groups ourselves (e.g. the People Led Policy Panel).

Inclusion Scotland support a SIAA (2022) recommendation that says there needs to be money invested in raising awareness on the role, value, and importance of independent advocacy 'to help practitioners across health and social care to understand what Independent Advocacy Organisations can do and how [they] can help improve communication, relationships with patients and unpaid carers and can help secure better outcomes for patients.'

Another missing item from the FM is budget for training for PA employers, social care providers, PAs, and other social care support staff, and independent advocates on the new data sharing requirements and the national care record.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Please provide your response in the box provided. :

Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Please provide your response in the box provided. :

National Care Service principles (Section 1)

Please provide your comments on the National Care Service principles in the box provided.

Use text box provided:

Inclusion Scotland and the PLPP are generally supportive of the principles in the bill, in particular the first principle on the realisation of human rights; and the advancement of equality and non-discrimination, further down. As we have said elsewhere in this submission, however, we believe these principles could be strengthened by adding in the right to independent living which elaborates on general human rights - specifically how disabled people should have choice, control, dignity and respect through social care support and in participating in the community. Since the charter will introduce no new rights, we feel it is inadequate not to specify disabled people's rights as the key stakeholder group to whom the delivery of the proposed new service will apply. This should be the bedrock of the National Care Service, along with the services provided being 'free at the point of delivery'. These additional points could underpin a service, if sufficiently and progressively invested in, that is the pride of this nation, as the NHS has been.

We are also glad to see that fair work is in the principles, as disabled people want the people that provide their support to be well remunerated and well recognised as a role with significant societal value (consider how social care support workers were recognised as key workers during the height of the pandemic; yet their pay and status has not really increased).

Accountability to Scottish Ministers (Sections 2 and 3)

Please provide your comments on Scottish Ministers' overarching responsibilities for the National Care Service in the box provided.

Text box provided below:

PLPP members and Inclusion Scotland support accountability of Scottish. We made it very clear in our response to the consultation in 2021 that there is very little trust left for Local Authority on their record of managing the delivery of social care support. Local Authorities, COSLA, and some unions argue that local authorities offer democratic accountability. However, with no independent complaints system and no legal recourse to justice or appeal for poor decision makers, PLPP members do not recognise this claim. Therefore, they want a national service that is accountable to Scottish Ministers. During last year's engagement for that consultation, it was raised that although decisions about social care support must happen at a national level to provide the national accountability that we currently lack in the present system, we also need to be able to consider local differences and the knowledge of local social workers. We also need to be aware of the issues specific to rural and isolated communities and not being urban-centric under a national service - one member said that "we need more consistent outcomes, but we are not all the same, so will a national system be adaptable enough to take into account our varying needs and the needs of rural or island communities?" The proposal within the bill to do that through care boards seems to address this, but also special care boards will need to recognise that people are not separate from their local communities and efforts should indeed be made to include them more.

One person described having a "major concern" saying, "how can we get it right across the country, when we can't get it right in our own postcode?" Another raised the concern that resources might not be allocated fairly across the country and that there must be full transparency around allocation of

resources in a National Care Service. Speaking about the current system, one member said, "Local Authority reporting on money coming from Central Government is not transparent, in terms of how it is used. When questions are asked about how centrally allocated funds are spent, it is impossible to get clear answers". People still now want to know how adult social care support specifically will be adequately funded, and that funding is ringfenced to ensure its spent on the right things, within a National Care Service, as this is crucial if we are to meet the aspirations of delivering on people's human rights to independent living.

Establishment and abolition of care boards (Sections 4 and 5 / Schedules 1 and 2)

Please provide your comments on these sections of the Bill in the box provided.

use text box below:

We support the establishment of care boards but with the amendments suggested under question 3 of this consultation, to ensure that people with lived experience are fully involved. While detail of this can come through co-design, the commitment to this should be made within the bill itself.

Strategic planning and ethical commissioning (Chapter 2)

Please provide your comments on this part of the Bill in the box provided.

use text box below:

Overall Inclusion Scotland agree with the Bill proposals around strategic commissioning. We are in support of the three-stage framework that ministers, and care boards will need to work through to reach strategic plans. Also, ensuring that strategic plans are assessed on a minimum 3-year cycle is welcomed as this will build in scope for making future improvements. The fact that this periodic lifecycle can be interrupted if an additional service is included under the NCS is viewed as necessary. However, any additional service brought under the NCS banner must be matched with sufficient investment, otherwise there is danger of other parts of the NCS being diluted due to funding being shared among different services.

The idea that voluntary organisations may solely be able to bid for set contracts does offer some promise for lessening competition for some contracts and in turn successful procurement could enable voluntary organisations to have increased robustness, as well as aid developing the workforce and staff retention. The emphasis of moving from a competitive to a collaborative agenda is laudable. There is an inherent need for due diligence so that commissioning strategies ensure that organisations bidding for voluntary contracts are not in a race to the bottom to attain them. We agree with an earlier consultation response from Alzheimers Scotland 2021, that:

'An ethical commissioning and procurement approach must include more than the bottom line. It must include Fair Work, terms and conditions, and aim to measure value delivering a fairer, outcomes focused, empowering social care support system that strives for continual improvement, participation and collaboration and delivers for all, those who need social care support and those who deliver it.'

(<https://www.gov.scot/publications/national-care-service-consultation-analysis-responses/documents/>)

Connected to ensuring that a bottom-line agenda is averted, we propose that the ways in which bids for contracts are assessed and the ways in which evidencing the effectiveness of the successful organisation, are co-designed with people who have lived experience of social care. Also, regarding procurement, ensuring that the NCS operates effectively at local and national level relies on ensuring that large national voluntary organisations do not monopolise at the expense of smaller organisations acting at the grass roots level in communities, as they often have well rounded knowledge of the area, the people living there and social issues affecting the local population. We only have to look to England and the fairly recent commissioning and procurement strategies to see the dangers of a few organisations attaining disproportionate amounts of public funding. And this has happened in Scotland to the detriment of small disabled people's organisation where a large central belt-based organisation has bidded over them, taken over their Service level agreement and then failed to deliver a decent service, leaving behind no services at all and a defunded DPO. As Klein (2014) evidences, 'organisations such as Turning Point and the Crime Reduction Initiative seem to be capturing an ever growing portion of government contracts for drug treatment' (<https://www.emerald.com/insight/content/doi/10.1108/DAT-03-2014-0017/full/html>)

In line with this trend the public health grant per head of population has reduced by almost a quarter between 2014/15 and 2019/20. A core factor in these service reductions has been the shift from moving away from a ring-fencing approach (Buck 2019 <https://www.york.ac.uk/media/healthsciences/images/research/prepare/reportsandtheircoverimages/Kings%20Fund%20report%20on%20drugs%20commissioning>). Therefore, to adhere to the NCS principles of meeting peoples' needs and human rights, we recommend that any commissioning strategy should have ringfenced budgets for each 3-year cycle, and again increasing this amount if other services are moved into the NCS.

National Care Service Charter (Sections 11 and 12)

Please provide your comments on these sections of the Bill in the box provided.

Text box:

Inclusion Scotland fully back the idea of an NCS charter and believe that by having human rights at the centre of it and the NCS more generally is progressive. Inclusion Scotland are aware that further detail around what human rights will feature in the charter are subject to secondary framework legislation. Inclusion Scotland very much support this approach in principle. When asked about the charter, panel members stated disabled people are regularly excluded from decisions about their needs, and that often there are differences in opinion between what professionals, like those working at Scottish Government and people with lived experience over what constitutes a full life. So, the fact that the charter is to be co-designed, it is felt that this bottom-up approach is best practice.

However, Inclusion Scotland and the PLPP do have some reservations around the charter. Namely, if the charter transpires not to be legally binding and / or has loopholes, then it could be diluted if a future minister / government did not fully back the NCS. Therefore, it is felt that the charter and the rights

contained within it need to be enshrined into law to offer protections around ensuring it is upheld, despite ministerial and governmental changes. Also, PLPP members state that if the charter isn't followed by government, care boards or service providers, it should be publicly acknowledged as to who didn't follow it and an explanation as to why this was the case should be given.

There is panel consensus that the NCS needs to enable people with lived experience of social care to fulfil all their human rights and participate in mainstream society as equal citizens. Both Inclusion Scotland and the PLPP believe that building the fundamental right to need satisfaction, a theory first advanced by Lough and Doyal 1991, into the charter is paramount. The concept of the right to need satisfaction is one of social justice, citizenship and reciprocity. It advances the idea that regardless of their background, every citizen in a society has the right to their basic needs being met. Jim Elder-Woodward OBE (2022), the Chair of the Scottish Independent Living Coalition (SILC) and a PLPP member has written a compelling article on the right to need satisfaction to be at the centre of the NCS: (<https://healthandcare.scot/default.asp?page=story&story=3173>)

Inclusion Scotland and the PLPP agree with two key points made in this article and recommend their uptake by the Government when going forward with the charter and NCS design. Firstly, if the NCS is to truly adopt a human rights approach that meets peoples' needs, then there must be a legal right to need satisfaction. This so as to give people increased scope to access the resources, they need to live a full and enriching life, as well as a legal right to challenge decisions if they feel their needs and rights are not being upheld. Secondly, a national record to chart levels of unmet need at a local and national level would offer transparency and aid tracking NCS success levels in achieving a core objective of meeting people's needs and human rights. The panel feel that the Charter needs to include having more than just basic needs met. Inclusion Scotland feel that the Scottish Government's move to bring the UN's Human Rights Convention into legislation is a bold and positive move, this trajectory should logically follow into the NCS and charter design. It is recommended that the UN's Convention on the Rights of Disabled People (UNCRPD) must be the central document used to inform the charter, if not the bill itself. This is because the UNCRPD adds detail to the rights in more generic conventions to clarify the rights of disabled people. Article 19 of the UNCRPD, 'Living independently and being included in the community' is felt to be significantly important and should be a central right within the charter. The Independent Living in Scotland (IiS) project stated that Independent Living is 'a philosophy developed by disabled people. Independent living means all disabled people having the same freedom, choice, dignity and control as other citizens at home, at work and in the community. It does not necessarily mean living by yourself or fending for yourself. It means rights to practical assistance and support to participate in society and live an ordinary life.' (<https://www.sdsscotland.org.uk/wp-content/uploads/2019/09/Independent-Living.pdf>). This definition has been adopted previously by the partners in the Independent Living Programme, the NHS, The Scottish Government and COSLA, and set out the vision for independent living. With such support, disabled people can participate equally and enjoy their human rights via their full and equal participation in the civic, social, judicial, and economic life of Scotland.

Current figures around loneliness and cultural participation are indicators of disabled peoples' non-participation in mainstream society. The most up to date figures from the 2020 Scottish Household Survey report that 48% of disabled people feel lonely some, or all of the time, when compared to 31% of non-disabled reporting similar feelings; it suggests that disabled people are on the whole considerably more isolated than their non-disabled peers. The same household survey reveals that just over half of disabled people had attended a cultural event (like going to the theatre, museum, or a library) or visited a place of culture in the last 12 months, this is in stark contrast to almost 9 out of 10 non-disabled people participating in such activities.

(<https://www.gov.scot/publications/scottish-household-survey-2020-telephone-survey-key-findings/documents/>)

Therefore, it is contended that particular focus is paid to Article 19 of the UNCRPD for charter design because this offers necessary protections to ensure disabled people the equal right to mainstream participation in ordinary life as non-disabled people. Article 19 states that this rests on ensuring choice over living arrangements and access to community services are on an equal basis with non-disabled people. Moreover, it also states that disabled people have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.

(<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-19-living-independently-and-being-included-in-the>)

In line with the right to live independently, ensuring that Self-directed Support (SDS) is kept in place under the new system is intrinsic, as it offers people self-actualisation over their care budget and therefore offers increased autonomy over how people want to lead their life. The fact that estimations suggest that around 4 out of 5 people (79.4) were involved in choosing and controlling their support via SDS options in 2021 is very encouraging (Public Health Scotland 2022)

<https://publichealthscotland.scot/publications/insights-in-social-care-statistics-for-scotland/insights-in-social-care-statistics-for-scotland-support-provided-or-funded/>

However, A recent ALLIANCE and Self-Directed Support Scotland (2020) report demonstrates that around 50% of people had not had access to all of the self-directed support options (<https://www.alliance-scotland.org.uk/wp-content/uploads/2020/10/ALLIANCE-SDSS-MSMC-National-Report-Oct-2020.pdf>). Going forward with the NCS design, we are in support of calls from Derek Feeley's Independent Review that calls for ensuring people are genuine partners in making decisions on their social care arrangements and that they are given clear information about all the options available to them.

Independent advocacy (Section 13)

Please provide your comments on this section of the Bill in the box provided.

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One of the guiding principles of the UNCRPD is the "Respect for [the] inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons' Inclusion Scotland and PLPP members agree strongly that having independent advocacy is vitally important in this respect and is vital for people with lived / living experience of accessing social care. As the Scottish Independent Advocacy Alliance (SIAA 2022) (<https://www.siaa.org.uk/wp-content/uploads/2022/08/SIAA-Response-SMHLR-Consultation-Additional-Proposals.pdf>) state, independent advocacy helps people to have 'the right to a voice: addressing barriers and imbalances of power, and ensuring that an individual's human rights are recognised, respected, and secured.' Also, Inclusion Scotland feel that having peer advocacy services embedded into the NCS is sound strategy. It offers promise for being a source for a collective voice and giving people a source of impartial support for getting advice and navigating the NCS. Also, we fully agree that embedding a co-design approach in this area is key for maximising the potential for an effective service.

However, it is felt that there is little detail in the Bill about how advocacy will be implemented and how people with lived experience will be involved on the co-design process. Panel members have asked questions and made several points on this area. The Bill does not have detail as to whether having access to independent advocacy will be enshrined in law. On Mental Health grounds in Scotland, the right to independent advocacy is written into the mental health legislation, in which you can have an advocate for things such as tribunals. This also extends into advocacy within the Social Security (Scotland) Act 2018 to help disabled people access social security and appeal decisions. So, there is legislative precedent to include this as a specific right, with resources committed to it, within the National Care Service.

Panel members stated that the Scottish Government needs to be clear about who advocacy is for. Unpaid carers and Disabled people may disagree on

what is needed from an advocacy service and that one form of advocacy may not fit all. There should be one for families and one for disabled individuals that meets their different needs and access requirements.

As the independent review by Derek Feeley outlines, there is a lack of local independent advocacy, both individual and collective. Also, SIAA 2022 raises issues with current arrangements to access local advocacy, namely in rural areas. So the ambition set by Scottish Government that the NCS will offer equitable provision nationally is welcomed. Although, there are still concerns that people may not get the same access to advocacy, for example how would people get support if there are no Disabled People's Organisations (DPOs) and / or Advocacy Organisations in their area?

Whilst it may be possible to use technology to speak with an advocate, it should not be assumed that people can or wish to access advocacy in this way. As it stands, to meet an advocate in person, people spend time and money travelling to see them especially if living rurally. One panel member said: 'if people can't do that, then you don't get the service that you get elsewhere'. We propose a solution to this is to have a budget allocated under the new system to cover the costs incurred for travelling to speak with an advocate. Regarding rural provision, SIAA (2022) report that independent advocacy groups operating in rural locations have said that accessing current learning opportunities has been problematic and therefore this requires a mixture of learning opportunities such as online learning as well as vocational learning.

Panel members report that experiences of accessing advocacy have demonstrated that often advocates are older people who are retired or nearing retirement age, so there needs to be a drive to bring in new advocacy workers to ensure there are sufficient workers nationally. Moreover, a PLPP member said that whilst advocates from access panels do their best, they are often under resourced and trained, thus go off their own experience when giving support and advice. We feel that a professionalised national advocacy service / body, with well funded and accessible outreach services, can offer much potential for addressing these issues. Controversially, there are also concerns at the prospect of having a national advocacy service, whereby an advocate is drafted in, but they are unfamiliar with the person's local area and the services they use/ that are available. PLPP members suggest that a professional advocacy training service and professional body at national level which has representatives with localised knowledge and connection to the area where they act as advocates is pivotal.

A panel member alluded to the fact that the Bill proposes that only voluntary organisations can bid for certain contracts, it has not been made clear if this extends into advocacy services? When looking at current independent advocacy jobs in Scotland, hourly rates start from as little £12.08, and some independent advocates work on a purely voluntary basis (SIAA 2022). Arguably, the role of advocates is instrumentally important, to provide support for decision making, understanding of information, etc., for disabled people trying to access support, complaints, appeals, etc. In line with the Independent Review of Social Care recommendation of up-skilling and paying support workers a fair wage to recognise their valuable impact, we propose the same should be applied to advocacy workers. A possible solution could be to ensure that independent advocacy organisations contracted under the NCS are paid sufficiently and that there is a government stipulation on the base rate for Independent Advocates pay.

A panel member felt that if an advocacy organisation was contracted and a lot of the cases they took on led to liable action or public criticism of the NCS underperforming, that they then may not be contracted again. Whilst this may sound anecdotal, SIAA (2022) report that, 'We know of member organisations who have used legitimate mechanisms to hold services to account and not had contracts renewed'. This panel member's view aligns with other points made by PLPP members, in that there is suspicion of people's human rights being undermined by those with extensive powers. Therefore, it is important to create an advocacy service that has tangible reach when there are service failures under the NCS. Otherwise, people with lived experience may have diminished trust toward the government and the NCS. In line with a SIAA (2022) recommendation, Inclusion Scotland agree that sufficient resources must be given to independent advocacy organisations to collect data in a uniform way across Scotland, so issues can be tracked at structural and strategic level. (<https://www.siaa.org.uk/wp-content/uploads/2021/02/SDS-and-Independent-Advocacy-Research-Report.pdf>)

There is a sense from the panel that disabled peoples' voices are being eroded and that investing in peer advocacy is critical for having a strong collective voice. The panel also feel that there needs to be more brokers / advocates with lived experience which has also been called for by SIAA (2022). We asked the panel what they felt disabled people would need to become advocates. It was mentioned that having support from a peer group could aid them to go onto become independent advocates. Also, having equal respect from other advocates and professions is necessary, as is an understanding that people with lived experience may need to work at a slower pace and their capacity levels may fluctuate. Therefore, offering job shares / or a low commitment, high threshold principle should be carefully considered. An accessible training programme would be required to enable disabled people and carers to become advocates as well. These could be delivered by centres for inclusive living which have expertise in delivering accessible training to disabled people and on social care support.

For disabled people to be enabled to become advocates and / or avail of advocacy services, there needs to be accessible advocacy information in various formats. Information would need to be available digitally and offline too because only 71% of adults with a limiting long-term physical/mental health condition use the internet compared to 94% of non-disabled adults (Scottish household survey 2020)

(<https://www.gov.scot/publications/scottish-household-survey-2020-telephone-survey-key-findings/documents/>). Also, advocates would require training to have an awareness of other forms of communication, including Easy Read, BSL and Makaton. If independent advocacy is to get to a professional level, then it needs to be equally met with communications support, in that it must be readily available, such as BSL interpreters to communicate with deaf BSL users receiving advocacy. As one panel member said 'any degree of reasonable advocacy must meet the reasonable adjustments and access requirements that people need to communicate. Not having such communication support equals an unmet need.'

A PLPP member works as a broker and is a social work student. They said social workers don't seem to understand brokerage. They don't talk about advocacy or brokerage. This suggests that other services with social care remits need training around advocacy to understand why it is vitally important for ensuring the human rights framework that is to be embedded in NCS is upheld.

Inclusion Scotland also support the recommendations made by Elder-Woodward (2022) (<https://healthandcare.scot/default.asp?page=story&story=3173>) which centre around the NCS and advocacy services being available for the following reasons

- To have independent pre-assessment (peer) advocacy
- To have the presence of independent (peer) advocacy during the assessment period
- To produce one's own self-assessment, with assistance from an independent (peer) advocate
- To be present, with an independent (peer) advocate, if required, when decisions about resource allocation are made

Complaints (Sections 14 and 15)

Please provide your comments on these sections of the Bill in the box provided.

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Similarly with the advocacy service that will form part of the NCS, Inclusion Scotland and PLPP members support the proposal that the complaints system is to be co-designed. As a PLPP member said on this issue, 'the best people to write this are those who've made complaints which have never been

addressed properly'. Another panel member has been involved in early co-design, taking part in an interview with support of a civil servant from the Scottish Government office of the Chief Designer. It is welcomed by them and Inclusion Scotland that the panel member feels they were genuinely listened to. As many panel members have been ground down by lengthy complaint procedures that haven't led to satisfactory outcomes, going forward, listening, and importantly acting upon peoples' views and recommendations on how to design the system is vital. It will be as important to include people with lived experience in evaluation and monitoring of new systems put in place through co-design as well.

With the NCS complaints system, it is felt that it must be designed from the ground up, it cannot be a case of copying and pasting from existing complaint systems elsewhere. Also, it is viewed that it should be solely for complaints, not general feedback, positive accounts, etc, and that these should be handled separately. This is based on a panel member reporting when they have contacted an NHS feedback department, they were told their feedback was overly negative.

We spoke to the panel about the Scottish Government providing sector guidance and direction on care board complaint processes. Panel members are wary about the language being used because in their experience if it's seen as merely guidance, that e.g. Local Authorities often don't adhere to fully. There are indeed many examples of good statutory guidance that have not been used effectively by public bodies such as IJBs, Local Authorities, and Community Planning bodies. For example, (Health and Social Care Integration – localities: guidance) from 2015 clarified the relationship between localities and community planning,

'10.1 Each Integration Authority will have two or more localities, which will contribute to its strategic commissioning plan. The Integration Authority will be a statutory community planning partner and therefore subject to duties placed on Community Planning Partnerships and partners by Part 2 of the Community Empowerment (Scotland) Bill.

10.2 Some locality arrangements already exist under community planning; it will be important that localities for integration build upon and take account of such arrangements and create effective relationships between CPPs and Integration Authorities that health achieve the national health and wellbeing outcomes.'

The advent of Health and Social Care Integration (HSCI) agenda provided a potentially rich opportunity for disabled people and their organisations to get involved and co-produce local plans with IJBs. Meaningful participation with disabled people and their organisations could have constructively informed and shaped both health and social care services, providing preventative solutions, and promoting the independent living agenda. However, these vital links were seldom made, and disabled people were generally to excluded from the community planning process in relation to health and social care support, or included in very tokenistic ways that did not take into account the views of the wider Community of Interest.

Inclusion Scotland appreciate that much of the Bill is subject to secondary framework legislation, and that acting upon service failures are mentioned within this section of the bill. However, the consistent use of the word 'may' is seen by the panel as being overly vague and they want to see definitive commitments being made. The panel and Inclusion Scotland want to see a real commitment to redress in cases where peoples' needs, and rights have not been fulfilled. Also, it was mentioned by a panel member that if a care board fails in its duties / doesn't comply with the NCS charter, then this information should be made publicly available.

Panel members also made the point that any letter which is sent to someone that relates to the NCS should have clear details and contact information on how to make a complaint and receive advocacy for doing so. Given that panel members have had severe difficulty in reaching relevant people to make complaints by phone, it stands to reason that there needs to be sufficient investment for staffing the complaints service and making it fully accessible (e.g. text relay service or similar), so that lodging complaints is a seamless and easy process. Afterall, when making a complaint people are already having feelings of stress and anxiety which poor handling has only ever added to. As part of making reasonable adjustments, any verbal interaction related to the NCS that leads a person to being unsatisfied with the outcome should be able to request that the details of the interaction are put into writing, this will also help document evidence if the person wishes to lodge a complaint.

Regarding the current arrangements for needs assessments and challenging / making complaints about decisions, there is currently no independent complaints procedure if you don't agree with an outcome, the review is done by same people who did the initial assessment. This puts supported people in a precarious position and can prevent them making complaints for fear of losing the support they already get. We strongly recommend that there is suitable alterations to this bill to ensure that any complaints system is entirely independent of the NCS and Boards themselves so that they can be held fully accountable.

There is agreement between the PLPP members that there should be a Commissioner for Social Care Support and Inclusion Scotland support this too. The panel feel that a Commissioner would give people accessing care and support a voice and provide assurance that complaints would be addressed properly – with the caveat that any Commissioner needs to be given meaningful powers to not just intervene and investigate, but also take and enforce remedial action. However, panel members raised a few concerns, one being there is feelings that often people in power act like they understand what it is like to have lived experience when they have family members who are disabled people, carers or social care workers; the panel feel this is not the same as having direct lived experience and is patronising. As a PLPP member stated, 'If their role is around Social Care and people's lived experience, but they don't have a clue about what we experience, how can they understand it?'

Therefore, the panel and Inclusion Scotland support calls from People First Scotland that the appointed Commissioner is someone who has lived experience and should be accountable to DPOs. Moreover, the commissioner should work closely alongside other people with lived experience. PLPP members suggested this could be an independent panel of people with lived experience to offer guidance, sense checking and problem solving, similar to the People Led Policy Panel itself.

The Bill suggests that the minister will select a commissioner, but Inclusion Scotland agree with a point made by a PLPP member. This being that input should come from people with lived experience as to who is elected as commissioner, for example progressive housing associations like Grampian Housing involve tenants on voting appointees and feeding their views into how the association is managed:

(<https://www.grampianhousing.co.uk/en/grampian-housing-association/tenant-zone/get-involved>)

We also want to see genuine powers given to the NCS commissioner enabling them to take and enforce remedial action at local and national level. Also, presently commissioners are technically not allowed to talk with other commissioners. For example, if something is raised to one commissioner and they knew it might be better under the purview of another commissioner, they cannot give the information over to them. We feel changes in this respect need to be made.

There is currently a Private Members Bill from Jeremy Balfour proposing a Disability Commissioner and it is unclear as to how this commissioner will cross over/ have common work with the NCS commissioner. Whilst it seems that the Disability Commissioner will have a wider remit than the NCS Commissioner, it is felt that they will both have to work closely together for a holistic and joint up approach to ensure improvements that benefit disabled people and wider society in Scotland are made (as social care support is not separate from other aspects of disabled people's lives that as they are experience it, such as housing, travel, employment and family life) .

Please provide your comments on these sections of the Bill in the box provided.

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We believe that with accountability there must be powers at a ministerial level to intervene; but there must also be legal redress for people when they are victims of service failure – a service failure does not happen in isolation of the person who should have received a service and service failure should be the absolute exception in social care delivery going forward, whereas it is not exceptional currently.

There is some discomfort with the use of the word 'power to' specifically in relation to choosing who is and is not allowed to bid for specific contracts. While we could potentially support limiting some contracts to voluntary organisations, it is the way in which this is written into the bill that is of concern. On the one hand it appears to place the onus on one person, a minister; there are concerns that this is not future proofing the bill as the power as it is currently written could allow a future minister to exclude other organisations or groups than were originally highlighted. It would be better for this requirement to be spelt out in the legislation itself. That is if there is an intention to limit bids from certain sorts of organisations then the type of organisations that the SG intends to exclude should be named/identified in the Bill (or at the very least in regulations) and if they are not totally excluded the circumstances in which they could be excluded should be spelt out. That way Parliament can scrutinise who is actually being excluded from bidding and can also ask why and in what circumstances. Alternatively, a future minister might never exercise this power even though they had earlier provided reassurance that they could/ would be able to exclude some groups by having this power, and this is concerning to PLPP members as well.

Connected functions (research, training, other activities and compulsory purchase (Chapter 5)

Please provide your comments on these sections of the Bill in the box provided.

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Including research and training as an NCS function and giving both ministers and care boards powers to conduct research and offer training is welcomed and necessary. We say this on the basis that having budgets for these areas offers promise for monitoring the effectiveness of NCS. 24 1.a of the Bill states 'training courses are for individuals to equip them with knowledge and skills relevant to providing services on behalf of the National Care Service.' Whilst we do commend this on the basis that it such investment would help to enable the upskilling of the social care workforce, there is no mention of people with lived experience being able to avail of training. Effective co-design is said to be at the heart of the NCS, so any research must involve people with lived experience. This also applies to training, in line with a point made by a PLPP member, there needs to be money earmarked in training budgets for capacity building for the active and effective participation of those with lived experience. For instance, training should be available around aiding people with lived experience of understanding, designing, and developing strategies. This is to ensure their input is knowledgeable, appropriate, and effective.

Looking at plans for the NCS Design School, the Scottish Government see it as 'a space for collaboration between those who deliver and those who receive care services – the work which will become the heart and home of co-design for the NCS'. Inclusion Scotland feel this is promising for effective co-design, however, the Government states the NCS Design School is to be modelled on The Promise Scotland (<https://www.gov.scot/publications/national-care-service-co-design-national-care-service/pages/1/>). Getting information and signing up to take part on Promise Scotland requires using an online portal. As touched upon in the advocacy section of the consultation, under a quarter of all disabled people in Scotland do not use internet (<https://www.gov.scot/publications/scottish-household-survey-2020-telephone-survey-key-findings/documents/>) As the NCS Design School is central to the co-design of the NCS, it is really important to look at alternative ways for both relaying information about the NCS Design School and for people to be able to take part offline, and online.

Moreover, the NCS Design School webpage states it was set to be launched in the summer of 2022 and no updates have been given around where things are at currently with these plans. As Scottish Care (2022) outline, 'the lack of clear timescales around the initiation of co-design processes and details of how people can get involved are adding to these concerns.' (<https://scottishcare.org/wp-content/uploads/2022/08/NCS-SC-Briefing.pdf>). Well intentioned policies such as the Scottish Community Empowerment Act (2015) have looked good on paper for enabling marginalised communities to access public funding for capacity building and, but have fallen short of the mark in delivering significant impact in this regard. As Elliot et. al (2018) contend: (https://www.researchgate.net/publication/328102855_The_Community_Empowerment_Act_and_Localism_under_Devolution_in_Scotland_the_perspective_of_mu

'it is frequently noted that developing capacity in leadership, governance and partnership working is very difficult (Sullivan et al., 2006; Sinclair, 2011). The Community Empowerment Act 2015 does not take account of these challenges and does not put systems in place to further support the capacity of communities to become more empowered ... community empowerment cannot happen in a strategy vacuum. For community empowerment to be effective it must be supported by a shared strategy, shared resources and shared accountability between all parties involved. This requires significant coordination, support and development activity. It is therefore recommended that, where community empowerment is to be promoted, efforts must be made to ensure that communities are supported with significant training and development.'

It is critical to launch the NCS Design School as soon as possible in order to avoid an implementation gap as this is a key stage for equipping people with lived experience with relevant knowledge around the NCS, human rights, as well as policy and legislation formation, so as to then be able to effectively contribute in the shaping and formation of the NCS. Also, to minimise existing concerns, providing more regular updates on where things are at with co-design are required, as is embedding accessible mechanisms for people to get involved, for instance a public campaign on the NCS inviting people to get involved, as well as initiating proactive outreach from the likes of Parliament and Communities Team and / or CLD workers as well as information events could prove useful in this regard.

In addition to the co-designing aspects of the NCS, it is imperative for people with lived experience to be consistently involved in ongoing co-production as equal partners and co-creators. This is recommended on the basis that whilst co-designing NCS services in the planning stages is really important, so is the need for involving people with lived experience in the delivery of service provision (Ross et al, 2013

https://www.researchgate.net/publication/265215591_Co-production_in_social_care_What_it_is_and_how_to_do_it) The authors outline, that co-production involves the following:

- co-design, including planning of services

- co-decision making in the allocation of resources
- co-delivery of services
- co-evaluation of the service.

In addition to these aspects of co-production, Inclusion Scotland also recommend involving people with lived experience in both designing the framework for and the actual monitoring of NCS services and any research associated with them. A good resource for informing Scottish Government around best practice for co-production with disabled people can be found at: (<https://www.drilluk.org.uk/project-summaries/>)

Compulsory Land Purchase

Generally speaking Inclusion Scotland back the Bill proposal to allow Government compulsory purchasing of land for NCS functions. This being said, ensuring any existing or new buildings that arise for compulsory land purchases must be accessible and have impact assessments made to ensure this is the case. Moreover, Inclusion Scotland feel that any land purchases must not include buildings that are currently used by the likes of voluntary organisations which offer critical / frontline support to the communities in which they operate. If this were to happen, it could stoke resentment from various stakeholders, so if any such cases do happen, there must be protections to offer any parties affected new and suitable premises, that are as close by to their existing site as is possible.

Transfer of functions, including scope of services (Chapter 6 and Schedule 3)

Please provide your comments on these sections of the Bill in the box provided.

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We agree that many functions of social work need to be transferred to the NCS in order to ensure that there is one national delivery service. However, as raised at the beginning of this consultation, care needs to be taken in the co-design stages as to how this is done without impinging on service delivery. And focus should not only be on the structure of the service but as to its commitment, for example, to improve and spread best practice in the delivery of Self-Directed Support.

The PLPP have been concerned, as stated throughout this response, that transfer of health functions could potentially both dilute resources available for good quality social care support; and that, as with the integration of health and social care support, it could introduce a medical model of service delivery into what should be focussed on removing barriers and realising human rights.

However, PLPP members are also pragmatic, and recognise that some functions that are being proposed to be transferred are currently under the purview of Integration Authorities and that this transfer is to local care boards, which will have community accountability and buy in from people with lived experience. Further, they are also fully aware, as people with a diverse range of lived experience of getting social care support, that some specialist healthcare support is needed as part of a person's package of social care support.

In terms of the scope of the National Care Service listed in Schedule 3, panel members responded to this question in last year's Scottish Government NCS proposal consultation and felt that they didn't have the required lived experience in order to comment on some of these services, and that as they were not included in the scope of the Independent Review, there should be more time given to exploring their inclusion with those who do have lived experience, as per the allowance in the bill given to children's and justice services. Having said that, when we looked more closely at which services and for whom they would be brought in to a NCS, most people agreed that there is a need to improve national consistency and to bring ministerial accountability to delivery of mental health, addiction and prison services.

It was also pointed out that authorities have different legislative duties/powers towards these diverse groups of people-in-need. This means that more money/resources could be put towards resourcing the needs of those to whom the authorities have a 'duty' of care (as with children and prisoners), than those to whom authorities merely have the 'power' to meet need (as with adults and older people with support needs). The danger here is that there will be a hierarchy of clientele, with adults and the elderly at the bottom.

We therefore want to propose that all aspects of this transfer be co-designed with people with lived experience, to ensure that the right culture is brought into the Service, and that the focus is put mainly on ensuring that supported people's outcomes, and human rights, are met. As with everything, it should be done using a human rights approach (PANEL principles).

Inclusion of children's services and justice services (Section 30)

Please provide your comments on this section of the Bill in the box provided.

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Inclusion Scotland and the PLPP support the Scottish Government taking time to consult on the proposal to transfer children's and justice social work services to the NCS, in order to avoid unintended consequences and really 'get it right' for everyone. We hope the children's social work consultation will take on the views of children and young people themselves, including especially disabled children and young people and other children with support needs, and their carers and families, along with support providers, etc. It needs to be done in truly accessible and age appropriate ways.

Most PLPP members agreed that children's social work and social care support services should be included in the NCS. People said it could help with transitions, that there is currently no continuity between children's and adult services, and it would help if they were all "under one roof". For example: "Yes, this is essential. For many children who require support from social services/ social care support they are going to require this as adults or often be more likely to need this as adults. Currently the process of transitioning is incredibly challenging and would benefit individuals and family for this to be smoother and a gradual change between the two. Children who require social care [support] should have as much right as any other member of the general population to leave home when they are old enough and have the option to choose where to live (different area, etc.) and also have the option to not remain with families but live as independently as possible if they so wish. By children's services being part of the NCS then this allows time for children and young people to know options into the future and choose what they want knowing whether they move or decide to do they are guaranteed the same support around Scotland. By doing this as a joint service there will be more security for children in transitioning and they won't just end up with only what's available or suddenly find themselves in a completely different system to try and navigate and find themselves starting over from scratch. Similarly, by linking it all in together it can ensure suitable respite and support for families and signposting to other aspects that could be helpful within the NCS (e.g. mental health support) which could also benefit young carers, siblings, etc. too. It is essential the service doesn't exclude people and that

everyone can benefit as seen with the NHS”.

“I haven’t changed” – why should the service change?”

There was a concern raised though that there have been previous efforts to include other services in the past, before separating them, and a feeling that we are “going round in circles”. Reference was made to the Kilbrandon Report which related to children’s welfare:

“Different groups, e.g. children but also probation, were part of social work in the past, but now they’re separate. We seem to be going round in circles.

The Kilbrandon Committee Report of 1964 (<https://www.gov.scot/publications/kilbrandon-report/pages/4/>) related to setting up Children’s Panels, but it grew arms and legs. It ended up in the 1968 with the Social Work (Scotland) Act, which set up local authority social work departments. These departments, under the leadership of newly designated Directors of Social Work drew together children’s departments, welfare departments and the probation service. We might want to ask Minister why the jump back in history; why the jump from adult social care support to other groups, and all other care and health services?”

Many people who encounter the justice system or justice social work are disabled people, often people with mental health issues or learning disabilities, and the root cause of this can be because of a lack of social care support:

“Yes, people in justice system often have undiagnosed mental health issues. I know someone who ended up in prison really due to social work not providing the support he needed– inclusion would help ensure a more comprehensive support for everyone”.

The current estimate for the numbers of people with social care support needs in prison between 2019-2020 are between 7-10%, with 13% of people requiring support in the community outside prison (<https://www.gov.scot/publications/scottish-prison-population-statistics-2019-20/>). There is an identified need for more preventative measures. Derek Feeley, in the IRASC, said:

Consideration should also be given to supporting social care in prisons and other custodial settings as part of the national service rather than through local arrangements”. (Independent Review, p 40).

We would like to see the engagement and consultation take intersectional and human rights approaches, particularly noting the need to get the views of seldom reached groups of supported people. And analysis of the consultations should be made publicly available in accessible formats.

Consequential modifications / Interpretation of Part 1 (Chapter 7 and Schedule 4)

Please provide your comments on these sections of the Bill in the box provided.

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Health and social care information (Part 2)

Please provide your comments on this section of the Bill in the box provided.

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We agree that an information standard needs to be produced in order for a scheme for care records to be shared to be successful, but we argue that this standard should be co-designed with supported people and unpaid carers. There was mixed support for a shared care record when we discussed this as part of last year’s consultation. Some people found the idea of not having to repeat their story/ lived experience to be potentially liberating; whereas others were highly concerned that confidential information could be recorded incorrectly and shared with other service providers. Supported people and unpaid carers therefore should have a right to access information held about them, and to correct it/ be believed if something has been recorded incorrectly by mistake. Indeed, a costly breach of human rights could occur if this does not happen. Express permission should be gained, in many cases with supported decision making to enable their right to legal capacity.

The PLPP has been involved in a great deal of consultation on the health and social care data strategy recently, have extensively given their views and informed how this should be applied. The Scottish Government therefore have a useful record of their views which could help inform plans for this information standard, to ensure that it recognises and realises the rights of disabled people and unpaid carers to privacy (article 8 of the Human Rights Act 1997). This can be used as a useful basis for starting to co-design the information standard.

Right to breaks for carers (Sections 38 and 39)

Please provide your comments on these sections of the Bill in the box provided.

text box:

As the Independent Review into Social Care shows, the impact of being a carer and not having breaks from caring responsibilities can be severe on their physical, mental, and psychological wellbeing. So, it is very encouraging to see the proposal for carers to be given the right to paid breaks and removing eligibility criteria for them is fully supported by inclusion Scotland. Whilst such breaks would offer much needed respite, it is not a panacea. The issues affecting carers and the people they care for often centre around a lack of material resources which is compounded by additional costs to provide care (such as buying aids and adaptations and paying higher energy bills than average households), as well as insufficient state support and housing conditions (Carers Scotland 2022 <https://www.carersuk.org/scotland/news/facts-and-figures>). This is especially relevant on the issue of unpaid care, when considering the value of unpaid care in Scotland is estimated at over £36 billion annually, and the 2019 NHS Scotland budget was £13.4 billion, arguably a lot more must be done to support carers than giving them free breaks. We recognise Scottish Government has made progressive moves for carers, not seen elsewhere in the UK, namely offering Carer’s Allowance Supplement payments and this offers promising foundations to build upon. In line with a recommendation made in the independent review to be increasing paid support workers’ wages, we recommend that more must be done to give unpaid carers increased social securities for the vital contribution they play.

This is arguably both an ethical and logical route to take, and one that aligns with the NCS early intervention and preventative approach. Otherwise, material hardship faced by carers and the people they care for could lead to an untenable situation, in which the unpaid carer can no longer provide care. Thus, the person receiving care would have an increased need for state support, and the costs for these new arrangements could be considerably more expensive. Also, moving into statutory care can be damaging for people receiving care from someone familiar and carers alike. The impending cost of living crisis is set to see carers, as well as the disabled people they care for disproportionately affected, as (Carers Scotland 2022 <https://www.carersuk.org/scotland/news/pushed-to-the-brink-financial-pressure-on-unpaid-carers-unsustainable>) at present more than half of carers are

financially struggling, this is projected to rise to 85% if costs keep increasing. Inclusion Scotland back all the recommendations called for by (Carers Scotland 2022)
2022, these being:

- for the Scottish Government to work with the UK Government to increase Carer's Allowance and other benefits, in line with current inflation predictions for April 2022. Carer's Allowance is set to rise by only 3.1% in April 2022, while inflation (CPI) is expected to reach 7.25%.
- also seek to increase devolved benefits in line with current inflation predictions
- pay a double Carer's Allowance Supplement payment in 2022, as provided in 2020 and 2021.
- extend eligibility to unpaid carers and ringfence hardship funding through the Scottish Welfare Fund.
- develop additional financial support for households with disabled people and carers to meet the increased costs of energy that are higher than the general population. At a minimum, the Government should develop targeted support for disabled people who face the highest costs, particularly those with complex needs and those with additional energy costs that are a key requirement for maintaining their health, wellbeing and independence. This could, for example, include for operating medical equipment such as home oxygen or electric beds to prevent pressure sores, or who require mobility aids such as electric wheelchairs to be charged.
- urgently reduce care charging: at a minimum requiring all councils to including heating and additional costs of living for disabled and older people within disability related expenditure.

We support these recommendations, given the nearly half (49%) of all those living in poverty in the UK, are either disabled people or live in a household containing a disabled person (Joseph Rowntree Foundation (JRF) Poverty in Scotland 2021). Also, the official measure of poverty (households living on less than 60% of median income) fails to take into account the additional costs associated with disability. In 2018 Scope found that Scots disabled people spent on average £632 a month on disability-related expenses (e.g., taxis, increased use of heating, special equipment, care costs, etc.) (Scope 2018 The disability price tag Technical Report). Moreover, many carers report that caring results in a negative and often lasting impact on their physical and mental health, but as with the rest of the population, many people with existing impairments or long-term conditions also take on caring responsibilities. The 2019 GP Patient Survey found that carers are more likely to report having a long-term condition, illness, or being disabled than non-carers – 63% of carers compared to 51% of non-carers. (Carers UK Facts_about_Carers_2019.pdf cf NHS England (2019) GP Patient Survey 2019).

Implementation of Anne's Law (Section 40)

Please provide your comments on these sections of the Bill in the box provided.

text box:

The Covid-19 pandemic and its impact have clearly shown how badly people suffered when not being able to have visitors / visit loved ones in care. So, Inclusion Scotland fully back the Bill proposal around providers and public health teams allowing visiting rights to residents in care homes, having different practices that currently exist and having these amendments in legislation. However, the Bill states exemptions may be put into force if ministers decide to do so. How exactly this would be decided remains unknown at this stage. We recognise that overall responsibility will lay with ministers and then care home managers and they have legal obligations to keep residents safe. It is felt that the people directly affected the most (residents and families) should be able to feed in their views, so as to help give an objective account to aid the final ministerial decisions made over visiting exemptions. In line with the NCS human rights framework, we support (Care Scotland 2021 <https://scottishcare.org/wp-content/uploads/2021/11/Annes-Law-Consultation.pdf>) recommendation that 'in situations where there may be divergence of views amongst residents and relatives that the adoption of human-rights based approaches such as the FAIR model offer a positive, right-based approach to address individual concerns in a collective and shared living environment.'

Reserved right to participate in certain contracts (Section 41)

Please provide comments on this section of the Bill in the box provided.

text box:

We reiterate points made earlier in here, that the bill needs to be more specific about which kinds of organisations should have a reserved right to participation in certain contracts and which should be exempted. We support the idea that the voluntary and third sector play key roles in the provision of a lot of social care support; including some disabled people's organisations such as Centres for Inclusive Living. There would indeed be high value in commissioning particular DPOs to provide Easy Read information; or training and support for PA employers who receive option 1 payments under SDS. However, keeping it vague in the bill will leave it open to interpretation for future ministers to decide which types or organisation could be favoured and which could be exempted.

Regulation of social services (Sections 42 and 43)

Please provide comments on these sections of the Bill in the box provided.

text box:

As with last year, again, the PLPP did not have time to look at this section of the bill in detail in the consultation period and nor did they have the necessary information the first time around. We want to know more about how deaf and disabled people and unpaid carers will be equal partners in regulating and monitoring the new NCS. The PLPP welcome being part of decision making about regulation and being equal partners in coproduction work in this area. Please contact us to get us around the table.

Final provisions (Part 4)

Please provide comments on this part of the Bill in the box provided.

Submitted to National Care Service (Scotland) Bill (Detailed)
Submitted on 2022-09-02 11:38:56

About you

Please read the privacy notice below and tick the box below to show that you understand how the data you provide will be used as set out in the policy.

I have read and understood how the personal data I provide will be used.

How your response will be published

I would like my response to be published in its entirety

What is your name?

Name:

[REDACTED]

What is your email address?

Email:

[REDACTED]

Are you responding as an individual or on behalf of an organisation?

Organisation

Organisation :

Shared Care Scotland, on behalf of the National Carer Organisations

Please tell us a little more about your connection to care services. Which of the following options best describes you. (Tick all that apply)

Other (please specify in the box below)

If you selected 'Other' please provide more information in the box provided.:

Shared Care Scotland is one of the six National Carer Organisations (NCOs) in Scotland. Together we have a shared vision that all Scotland's unpaid carers will feel valued, included, and supported as equal partners in the provision of care. The NCOs aim to achieve this through the representation of carers and giving them a voice at a national level.

Would you like to be involved in future engagement work?

Yes, I would like to be involved in future engagement work and agreed to be contacted by the Committee in the future.

Organisation details

What is your job role?

Please provide answer in box provided:

Head of Policy and Communications

Information about your organisation

Please add information about your organisation in the box below:

This response has been jointly prepared and submitted by the following National Carer Organisations, collectively referred to within this document as the NCOs: Carers Scotland; Carers Trust Scotland; Coalition of Carers in Scotland; MECOPP (Minority Ethnic Carers of People Project); Shared Care Scotland; and Scottish Young Carers Services Alliance. It sets out our jointly agreed position.

General questions about the Bill

The Policy Memorandum accompanying the Bill describes its purpose as being "to improve the quality and consistency of social work and social care services in Scotland". Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

Please provide your response in the box provided.:

Lack of detail

We start by noting that our key criticism of the Bill is that the proposals lack detail, and it is impossible to articulate an informed response on their merits or deficits while they are in an amorphous state. Given the importance of the parliamentary process in scrutinising draft legislation and mitigating against unintended consequences, there are real concerns that the legislation may not deliver its stated aims.

This lack of detail is also hampering local discussion. Many carer representatives on Integrated Joint Boards (IJBs) are reporting that discussions at a local level are being hindered by the lack of detail in the Bill. This is concerning, as there will be a lack of preparation for involvement at local level if IJBs are waiting until regulations are produced.

Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

Please provide your response in the box provided.:

Support for a National Care Service

Throughout the review of adult social care and the consultation on a national care service, unpaid carers have been emphatic that something must change and that the current system is not working. This reflects not only the experience of unpaid carers throughout the pandemic, including the current challenges they face, but their experiences over many years. Unpaid carers felt that the pandemic had shone a light on issues with social care that were long-standing, and often ignored.

“We need it – proved over last 18 months.”

“Some councils are terrible and are so inept they can cause harm and unduly dismiss family unpaid carers.”

In September and October 2021, NCO partners held a series of engagement events with adult unpaid carers and hosted a survey and online polls. We have also held further discussions with unpaid carers including on the Bill itself. The majority of unpaid carers voiced their support for the development of the national care service. Over half (52%) supported the responsibility for social care transferring to Scottish Ministers.

Yes, I think this is a good idea 52.12% 221

I don't know 21.93% 93

No. I don't think it is a good idea 21.23% 90

Other 4.72% 20

TOTAL 424

The predominant reason for supporting this shift was the perceived failures in the current system and a call for a radical shift in the way social care is resourced valued, alongside the desire improved processes, services, and pathways to support.

“I support a National Care Service because my local authority has failed me and no-one is willing to accept accountability”

Notwithstanding the overall support for a national care service and fundamental change in the delivery of social care, we remain concerned that the Scottish Government’s proposals are too focused on structures and processes and not human rights and enabling people to live their best lives.

“The Bill focuses on structures; how can we know how this will deliver real change?”

We would further argue that whilst the focus of the realisation of human rights is paramount to enabling individuals to live their best life, much more weight needs to be given to the enactment of Equalities legislation as the primary level for supporting people with protected characteristics. A human rights-based approach treats equality as a matter of non-discrimination, whereas in contrast, the General Duty of the Equality Act 2010 requires public bodies to consider how they will "advance equality of opportunity". This changes the context of the work from simply ensuring a level playing field to actively addressing the needs of people who experience discrimination on the grounds of their sex, race or disability. It is our contention that the National Care Service will not lead to transformational change without acknowledging and addressing the existing structural and systemic barriers that actively disadvantage people with one or more protected characteristics. The progression of equality and human rights within the National Care Service must go hand in hand.

“I feel like I have been treated different from others because I am a Gypsy/Traveller. I have never had any help offered and had to fight for everything.”
(Gypsy/Traveller parent carer)

National care service terminology

Social care is about people who need care and support to live independently or to have a life outside of caring. Carers have told us that this distinction is important because often people don't need what might traditionally be called 'care' but they do need support and that can include a range of services and people. Based on what carers have told us, it would perhaps be more accurate to call this a National Care and Support service.

Young carer support for a national care service

In autumn 2021, we held engagement events with young carers and undertook a survey and online polling. The majority of young carers that participated supported the development of a National Care Service. Young people can see the potential for a National Care Service to improve the support available both to unpaid carers of all ages, and the person(s) they care for. Improving the support of their cared for person can often be an effective way of better supporting the young carer, where it would be expected that there would be less onus on the child or young person to provide the required social care.

Young carers noted that support models differ across Scotland's local authorities. Young carers expressed their view that a National Care Service could have a role in standardising the support available, ensuring high-quality provision regardless of location.

Young carer respondents also told us that it is important that a National Care Service looks at good practice services across the country, adapts where required and rolls this support out to prevent a postcode lottery of quality young carer support services. It is therefore also vital to ensure that no young carer should experience a poorer quality service under a National Care Service model.

BME carer support for a national care service

We note from our consultation activities with BME carers, inclusive of Gypsy/Traveller carers, that whilst there was majority support for a National Care Service, this was partly motivated by the failure of local authorities to date to recognise and respond appropriately to their specific needs. Evidence of this lack of progress was evident in the findings of a recent internal review undertaken by MECOPP of local authority Carer Strategies and Action Plans to identify whether they contained any strategic action, outcome and measure aimed at BME carers. Of the 27 documents we could locate on local authority websites, 15 contained a statement of values or principles setting out their commitment to equality, diversity and human rights. Of these 15, only 7 contained specific strategic outcomes underpinned by actions and measures in the main limited to: information gathering, accessible information and training/resources for practitioners.

Respondents indicated that stronger leadership and direction from National Government was necessary to change the status quo. Whilst we actively welcome the commitment within the principles of the Bill to “advance equality and non-discrimination” we would argue that there is insufficient detail to see how this will transpire in practice.

Are there any specific aspects of the Bill which you disagree with or that you would like to see amended?

Please provide your response in the box provided.:

Balancing local and national responsibility and accountability

The results of our consultation work showed that of those carers who did not support the transfer of responsibilities to Scottish Ministers, or who were unsure (43%), the most common reason was a preference for retaining local accountability and a concern that a national service would not reflect local needs.

“I think the social care works better and is more accountable and accessible at a local level. National services are too remote and do not reflect local needs.”

A balance must be struck between centralisation and localism. While national standards and accountability can drive improvements, decisions must be made as close to people and communities as possible. This is particularly the case for rural and island communities who must have representation within the structures of the National Care Service.

Is there anything additional you would like to see included in the Bill and is anything missing?

Please provide your response in the box provided.:

National Care Service conclusions

- We are concerned that the government’s proposals are too focused on structures and processes and not human rights and enabling people to live their best lives.
- The involvement of unpaid carers, including young carers, and people with lived experience as equal partners in the new structures and processes, both nationally and locally is a prerequisite to improving social care.
- A balance must be struck between centralisation and localism. While national standards and accountability can drive improvements, decisions must be made as close to people and communities as possible. This is particularly the case for rural and island communities who must have representation within the structures of the National Care Service.
- The National Care Service must set out and address existing inequalities with the social care sector to ensure that all those who require support receive the support that is right for them
- The development of a National Care Service will require considerable investment. However, our stakeholders were keen to emphasise that they wished to see the majority of additional resources made available for the reform of social care being directed to frontline services.
- The proposed scope of the National Care Service is very broad and goes far beyond the remit and recommendations of the Feeley report. We agree with our members that the government should consider developing the National Care Service on an incremental basis, starting with adult social care and then including other areas once more consideration has been given to the implications of widening the scope.
- Given the proposed relationship between the NHS and the proposed National Care Service, while we welcome a greater drive towards integration at a national level, the National Care Service must not follow the medical model but must have human rights as its heart.
- A human rights-based approach must be underpinned by a targeted focus on improving equality. The relationship between the two must be made explicit. There must also be greater recognition that each of the constituent parts of the National Care Service have a role to play and a duty to promote and achieve equality for people with one or more protected characteristics.
- Require Care Boards to set equality outcomes to be monitored and accountable to the National Body

Future secondary legislation

Please provide your response in the box provided:

We have incorporated our comments on this aspect into the sections of our response where we feel they are most relevant.

Transfer of services to the National Care Service

Please provide your response in the box provided:

Eligibility criteria and assessment

Assessment

The Carers (Scotland) Act is supported by guidance about the Adult Carer Support Plan and Young Carers Statement being a meaningful conversation between the unpaid carer and assessor. In Scotland we have a range of resources to support good outcome-focused and strength-based conversations. We also have considerable evidence about the benefits to both unpaid carers and supported people from having the opportunity for those skilled conversations, including more effective decision-making.

However, a range of system-based requirements including excessive data requirements, performance indicators, eligibility criteria (which are deficit-based and work against strengths-based practice) mean that meaningful conversations are often not supported in practice. Although there are pockets of good practice, currently the 'assessment' process is too often very stressful and confusing for unpaid carers, with missed opportunities to identify community resources or creative options to help unpaid carers achieve their outcomes. When done well, these conversations can immediately improve outcomes for unpaid carers.

We believe that renewed attention is required and that further clear guidance should be developed to support 'good conversations' to ensure a personalised, responsive approach to determining the outcomes that matter to them and the people they support, leading to more effective support including more meaningful short breaks.

Our evidence shows us that there is a great deal of cynicism about assessments and adult carer support plans amongst BAME carers, inclusive of Gypsy/Travellers as very often, conversations do not lead to the provision of services. We would argue that there needs to be a renewed focus on the outcomes of assessments/conversations being used to inform future commissioning processes.

We welcome the introduction of a right to breaks from caring and the removal of eligibility criteria in relation to providing unpaid carers with 'sufficient' breaks. With the removal of eligibility criteria, having a meaningful conversation with unpaid carers, rather than a focus on the assessment process will be even more essential to prevent Adult Carer Support Plans and Young Carer Statements being used as a gatekeeping or rationing device to manage resources, as an alternative to eligibility criteria

Eligibility criteria

In terms of the reform or removal of eligibility criteria, the government has not made their intentions clear. The Feeley report (Independent Review of Adult Social Care) included as one of its recommendations that:

"People must be able to access support at the point they feel they need it, including for advice and signposting to local community-based resources and help, and for barriers to this, such as the current eligibility criteria and charging regime, to be fundamentally reformed and removed, to allow a greater emphasis on prevention and early intervention"

In their consultation on the National Care Service in 2021 the government committed to the following:

"We will remove eligibility criteria in their current form by moving away from a focus on risk and instead focusing on enabling people to access the care and support that they need to lead a full life."

We asked unpaid carers if they agreed with the Scottish Government's proposals for eligibility criteria and they responded as follows

Yes No Don't Know

29% 71%

The majority at 71% said they don't know, which perhaps reflects the opaque nature of the government's position. They have not included any further reference to eligibility criteria in the Bill and have not specified what they mean by 'removing eligibility criteria in their current form'.

It is our view the use of eligibility criteria is not consistent with a human rights based approach. Eligibility criteria is used as a form of gatekeeping: it promotes a deficit model, which undermines the principles of independent living and preventative support and is a significant factor in people ending up in crisis. We support the position put forward by the Independent Review of Adult Social Care that eligibility criteria should be removed.

We are part of a collaborative project involving multiple stakeholders who are looking at alternatives to eligibility criteria. Over 100 stakeholders met in June 2022, with representatives including unpaid carers, supported people, front-line social workers, third sector organisations and policy makers. Participants heard from a range of speakers who have taken a different approach to eligibility criteria, both in Scotland and other parts of the UK. One of the conclusions from this project was the need for carefully constructed tests of change to enable comparisons to be made, while opening possibilities for change in a managed way, within a learning system approach.

Eligibility and access to care and support conclusions

- Support planning should build on outcomes focused best practice, including the good conversation model.
- The work of carers centres/services in undertaking Adult Carer Support Plans/Young Carer Statements should be retained and built on. The government should consider devolving responsibility to the third sector for other forms of support planning.
- We welcome the removal of eligibility criteria for short breaks. The process for support planning in relation to accessing a right to breaks from caring must be simple, fair and transparent. Lengthy assessments and form filling will dissuade some unpaid carers from accessing support. Support planning must not be used as a method of gatekeeping or rationing resources.
- It is our view that the use of eligibility criteria is not compatible with a preventative or human rights based approach. The government should consider other methods to facilitate access to social care to ensure people do not have to focus on deficits and risks and are supported to live their best lives -such as example from eligibility meeting – test of change.
- Meaningful support planning and the identification of personal outcomes does not, and cannot, exist in isolation from what is available locally to support BME unpaid carers and unpaid carers more generally. The two are inextricably interlinked. There needs to be greater recognition that BAME carers and carers with other protected characteristics may prefer different forms of support, which may be unfamiliar to practitioners, but which should not influence their decision making.

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

Please provide your response in the box provided.:

To deliver this fundamental change in provision and in principles, we are keen to reiterate our position and that of carers that the majority of funding must be directed to frontline services and support. It is vital that the funding available is used to its best effect and does not end up swallowed up in

bureaucratic structural change

Impact assessments

Please provide your response in the box provided.:

We have incorporated our comments on equality and specific groups into our response to individual sections of the Bill where we feel they are most relevant.

Questions about the Financial Memorandum

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Please provide your response in the box provided.:

We have incorporated our comments on the Financial memorandum into the relevant sections. In particular we would draw attention to our comments within the Right to a Break section.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

Please provide your response in the box provided.:

We have incorporated our comments on the Financial memorandum into the relevant sections. In particular we would draw attention to our comments within the Right to a Break section.

Did you have sufficient time to contribute to the consultation exercise?

Not Answered

If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

Please provide your response in the box provided. :

We have incorporated our response to costs throughout but would draw particular attention to our response to the section on Right to Breaks in relation to costs.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

Please provide your response in the box provided. :

We have incorporated our response to costs throughout but would draw particular attention to our response to the section on Right to Breaks in relation to costs.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Please provide your response in the box provided. :

As above

Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Please provide your response in the box provided. :

As above

National Care Service principles (Section 1)

Please provide your comments on the National Care Service principles in the box provided.

Use text box provided:

Translating principles and codesigning real change

Whilst we welcome the fact that the principles are set out on the face of the Bill and, importantly, that it is clearly articulated by the Scottish Government that this is an investment in society, it is not yet clear how this will be translated into action.

There are already examples of good legislation, such as the Social Care (Self-Directed Support) Scotland Act 2013 and supporting strategies, which have failed to deliver on their intention. The reality for unpaid carers is that, when they come up against bureaucracy, rationing, lack of trust and an unwillingness to cede control, they are too often on the losing side; left exhausted, demoralised and with unsustainable caring responsibilities.

"If Scottish Government took responsibility away from local authorities, would that make any real difference to us as carers, or would it merely be another level of bureaucracy for us to tackle? I get exhausted at times trying to get folk to really listen to what I am saying or asking!"

From the outset, every decision nationally and locally must be measured against how it will 'contribute to the realisation of human rights', how it will 'enable people to thrive and reach their potential' and how it will 'enable communities to flourish and prosper'. This includes setting out and addressing existing inequalities within the social care sector to ensure that all those who require support receive the support that is right for them. True choice and control for individuals and their unpaid carers, trust, eliminating bureaucracy and giving more autonomy to frontline workers will be key elements of making this happen – but this will not happen simply by creating a new structure.

Moreover, to realise the principles, the full involvement of unpaid carers and people who use services as equal partners in the codesign of the national care service is a pre-requisite for improving social care and we welcome the initial commitment by the Scottish Government on co-design. This must extend to all aspects including equal involvement in local care boards. We cover this in more detail in 4, Unpaid Carers as Equal Partners in Care, however it is important to highlight in the context of co-design that unpaid carers have raised concerns about how stakeholders' contributions be weighted. Individual representatives often feel that their views are not given the same standing as that of larger organisations and public sector representatives. Managing competing interests and ensuring that people who use services and their unpaid carers are heard equally and their views and experiences given the weight they deserve will be a key measure of successful codesign. Consideration must also be given to how young carers are represented and heard through co-design processes and through unpaid carer representation.

Concerted and explicit efforts are also required to ensure those who are 'distant' from services as they are currently planned, commissioned and delivered have a voice. As a starting point, we would argue that the Equality Impact Assessment process should be much more robust and, as a minimum, be much more inclusive of equality organisations.

It is also important to note that, whilst welcoming a greater drive towards integration, given the proposed relationship between the NHS and the National Care Service nationally, the National Care Service must not follow inadvertently the medical model but must ensure that it not only has the stated principles as its heart but delivers them.

To deliver this fundamental change in provision and in principles, we are keen to reiterate our position and that of carers that the majority of funding must be directed to frontline services and support. It is vital that the funding available is used to its best effect and does not end up swallowed up in bureaucratic structural change.

Accountability to Scottish Ministers (Sections 2 and 3)

Please provide your comments on Scottish Ministers' overarching responsibilities for the National Care Service in the box provided.

Text box provided below:

Unpaid carers as equal partners in care

Unpaid carers have expressed concern that the Bill does not explicitly mention the role that unpaid carers will play in the design and delivery of the National Care Service. While we understand that this is a framework bill and there will be more details provided in regulations and guidance, the role of statutory stakeholders is mentioned throughout the Bill, leading unpaid carers to the conclusion that they will still not be viewed as equal partners in the new structures.

Unpaid carers have expressed the following views in relation to their role as equal partners in care in the design of the National Care Service:

- Unpaid carer involvement in local and national strategic planning has shown some improvement, but remains an area which requires greater investment is required. In particular this investment is needed to support unpaid carers from harder to reach communities in order to better represent the diversity of the unpaid carer population.
- Support has been expressed for the role of an equality and diversity champion or lead both on the National Care Service Board and on local Care Boards. This would strengthen accountability and, if properly integrated within work streams, could support the setting of equality outcomes (as suggested in our submission) and reporting.
- They welcome the principle that 'Services provided by the National Care Service are to be designed collaboratively with the people to whom they are provided and their unpaid carers' but note that this requires investment to ensure equity and enable all unpaid carers to have the opportunity to contribute.
- Many unpaid carers have expressed the view that unpaid carers must be full members of the local Care Boards and the National Care Service Board, with voting rights. This should be included on the face of the Bill.
- We understand that the process for the appointment of members to Care Boards may take a public appointment approach. This is concerning as our report Equal, Expert and Valued shows that Integrated Joint Boards (IJBs) already struggle to appoint unpaid carers, so making this a more challenging process will have an impact on unpaid carer involvement. 'We presently lack proper representation of member of the public on boards. This may result in further problems as people won't want to go through the process'.
- If the codesign process is how key decisions will be made this has to be robust and transparent and allow equal involvement of unpaid carers. The right people need to be around the table and there needs to be a true balance of power, where unpaid carers and members of the public have an equal say. Consideration must also be given to how young carers are represented and heard through co-design processes and through unpaid carer representation.
- As well as unpaid carers being represented at Board level, there needs to be more accessible opportunities for unpaid carers to become involved in the design of the National Care Service. Due to intense caring roles, many do not have the time, energy, resources, and access to replacement care to attend meetings. For example, social media should also be used as a route to engage unpaid carers in a more accessible way.
- The Bill allows for Care Board members to receive recompense for their involvement. We welcome this development. Many unpaid carer representatives on IJBs undertake the equivalent of a full-time job, with no financial payment. In fact, many have to subsidise this role as they don't receive full expenses such as replacement care, or they lose out on earned income when they attend meetings. A poll was held at the Carers Parliament in 2021 asking about this issue and the following responses were received.

Recompense for involvement: do you agree with carers being paid?

Event Yes No Don't Know

Carers Parliament 88 22

There is precedent for providing remuneration of this kind. People with lived experience on some Health Boards receive a payment and we understand that the members of the Social Care Covenant Group have also received remuneration for their time.

Careful consideration would need to be given to the form of payment, to ensure it would not have negative financial consequences for those in receipt of social security benefits. We also believe that the role and remit of unpaid carer representatives in these circumstances should be clearly defined, so that although they may receive a payment, this should not conflict with their role. They should not be restricted from representing the views and needs of local caring communities without censure as a result of receiving a payment or remuneration.

Recommendations from the Equal, expert and valued report and conclusions

Strengthening unpaid carer involvement must be an early priority if unpaid carers are to equal and expert partners in both the design and delivery of the National Care Service.

The Carers Collaborative Forum for unpaid carer representatives on IJBs was established six years ago and has produced four scoping reports looking at the experience of unpaid carer reps on IJBs, making recommendations for strengthening carer engagement and involvement in health and social care. The latest report was published in April 2022 and can be downloaded [here](#).

The key recommendations from the report are:

- An investment needs to be made in the recruitment and retention of unpaid carer representatives.
- Succession planning needs to be put in place in all areas.
- Support needs to be put in place for unpaid carer representatives, including induction, training, mentoring and a buddying system for new reps.
- In most areas there are only one or two unpaid carers who are the 'Go-To' people and who are undertaking the equivalent of a full-time role. The development of the National Care Service is placing even more pressure on them and this is not sustainable.
- It was noted by the Carers Collaborative that there is a lack of diversity and inclusion in relation to unpaid carer representatives. Representatives are often middle class, white professional, often male. One unpaid carer commented "People recruit the people who are like them." There is less representation from working carers, unpaid carers from harder to reach communities, such as BME unpaid carers and unpaid carers from areas of multiple deprivation.
- Not all areas have an expenses policy for unpaid carer representatives and those that do, do not always include full costs, such as replacement care, or the costs of printing. The Carers Collaborative have produced a best practice expenses policy and this should be adopted nationally to provide greater consistency and ensure no unpaid carer is out of pocket.
- Over many years unpaid carer representatives have reported that they have less involvement in financial planning and commissioning. It was noted from an unpaid carer representative in one area that they were "kept well away from procurement". If unpaid carers are to be viewed as equal partners in care in the new structures they must have equal status in decision making and agenda setting, particularly in relation to budgetary decisions. As one unpaid carer remarked "it feels there is an irritation with lay members". Another said "Involvement comes and goes depending on the urgency of budget cuts".
- Consideration must be given to allow young carers to meaningfully participate in local planning. This involvement must be age appropriate, at times that doesn't impact on their education and delivered through engaging methods.

Establishment and abolition of care boards (Sections 4 and 5 / Schedules 1 and 2)

Please provide your comments on these sections of the Bill in the box provided.

use text box below:

Transitioning from Integrated Joint Boards to Care Boards

We held two meetings with the Carers Collaborative forum for unpaid carer representatives on IJBs to discuss the Bill. Much of the discussion focused on the establishment of Care Boards and what this will mean to the current structures, including IJBs.

The carer representatives were frustrated by the lack of detail regarding IJBs and the transition to Care Boards. It does not explicitly state that Care Boards will replace IJBs, although this is clearly the intention and there is no information on the transition period, including timescales, transfer of functions and membership. For example, will the carer representatives on IJBs transfer to become members of the Care Boards? This uncertainty and anticipated additional workload has added further pressure to the role and, as a result, some unpaid carers are considering stepping down.

The unpaid carer representatives had the following questions and conclusions in relation to the establishment of Care Boards:

- What powers and duties, relating to social work and care will be retained by Health and Social Care Partnerships and local authorities, and how will the new structures impact their service provider role?
- What will happen to IJB membership? Will unpaid carer representatives transition or will there be a new recruitment process? How will young carers be engaged and heard?
- Given the current challenges in relation to the recruitment and retention of unpaid carer representatives, there is potential for this to leave a further deficit and the loss of unpaid carers with a great deal of experience and expertise.
- A common concern from carers has been balancing national consistency and local responsiveness. What will the process and scope be for local decision-making and responsiveness?
- There are challenges for some rural areas in terms of boundaries for the new Care Boards. For example, in Argyll some services provided by Greater Glasgow, as well as NHS Highland.
- The Bill states that Care Boards and the NCS must consult on their Strategic plans, however there is no specific mention of unpaid carers. Unpaid carers expressed a preference for this to be included on the face of the Bill, rather than in regulations
- The Bill does not mention how housing will fit into the National Care Service plans. Will local care boards include representation from housing services? The lack of suitable housing is a huge barrier to independent living for many older and disabled people. If local care boards don't work in partnership with housing, these issues will not be addressed.

We also reiterate our call for meaningful consideration to be given to the role of an equality and diversity champion or lead within each local Care Board to ensure the views of marginalised communities are actively sought and acted upon.

Strategic planning and ethical commissioning (Chapter 2)

Please provide your comments on this part of the Bill in the box provided.

use text box below:

Lack of detail: ethical commissioning

We note that the Bill contains no definition of 'ethical commissioning' and this should be more clearly defined. In particular ethical commissioning should be seen as an opportunity for local Care Boards to require services to set out how they will meet equality and human rights obligations (as a principle on the face of the Bill) and also consider social/community investment. While this has relevance across all areas, it is of particular note for the successful delivery of a Right to a Break from caring.

National Care Service Charter (Sections 11 and 12)

Please provide your comments on these sections of the Bill in the box provided.

Text box:

Independent advocacy (Section 13)

Please provide your comments on this section of the Bill in the box provided.

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We reference our response to the section on Complaints and highlight that to support the development of a trusted complaints system, we would also like to see consideration of a statutory entitlement to advocacy services and a review of timescales in which complaints can be submitted.

Complaints (Sections 14 and 15)

Please provide your comments on these sections of the Bill in the box provided.

use text box:

Complaints

Whilst we welcome the Scottish Government's intention to seek to improve the complaints procedure, it is hard to see how much different this system would be once a complaint is passed to the relevant person. Whilst it is important to make the system as smooth as possible, unpaid carers have said that the current system lacks both trust and transparency and leaves them with issues unresolved. To bring about a trusted complaints procedure, we recommend a new complaints process should be developed to enable complaints to be assessed against the principles of the National Care Service Bill.

- Has the decision/issue negatively impacted about the realisation of human rights for the individual or their unpaid carer?
- Has the decision resulted in a detriment to carers with one or more protected characteristics?
- Has the decision/issue impacted upon an individual or their carer's ability to thrive and/or reach their potential?

This includes individuals and their unpaid carers having the ability to complain about the allocation of social care resources, how any assessment of eligibility is decided upon and whether they have been able to have the choice and control they wish over how their needs and outcomes are met. The SPSO, as we presume the final arbiter of individual complaints, should be able to review such decisions and instruct further work to be undertaken to provide a suitable resolution.

We accept and understand the role of professional judgement but too often unpaid carers are mystified and indeed frustrated by decisions that appear to align with neither assessments and guidance nor in enabling people to have choice and control over what best meets their needs and outcomes.

We also feel that it is appropriate for the key elements of whether decisions impact upon the realisation of human rights, ability to thrive or reaching potential to be extended to both the NCS and NHS complaints processes. Equally, consideration should be given to providing the same principles framework and one door approach for complaints about commissioned services (local or national) in the third and independent sector service. Although there may be a different body that undertakes investigation such as the Care Inspectorate, the SPSO should have oversight of the resolution provided.

Finally, the SPSO should identify where themes of complaints emerge and undertake investigations of these themes. It is important to proactively act to resolve problems that are impacting on the realisation of the human rights.

To support the development of a trusted complaints system, we would also like to see consideration of a statutory entitlement to advocacy services and a review of timescales in which complaints can be submitted.

Transfer of functions, including scope of services (Chapter 6 and Schedule 3)

Please provide your comments on these sections of the Bill in the box provided.

text box:

Eligibility criteria and assessment

Assessment

The Carers (Scotland) Act is supported by guidance about the Adult Carer Support Plan and Young Carers Statement being a meaningful conversation between the unpaid carer and assessor. In Scotland we have a range of resources to support good outcome-focused and strength-based conversations. We also have considerable evidence about the benefits to both unpaid carers and supported people from having the opportunity for those skilled

conversations, including more effective decision-making.

However, a range of system-based requirements including excessive data requirements, performance indicators, eligibility criteria (which are deficit-based and work against strengths-based practice) mean that meaningful conversations are often not supported in practice. Although there are pockets of good practice, currently the 'assessment' process is too often very stressful and confusing for unpaid carers, with missed opportunities to identify community resources or creative options to help unpaid carers achieve their outcomes. When done well, these conversations can immediately improve outcomes for unpaid carers.

We believe that renewed attention is required and that further clear guidance should be developed to support 'good conversations' to ensure a personalised, responsive approach to determining the outcomes that matter to them and the people they support, leading to more effective support including more meaningful short breaks.

Our evidence shows us that there is a great deal of cynicism about assessments and adult carer support plans amongst BAME carers, inclusive of Gypsy/Travellers as very often, conversations do not lead to the provision of services. We would argue that there needs to be a renewed focus on the outcomes of assessments/conversations being used to inform future commissioning processes.

We welcome the introduction of a right to breaks from caring and the removal of eligibility criteria in relation to providing unpaid carers with 'sufficient' breaks. With the removal of eligibility criteria, having a meaningful conversation with unpaid carers, rather than a focus on the assessment process will be even more essential to prevent Adult Carer Support Plans and Young Carer Statements being used as a gatekeeping or rationing device to manage resources, as an alternative to eligibility criteria

Eligibility criteria

In terms of the reform or removal of eligibility criteria, the government has not made their intentions clear. The Feeley report (Independent Review of Adult Social Care) included as one of its recommendations that:

" People must be able to access support at the point they feel they need it, including for advice and signposting to local community-based resources and help, and for barriers to this, such as the current eligibility criteria and charging regime, to be fundamentally reformed and removed, to allow a greater emphasis on prevention and early intervention"

In their consultation on the National Care Service in 2021 the government committed to the following:

"We will remove eligibility criteria in their current form by moving away from a focus on risk and instead focusing on enabling people to access the care and support that they need to lead a full life."

We asked unpaid carers if they agreed with the Scottish Government's proposals for eligibility criteria and they responded as follows

Yes No Don't Know

29% 71%

The majority at 71% said they don't know, which perhaps reflects the opaque nature of the government's position. They have not included any further reference to eligibility criteria in the Bill and have not specified what they mean by 'removing eligibility criteria in their current form'.

It is our view the use of eligibility criteria is not consistent with a human rights based approach. Eligibility criteria is used as a form of gatekeeping: it promotes a deficit model, which undermines the principles of independent living and preventative support and is a significant factor in people ending up in crisis. We support the position put forward by the Independent Review of Adult Social Care that eligibility criteria should be removed.

We are part of a collaborative project involving multiple stakeholders who are looking at alternatives to eligibility criteria. Over 100 stakeholders met in June 2022, with representatives including unpaid carers, supported people, front-line social workers, third sector organisations and policy makers. Participants heard from a range of speakers who have taken a different approach to eligibility criteria, both in Scotland and other parts of the UK. One of the conclusions from this project was the need for carefully constructed tests of change to enable comparisons to be made, while opening possibilities for change in a managed way, within a learning system approach.

Eligibility and access to care and support conclusions

- Support planning should build on outcomes focused best practice, including the good conversation model.
- The work of carers centres/services in undertaking Adult Carer Support Plans/Young Carer Statements should be retained and built on. The government should consider devolving responsibility to the third sector for other forms of support planning.
- We welcome the removal of eligibility criteria for short breaks. The process for support planning in relation to accessing a right to breaks from caring must be simple, fair and transparent. Lengthy assessments and form filling will dissuade some unpaid carers from accessing support. Support planning must not be used as a method of gatekeeping or rationing resources.
- It is our view that the use of eligibility criteria is not compatible with a preventative or human rights based approach. The government should consider other methods to facilitate access to social care to ensure people do not have to focus on deficits and risks and are supported to live their best lives -such as example from eligibility meeting – test of change.
- Meaningful support planning and the identification of personal outcomes does not, and cannot, exist in isolation from what is available locally to support BME unpaid carers and unpaid carers more generally. The two are inextricably interlinked. There needs to be greater recognition that BAME carers and carers with other protected characteristics may prefer different forms of support, which may be unfamiliar to practitioners, but which should not influence their decision making.

Inclusion of children's services and justice services (Section 30)

Please provide your comments on this section of the Bill in the box provided.

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3.1 Children's Services: preventing detriment

As recognised with the policy memorandum, the proposed scope of the National Care Service is very broad and goes far beyond the remit and recommendations of the Independent Review of Adult Social Care (Feeley report), and beyond what is delegated consistently to Integration Authorities. We therefore welcome the intention to gather further evidence before transferring children and justice social work services and reiterate that we believe consideration should be given to developing the National Care Service on an incremental basis. However, we would note that consideration is needed on the key aspects of ensuring that young carers and parent carers do not face detriment from this decision – either individually or in the quantum of

funding available for the services that support children and young people. At a minimum, early attention should be paid in particular to how local Care Boards and local authority children's services can be funded and guided to work together to:

- improve work during transitions between child and adult services.
- expand accessible childcare and activity services to support parent carers.
- expand support for young carers in school, communities and for their mental health.

Consequential modifications / Interpretation of Part 1 (Chapter 7 and Schedule 4)

Please provide your comments on these sections of the Bill in the box provided.

text box:

Health and social care information (Part 2)

Please provide your comments on this section of the Bill in the box provided.

text box:

Data and integrated record keeping

We welcome proposal to improve data quality, establish consistent standards and consider the development of a single electronic health and care record. We have made some broad recommendations on this within the recent Data Strategy for Health and Social Care which we believe would be relevant to the proposals within the Bill.

In the first instances, there is an assumption that shared record keeping will only be between the local authority and health staff. There is need for developing shared data across the relevant public, third and independent sectors and indeed with community providers. There are often more providers outside the public sector than within it and in order to have a full understanding of provision and gaps, workforce and investment planning, and importantly of impact on achieving the principles of the Bill, this wider pool is needed.

Data and integrated record keeping: BAME carers

We are aware that Scottish Government is currently consulting on its Equality Evidence Strategy 2023–2025, that this is directly relevant to improving data collection to inform the development and implementation of the constituent parts of the National Care Service and would strongly advocate that Public Bodies be supported to improve data collection across all protected characteristics.

For example, we note from the accompanying Equalities Impact Assessment that continual reference is made to the limitations of data which prevent any conclusions being drawn on the use of health and social care services by ethnic minority groups. Public bodies are required to collect equalities monitoring data as part of the General Equality Duty. Guidance produced by the Equality and Human Rights Commission explicitly states that "having due regard to the aims of the General Equality Duty requires....an adequate evidence base for ... decision-making". The lack of robust data will severely compromise decision-making processes going forward.

Single electronic health and care records

It is important that, from development, that health and care records should belong to the individual, and they should:

- have full access to their own health and social care records with a mechanism for providing summary data for ease of access.
- be able to update their own records, for example, to add information about changes or increased needs.
- be able to set informed limits on who can access their records and what information can be shared. This could include providing independent advocacy and ad.

Any system should be able to provide translated records for those whose first language is not English and consider how it provides data in a way that is easily accessible for people who have, for example, a learning disability or who have difficulties with literacy.

Accessibility for unpaid carers

In developing such a record it is also vital that there is recognition of the need for information to be provided to and from unpaid carer. This enables unpaid carers, as key partners in the provision of health and social care services, to be able to provide the right support to the person they care for and receive and provide relevant information to paid health and social care staff.

Suitable safeguards must be in place, including where an individual is unable to provide consent. Where an individual is unable to give consent and a power of attorney or guardianship is not in place, there should be a clear process for enabling the sharing of relevant information and for unpaid carers to provide information.

Where consent is not given or where consent is given to sharing only certain information, it is worth considering the development of a summary health and care record similar to that which ambulance or out of hours staff can currently access to enable individuals providing care to be able to access information that is relevant to the provision of care - for example, medication and side effects, what services will be provided etc.

At a minimum, carers should be able to share information with those who provide health and care support.

Right to breaks for carers (Sections 38 and 39)

Please provide your comments on these sections of the Bill in the box provided.

text box:

Right to a break from caring

The National Carer Organisations in Scotland welcome the inclusion of the Right to Break within the National Care Service. This new right represents a

huge step forward in recognition of the importance of regular breaks in supporting Scotland's unpaid carers to have a life outside of caring and good health and well-being.

Our response has been influenced by the evidence we have drawn from initial consultation events on the National Care Service and by wider research into breaks from caring. We have also taken into consideration our response to the initial consultation on the National Care Service in which we outlined certain conditions that we see as necessary to ensure a right to a break will make a meaningful difference. These can be summarised as:

- A more developed market in short breaks provision that offers greater choice and flexibility and is sensitive and responsive locally to considerations such as geography, age of population and support needs. This also covers the role of community development, mainstream leisure providers, and volunteering in supporting the expansion of universally available breaks.
- Unpaid carers having confidence in the quality and availability of replacement care when it is required.
- Adequate provision of what is often regarded as the more expensive or difficult options such as overnight or weekend respite.
- An understanding that the break must be delivered sensitively and in a person-centred way that benefits both the unpaid carer and cared-for person without adding to stress.
- Much simpler and clearer access to breaks, including making assessments to access breaks less time-consuming and intrusive.
- An embedded human right based approach, with equalities and diversity at the heart of decision-making and implementation.

We have restated these points here in the belief that they are fundamental to a Bill which will successfully deliver a Right to a Break from caring. Some aspects of these have been addressed within the Bill however there are others where we feel meeting these conditions will be more challenging with the current provisions, or it is unclear how they will be met. We cover these points below.

It is also important to emphasise that while research consistently tells us that having access to planned, regular good-quality breaks is vital to unpaid carers' health, and there is an existing duty on local authorities to consider them as part of an Adult Carer Support Plan, only a small proportion of unpaid carers receive regular and meaningful breaks from their caring role. According to government data as few as 3% of unpaid carers currently receive support for breaks from caring and there is significant variation in the availability of breaks, and unpaid carers' experience will be different due to a variety of factors, including where they live.

Right to a break: Young carers

Young carers were asked their views about a Right to Breaks during this summer's Scottish Young Carers Festival. They voiced that a Right to Breaks needs to be fully resourced and a range of age appropriate short break services must be available that meets their varied needs to ensure this right is implemented and upheld:

"There is never enough funding or breaks. No respite - I've been laughed at from social workers for suggesting I need respite" Young Carer, Scottish Young Carers Festival, 2022.

Young carers have repeatedly told us that it is important that they get regular breaks from caring. We know that breaks can be very beneficial for young carers, giving them time to recharge and do things they enjoy. It is vital that young carers are recognised as children and young people first and foremost. A Carers Trust survey undertaken during the pandemic found that 1 in 4 young carers were unable to take any break from their caring role. Breaks from caring are essential for supporting young carers' positive wellbeing, reducing social isolation and to ensure children and young people with caring responsibilities can live a fulfilled life:

"It helps us in so many ways not just our mental health it helps physically, speaking to new people, making fun, being in the outdoors, having not to panic every two minutes, no cares, no worries, no one to judge us or to even be so not free, we can just be ourselves and just be free that's a small word but big difference" Young Carer, Scottish Young Carers Festival, 2022.

"It allows me to relax and have time to myself meaning I can sleep and just generally function better" Young Carer, Scottish Young Carers Festival, 2022.

"If I could have time from my role it would be great to go and meet friends without worrying and maybe do some sports" Young Carer, Scottish Young Carers Festival, 2022.

Opportunities for breaks are important to all unpaid carers, including young carers. It is important to young people that breaks are available, and suitable to their needs. Each young carer has different expectations of a break; and different requirements for what makes a good break for them:

"I want to spend more time 1:1 with my mum and dad ... I want my breaks to be with my own friends and family and with people I choose ... If my mum and dad got more help with my sister this would help me too." Young Carer, Survey 2021.

It is essential that considered planning is undertaken to ensure young carers do not become an after-thought of short break provision, recognising that their needs and requirements may be different from adult unpaid carers. All unpaid carers, including young carers, should have regular access to personalised short breaks which meet their needs. The process for young carers accessing short breaks must be simple, consistent and fair. There needs to be flexibility on how short break budgets are used to meet the diverse needs of young carers.

Right to a break: Framework approach

We welcome the greater level of detail which is contained within the Right to A Break section of the National Care Service Bill, however, the framework approach used throughout the Bill makes it difficult to assess the potential effectiveness of the legislation as a whole, because of the omission of key detail on specific issues.

For a right to breaks from caring this causes particular challenges in respect of the approach to workforce development, fair work, and ethical commissioning. Each of these components has a crucial role in developing and delivering a sustainable short breaks infrastructure on which the new Right to a Break is entirely contingent.

For BAME carers and carers with other protected characteristics, the right to a break is only as good as their ability to exercise that right. The points raised above – workforce development, fair work and ethical commissioning – are paramount from both an equalities and human rights perspective in supporting carers who are currently excluded for a variety of reasons from mainstream provision.

Right to a Break: Workforce development

A recent report by the Equality and Human Rights Commission and a supplementary Policy Paper (Scotland specific) highlights the following on the treatment and experience of BME workers in the health and social care sector:

- incomplete data on lower-paid ethnic minority workers, particularly in adult social care
- different treatment and experiences at work
- commissioning and outsourcing leading to poor pay and insecure work
- low awareness of employment rights
- fear of raising concerns and a lack of mechanisms to do so

Having previously alluded to systemic inequalities within health and social care in our submission, the development of the National Care Service and the wider reform agenda in Scotland provides an opportunity to address the above.

Right to a break: Human rights based approach

The Independent Review of Adult Social Care was unequivocal in the need to take a human rights based approach, and while we recognise that this is partly included in the Bill we would like to see a stronger commitment to human rights throughout the Bill and particularly around the sections on unpaid carers.

We believe there are opportunities throughout the Bill to define more specifically what human rights apply and where they are built in, rather than as a vague guiding principle. The lack of specificity on human rights does not serve rights holders well, as it gives little opportunity for scrutiny, accountability, and redress when things go wrong.

We also feel that with potential changes to the Human Rights Act and the Bill of Rights, it is crucial that this is explicit within the Bill.

Terminology

Sufficient

One area where the application of human rights should be more clearly defined is the use of the term 'sufficient' as it relates to the right to breaks from caring. (Part 3, Section 2(1) of the Bill).

The lack of definition gives us cause for concern as, with the removal of the application of eligibility criteria on breaks from caring, the term 'sufficient' is pivotal to how this right will be experienced by unpaid carers. As a key standard in the Bill, it is vital that 'sufficient' is clearly defined within the legislation and we would like to see a great deal more detail on this within the regulations.

We believe that clearly defining 'sufficient' strengthens the position of rights holders, gives a level of accountability and scrutiny to the term. We also believe that a failure to define 'sufficient' would disproportionately impact on carers with one or more protected characteristics who are currently and significantly underserved by existing short breaks provision.

We would like to see changes made to link sufficiency to Articles 24 of the International Declaration of Human Rights, and acknowledgement of the link to the Right to Health. For example "sufficient breaks to enable them to realise their human right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay."

We would also like to see reference to the fact that the UN Committee on Economic Social and Cultural Rights has stated that health is a fundamental human right indispensable for the exercise of other human rights. We know that having access to regular breaks from caring is a key to unpaid carers being able to look after their own health and well-being, and linking the right to a break to these standards reduces ambiguity, increases measurability and firmly places it within a human rights framework.

"I think it's vital that carers have a legally protected right to respite. We don't get to leave our place of "work", but we absolutely need time to recharge ourselves mentally and physically." NCO Right to a Break Survey 2021

"The break allowed me not only to relax physically but I also recognised that I was able to take a rest and that it was important to do so when I needed it"

"It has also been a comfort knowing that there are people able to help and that I am not alone" – Jennifer, a carer who accessed a Time to Live grant

There also needs to be clarity on what "sufficient breaks" means specifically for young carers and a person-centred approach adopted to meet the individual needs of young carers.

Providing care

Section 38 2, 1 of the Bill makes reference to "the outcome that the adult carer is able to take sufficient breaks from providing care for the cared-for person." We are concerned that by using this definition of 'sufficient breaks from providing care', the terminology may exclude the possibility of the carer and cared-for person having a break from routine together.

With reference to the Carers Act Statutory Guidance Annex C, we would again like to see the inclusion of the Short Breaks definition produced by Shared Care Scotland and particularly would reference Part 3 that a break from caring may 'take the form of the carer and the person they care for having a break together, with assistance if necessary, providing a break from the demands of their daily caring routines.

This point is particularly relevant to BAME carers on two counts: the lack of appropriate and accessible replacement care as a significant barrier to enabling carers to have a break; and, a preference to take breaks with the person they are caring for.

"Before the break, I was very tired and run down. Being told about the break had me looking forward to something...The hotel itself and the staff plus good food all made for a relaxing time. It felt as though you left all your worries behind for that one night and just chill. Even though I took my husband who I care for with me, we both relaxed." – Carer on Respite break at Crieff Hydro.

Eligibility criteria

The removal of the application of eligibility criteria to the duty to provide breaks from caring is a very welcome inclusion in the Bill. However, in addition to our recommendations on the definition of sufficient, we would also like to highlight the potential for unintended consequences to derail the effective delivery of the Right to Break, particularly for those who have a higher level of need.

Resources are finite and – even with significant and sustained investment – it is likely that demand will continue to outstrip supply. We will refer to this in more detail in Section 9.7, Short breaks infrastructure however, it is important to address the potential bottleneck or 'rationing' of services that could be put in place through an assessment process which largely remains the same.

If the means to access more personalised, high levels of breaks, such as replacement care, is through the production of an Adult Carer Support Plan or Young Carers Statement, then unpaid carers could be subject to lengthy waiting lists which are applied as a means of managing demand.

We are also concerned that finite resources may be used as an excuse not to invest in additional services which support BAME carers and carers with other protected characteristics.

Right to a Break: Hybrid model

The initial National Care Service consultation made specific reference to a hybrid model of delivery for the Right to a Break from caring. This was suggested to be made up of a guaranteed flat rate of entitlement coupled with enhanced provision for those who had more significant needs, met through an assessment.

The Bill as it is set out does not meet this hybrid model and there needs to be greater clarity on the Government's intention around 'easy access' and how they can be guaranteed. As it stands, the easy access breaks will be scaled up as part of the increased investment in the voluntary Short Breaks Fund, rather than a statutory provision. While this is not in itself problematic, it is not clear if 'easy access' breaks can be guaranteed for every unpaid carer who needs one, and, as these fall outwith the statutory sector, there is no provision for how this will be contested if an unpaid carer is refused a break. The position and intention on easy access breaks therefore needs to be much more strongly identified.

Scrutiny of the financial memorandum as carried out by Social Work Scotland identifies a shortfall in the figures allocated to this and therefore it is difficult to see how a Right to a Break on an easy access break could be guaranteed as it would inevitably be subject to funding and demand.

This potentially places the delivery partner within the voluntary sector – currently Carers Centres – within the position of gatekeeper. Our routine meetings with the Centre Manager's Network have consistently highlighted that carers centres are operating at the limits of, or beyond, their capacity and further investment in staff and infrastructure would be required if this role was to further expand.

Short breaks infrastructure

Variety and sufficiency

The Independent Review of Adult Social Care stated that a range of options for short breaks and respite should be developed and the Bill makes an inclusion within the Carers Act under development of local carers strategy that there must be "plans to promote a variety of providers of support to relevant carers and to promote the variety of support provided."

The promotion of options is also referenced in the Carers Act in relation to Self Directed Support.

While variety is without doubt vitally important to ensuring unpaid carers can access the type of break that is right for them and the person they care for, having provisions for a variety of short break services does not address the crucial fact that there are not enough short break services to meet the level of needs: and by this we mean both enough services, but also enough capacity within existing services. Concerns about the lack of availability of short breaks were raised repeatedly during the National Care Service engagement events and in survey responses. This is supported by Scottish Government figures themselves which demonstrate that only 3% of carers are accessing short breaks through statutory support.

We feel it is important to highlight that whilst a pre-existing lack of variety and sufficiency impacts on all carers, some groups of carers, i.e. those with one or more protected characteristics are disproportionately impacted. There is little to suggest in the Bill that current providers will be encouraged to develop a range of provision for carers with protected characteristics and we would therefore advocate that more active consideration be given to micro-commissioning as a key plank within guidance and regulations.

"As part of its focus on improving support for unpaid carers, the National Care Service should also increase investment in a range of respite provision including options for non-residential respite, and for short breaks."

- The Independent Review of Adult Social Care

We are concerned that much of the focus of the Bill is on developing variety, however we would like to see both variety and sufficiency included with clearer parameters on how the development of a short breaks infrastructure will be supported. Without this it will be impossible for carers to fully realise their right to a break.

Carers and the people they support want the opportunity to participate in community life in a way that is supportive and accessible. This must be considered in the context of community planning and development, access to leisure and the skill set for volunteers and volunteering roles.

"I have over £80,000 sitting in my SDS fund but nowhere available to send my loved one as there is zero provision available for complex needs. So, there's no point talking about increasing the right to respite if there is nowhere to send them!"

"Money is useless if there's nothing to spend it on. The same as hours, you can legislate entitlements, but entitlements are useless without actual service provision."

There are clear comparisons that can be made with the extension of childcare provision within Scotland and the sustained investment that this required in order to meet the level of need.

The Early Education and Childcare Expansion policy states:

Local authorities are responsible for ensuring that funded entitlement is available for all eligible children in their area. We are supporting them to build the capacity needed in their communities to phase in extended entitlement. We have a multi-year capital and revenue funding agreement in place with the Convention of Scottish Local Authorities (COSLA) which is fully funding the expansion

While we welcome and recognise the upscaling of short breaks through existing powers, as detailed in the Financial Memorandum, increased investment in the Short Breaks Fund does not, in itself, address the need to invest in capacity building.

There are clear links between the upscaling of short breaks and respite services and ethical commissioning, and workforce development, however owing to the framework nature of these sections of the Bill it is difficult to gain perspective on how this will work in practice.

Pre-pandemic levels

It is important to note in any discussion on short breaks infrastructure, the significant impact that the COVID-19 pandemic had on short break services and their capacity.

We understand that a recent Scottish Government survey through COSLA indicated that less than 50% of adult day services are open at pre-pandemic levels. It also showed that 12% remain closed. Pre-pandemic levels of provision did not fully meet the short breaks and respite needs of cared-for people in Scotland and their unpaid carers. Prior to the implementation of a right to short breaks and respite we would like to see a thorough review of the capacity, viability and sustainability of the short breaks and respite sector: giving a comprehensive understanding of where gaps are, where investment is needed, and where need is not being met, in order that investment in infrastructure can be prioritised accordingly.

Right to a break: data challenges

As detailed above, the lack of comprehensive data on short breaks infrastructure makes it difficult to understand how a right to respite will be experienced by carers.

It is important to note our concerns with the data used throughout the Bill and the Financial Memorandum and the heavy caveats that apply. Our concerns can be summarised as follows:

Much of the data is based on pre-pandemic levels of service. In many cases these have not resumed so the baseline measurement that is being used is higher than reality;

The estimated costing on short breaks in the financial memorandum is based on historic figures and does not account for current inflationary pressures. With this escalating and continued unpredictability the current figures included in the Bill look increasingly unlikely to meet the levels of need. We endorse the work of Social Work Scotland in scrutinising the financial memorandum and highlight that the implied intention is to increase the percentage of those accessing statutory support from 3% to circa 26%. This requires greater clarity as 26% is far removed from a universal right. We have concerns that these figures are also based on funding allocated as part of the Carers Act, but which in many cases was not spent locally on improving carer support. A Freedom of Information request to local authorities in the first year of the Carers Act found a shortfall of over £5million from the £19.4million allocated to implement the Act. We know that in subsequent years there has continued to be a shortfall in the funding allocated directly to support carers from this resource, although information on this is incomplete

Right to a break: costs

Many of our concerns regarding the costs of the Right to a Break have been touched upon in earlier sections however we feel it is useful to summarise this in this section:

The paucity of data and accurate information on the current picture of short breaks and respite provision across Scotland makes it difficult to make accurate predictions on the scale and nature of investment required, and therefore to predict accurate costs;

Many of the assumptions in the Financial Memorandum are based on old datasets. This applies across the range of figures including the number of adult carers which is estimated to have increased from the figures that were used within the Bill and the financial memorandum.

This also applies to young carers. The financial memorandum for the Bill has used an estimation of 30,000 young carers in Scotland, with the Scottish Health Survey as the only source. This figure is generally regarded as an underestimation, some studies estimate as many as 1 in 5 to 1 in 10 child or young person in a class has a caring role, bringing this possible estimation to over 100,000. Scottish Government acknowledges there is an underestimation: "the number of young carers is likely to be an underestimate as young carers in particular may not identify themselves as such in a survey". As the number of unpaid carers in Scotland has estimated to have increased and forecasted to continue to increase, it must be recognised that many of these unpaid carers are young carers. Many young carers remain hidden and unidentified and there is lack of robust data on this cohort of unpaid carers. We are concerned that estimates produced on a Right to Breaks for young carers has significantly underestimated the actual number of young carers that will be entitled.

We are also very concerned that there is lack of any repl [answer truncated to 25000 characters]

Submitted to National Care Service (Scotland) Bill (Detailed)
Submitted on 2022-09-02 17:18:01

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Name:

[REDACTED]

What is your email address?

Email:

[REDACTED]

Are you responding as an individual or on behalf of an organisation?

Organisation

Organisation :

GMB Scotland

Please tell us a little more about your connection to care services. Which of the following options best describes you. (Tick all that apply)

Other (please specify in the box below)

If you selected 'Other' please provide more information in the box provided.:

Trade Union

Would you like to be involved in future engagement work?

Yes, I would like to be involved in future engagement work and agreed to be contacted by the Committee in the future.

Organisation details

What is your job role?

Please provide answer in box provided:

Policy and External Relations Officer

Information about your organisation

Please add information about your organisation in the box below:

GMB Scotland represents thousands of social care workers across Scotland, including social carers and ancillary workers.

General questions about the Bill

The Policy Memorandum accompanying the Bill describes its purpose as being "to improve the quality and consistency of social work and social care services in Scotland". Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

Please provide your response in the box provided.:

Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

Please provide your response in the box provided.:

Are there any specific aspects of the Bill which you disagree with or that you would like to see amended? **SJSS/S6/22/29/2**

Please provide your response in the box provided.:

Is there anything additional you would like to see included in the Bill and is anything missing?

Please provide your response in the box provided.:

GMB Scotland submission to the Health, Social Care and Sport Committee National Care Service Bill Consultation - September 2022

Introduction

GMB Scotland represents thousands of social care workers across Scotland, including social carers and ancillary workers. The social care workforce is one that has been asked to work on the frontline of public services caring and supporting society's most vulnerable throughout the depths of the pandemic and after.

During a cost-of-living crisis, they are being asked to accept working poverty. The Scottish Government is able now to overcome this by properly value social carers with £15 an hour and a proportionate increase for ancillary staff. The National Care Service (NCS) has the potential to go further. However, this requires robust structures which empowers the workforce to deliver improved terms and conditions which values them.

The Bill does not achieve the aim "to improve the quality and consistency of social work and social care services in Scotland" as it is not proscriptive enough nor does it provide enough detail on how the NCS will operate and impact workers. Instead, social care staff are being asked to take a leap of faith without knowing what they're agreeing to. Just that they should trust in "co-design" which includes the employers who have overworked, undervalued and underpaid workers for years. Given the level of hardship the workforce has faced over recent years, this is incredibly difficult for GMB Scotland's members to accept. The Bill therefore must provide more details, guarantees, and certainty that a NCS will value, respect and empower the workforce and enforce standards on employers.

Workers' Representation

If a NCS is to enfranchise the workforce, then that must be done meaningfully within the structures of the NCS – not just in rhetoric. Workers have suffered years of warm words in place of tangible recognition of their work.

Social care staff have a wealth of experience and understanding of the sector and the needs of the workforce which has been built up over years, sometimes decades, of frontline service. Their knowledge and perspective are unique and cannot be represented any other way than from those workers themselves.

Given the level of dedication shown by social care staff over recent years, their involvement in the running of care services is not only deserved, but it will also be beneficial to the overall running of services. Therefore, employers should encourage and not resist the emergence and work of trade union representatives within workplaces.

Amend: A minimum of four trade union positions on Care Boards and Special Care Boards must be enshrined within the Bill. These positions must hold full voting rights alongside other Board members. Given the level of membership within the sector, GMB Scotland, Unite, Unison and the Royal College of Nursing should fill these positions. Each union should be able to decide their own appointment internally without outside interference.

Negotiating Pay, Terms and Conditions

If the NCS is to improve the quality and consistency of care, this must come with improved pay, terms and conditions for social care staff. The social care workforce has been financially undervalued for years. The £10.50 per hour minimum does not come close to reflecting the level of work that staff undertake. This is why GMB Scotland has been campaigning for £15 an hour for social carers and a proportionate increase for ancillary staff. This is especially important in the midst of a cost-of-living crisis which is showing no signs of easing and an ongoing recruitment crisis within the care sector. Improved pay will lead to improved recruitment and retention and therefore a higher level of care.

The pay, terms and conditions of the social care workforce are currently far too uneven. The Scottish Government can take action to improve them across the board now rather than workers facing in work poverty until the NCS is fully functioning in the years to come. However, a long-term structure is required to ensure the workforce are given fair and equal standing in bargaining.

Amend: A tri-partite structure which includes trade unions, employers and the Scottish Government to negotiate minimums on pay, terms and conditions must be enshrined in the Bill. Negotiations must be on the basis of national collective sectoral bargaining which covers public, private and third sector employers. However, workforces within an individual employer, must be able to negotiate directly with their employer if they wish to pursue pay, terms and conditions above the minimums set by the national negotiating structure. The body should be used to negotiate improvements to the pay, terms and conditions of workers on poorer contracts so they can catch up with those on better contracts. However, those workers already on better contracts must not have their conditions frozen while others catch up.

Local and Public Service Provision

Local authorities are expected by communities across Scotland to provide local and public services. This is still true for care. While Care Boards may

commission and transfer services from local authorities to themselves, the role of councils in the provision of care should not be undermined so that those local services remain by communities holding their Councillors to account for the services in their area.

Furthermore, on average, the pay, terms and conditions of workers in the public sector of care are higher than those in the private sector. Public sector workers in care are therefore more likely to remain in their post and be in a position to provide higher quality care due to reduced financial and workload pressures.

Amend: Local authority provision of care should be protected and only be transferred to a Care Board if it is in the case that the service has completely failed and the Care Board must step in as a provider of last resort.

Amend: Due to the nature of the work of social workers and the level of care they provide to often extremely vulnerable people, these services should not under any circumstance be outsourced to the private sector. This should remain completely public and within the remit of local authorities and be outlined clearly within the Bill.

Procurement and Fair Work Accreditation

Disputes and testimonies from GMB Scotland's members in social care show that many employers – especially those from the private sector – are not meeting their obligations to the workforce.

For example, despite the Scottish Government previously increasing the minimum wage for social carers to £10.50, some employers have failed to pay the increase. Furthermore, some employers have ripped up trade union recognition agreements in an attempt to silence and disempower their workforce.

Despite this, many providers are still allowed to continue to provide those services and are awarded new contracts. This cannot be allowed to continue. The introduction of a Fair Work Accreditation scheme is welcome in principle, but it must have effective oversight and powers to robustly regulate employers to ensure the standards, conditions and aspirations of a NCS are adhered to.

Amend: A new regulatory body must be enshrined within the Bill which will be responsible for ensuring all care providers are adhering to standards, conditions of their contracts and obligations on employment rights e.g. paying the correct wages; and monitor Fair Work Accreditation. Representation of GMB, Unison, Unite and the Royal College of Nursing must also be guaranteed on the executive board of the body. Fair Work Accreditation must require employers to adhere to certain standards on union activity within their services prior to full recognition which includes recognising trade union representatives and allowing them release for training and facility time. Accreditation awarded to employers must be reviewed when the new regulatory body receives any official complaints from trade unions about their practices – especially if those complaints are upheld. The body must possess and use enforcement powers e.g. fine those employers not adhering to standards and contracts and compensate affected staff. A clear complaints procedure for whistleblowing staff must be established. Where trade unions and workers are not satisfied with an outcome of a complaint, the complaint must be able to be escalated to Ministers for a final decision.

Private sector care providers are in receipt of public money, yet there is little transparency over how that money is being spent, how profits are being distributed, and who they are being distributed to. This must change to ensure accountability and transparency for the public, the workforce and the Scottish Government.

Amend: Freedom of Information legislation must be amended so that the public can see how private firms are spending and profiting from public funds.

Principles and Charter

The NCS can be an opportunity to ensure social care workers are valued, respected and empowered. The principles of the NCS included in the Bill must therefore be far stronger so that there is no ambiguity that improving the pay, terms and conditions of the workforce and to make work better are fundamental tenets and realistic aims.

Amend: Replace section 1(g) with: “the National Care Service will ensure that the social care workforce across all sectors will be valued, recognised and respected for the work they do; and empower them within the Service to represent their own interests directly.”

The NCS is supposed to revolutionise the way care is delivered in Scotland for those receiving care and delivering it. Much of the specifics and details of the NCS are to be discussed through “co-design”. However, it is unclear how this can be achieved if no new rights or responsibilities are to be adopted and undermines the principle included in the Bill that the NCS will value the social care workforce. The Charter will therefore only act as a hollow public relations exercise without securing any meaningful progress in improving how care is provided.

Amend: Delete sections 11(4)(a)(b)(c) which prevent new rights and responsibilities from being adopted so that stakeholders of the NCS can put forward their own ideas of what should be included within the Charter.

Training and Progression

Staff within the social care sector are care professionals but they are not valued as such. The increased complexity of home care and residential care delivery should be recognised not just in the basic rate of pay, but also in the consistency of training and development for the workers we need to deliver the NCS.

If we want a world-class National Care Service then we need a comprehensive and consistent training and development programme in place across all employers, and where staff can undertake development on paid time and paid for by their employer. This should include vital areas of service delivery, including inductions; administration and safe handling of medication; health and well-being; and NHS shadowing.

Amend: The role of trade unions in identifying and agreeing training for social care staff must be recognised within the Bill. The Scottish Government via the NCS must commit to forming a robust training and development programme for all social care workers in conjunction with trade unions and professional bodies and guarantee that all staff will either undertake training on their employer's paid time or that the NCS will provide a guaranteed hourly rate of pay for any training undertaken by workers and cover all additional expenses incurred.

GMB supports the recommendation of the Feeley Review that reform of the sector's regulatory framework is essential. We are clear that the regulation of the NCS must work for staff and not against them, as evidenced by concerns the Care Inspectorate hold little influence over the actions and standards of employers, and with the contentious role of the Scottish Social Services Council (SSSC) in the sector.

Freedom of Information previously conducted by GMB Scotland demonstrated that in over a ten-year period from 2006/7, the SSSC had held 1113 interim hearings of which 1050 (94 per cent) resulted in suspension for the worker prior to the hearing of the case. In comparison the General Medical Council have rates of imposing suspensions of between 9 per cent and 32 per cent. This is the antithesis of fair work, handing down punitive sanctions on staff who are often innocent, ruining livelihoods and reputations, and ultimately deterring staff from remaining in the social care sector.

Amend: The Bill must commit to a new regulatory framework which will respect workers, end punitive sanctions against care staff, and be developed with the full participation of trade unions.

Amend: The Scottish Government must place the commitment to pay any SSSC fees and any other professional body fees for social care staff on employers or commit to paying for these fees themselves.

ENDS

Future secondary legislation

Please provide your response in the box provided:

Transfer of services to the National Care Service

Please provide your response in the box provided:

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

Please provide your response in the box provided.:

Impact assessments

Please provide your response in the box provided.:

Submitted to National Care Service (Scotland) Bill (Detailed)
Submitted on 2022-09-02 13:39:15

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What is your name?

Name:

[REDACTED]

What is your email address?

Email:

[REDACTED]

Are you responding as an individual or on behalf of an organisation?

Organisation

Organisation :

Volunteer Scotland

Please tell us a little more about your connection to care services. Which of the following options best describes you. (Tick all that apply)

Other (please specify in the box below)

If you selected 'Other' please provide more information in the box provided.:

I work for an organisation representing the interests of volunteers

Would you like to be involved in future engagement work?

Yes, I would like to be involved in future engagement work and agreed to be contacted by the Committee in the future.

Organisation details

What is your job role?

Please provide answer in box provided:

Policy Officer

Information about your organisation

Please add information about your organisation in the box below:

Volunteer Scotland is Scotland's national centre for volunteering. We believe that volunteering should be an enjoyable, rewarding and fulfilling experience for the volunteer; that volunteers have the right to be safe and protected in delivering their volunteering roles; and that to derive health and well-being benefits from volunteering requires regular and meaningful contributions of time.

General questions about the Bill

The Policy Memorandum accompanying the Bill describes its purpose as being "to improve the quality and consistency of social work and social care services in Scotland". Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

Please provide your response in the box provided.:

We believe that several key considerations still need to be addressed in the detail of the National Care Service (Scotland) Bill to ensure it can fulfil its purpose - "to improve the quality and consistency of social work and social care services in Scotland".

The Bill fails to acknowledge the role of over 200,000 volunteers directly supporting health, wellbeing and disability organisations, as well as the many thousands of other volunteers supporting older adults, physical activity and community connection (comparative analysis of SHS 2018 and 2020 data', 2021, Volunteer Scotland). Volunteers are a key part of the Social Care workforce but are not mentioned in the Bill at all. It is vital that volunteers are explicitly referenced in the Bill when detailing arrangements for workforce planning and development.

Similarly, the Bill does not adequately recognise the voluntary sector as a key partner in the delivery of social care. The Scottish Government's commitment to a joined up, collaborative approach to the National Care Service is commendable, and we are reassured to see that the contribution of the voluntary sector is acknowledged in proposed plans for Community Health and Social Care Boards. However, it is unclear in the Bill how the voluntary sector will be meaningfully engaged and consulted at a local and national level about care plans.

The third sector is incredibly diverse with over 40,000 voluntary organisations estimated to exist, including 24,832 registered charities ('Sector Stats', 2022, SCVO). Meaningful collaboration with the voluntary sector is challenging, particularly given it is estimated that half of voluntary organisations are community groups who will likely be largely or wholly operated by volunteers. As a result of significant restrictions on time and resource, many voluntary organisations find it difficult to engage with collaborative decision-making processes at both a local and a national level.

As a result, the Bill needs to explicitly state that the voluntary sector will be meaningfully included in decision-making structures, and identify solutions for some of the challenges with engaging this sector. We would propose that the Third Sector Interface network has a key role in representing the interests of the local voluntary sector on Care Boards, and would require significant additional resource to ensure they can consult widely and provide adequate representation.

Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

Please provide your response in the box provided.:

We have some concern about centralising decision-making to the extent detailed in the National Care Service (Scotland) Bill when much of the social care sector locally has developed organically to meet local demand. We are also wary of increasing the bureaucratic burden on small voluntary sector care providers, often run by volunteers, with more detailed reporting structures. It is important to ensure that the requirements of smaller voluntary organisations that support social care are proportionate to their size and capacity.

Are there any specific aspects of the Bill which you disagree with or that you would like to see amended?

Please provide your response in the box provided.:

In Section 24, 'Training', we believe it is important to acknowledge the training requirements of volunteers in the provision of social care services, as well as those of paid staff. Volunteers have different training needs to paid employees, in terms of capacity, timing and types of roles they will be expected to fill, and these will need to be acknowledged at the design and delivery stages.

Is there anything additional you would like to see included in the Bill and is anything missing?

Please provide your response in the box provided.:

Future secondary legislation

Please provide your response in the box provided:

We are reassured that many aspects of the proposed National Care Service are yet to be outlined in future secondary legislation as this will allow for more meaningful consultation and co-creation on some key areas. These include further clarity around the composition of care boards, plans for achieving financially sustainable services and priorities for shifting the focus to early intervention and prevention. However, it is vital to ensure that the wider voluntary sector is meaningfully consulted at all stages. As detailed previously, meaningful consultation with the voluntary sector is challenging and will require dedicated resource.

Transfer of services to the National Care Service

Please provide your response in the box provided:

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

Please provide your response in the box provided.:

It is hoped that the Bill will make funding for services related to social care in the voluntary sector, many of which are reliant on volunteers, more sustainable. Organisations in the voluntary and community sectors have a key role in supporting much of the community-based and early intervention work in social care but are operating in an increasingly challenging financial environment.

In the Scottish Government's recent research exploring the impact of Covid-19 on volunteering, 48% of volunteer involving organisations identified dedicated funding for their volunteer programmes as a priority for their medium or long term recovery 'Scottish Third Sector Perspectives On Volunteering During Covid-19: Survey Report', 2021, Scottish Government and Volunteer Scotland). Similarly, OSCR's survey exploring the impact of Covid-19 on Scottish Charities exposed a particularly acute issue related to fatigue and burnout experienced by trustees, who are volunteers, particularly in smaller organisations with no paid staff ('November COVID-19 survey: Volunteers and Trustees Supplementary, 2020, OSCR).

Cost of living increases are also affecting the balance sheet of many voluntary and community organisations. Demand for services is increasing, as are operating costs, yet the money available is decreasing. Those whose core funding comes from the public sector are often subject to either fixed funding, which is declining in real terms due to high inflation, or reduced funding. This is compounded by the fact that many people will likely have less disposable income to donate to charities in the months ahead. The Charities Aid Foundation recently found that 12% of individuals are planning to cut back on charity donations ('Cost-of-living squeeze hits donations to charity sector', 2022, Charities Aid Foundation)

As a result of this, it's vital that the financial challenges facing the voluntary sector are addressed in the long-term funding of social care, social work and community healthcare

Impact assessments

Please provide your response in the box provided.:

National Care Service principles (Section 1)

Please provide your comments on the National Care Service principles in the box provided.

Use text box provided:

We are largely supportive of the National Care Service Principles detailed in the Bill, but feel further consideration is required as to how they will be achieved in practice.

The principle to 'increase equality and enable people and communities to thrive' is admirable, but the inequality of access to both services and opportunities for participation present a significant challenge. We know that those living in the areas of greatest deprivation have significantly worse mental and physical health outcomes, and that those who have the highest demand for health and care services are likely to generate the highest benefits from volunteering ('Volunteering, Health and Wellbeing', 2018, Volunteer Scotland). However, volunteering participation rates in Scotland's most deprived communities are significantly lower than the average participation rate of 26% - 20% in 2018 and 14% in 2020 (Comparative analysis of SHS 2018 and 2020 data', 2021, Volunteer Scotland). As such, significant investment is required in inclusive volunteering strategies for people and communities to thrive.

The principles to ensure that the National Care Service is an exemplar of Fair Work practices, and to ensure that the care workforce is recognised and valued, are equally welcome but also require explicit recognition of volunteers as part of the workforce.

Volunteers can have a valuable role to play in the provision of health and social care services, but it is vital that this is not a replacement for duties previously performed by paid staff. In response to a question regarding waiting lists for social care in parliament on the 4th May 2022, the Minister for Mental Wellbeing and Social Care stated that 'Through contact with partnerships, I am aware that there is a range of local initiatives across the country to support recipients of care, using volunteers, redeployed staff and third sector partners.' Whilst we welcome the recognition of volunteers in the provision of social care, referring to them as part of a solution in the context of staff shortages could unintentionally condone the displacement of paid staff by volunteers.

In the commitment to Fair Work, and to ensuring that the care workforce is recognised and valued, we would like to see explicit recognition that volunteers will not be used to carry out duties normally performed by paid staff or to disguise the effects of staff shortages. Volunteer Scotland and the Scottish Trade Union Council developed the Volunteer Charter identifying the key principles for 'assuring legitimacy and preventing exploitation of workers and volunteers' (2019, Volunteer Scotland and STUC). In particular, the 5th principle states that 'volunteers should not carry out duties formerly carried out by paid workers nor should they be used to disguise the effects of non-filled vacancies or cuts in services.'

The commitment to prevention and early intervention are an important step in the right direction. The role of the voluntary sector and volunteers is key to achieving this, and also reflects the principle to provide financially sustainable care. The voluntary sector provides excellent value for money, both in terms of reducing the care burden through services focussed on prevention and in providing significant return on investment in the delivery of care services. As such, procurement processes tailored to the needs of the voluntary sector are vital, as is a commitment to multi-year funding. This is detailed further in our answer to the question related to Ethical Commissioning and Procurement.

Strategic planning and ethical commissioning (Chapter 2)

Please provide your comments on this part of the Bill in the box provided.

use text box below:

We welcome the commitment to ethical commissioning and procurement, but we believe that the Bill and associated memoranda do not go far enough in ensuring that the specific needs of the voluntary sector, and the volunteers it engages, are addressed.

Volunteer-led services are often seen as a cheaper option by funders. This undervalues the contribution of volunteers and misrepresents the level of investment required for sustainable volunteer management. Whilst volunteers are unpaid, they are not free. The effective and inclusive engagement of volunteers requires dedicated resource, usually in the form of paid coordinators and budget to cover recruitment, training, ongoing support and recognition costs, as well as volunteer travel expenses, for it to thrive.

An evaluation carried out by the York Health Economics Consortium (YHEC) of Children's Hospices Across Scotland (CHAS) showed that they had invested £306,000 in their volunteering programme in 2018/19 (2021, Hanlon, J. and Hex, N.) This might seem to be a considerable sum of money, however it was

also calculated that the return on this investment was £737,000 - over 140%. CHAS have a care model that has fully embedded volunteering. Indeed, their Volunteering Strategy states that 'volunteering is critical to the success of CHAS' ('Our Volunteering Strategy', 2020, CHAS). This demonstrates the significant value that volunteers can add to care services, so long as it receives an appropriate level of investment.

As a result, we feel that the detail around ethical procurement in the Policy Memorandum should explicitly reference the requirement to invest in sustainable volunteer management. This could include a commitment for funded services that involve volunteers to a relevant quality standard such as Investing in Volunteers or Volunteer Friendly. It could also include agreement to abide by the Volunteer Charter, which provides clear and unambiguous principles for assuring volunteer legitimacy and preventing exploitation.

A commitment to multi-year funding for voluntary sector providers would also support the sustainable engagement of volunteers in the delivery of services, ensuring adequate time for recruitment, training and relationship-building.

Final provisions (Part 4)

Please provide comments on this part of the Bill in the box provided.

text box:

Social Justice and Social Security Committee Briefing

National Care Service (Scotland) Bill

November 2022



About Us

Volunteer Scotland is Scotland's national centre for volunteering. We believe that volunteering should be an enjoyable, rewarding and fulfilling experience for the volunteer; that volunteers have the right to be safe and protected in delivering their volunteering roles; and that to derive health and well-being benefits from volunteering requires regular and meaningful contributions of time.

Introduction

Thank you for the opportunity to present evidence at the Social Justice and Social Security Committee meeting on the 10th of November. Volunteer Scotland welcomes the opportunity to reinforce the important role of volunteers and volunteering in a future National Care Service, and to share some of the key considerations for ensuring volunteer involvement is managed effectively.

This briefing will summarise the key points of our [detailed submission](#) to the Health, Social Care and Sport Committee consultation that closed on the 2nd of September, as well as providing some additional commentary.

Our Consultation Response: Key Points

1. Volunteers are a key part of the care workforce

17% of Scotland's formal adult volunteers supported organisations or groups focused on health, disability, and wellbeing, which equates to 201,075 people (Analysis of SHS 2020 data, 2021, Volunteer Scotland). Many residential or respite care services in the voluntary and statutory sector engage volunteers to provide person-centred support and ensure beneficiaries have rich social experiences.

Volunteering also supports prevention and early intervention services. Volunteers have a significant impact on social isolation and loneliness and support a range of services that aim to keep people in their home environment for longer such as community transport or shopping services.

2. Health and wellbeing benefits of volunteering

Participation in volunteering can have significant health and wellbeing benefits for the volunteers themselves, which in turn can prevent or reverse more serious health issues. In a report from December 2018, we found that regular volunteering can alleviate depression, anxiety and stress, and reduce loneliness and social isolation ('Volunteering, Health and Wellbeing', 2018, Volunteer Scotland).

3. Recommendations for the Bill

The Bill fails to acknowledge the role of over 200,000 volunteers directly supporting health, wellbeing and disability organisations, as well as the many thousands of other volunteers supporting older adults, physical activity and community connection ('comparative analysis of SHS 2018 and 2020 data', 2021,

Volunteer Scotland). It is vital that volunteers are explicitly referenced in the Bill when detailing arrangements for workforce planning and development. Volunteers have different training needs to paid employees and these will need to be acknowledged at the design and delivery stages.

It is also unclear in the Bill how the voluntary sector will be meaningfully engaged and consulted at a local and national level about care plans. Meaningful collaboration with the voluntary sector is challenging, particularly given that just under 40% of the 12,008 voluntary organisations whose primary area of work is social care are community groups who will likely be largely or wholly operated by volunteers (SCVO Sector Stats, 2022). The Bill needs to explicitly state that the voluntary sector will be meaningfully included in decision-making structures and identify solutions for some of the challenges with engaging this sector.

It is hoped that the Bill will make funding for services related to social care in the third sector more sustainable. Organisations in the voluntary and community sectors have a key role in supporting much of the community-based and early intervention work in social care but are operating in an increasingly challenging financial environment.

The third sector and volunteer-led services provides excellent value for money, both in terms of reducing the care burden through services focussed on prevention and in providing significant return on investment in the delivery of care services. As such, procurement processes tailored to the needs of the voluntary sector are vital, as is a commitment to multi-year funding.

Volunteer-led services are often seen as a cheaper option by funders. This undervalues the contribution of volunteers and misrepresents the level of investment required for sustainable volunteer management. The effective and inclusive engagement of volunteers requires dedicated resource for it to thrive.

Finally, volunteers have a valuable role to play in the provision of health and social care services, but it is vital that they do not replace paid staff. Volunteer Scotland and the Scottish Trade Union Council developed the Volunteer Charter identifying the key principles for 'assuring legitimacy and preventing exploitation of workers and volunteers' (2019, Volunteer Scotland and STUC). In particular, the 5th principle states that 'volunteers should not carry out duties formerly carried out by paid workers nor should they be used to disguise the effects of non-filled vacancies or cuts in services.'

Additional Relevant Points

1. Cost of Living Crisis

Since submitting our response to the Health, Social Care and Sport Committee consultation, we have published research detailing the potential impact of the cost of living crisis on volunteers and volunteering ('Testing our Resilience: The impact of the cost of living crisis on volunteering and volunteers', 2022, Volunteer Scotland). Depending on how long it lasts, the current financial crisis could impact on the role volunteers are able to fulfil in a new National Care Service.

Whilst the full impact of the crisis remains unclear, we believe that reduced disposable income for many individuals could lead to a decrease in the number of people volunteering, or in the number of hours that volunteers are able to give. People are more likely to be working additional hours or making savings on costs such as childcare, thus meaning that their time for volunteering is reduced.

We also believe that the cumulative impact of Covid-19, the cost of living crisis and other negative current events could lead to apathy or 'compassion fatigue' from many individuals, which in turn could cause a reduction in volunteering.

Many third sector organisations and their volunteers are on the frontline of the cost of living crisis, and an increasing number are reporting significant increases in demand for their services. Indeed, third sector organisations are facing a perfect storm of rising demand, stagnating/decreasing resource and increasing operating costs. If you add challenges recruiting and retaining volunteers, many organisations will struggle to meet demand.

As a result of these challenging circumstances, the significant role that third sector organisations and volunteers currently have in the provision of care services could be under threat. This would significantly increase the cost of implementing the National Care Service and would reduce the quality and choice of care services on offer. It is therefore even more important to ensure that the needs of the voluntary sector are considered when considering funding for the National Care Service.

2. Lived Experience Experts

The important role of individuals with lived experience of care in the design and implementation of a National Care Service was highlighted in some of the other responses to the National Care Service consultation. Given the current efforts to develop a Lived Experience Experts Panel to co-design the National Care Service, it is important to reinforce two points.

Firstly, many third sector organisations in the care sector are likely to have volunteers with lived experience. Indeed, See Me referenced their own lived experience volunteers in their consultation response. If people are giving their time to inform the design of the National Care Service as volunteers, it is vital that they are given adequate support and are not left out of pocket. Sharing personal experiences can be triggering or re-traumatising and the government will have a duty of care to ensure that the wellbeing of those with lived experience is safeguarded. They must also ensure that adequate out of pocket expenses are provided.

Wayne Gault, in his response to the consultation, also spoke about the importance of lived experience but suggested that this should be done in line with the Scottish Human Rights Commission guidance on payments for participation. We agree that people with lived experience should, if possible, be paid to share their expertise but it is important to clarify that any form of payment would mean that their participation is no longer classed as volunteering. This is an important distinction, particularly given the implications of any form of payment for the provision of benefits or liability to pay tax.

3. Access to Volunteering

COSLA, in their consultation response, gave a helpful reminder that a new National Care Service would need to ensure that recipients of care are still able to benefit from participation in volunteering. Similarly, Shared Care Scotland spoke about the importance of flexibility in the provision of short breaks to carers so that they can participate fully in community life, including as volunteers. This point is particularly pertinent given the health and wellbeing benefits of volunteering mentioned previously in this briefing. Those designing a new National Care Service need to be mindful that it does not inadvertently create barriers to wider participation in community life and should in fact build such opportunities for participation into the overall design.

4. Clarity and Consistency in Language

In the consultation response from Community Integrated Care, they shared concern that statutory services will be provided by organisations that are entirely volunteer-run. Whilst we believe that volunteer-run services have the capacity to deliver many services as part of the National Care Service, the use of the phrase 'voluntary sector' within the Bill appears to have caused confusion in this case.

It is accepted by most that 'voluntary sector' and 'third sector' are used interchangeably to refer to the whole not for profit sector. However, it would be

helpful if the Scottish Government consistently use 'third sector' when referring to voluntary groups and charities to avoid any further confusion of this nature.

5. International Volunteers

Finally, we wish to reinforce the observations made in the consultation response by Camphill Communities regarding the ongoing challenges with recruiting international volunteers. People from other countries who wish to live and work in the UK are, subject to certain exceptions, required to pay an immigration health surcharge in order to access services under the NHS. The UK Government has granted an exemption from paying the Immigration Health Surcharge to health and social care employees from other countries, but this exemption does not include international volunteers who support charities in the UK. This will undoubtedly have an impact on the engagement of volunteers in a new National Care Service.

Conclusion

It is evident that volunteers have an important role in the provision of social care services. It is also clear that participating in volunteering can improve wider health and wellbeing outcomes for those in receipt of care services, those at risk of needing care services in the near future, and those providing unpaid care for a family member or loved one.

A new National Care Service needs to acknowledge this dual role and ensure that volunteer involving organisations can contribute to decision-making and access available funds. It is also vital that volunteering is adopted appropriately and is not seen as a solution for reducing costs, either in reducing staff numbers or engaging people with lived experience.

Finally, the current cost of living crisis is having a significant impact on both volunteer involving organisations and volunteers. For volunteering to continue playing a key role in the provision of care services, the challenges presented by the cost of living crisis must be addressed.

Submitted to National Care Service (Scotland) Bill (Detailed)
Submitted on 2022-09-01 15:39:29

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Name:

[REDACTED]

What is your email address?

Email:

[REDACTED]

Are you responding as an individual or on behalf of an organisation?

Organisation

Organisation :

Scottish Women's Budget Group

Please tell us a little more about your connection to care services. Which of the following options best describes you. (Tick all that apply)

Other (please specify in the box below)

If you selected 'Other' please provide more information in the box provided.:

Gender budgeting perspective

Would you like to be involved in future engagement work?

Yes, I would like to be involved in future engagement work and agreed to be contacted by the Committee in the future.

Organisation details

What is your job role?

Please provide answer in box provided:

Coordinator

Information about your organisation

Please add information about your organisation in the box below:

The Scottish Women's Budget Group (SWBG) is an independent analysis and campaign group that aims to promote gender analysis in public policy and public finance decisions through budgetary processes. SWBG brings together a wide range of women from across Scotland who have an interest in women's equality and want to achieve better gender equality in our society and has focused on encouraging active gender analysis in the Scottish Budget process since 2000.

General questions about the Bill

The Policy Memorandum accompanying the Bill describes its purpose as being "to improve the quality and consistency of social work and social care services in Scotland". Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

Please provide your response in the box provided.:

The NCS Bill has potential to improve social care services in Scotland. However, there is still insufficient detail to establish if it will be successful in achieving the purpose set out in the question. There is not yet enough detail to establish if the NCS will match the ambitions of the recommendations set

out in the Independent Review of Adult Social Care or if the level investment committed is sufficient to meet care needs in Scotland and place the NCS on an equal footing to the NHS.

Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

Please provide your response in the box provided.:

The NCS Bill offers an important opportunity to improve the quality of social care services in Scotland. However, at present there is still much detail that needs to be elaborated to understand how it will work in practice and the difference it will make to people's lives in Scotland.

In working out this detail it is vital that robust accountability mechanisms are in place, including measures to evaluate the proposals as they move into practice. As part of this we support recommendations from the Health and Social Care Alliance to ensure robust and fully transparent national data collection patterns to monitor and evidence impact of changes and ensure equitable access to social care. Ensuring the necessary data is available to support this evaluation is vital from the start. This should include intersectional disaggregated data.

As plans develop to provide more detail on the NCS we support calls from disabled people's organisations to ensure these align with the PANEL human rights principles.

No other alternatives to the NCS have been set out by Government and there is no clear information on what cost-benefit analysis has gone into producing the NCS Bill as it stands, so we would not be in a position to state if the NCS Bill is the best way to create improvements with the information provided.

Are there any specific aspects of the Bill which you disagree with or that you would like to see amended?

Please provide your response in the box provided.:

Amendment to:

Section 4(3)(a) (Establishment and abolition of care boards): care boards should be required to have multiple lived experience representatives, representing disabled people, people living with long term conditions, and unpaid carers to be considered quorate. Boards should ensure full voting rights for representatives who access services and unpaid carers, and their attendance (properly reimbursed) should be a pre-requisite for quorate meetings and decision-making. Leaving these items as optional possibilities for care boards is not a meaningful commitment to participation and empowerment, or human rights based approaches. Furthermore, people's participation and involvement in decision making needs to be embedded through these processes – not only within care boards, but also within related subgroups and connected meetings. Provision should also be made for full and appropriate support to enable people with lived experience to participate in decision-making at all levels, including capacity building and financial support (e.g. drawing on the learning from the People Led Policy Panel).

Is there anything additional you would like to see included in the Bill and is anything missing?

Please provide your response in the box provided.:

Future secondary legislation

Please provide your response in the box provided:

SWBG would like to comment on the following two areas:

Fairwork

There is a limited mention of the provisions for fair work in the the current NCS Bill, considering the known failings in delivering Fairwork under the current social care system which was evidenced by the Fairwork Convention and the impact this has on the mainly female workforce we believe this is an unfortunate omission. More detail is required within the secondary legislation to demonstrate better valuing of social care staff and the role the NCS can make in addressing gender inequality. This needs to include prioritising recruitment, training, pay and terms and conditions of social care staff, including opportunities for career progression.

Care Charging

SWBG supports calls from the Health and Social Care Alliance and Inclusion Scotland for the removal of care charges. A quality, universal, accessible care service free at point of delivery. In the SWBG Women's Survey conducted between February and March 2022 almost 22% of respondents to questions on social care stated that their social care was not affordable and they did without care due to costs, a further 18% stated that they struggled with other household costs due to care costs. Only 22% stated that social care costs did not affect any other household spending. Full details of the Women's Survey can be found here: <https://www.swbg.org.uk/content/publications/Womens-Survey-Results-Report.pdf>

Transfer of services to the National Care Service

Please provide your response in the box provided:

SWBG views are related to the process of decision-making rather than specific to which services may or may not be included.

Within the decision making process of which services may or may not be included in the NCS there is an importance of recognising the impact of

transitions on different groups in society. Including potential impact on reducing or entrenching existing inequalities. An analysis of how different parts of the care and social work systems interact and intertwine with each other so the implications of moving some parts and not others will need to be identified.

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

Please provide your response in the box provided.:

The Scottish Women's Budget Group is currently undertaking research with experts in the field of care cost modelling. Through this research we aim to demonstrate the overall costs of a quality, universal adult social care service. Considering different options in terms of amount of care available to individuals and meeting existing unmet needs, as well as, terms and conditions for those working in care. This research will be published in October and shared with Committee members.

The findings are likely to demonstrate the need to invest significant further resources to develop a social care system that meets the ambitious rhetoric. This is necessary due to the historic undervaluing of care and lack of investment across the care system. However, there are also opportunities to make savings or to ensure that investment stays within the care service and is not extracted as profit, making better use of public funds.

SWBG welcomes the focus on care spending as an investment in our society and for the recognition given to the contribution care makes to the wider economy. It is important to demonstrate that the 'financial implications' of the NCS make an important payback to society. The Independent Review on Adult Social care recommended that "consideration of options for raising new revenues to increase investment in adult social care" would be needed. SWBG would agree that for long-term sustainability a quality social care service will need to be part of a wider package of progressive tax realisation in Scotland (beyond solely income tax).

Article 2(1) of the International Convention on Economic, Social and Cultural Rights², commits Governments to ensuring first, that it has generated the "maximum of its available resources" to fund the realisation of rights through its policy agenda. When considering the financial implications of the NCS Bill the Government must also be clear how resources have been maximised to meet needs.

Impact assessments

Please provide your response in the box provided.:

The Equality Impact assessment draws out a number of key statistics relating to equality dimensions and care. The SWBG response will focus on gender dimensions. While numerous important statistics are identified, such as the majority of unpaid carers being women or the majority of care home residents being women, there is little connecting these statistics to how provisions laid out in the NCS will tackle existing inequalities. For example, the EQIA provides the evidence on the inequality of unpaid care division between women and men but it does not provide analysis of how the current provision of care embeds or reinforces this or how the NCS will concretely change this inequality. More analysis is needed of what the available statistics that have been identified say about the current delivery of care services and in turn what changes the NCS will bring to challenge these inequalities. Where data is not available working with stakeholder groups or conducting qualitative research into specific areas can help.

Under the local care boards section there is a lack of recognition about who uses and who delivers care services and the gender differences that exist and how there will be differences in how people experience the coming changes in care systems because of existing inequalities. The EQIA's main summary states that 'It will therefore affect all people, using, planning and providing health, social work and social care services'. For sex some key statistics are highlighted but the analysis of what this means for the establishment of Care Boards is missing. For other protected characteristics an overarching theme in this section is need for greater engagement with particular groups. This analysis is important for establishing the impact of the proposals set out and without further detail SWBG has concerns that existing inequalities could continue to be entrenched in the new service. If this analysis has been conducted elsewhere it should be highlighted in the EQIA for better transparency.

Under the Charter section, there is welcome recognition of the need to engage a range of diverse voices in the co-design of the charter, alongside equalities groups. However, there lacks analysis of how the charter will be used to tackle inequalities.

Under the National Social Work Agency section the EQIA states that 'We believe there will be no impact on people due to protected characteristics for the following reasons: this policy will apply to all social workers and provide support for undergraduates through to senior social works'. This is despite highlighting evidence that 81% of social workers are women, therefore if the NCS creates change for social workers (whether positive or negative) it will have a disproportionate impact on women as they make up the majority of the workforce.

Questions about the Financial Memorandum

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Please provide your response in the box provided.:

SWBG did respond to the November 2021 National Care Service consultation. Within it we highlighted the need to view spending on care as investment in our society and economy, the need to invest in the care workforce and that current predictions for investment remain modest when compared to examples from Scandinavia.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

Please provide your response in the box provided.:

The financial memorandum presents a positive picture of care spending as an investment, this is an important shift in recognising the role of care in society and the economy.

There is not yet sufficient detail on how spending on the NCS Bill provisions will create change to the delivery of care services.

Did you have sufficient time to contribute to the consultation exercise?

Not Answered

If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

Please provide your response in the box provided. :

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

Please provide your response in the box provided. :

The financial memorandum makes a welcome recognition on the role that care plays in Scotland's wider economy. A recognition that has been missing from recent documents relating to the economy, such as the National Strategy for Economic Transformation. It recognises the role care plays in supporting local economies, and working towards child poverty alleviation, climate change and sustainable development targets. These are important signifiers in the financial memorandum to reframe care budgeting and the role it plays for society.

The financial memorandum focuses attention on costs related to the National Care Services but does not include costs related to wider care sector reform such as the increasing base rate of pay for those working in social care or bringing free nursing care rates in line with national care home contract rates. This is intentional to ensure it fits with the remit of the NCS Bill, however, it means that the information outlined in the financial memorandum is a partial picture of care sector investment yet there is no additional information about expectations for funding the excluded wider reforms that are needed if this reform is to lead to the transformational change expected. It is also clear that separating out the wider care reforms is not simply done. This is demonstrated in the section on economic benefits of the National Care Service which highlights that investment in social care can reduce the gender pay gap – substantial reduction will only be possible if increases to base rate pay are incorporated. This example demonstrates both the challenge in separating the NCS from wider reforms simultaneously taking place both for those writing the financial memorandum and those scrutinising it. It would therefore be useful to publish projections for the areas excluded as not falling within the NCS Bill. This would allow scrutiny to include how realistic the financial memorandum is based on areas of known increase, such as wages which will in time fall into the costs of the NCS.

There have been long term challenges in transparency of social care spending. The NCS is an opportunity to change this setting out all care spending information for the NCS and wider reforms clearly from the start of the process would be an important first step in rectifying this.

As stated in a previous answer, the Scottish Women's Budget Group is currently undertaking research with experts in the field of care cost modelling. Through this research we aim to demonstrate the overall costs of a quality, universal adult social care service. Considering different options in terms of amount of care available to individuals and meeting existing unmet needs, as well as, terms and conditions for those working in care. This research will be published in October and shared with Committee members.

The findings are likely to demonstrate the need to invest significant further resources to develop a social care system that meets the ambitious rhetoric. This is necessary due to the historic undervaluing of care and lack of investment across the care system. However, there are also opportunities to make savings or to ensure that investment stays within the care service and is not extracted as profit, making better use of public funds.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Please provide your response in the box provided. :

Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Please provide your response in the box provided. :

Submitted to National Care Service (Scotland) Bill (Detailed)
Submitted on 2022-10-18 08:56:15

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Are you responding as an individual or on behalf of an organisation?

Organisation

Organisation :
Social Work Scotland

Please tell us a little more about your connection to care services. Which of the following options best describes you. (Tick all that apply)

If you selected 'Other' please provide more information in the box provided.:

Would you like to be involved in future engagement work?

Organisation details

What is your job role?

Please provide answer in box provided:

Information about your organisation

Please add information about your organisation in the box below:

General questions about the Bill

The Policy Memorandum accompanying the Bill describes its purpose as being “to improve the quality and consistency of social work and social care services in Scotland”. Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

Please provide your response in the box provided.:

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. The National Care Service (Scotland) Bill (“the Bill”) represents an unparalleled opportunity to put Scotland’s social work and social care systems on a road out of the current crisis, through recovery, to a sustainable, effective future. We have therefore considered the Committee’s questions carefully, and afforded as much time as possible for our members to reflect on the Bill, arguing its merits alongside its flaws.

Overview of Social Work Scotland position in respect of the Bill at Stage 1

The conclusions we have reached, and set out in our responses to the Committee’s specific questions below, should not be interpreted as a position for or against a ‘National Care Service’. Social Work Scotland seeks reform and investment to redress the multiple crises

which are impacting social work and social care. We support the intent of the Scottish Government to make changes which will embed human rights and social justice into the operation of social work and social care. We acknowledge the democratic mandate the Scottish Government and Scottish Parliament have to establish a National Care Service in Scotland, and we are committed to engaging with energy and openness in its development.

However, the Bill, as currently drafted, does not provide a robust process for delivering reform of such significance. Particularly in respect of the financial investment that will be needed in social work and social care. It is our hope that, in reviewing the feedback we and others are providing to the Scottish Parliament, Scottish Ministers will reconsider the approach they are taking to the development of a National Care Service, withdrawing or pausing this Bill until the detail of proposals has been properly considered and costed. If Scottish Ministers are unwilling to adjust their strategy, we recommend that MSPs reject the Bill at this initial legislative stage.

We believe an alternative approach to developing a National Care Service is possible, still based on a genuine partnership between those who rely on social work and social care, and the staff who provide social work and social care. If this Bill was 'paused', all parties, including local government, should be able to engage in reform discussions constructively. The strands of co-design work necessary for the development of a National Care Service, many already identified by Scottish Government, could still begin immediately, with the lived experience of supported people, carers and staff helping to determine the detail. In fact, with the Bill set aside those strands would be freed from a political and legislative timetable which feels too restrictive, and proper consideration can be given to the strands sequencing and interdependencies, encouraging better policy development.

We appreciate that the Bill also includes sections which are not directly related to the development of a National Care Service; we recommend that Scottish Government use the upcoming Programme for Government to detail how these aspects can be realised in the near term (while the National Care Service co-design work progresses). The Programme for Government could also detail how a National Social Work Agency will be established as a public body, separate to Scottish Government.

With the Bill 'paused', a pace for the co-design work could also be set which acknowledges the hard realities of the current context. The Scottish Government's current approach to developing a National Care Service appears oddly detached from the pressures which Scotland's people are grappling with. Social work, social care and health services (those impacted most directly by the National Care Service proposals) are in the midst of the most serious capacity and delivery crisis in living memory. Waiting times for assessments, support and treatment are all increasing. In some social work teams over 30% of posts are unfilled, with vacancies receiving no applications over multiple recruitment cycles. A similar situation persists in social care. Sickness absence adds further workload on the remaining staff. Inflationary pressures are effectively cutting public sector budgets at a time when public demand for assistance is rising. And further budget reductions are now having to be identified in many critical public services. Most importantly, social work and social care staff are, like everyone, experiencing a cost of living crisis, and the continued adaptation we are all having to make to a post-pandemic world. Indeed social care staff, and the many paraprofessionals and administrative staff that support social work, are likely to be on relatively low rates of pay, and therefore under acute stress. A process of co-design requires the informed, active engagement of people. In the present context, invitations to co-design a National Care Service risk adding to existing stress and undermining the wellbeing of the very people this Bill purports to be about; staff, carers and supported people.

A more considered and outcome focused approach to NCS development will also allow for decisions around children's and justice services reform to be made, and for those seismic decisions to be properly incorporated into NCS policy development. In parallel to a cooperative programme of co-design, a rigorous plan for the investment in social work and social care can be developed and shared, indicating levels of funding over future years and setting out how funds will be sourced or raised. The ambition of a National Care Service will be determined by the extent of the resources at its disposal, not only by its underlying principles or governance structures. The Financial Memorandum accompanying the Bill now before Parliament is largely taken up with organisational changes which are estimated to cost up to £500 million by 2026-27. The reforms that will really matter to people, for example around eligibility, are not included. We therefore do not know if a National Care Service is really going to represent a break with the recent history of systematic underfunding of social work and social care; largely because the investments needed have not yet been costed. Nor can we say whether the combined organisational and service investments indicated in the Policy Memorandum (but not all included in the Bill) are actually deliverable, from the perspective of the public finances. Indeed the seriousness of

current crises demands that we consider where limited public resources might be allocated with the most value. The up to £500 million set aside for organisational restructuring may well be needed to protect Scotland's social work and social care services, as inflation steadily eats away at their budgets over the coming year. And if we are really intent on addressing social care workforce issues, some of the money could be put towards a higher 'Fair Wage' rate than is currently in place.

In considering how a National Care Service might be realised, or perhaps more importantly, how we can improve the availability of high-quality social work and social care services, we believe the potential to evolve existing structures should be explored more fully. Scottish Government may feel they have reviewed all the options and identified their current proposals as the only viable one. But that was a process done largely behind closed doors, without any real input from those responsible for delivering these services, or those who make use of the services. After years of personal, political and financial investment in health and social care integration arrangements, should we not be exploring the potential to build on these towards a National Care Service, rather than throwing them out and leaping towards unknown and untested arrangements? We do not believe that reform of Integrated Joint Boards is necessarily the right next step; but it is a viable one. We suggest it to the Scottish Parliament as an example of an alternative approach which, to date, has not been properly considered by Scottish Government.

Co-design work at a national level, involving organisations, professions and individuals with diverse interests, is unlikely to deliver consensus. We understand and expect that Scottish Ministers will eventually need to make decisions, not all of which will necessarily be our preferred option. But with a programme of reform as significant as this, our priority – and we believe the Scottish Parliament's priority – is to ensure that the Scottish Government's approach marries ambition with evidence, experience and practical reality. The decisions which Ministers take should follow detailed, transparent, collaborative policy making. If legislation is needed to give effect to those decisions, then a new Bill should be introduced to Parliament, complete with the detail MSPs require to provide proper scrutiny. The approach proposed by the current Bill precludes both good policy making and scrutiny, and therefore is not the best approach to delivering a National Care Service that will improve lives in Scotland.

For Social Work Scotland's members the establishment of a National Care Service, while important and significant in many ways, remains secondary to the core objective of improving the lives of the many thousands of people who require support from social work and / or social care. We believe Scottish Government shares this core objective, and it is therefore against this objective that we have evaluated the Bill.

1 <https://yourviews.parliament.scot/health/national-care-service-bill/>

Part A: General questions on the Bill

1. The Policy Memorandum accompanying the Bill describes its purpose as being "to improve the quality and consistency of social work and social care services in Scotland". Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

No, the Bill as introduced will not improve the quality and consistency of social work and social care services in Scotland. Over the past decade Social Work Scotland has taken every opportunity available to underline the pressing need for investment, paired with reform, across all aspects of social work and social care. The gap between Scotland's policy rhetoric and our collective ability to deliver has steadily grown, fuelling disappointment, frustration and cynicism among both those seeking publicly-funded support and those employed to deliver it. Ten years on from the Christie Commission, the preventative model of public services that it described also remains, for many, some way off.

Closing this 'implementation gap' is a priority for Social Work Scotland's members, and to that end, when Scottish Government consulted on proposals in autumn 2021, we gave our cautious support for the establishment of a National Care Service.² Many of our members hoped (and many still hope) that such a radical change in structures and power would act as the locomotive for the long train of change and investment that is needed. But we also made clear that, while we support reform, the detail matters. As does certainty over the levels of investment that will be made in services over coming years. We also noted that the complexity of the task ahead needs to be matched by the most rigorous and robust policy making, based on the experience and insight of those who understand the system 'as is', and what it will take to create the system 'as it is to be'. Unfortunately that rigorous, implementation-focused policy making has not yet happened, and therefore this is not yet

legislation we can support.

The Scottish Government itself acknowledges that this is a ‘framework bill’, equipping Ministers with the means by which to improve social work and social care, but not detailing how they would do so. But as we argued in our response to the Scottish Government consultation (2021), organisational structures do not, in themselves, deliver improvement. Structures matter, but only in reference to what they make more or less possible (e.g. personal choice, professional autonomy, available funding, etc.). Without detail about how Ministers intend to use the proposed National Care Service structures to attend to the decades-old wicked issues which underlie the crises in social work and social care, it is not possible to say whether the Bill will deliver on its purpose. We urge members of the Scottish Parliament to withhold their support for the Bill until more of the necessary detail is available. A National Care Service may be the vehicle needed to deliver Scotland out of its worsening social care crisis, but to evaluate whether the potential benefits outweigh the immediate risks we need a sense of what the end-destination will look like (scope of services and staff, number of care boards, etc.) and the route Ministers will take to get there. Critically, we also need to know what both the journey and the end-point are likely to cost. Without the provision of that detail the Bill is simply an invitation for MSPs (and Scotland as whole) to trust Ministers, current and future, to chart and navigate a course at a later date.

Perhaps the most important detail needed is around finance. Determining the levels of public (and in some cases, personal / individual) expenditure that will be required to deliver the Bill’s Policy Memorandum will be a complex and necessarily contentious piece of work. The outcome could only ever be an estimate, with so many variables at play. But such work, while difficult, is not impossible. Individuals and organisations exist in Scotland that can expedite it, offering into the debate robust assessments of what genuine ‘delivery’ of policy objectives is likely to cost.³ And in turn this can help us to collectively determine whether Scotland can afford, or would be willing to pay for, such investment. We at Social Work Scotland believe strongly that further investment is necessary, over and above what Scottish Government have committed to, and we will be at the vanguard should a case have to be made to the public about the necessity of raising funds to pay for these vital public services. As a representative organisation for those working in such services now, we want to avoid a scenario where a National Care Service is forged through the smelting of existing structures, with the inevitable pain that will involve, only for it to deliver no real, substantive change because there are not the sustained levels of above-inflation investment that will be needed. Scotland’s social work and social care systems are too important, with too many people reliant on them, for them to be broken up without there being even a rough estimate as to what future service provision will cost. And while Scottish Government may defend the Bill on the basis that no dismantling of the current system would take place until costs were understood, we cannot support such a significant transfer of power (from local to central government), such as this Bill represents, prior to those costs being better profiled and understood.

Furthermore, we do not think the Bill, as introduced, will be successful in achieving its core purpose because the implications of incorporating social work into a National Care Service do not appear to have been fully understood or accounted for. Two matters in particular have not been sufficiently addressed. First, the practical, legal, governance and professional leadership implications of employing (or at least being responsible for) a profession whose functions extend to protective actions. Secondly, the implications for social work if, as it may transpire, the profession is split across different delivery and accountability structures.

On the first of these, we noted that the Bill itself makes no explicit reference to the protective responsibilities of social work, and therefore a future National Care Service. The only oblique reference to such duties is in Schedule 3, which lists the enactments giving rise to transferable local authority functions.⁴ But the ‘protective responsibilities’ of social work are extensive, complex, sensitive, high-profile and, at times, contentious. At their most formalised, these protective responsibilities are set out in law as statutory duties, covering processes and powers relating to adult support and protection, mental health, the management of offenders, and child protection. These duties equip social workers with the means to take action to protect an individual from causing harm to themselves or those around them. They include powers to detain people, restricting their liberty. Such powers are necessary, but any potential infringement on people’s human rights must be treated with the utmost seriousness and transparency. To ensure they are used proportionately, at present they are calibrated in well-developed systems of oversight and accountability. It is a particular and serious concern of Social Work Scotland’s members that neither the National Care Service (Scotland) Bill itself, nor its accompanying documentation, reflect an understanding of the protective responsibilities which a future National Care Service may

assume (through its inclusion of social work).

No provision is made for the fact that Scottish Ministers will be assuming direct control of a group of professionals who hold powers to restrict an individual's liberty; with the establishment of Police Scotland, this same issue was part of the rationale for creating the Scottish Police Authority, as a necessary buffer between Government and the police force. No section of the Bill or accompanying paper articulates how the existing structure of oversight and accountability, which relies heavily on the political and operational independence of local government, will be replicated or reformed in the context of a National Care Service. There is no reference to the Chief Social Work Officer, or to the unique responsibilities the individual holds. There is no acknowledgement of the legal requirements to have certain officers (such as Mental Health Officers) subject to different governance structures to colleagues they must work with (such as doctors), to ensure independence and challenge around decision making.

The absence of such important detail from the Bill is possibly reason enough to pause its passage through Parliament. But the Bill's deficiencies in respect of social work's responsibilities go deeper. In contrast to the popular portrayal of social work, the profession's primary focus is prevention, taking action to protect individuals and communities from negative outcomes, preferably by building strength, resilience and capability. The profession's roots lie in the 1968 Social Work (Scotland) Act, with its provisions for local authorities to secure the general social welfare of their communities.

Unfortunately, over recent decades legislative and funding issues have concentrated social work resources on crisis response. But if adequate funding could be secured, and lines of leadership and governance got right, it does not have to be that way. Social work could be freed to play a role akin to general practice in the NHS, a non-stigmatising service open to all individuals and families seeking support and assistance, while also working to monitor the wellbeing of people who are subject to risk, and escalating cases when necessary. We believe strongly that the central purpose and underlying principles of the proposed National Care Service (particularly those aspects relating to prevention and advancing equality) can only be realised if social work is enabled to fulfil the full scope of its responsibilities. If the Scottish Parliament's objective is improving people's outcomes, rather than just changing public service structures, the Bill must go much further in detailing how a National Care Service will be different, for the professionals who work in it, to the current environment. In addition to the matter of social work's protective and preventative responsibilities, the Bill also does not adequately address the implications of splitting the profession across different delivery and accountability structures (i.e. adult social work in the National Care Service, children's social work in local government). This outcome is acknowledged in the Bill's accompanying papers, but analysis of what this will really mean for individuals and families seeking or requiring support, and the profession as a whole, is deferred to a later date. There is also much faith being placed, as articulated in the Bill's accompanying documents, on the power of a National Social Work Agency to overcome any challenges. A National Social Work Agency, we observe, that is not mentioned explicitly in the Bill itself. We support the establishment of a National Social Work Agency, and believe the organisation is an essential, although not on its own sufficient, part of the response to the discreet challenges facing social work. But on the operational issues that will flow from separating social work across different structures a National Social Work Agency can only ever have marginal influence.

For example, if children's and justice social work are not included in the National Care Service's scope, how will responsible Minister's ensure that a (relatively small number of) adult social workers retains the independence and authority necessary to act in the interests of individuals in the integrated health and social care environment? A social work service which can push back assiduously, as the profession had to do during the COVID-19 pandemic, on moves to turn people's homes into health care settings in the pursuit of infection control. Or to withstand pressure to release an individual out of hospital if there is not appropriate social care support available to keep them safe and well in the community. The current integration landscape is far from satisfactory, and the issues it has created for social work partly explain our support for reform. But while imperfect, the current system retains most of the checks and balances that, built up over decades, help prevent one part of our public services infrastructure from becoming dominant.

With the absence of any detail in the Bill about how professional responsibilities and services will be organised, we cannot see how those necessary checks and balances will be replicated in a National Care Service. Indeed, on the basis of what the Bill does say, power would be consolidated in the hands of Ministers; ostensibly to enable the change and improvements necessary, but ultimately that consolidated power could be used to whatever political priority emerges at a later date. Consolidation of power promises speed in delivering a vision. But what is lost? Friction in a system is not a bad thing when the protection of human rights and minority interests is a priority, or if we are interested in

sparkling innovation. A plurality of power keeps people and communities safe, by limiting the ability of any one professional or service from unilaterally making a decision and implementing it. The Bill does include references to complaints, Charters of rights, etc. but these should not be considered sufficient (or adequate) checks on the powers of a National Care Service, and they do not in any way speak to the issues we have outlined above, in respect of ensuring professional autonomy within th [answer truncated to 25000 characters]

Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

Please provide your response in the box provided.:

Through both our members and project work, Social Work Scotland is closely involved in current efforts to improve the quality, consistency, availability and people's experiences of social work and social care services. We believe progress is being made, but acknowledge that the pace of change is too slow. Reform of structures and processes is needed to unlock the potential of both our social work and social care professions, and to deliver the person-led, rights-based and early intervention orientated services we aspire to provide. But reform of structures and processes is only part of the equation; and not, in our view, the most important part. Simply increasing public investment in today's social work and social care system is unlikely to deliver the transformational changes needed. However, without significant increases in public investment, no meaningful change is possible in any structure. This is because limited resources (financial and human) are the primary reason why social work and social care services are struggling to meet the population's needs; let alone the population's wants. We can assert this with confidence, having a clear view on both demand and supply. The former is significantly outstripping the latter, and as a result we must increasingly focus on those with the most critical needs. Rearranging the structures of accountability and delivery, and introducing broad principles and charters, as the Bill proposes to do, will at best only make a very marginal impact on this present reality. By disrupting the current system, creating volatility and uncertainty, and by diverting money away from service delivery and onto structural reorganisation, the Bill may even make the current situation in social work and social care worse.

We do not believe that the public care greatly about how services are integrated or who is politically accountable for them. They desire there to be good quality support available to them when they need it, and if delivery of different services feels connected and coordinated, all the better. Achieving this aim must be our collective ambition, and as yet the Scottish Government has not provided the detail, beyond an outline of future structures, for how it would do so under a National Care Service. Their argument, articulated through the Bill's accompanying papers, appears to be that such detail can only be developed through a co-design process which follows the Bill's successful passage through Parliament. Although we do not believe it is the Scottish Government's intention to give an impression of such, but to some of our members the argument amounts to taking social work and social care improvement hostage till demands for greater central government power are met. Why can we not work together now to identify the resource demands social work and social care require, begin making the necessary investments in services quickly, and in parallel consider the structural reforms that would accelerate and facilitate improvement? To the best of our knowledge there is no legal or structural impediment in the way of Scottish Government and its 'co-design' partners approaching the task in this way.

Our alternative approach would, therefore, be simply to change the order of the Scottish Government's existing plan. Bring forward investment in relevant services, evidencing commitment to the people who work in and/or receive support from social work and social care. Initiate the co-design programme as planned, but in a considered (preferably codesigned) way, with strands of work sequenced and interconnected appropriately. In parallel, partners can undertake the work necessary to properly estimate the resources that social work and social care need (to meet demand within the current system, and to meet demand in the system we seek to build). With the outcome of these two strands established, discussions about structures can begin in earnest, with legislation following to give effect to final decisions.

We are mindful that some sections of this Bill are not directly related to the National Care Service. For example, Anne's Law. Taking a considered approach to the development of a National Care Service should not have to delay progress on these aspects. Instead, Scottish Government could use the upcoming Programme for Government to detail how such aspects will be realised. The Programme for Government could also detail how a National Social Work Agency will be quickly established as a separate public body, with resources focused on addressing the various issues identified by the Scottish Government

as needing a national agency's urgent attention.

In respect of the comment above about initiating a co-design programme in a considered, well-managed way, it is necessary for us to state the obvious: with so much change envisaged by the Bill, the careful management of the related co-design programme will be a massively complicated but essential job. From what we know so far of Scottish Government's current plans, it appears the level of complexity involved in building a National Care Service has not been sufficiently understood. The tight timescales risk giving a priority to speed of decision making over meaningful participation or efficacy of output. When attempting to build an untested service delivery structure on largely new theoretical foundations (e.g. human rights, alternatives to eligibility criteria, etc.), current plans will be found to be profoundly inadequate. What is more, the plans would be inadequate in the best of external contexts. But the external context in which this Bill is progressed is instead extremely challenging, throwing up numerous practical and ethical issues with the Scottish Government's co-design plans. Scotland's population is facing the most serious cost of living crisis in many decades; inflationary pressures which impact most significantly the already vulnerable in our society, such as people supported by social work services, many of those in receipt of social care, the elderly, those with complex health conditions, etc. Precisely the people we need to be actively involved in the process of co-design. And of course in respect of the 'workforce' which needs to be involved, the individuals are subject to exactly the same stresses, with many in low-paid roles.

Furthermore, aside from the pressures created by the cost of living crisis (which is increasing demand for services and support while simultaneously eroding organisation's own resources and capacity), social work and social care are still very much in postpandemic recovery. Vacancy and absence rates are high, caseloads overwhelming, and burnout and fatigue evident in all service areas. Although few in relative numbers, the continued demand placed on social work by arrivals from Ukraine (and now, increasingly, the re-housing of arrivals from spring) is considerable, requiring the redirection of whole teams' time, and consuming the attention of managers and leaders. For children and families social workers, this is in addition to change activity they are trying to progress in delivery of the Promise. Inviting the workforce into (necessarily) challenging co-design conversations at this time may not just be impractical, but also insensitive.

From a political perspective, our recommended alternative approach may seem naïve; why embark on months of difficult work with no certainty of a clear outcome? However, we believe that our approach is more consistent with the steps implementation science would recommend. In the Bill's Policy Memorandum the Scottish Government itself explicitly acknowledges the implementation gap that has characterised social work and social care policy over the past decade. If the objective is to overcome that implementation gap then we must engage with the evidence properly. Evidence which, we think, runs strongly counter to the approach this Bill proposes. To cite a recent review on this subject, already profiled to MSPs by the Scottish Parliament's Information Centre,

"[...] those who work on the front line, whether managerially or professionally, know more about the challenges of delivery than national policy-makers. A crucial task for implementation support is, therefore, to tap into the perceptions and experiences of those whose behaviour will shape the implementation process."⁵

The members we represent, a group of professionals with good claim to being essential to the operation of the current and any future system, do not feel they have yet been engaged by Scottish Government in any meaningful or systematic way. Should legislation to create a National Care Service proceed prior to that engagement taking place? We do not think so. Further to our main argument outlined above, if we accept that reform of structures is a necessary precursor to 'unlocking' the public investment social work and social care need, the proposed version of a National Care Service is not the only viable (or even best) approach. Addressing some of the issues around Integration Joint Boards, identified by Derek Feeley and Audit Scotland, among others, could be done without the type of National Care Service currently proposed. There are also alternatives which incorporate much more extensive reform of the NHS; options theoretically possible, although not perhaps politically. The National Care Service (Scotland) Bill does seem, on the basis of the limited detail available, to be a backward step in respect to integrating health and social care. Social Work Scotland has made many criticisms of the current integration arrangements, particularly in respect to how they impacted social work leadership and delivery. However, we have also always acknowledged the benefits health and social care integration, done right, can bring for individuals and communities. Through the development of the National Care Service proposals, many of our members have voiced concern about the risks it poses to the local progress they have made in creating common cultures, and effective, integrated operating models. Some members have gone further, articulating disappointment

that this Bill appears to disrupt rather than enhance partnerships, setting back the policy clock in Scotland. Other members have commented on the irony inherent in a government, until recently proudly extolling the progress made and benefits delivered in respect of integration, now advancing legislation that would disintegrate arrangements.

5 Bob Hudson, David Hunter & Stephen Peckham (2019) Policy failure and the policy-implementation gap: can policy support programs help?, Policy Design and Practice, 2:1

Are there any specific aspects of the Bill which you disagree with or that you would like to see amended?

Please provide your response in the box provided.:

Addressing these in line with the structure of the Bill.

Part 1: Section 1: The National Care Service Principles

We agree with the notion of setting out clearly the principles on which a National Care Service is to be established, but as currently drafted, we question whether they provide a suitably robust foundation. They are laudable statements of intent, but they do not appear to have any real weight. Determining whether they have been 'realised' will be matter of subjective opinion, for there does not appear to be any provision for objectively and empirically adjudicating. And the wording of some render them useless as a tool by which to hold Ministers or a National Care Service to account; for example "opportunities are to be sought to continuously improve ..." affords so much latitude that it is effectively meaningless. Where there is some specificity, there is no obvious provision for redress if an individual feels a principle has not been upheld in respect of their experience.

The principles also do not provide for the full breadth of social work activity; especially if children's and justice social work are included in the scope of the National Care Service. In particular, there is no reference in any of the principles to how the National Care Service will fulfil its protective responsibilities, which it will assume with the social work functions of local authorities. These include duties, and associated powers, to ensure individuals who require support receive it, even if the individual actively rejects the assessment of their need and the offer of support. Although this represents a relatively small number of cases out of the total, they are cases that consume considerable time, energy and resources, and which often involve legal dispute and court intervention and risk of serious harm. They are cases that illustrate both the value and tensions associated with human rights, surfacing the fact that individuals' rights may be in conflict with each other, or even that the exercise of an individual's rights is not in their best interests. When such serious consequences as the deprivation of an individual's liberty is involved, we expect Ministers would want to be explicit about the principles on which the National Care Service will use such powers. In respect of principle (b), we would welcome further detail on what constitutes financial stability, and how the Scottish Government intends to deliver it.

On principle (c), we strongly support the focus on early intervention, but question how the services provided by the National Care Service can be 'centred' on such activity, at least in the short to medium term. Levels of need in our communities are high and of a complex nature, and our current system is struggling, through lack of resource and good national planning, to reach it all. Resources and services will need to continue to be available to those with the most pressing needs once a National Care Service is established, and as yet it is not clear where the resources are coming from to finance the early intervention services that will have to be built alongside the existing 'acute' provision. This reality is mirrored in the NHS, where resources are increasingly consumed by acute need, making the case ever stronger for earlier interventions, but shrinking the NHS' capacity to actually deliver those earlier interventions. It is a public policy dilemma, which in our view can only be overcome through concerted public investment over many years, effectively building and maintaining two systems at scale (one 'preventative' and one 'acute / crisis response') until such time as the preventative services significantly reduce the demand on acute services, allowing for disinvestment and decommissioning.

On principle (d), it should be amended to reflect that services are to be designed collaboratively with the people to whom they are provided, their carers, and those who work in the services at all levels. It should not simply be assumed or taken as implicit that those who work in a system, and who arguably understand its strengths and weaknesses best, are included in service design, evaluation and implementation activity. It is certainly not the case currently, despite much rich rhetoric about co-production and engagement. The value of the 'generalised' perspective professionals can bring, identifying themes and commonalities across hundreds of individual cases, feels to have fallen out of favour. But it is through the interaction of the professional and supported people's experience that we will

identify a viable path of improvement.

Moreover, if the National Care Service is to realise the principle of advancing equality and non-discrimination, it will need to go much further than Scottish Government has to date in securing the whole continuum of lived experience; not just those with the means and desire to engage. This is particularly important if social work services are included in the National Care Service; the voices of those who receive support from social work must be heard, rather than just those who seek support through social work (e.g. social care support). And as Ministers have left open the possibility that a National Care Service will encompass children's social work and social care, and justice social work, it is essential that the voices of children, families and offenders are part of co-design work from the start. If not, the Scottish Minister's co-design programme will be inherently unequal, privileging one set of lived experienced voices over another.

Part 1: Section 4: Establishment and abolition of care boards

We believe this section should be amended to provide more detail (and narrow the scope of Ministerial discretion) on the proposed care boards. For instance, the number of local care boards should be made clear, as the implications of different options are profound. Coterminosity with local authorities would enable local democracy to have a meaningful place in the National Care Service's governance, and facilitate links with other relevant public services (which are not proposed to be in the scope of the National Care Service, such as housing). But it would also tie the National Care Service to a level of administrative fragmentation which is, we believe, a drag on improvement in the current system. An issue exacerbated by the fact that some existing local government units lack the size and scale to commission the breadth of services that diverse communities increasingly demand. An alternative approach for local care boards would be coterminosity with territorial health boards. We can see the appeal in this for Ministers, promising easier integration between the national health and care services for which they will be accountable. The approach also resolves the issues around economies of scale, creating units which would cover sizeable populations. But a National Care Service built on the same map as the NHS will make local democratic links difficult, if not meaningless (as some Care Boards will cover many and diverse local authorities). It would also increase the prospect of the National Care Service as a whole becoming an adjunct to the NHS, its funding, staff and activity largely focused on addressing the priorities of its bigger, well-established and more politically salient partner. A third, but by no means final, approach to local care boards would be to choose a number unrelated to either local government or NHS administration. That presents opportunities, but would, among many other challenges, create another set of administrative boundaries that need to be navigated.

In respect of special care boards, looking across to the NHS provides some indication of how Ministers have utilised this provision. And indeed the Bill's accompanying documentation gives some hints to how special care boards might be used to consolidate and coordinate workforce development, data, etc. (as is the case in the NHS). However, there is also scope for special care boards to provide services which are (determined by Ministers to be) best delivered 'once for Scotland'. We are not opposed to this idea in principle, but specific decisions will have profound implications on social work and social care. Should, for example, all mental health services be organised and managed through a special care board? Or all drug and alcohol services? We appreciate that no decisions have yet been taken, and we are confident that, as representatives for the leaders of social work, we would have a voice in any discussions. But irrespective of whether firm decisions have yet been taken, the singular absence in the Bill of even ideas / indications retards the quality of debate. We believe MSPs should be appraised about what some of the possible special care boards might be, so that they can make an informed judgement as to whether Scottish Ministers should have powers to make such changes.

As this exercise in working through some of the options around care board numbers hopefully illustrates, the decision will have profound implications, not just for the operation of the National Care Service, but for other public organisations. We cannot see how it is possible to evaluate the Bill properly without such essential detail (or even an indication at this stage of the Scottish Government's preferences / intentions).

Further to the issues of number and focus of care boards, we would also encourage amendment of schedule 1, relating to care boards' constitution and operation. In particular, we seek change to Part 6 of the schedule, to establish a requirement for all local care boards to have a Director of Social Work, who is a member of staff and an attending member of the governance board. The Director of Social Work must be social work qualified and be registered with the Scottish Social Services Council. This amendment would serve to carry over an existing legal requirement on local authorities to appoint a Chief Social Work Officer; a role specifically tied to the social work and social care functions

which this Bill proposes to transfer to a National Care Service. But we are choosing to go further than just recommending the establishment of a 'Chief Social Work Officer' for each local care board, on the basis of our members' feedback about the current issues and limitations of the role.

Since the removal of the requirement on local authorities to appoint a Director of Social Work (as part of local government reform in the mid-1990s), lines of accountability and professional leadership have become blurred or incoherent. The influence of the profession at all levels of decision making has waned, and we believe this has contributed to the loss of focus, nationally, on the mounting issues within social care. Today, Chief Social Work Officers sit in a variety of operational positions across local authorities; in some cases at some distance from the core executive team. We have concluded that it is not possible to fulfil the role, in letter and spirit, without the kind of authority which Directors of Social Work used to possess (in pre-1995 local authority structures). The Chief Social Work Officer role was designed to create, when necessary, friction in a system, advocating for the people who receive support from social work, and is empowered (indeed obligated) to comment on the validity of their partnership's approach to addressing local population needs. It is a role intended to be grit in the oyster. And it is the sort of role which will be more important than ever in a National Care Service; a centralised system under the direct control of Ministers. To fulfil the functions of such a role properly it will need authority, which is why we are recommending amendment to the Bill, ensuring a Director of Social Work clearly sits alongside the Chief Executive (and possibly other statutorily prescribed Directors) as the executive team. This would ensure a diffusion of power across senior executives, and redress some of the deficiencies of the Bill in respect of checks and balances. (The autonomy and agency of a Director of Social Work could be strengthened further if appointments were not the sole preserve of Scottish Ministers, but subject to a selection process involving those with lived experience, the Scottish Government's Chief Social Work Advisor and professional representatives.)

Part 1: Section 11: The National Care Service charter

We remain unclear about what the value added is of these provisions, over and above the existing structure of national standards and outcomes. Considering that the Bill states explicitly that nothing in the charter is to give rise to any new rights, or impose or alter any responsibilities, any value seems primarily for Scottish Ministers, providing opportunities to produce, review and re-publish a written output.

Part 1: Section 13: Independent Advocacy

Social Work Scotland has been closely involved in developments around 'independent advocacy' over recent years, and can attest to their complexity and sensitivity. We do not oppose Scottish Ministers having powers, by regulations, to make provision for such services in respect of the National Care Service; indeed it is likely that Ministers already have powers to establish equivalent services for the current system. But this section is another example of where Parliament's Committees may wish to seek more detail from the Scottish Government, on Minister's intentions or expectations. Different options entail very different implications for the delivery of social work and social care services within an NCS, determining, to a degree, the extent to which it will mark a genuine break from the current system, or simply represents a repackaging of the same issues under a new banner. Furthermore, it is worth noting that social work is already subject to a number of specific legal duties in respect of advocacy. Legislation pertaining to adults with incapacity, adult support and protection, and mental health, among others, require social work to ensure independent advocacy is available, as part of processes where liberty could be restricted or where investigations into an individual's personal affairs is being undertaken. From the detail provided in and alongside the Bill, we are unclear about how Scottish Government intends to deliver these discrete and specialist functions (which will, in a National Care Service, be the responsibility of Ministers) alongside the more generic 'independent advocacy' model described in the Policy Memorandum, focused on supporting individuals to articulate needs and secure social care support packages

Part 1: Section 19: Transfer of care board's functions due to service failure

In continued pursuit of checks and balances within the proposed National Care Service, we would welcome amendment to this section to proscribe Ministers' power to define 'failure'. The pandemic provided many instances where the performance of public authorities was, possibly, seen as failure by Scottish Ministers, when viewed through a prism of infection control or social care delivery. But we are not convinced that Ministers being empowered to take direct control of such authorities would have made any discernible improvement on the narrow criteria about which they were making a judgement, and their preoccupation with

said criteria may have put at risk equally important activity which lacked, in that particular moment, political saliency.

Part 1: Section 27: Power to transfer functions from local authorities & Part 1: Section 28: Power to bring aspects of healthcare into the National Care Service

Our principal concern with these sections is the missed opportunity they represent. Across the United Kingdom populations and governments are rightly proud of the National Health Service, and commitments to its services and workforce are, understandably, priorities. But few NHS staff would defend it as a perfect system. A number of Boards have ongoing challenges in respect to culture, and the performance of some services has been, over many years, sub-optimal. Why then should we exclude NHS functions from the scope of the National Care Service? If a National Care Service can provide the improvements needed in adult social care, why cannot it not also realise such improvements for services such as Child and Adolescent Mental Health? If embedding human rights, choice and control are valid objectives for social work and social care, why not for healthcare? As yet our members have not heard a credible explanation for why the Bill mandates this disparate and unequal approach to health and social care. For all their challenges, current integration arrangements are at least premised on a partnership of notional equals, with local authorities and the NHS delegating functions to an Integration Authority. This Bill appears to be based on a different assessment of the respective value of health and social care services.

Part 1: Section 31: Transfers of staff

Related to our comments immediately above (on sections 27 and 28), the inequity in how the transfer of staff will be managed between local authorities and the NHS is felt deeply by our membership. We understand and appreciate that proposals to transfer NHS staff would likely elicit strong opposition and vocal resistance. But if the objective of the Bill's reforms is improving the quality and availability of support to Scotland's communities, surely no public sector worker's position is sacrosanct. We are not advocating for the transfer of NHS staff, but we believe the development of a National Care Service should be built on a parity of esteem between the various, affected professional groups. In the Bill that would translate to Ministers having powers to transfer all relevant staff.

Is there anything additional you would like to see included in the Bill and is anything missing?

Please provide your response in the box provided.:

Our position, set out in our previous answers, is that much more detail about the National Care Service itself, and its operating model, should be included in the Bill. Or at least in draft / indicative secondary legislation, provided alongside the Bill. Such detail is essential if the Scottish Parliament is to scrutinise these proposals properly, weighing potential benefits against costs and risks.

Of the many additional elements we would like to see in the Bill, we would single out here the National Social Work Agency. The Bill's Policy Memorandum notes that:

"The [National Social Work Agency] will contribute to meeting the Scottish Ministers' duties to provide a national care service, reflecting its principles and human rights based approach, and to monitor and improve the quality of the services that the NCS provides, since those services are expected to include social work as well as social care."

We are pleased to see the potential value of a National Social Work Agency acknowledged by the Scottish Government. In our analysis of why social work and social care systems have struggled to evolve and improve at the pace required by policy and service demand, Social Work Scotland has highlighted the absence of national structures for national professions as part of the problem. In our response to the Scottish Government's consultation on a National Care Service in autumn 2021 we said:

A National Social Work Agency is no panacea or silver bullet for the challenges facing social work and social care. But for those working in and leading the profession, the establishment of National Social Work Agency is a vital piece in the jigsaw of reform, providing the levers we collectively need to plan, develop and improve social work in Scotland. It should be complimentary to existing bodies, assuming responsibilities that currently no one holds, and bringing greater coordination in areas where various partners have a role but at present no clear lead.

The current national arrangements for social work are messy and inefficient, with

Scottish Government, employers, SSSC, Social Work Scotland, improvement bodies and many others all separately 'leading' on aspects of social work's development. At best the current arrangements serve to hold things together. But if we are to affect the changes in social work systems and practice outlined by the Independent Review of Social Care and the Promise, and which the profession itself has called for, we need to create an enabling context. The National Social Work Agency alone cannot deliver that context, but conversely, the context cannot be created without the kind of functions and leadership a National Social Work Agency will provide.

The Scottish Government's initial plans for the National Social Work Agency, in terms of focus and function, align with our recommendations, and we are looking forward to working with officials and other partners to develop plans more fully. Most immediately we see the benefits it can bring to improving pathways into and through the profession, responding to the evolving demands of communities and supported people.

However, we are disappointed that there is no reference to the National Social Work Agency in the Bill itself. The Policy Memorandum states the intention is to establish the National Social Work Agency "within Government as part of the NCS structure"⁶. This ambiguity is unsatisfactory for a number of reasons. Firstly, it does not provide social work with certainty that a National Social Work Agency will be delivered, or that it has any longterm security. In the 'co-design' period to follow the successful passage of the Bill, it is possible that Scottish Government's enthusiasm for the idea wanes. Consistent with our general critique of the Bill and its approach, the current proposals around the National Social Work Agency feel like a promise of action if support is given; "back the Bill and a National Social Work Agency will be delivered". But if the Scottish Government share our analysis of the factors limiting social work's development, and are committed to establishing a National Social Work Agency as part of the solution, why not confirm that commitment on the face of the Bill itself, as they have with Care Boards?

Moreover, on the point about long term security, being part of Scottish Government leaves a future National Social Work Agency open to rapid change (even deletion) without any reference to the profession or other stakeholders. It is a strength of the core civil service that teams can be reorganised quickly in order to meet the demands of the day; recently around COVID-19, and currently for arrivals from Ukraine. But for a team / organisation that will need to make and implement plans over 10+ year cycles (as is necessary with workforce development), such fragility and vulnerability is unwelcome. There are also questions about the type of people who would be eligible and interested in working for a National Social Work Agency that is part of the core Scottish Government (and who are therefore conventional 'civil servants'), as opposed to an Agency that sits at arm's length. A degree of planning for the future is needed too; should the political party in control of Scottish Government change, a National Social Work Agency that is part of Scottish Government might disappear overnight. If the agency sat outwith Scottish Government, underpinned by legislation, Parliament as a whole would need to consent to change. The proposal of a National Social Work Agency situated within Scottish Government, as part of the National Care Service, also begs a number of practical questions about links across government, and the future role of the Scottish Government's Chief Social Work Advisor. At present, the Office of the Chief Social Work Advisor (CSWA), although notionally based in the Directorate for Children and Families, facilitates cross-Government connections and helps ensure that public policy relevant to social work takes into consideration the profession's insights and expertise. How will the National Social Work Agency, as proposed, continue to fulfil this function? And what impact will it have on the CSWA role?

Furthermore, for a National Social Work Agency to be credible with the profession and effective in delivering its functions, it will require a degree of separation and quasiautonomy from Scottish Ministers. Not 'independence' (such a position would be neither viable or beneficial), but sufficiently arm's length to reassure the profession that its activities are determined by more than Ministerial priorities, its resources ring-fenced for its core purposes, and its senior team confident to speak up for the profession when necessary (possibly in opposition to colleagues within government). One of the barriers to progress with social work education is the absence, among social work organisations, of a robust mandate to lead improvement and deliver change. A National Social Work Agency situated within Scottish Government would not necessarily provide that, being little different to current arrangements. A mandate set out in legislation is likely needed.

The development of a National Social Work Agency must also be considered in the wider context of reform of social work, as proposed by this Bill, and in particular the impact changes will have the professional leadership. Current social work structures within Scottish Government reflect the fact that the profession's leadership sits outwith central government

direct control, in the form of local authority Chief Social Work Officers. The relative independence of Chief Social Work Officers provides the Government's Office of the Chief Social Work Advisor with influence, as the conduit between Ministers / officials and an 'independent' group of professional leaders. When a proportion, or possibly all, of the profession's leadership sits within a centralised National Care Service structure, how will the Chief Social Work Advisor (presumably based in a National Social Work Agency) maintain the necessary scope to robustly articulate the profession's perspective?

For these reasons we believe the plans for a National Social Work Agency should be set out in legislation. However, we remain consistent with our overall position that the legislative process should be paused while much of the necessary detail around the National Care Service is worked out. Therefore we recommend that provisions for a National Social Work Agency be set out either in regulations, through powers already sitting with Ministers under existing law, or as part of a relevant upcoming Bill.

In response to question 3 we also suggested a number of specific additions to the Bill. Among these proposed amendments, the most relevant here is the introduction of provisions for a 'Director of Social Work' position in local care boards. This would be a qualified and experienced social work leader, providing a range of similar functions to that of the Chief Social Work Officer in current local authority and Integration Authority arrangements. In view of how many critical processes (assessment, public protection, etc.) will run through the social work professionals located within a National Care Service, it will be necessary for the Director of Social Work to have a status, operational power and authority necessary to get things done. Social Work Scotland's members have been clear on the importance of positional power within governance and delivery structures, noting that direct operational responsibilities are integral for social work leaders being able to fulfil their statutory functions according to the profession's values. Social work leadership roles positioned outwith day-to-day budget, management and delivery decision making were felt to be constrained in their ability to influence developments.

For these reasons, among others, we advocate for the position of a 'Director of Social Work' to be confirmed in the Bill. However, our proposal is offered primarily to address a gap in the legislation, as it is currently drafted. We are very aware that, should such a role be established within Care Boards, it may significantly complicate the profession's leadership structure. What does it mean, for example, for the current primacy of the Chief Social Work Officer? Indeed our primary concern with the Bill is its total silence on issues pertaining to social work leadership. This is despite the fact that existing legislation places numerous, specific and unique responsibilities on a number of professional social work roles, and in particular that of Chief Social Work Officer. It is a Chief Social Work Officer who acts, on behalf of the local authority, as a guardian in situations where an individual lacks capacity to make decisions for themselves. It is the Chief Social Work Officer who authorises a child's placement in secure care. And although current integrated arrangements have complicated lines of accountability and authority, the role of the Chief Social Work Officer remains generally understood and respected by other professions. It is also understood that, in order for the functions and powers of a Chief Social Work Officer to be carried out properly and timeously, tiers of senior social work management are necessary; a partnership such as Glasgow could not function without authority properly delegated across an extensive social work leadership team.

At the time of writing, Social Work Scotland (representing the senior leadership of the profession) have had no formal discussions with Scottish Government Ministers or officials about the future of the Chief Social Work Officer role, or their ideas for how professional leadership and governance will work in a National Care Service. We have no sense of how officials propose to overcome the complications the proposed reforms will create. Considering the statutory responsibilities of social work, this absence of discussion, planning and detail around the future of social work leadership feels like a significant omission. There has been no consideration, to the best of our knowledge, about what the lines of accountability and / or authority would be between senior social workers employed within the National Care Service and senior social workers employed by local authorities; or how it would work across the potential three-way split, with justice social work leaders sitting in structures outwith both a National Care Service and local government. Moreover, with children's social work so central to the delivery of the Promise, it is surprising that detailed work has not already been undertaken to assess the implications of different structural permutations.

The answer from Scottish Government to this is likely to be that such aspects will be attended to as the Bill progresses. But this specific matter, along with many others, are of direct significance to the future of social work (and obliquely, of local government's role in public protection). Understanding how such aspects will work in a National Care Service is a prerequisite to forming a view on whether a National Care Service will be an improvement

on current structures (and therefore worth the risks inherent in disruption and reorganisation). Worked through detail on how social work leadership will be realised through, and possibly between, future structures is a key area we believe MSPs should be appraised on before taking this Bill further.

6 Policy Memorandum, p.16

Future secondary legislation

Please provide your response in the box provided:

We have addressed the question of specific detail extensively in our previous answers, so our response here concentrates on the 'framework bill' approach in general. Such an approach is not, we believe, appropriate to either the task (improving social work and social care) or a real-world context characterised by fatigue, volatility, uncertainty and fear. An approach which exacerbates the uncertainty, and which delays discussion and investment, cannot be the right one.

On the utility and problems inherent in 'framework' or 'skeleton' bills, we draw MSPs attention to the extensive work done by UK Parliament colleagues⁷, and that of the Hansard Society⁸. The conclusions of this work have consistently been critical of such an approach to making law, albeit acknowledging that there are some exceptional circumstances in which it may be appropriate, such as responding to a new pandemic. While the need for reform and investment in social work and social care is urgent, this is not one of those exceptional moments.

Within the material relating to this issue from the UK Parliament, the report by the House of Lords' Select Committee on the Constitution (2018) most clearly voiced our own views. In particular:

"The extreme end of the spectrum of legislative uncertainty comes in the form of 'skeleton bills', where broad delegated powers are sought to fill in policy details at a later date. We heard a great deal of scepticism about skeleton bills "that lead to lots of regulation because [the policy] has not been worked out yet."⁹

And

The Bar Council said that skeleton bills "should be assessed on their merits, but with a sceptical approach", and that they should be subject to "appropriate scrutiny and sunset provisions." They added that skeleton bills were, "in most cases ... simply shorthand for [the Government saying] 'we have not thought through what we intend to do'."¹⁰

And

"The Bingham Centre for the Rule of Law said that Bills which are wholly or partly 'skeleton' in nature should not be adopted in the absence of an exceptional justification, and the burden of explanation should fall on the government."¹¹

And

"We have previously stressed the importance of good policy development as the foundation of good legislation. If the Government is thorough in its policy development prior to drafting legislation, the need for skeleton bills would be reduced. The Law Society of Scotland made a similar point: "If the Parliamentary Counsel Guidance on making good law is adhered to, that law will be necessary, clear, coherent, effective and accessible. Skeleton Bills by their very nature do not fulfil these criteria."¹²

And finally

"Skeleton bills inhibit parliamentary scrutiny and we find it difficult to envisage any circumstances in which their use is acceptable. The Government must provide an exceptional justification for them, as recommended by the DPRRC's guidance for departments; it cannot rely on generalised assertions of the need for flexibility or futureproofing."¹³

Having reviewed the literature on 'framework' / 'skeleton' bills we feel that the Scottish Government has no justification, except perhaps political expediency, for taking such an approach with reform of social work and social care. Good legislation will be built on good

policy making, not vice versa. Furthermore, as with all Bills which provide Ministers with illdefined powers, there is no guarantee that such powers will always be used in pursuit of aims with which Social Work Scotland agrees. The present Scottish Government's objectives for social care align closely to our own, and although we may differ on the best approach to be taken to achieve them, we believe and trust in Ministers' commitment to delivering improvement and quality, greater equity and accessibility, etc. But individual Ministers will change over time, and at some point the party in charge of the Scottish Government may also. How do we guarantee that future Ministers will not utilise powers to make changes to public services that we do not believe to be in the interests of the public? It seems the only way would be to proscribe the powers of Ministers at all times, to ensure scrutiny, and possibly even a break, on their capacity for action. In defending the presentation of 'framework' bills to UK and Scottish parliaments, Ministers have previously spoke of having to "future proof" legislation for rapidly changing contexts (providing Ministers with powers to make changes as the circumstances change). But that logic works in the opposite direction too; to future proof legislation from being used in ways inconsistent with the original framer's intentions, we should limit the potential by not providing such powers to Ministers in the first place.

The 'framework' bill approach is also problematic because of the context in which Scottish Government seeks to progress this. Social work and social care services are currently in crisis, with waiting times for assessment and support growing, low morale, and long-term structural challenges now manifesting (such as an ageing population, low immigration, number of social workers reaching retirement age, etc.) Organisations are still consolidating changes provoked and cemented by the pandemic (e.g. closure of buildings, increased home working, etc.) and managing high levels of staff absence. Inflationary cost pressures constrict the value of service budgets, at the same time as provoking more demand on those budgets, as people seek more support from public authorities. For social work, additional to all this has been demand placed on teams by the Homes for Ukraine and Super-sponsor schemes, which continues to consume considerable time, energy and emotion. As hosts' initial six month commitments come to an end (starting in September), and many decide to no longer continue providing accommodation to people from Ukraine, social work expects added pressure on their already over-stretched resources.

On a more prosaic level, the National Care Service (Scotland) Bill is just one of a dozen or more current policy and legislative developments that propose profound changes to the way social work is delivered in Scotland. Each of these requires time and attention, not least because the interdependencies between them are rarely surfaced or properly considered by officials. Examples of such developments include the Mental Health Law Review, the Promise, the Community Justice vision, revision of the Self-Directed Support Statutory Guidance, and the Children's Care and Justice Bill, among others.

There is a feeling among our members that the situation on the ground, with services in crisis, is met by Scottish Government with more policy activity, rather than a focused attention to problem solving and policy implementation. The solution to a problem is not necessarily reform and change. We do believe social work and social care require both reform and change if they are to function as our members want them to, and which the public need them to. For that reason we gave our cautious support to the development of a National Care Service, as means by which we open the conversation about what changes are needed. But the Scottish Government has jumped to the end and intends to work backwards, or even top-down, with the structures established and the detail to follow about what those structures will actually do. This has frontloaded disruption and tension into an already unstable system. Colleagues at or close to retirement age (a significant number in respect of social work leadership) are weighing up whether to stay in posts, the future of which is uncertain, or leave now. Investment in some services or programmes (such as IT upgrades) have been frozen, the cost-benefit calculations thrown out by the 'potential' of a National Care Service coming into existence in 2023-24 (at least in some form). It is unfortunate, but the Scottish Government's approach to improving social work and social care may in fact be making the delivery of those services more difficult in the short to medium term.

7 House of Lords, Select Committee on the Constitution (20 November 2018), The Legislative Process: The Delegation of Powers, 16th Report of Session 2017-19; House of Lords, Merits of Statutory Instruments Committee (12 November 2009), What happened next? A study of Post-Implementation Review of secondary legislation, 30th Report of Session 2008-09

8 Hansard Society, Delegated Legislation: The Problems with the Process, November 2021; and 'Delegated legislation review', accessed 12 August 2022

9 House of Lords, Select Committee on the Constitution (20 November 2018), The Legislative Process: The Delegation of Powers, 16th Report of Session 2017-19, p.17

10 Ibid, p18

11 Ibid p.18

12 Ibid, p.18

Transfer of services to the National Care Service

Please provide your response in the box provided:

Yes, Social Work Scotland members hold strong views on the question of what services may or may not be included in the National Care Service. Our position was set out clearly in our response to the Scottish Government consultation in 2021¹⁴, and remains largely unchanged. We are pleased that Scottish Government took on board our recommendation to review the evidence before making a decision in respect of children's and justice services, and we will engage with the processes established constructively. Although it should be noted we remain very concerned that the Scottish Government's timetable for developing the National Care Service runs ahead of these profoundly important decisions (on children's and justice services). It is highly likely, therefore, that proposals will be developed which fail to take proper cognisance of the child and justice contexts, and which then do not create the conditions for the successful realisation of the Promise or Scotland's vision for Community Justice. Moreover, and rather perversely, in adopting an adult-only scope for the initial development phase, adult social work interests are likely to find themselves marginalised. With the majority of the profession located in children and justice structures, civil servants will be under less pressure to attend to the needs and issues of those social workers who are in scope from the beginning.

To avoid repeating arguments we have made at length elsewhere¹⁵, we will restrict our comment here to those services identified as being included in a National Care Service from the start, and those determined to be firmly out of scope.

A concern raised by Social Work Scotland members related to the potential break in current arrangements for addressing homelessness. The move of certain services into a National Care Service is likely to complicate efforts to provide coordinated support to people with complex needs. Key drivers of homelessness include trauma and adverse childhood experiences, exclusions from the labour market, problem substance use and involvement with the criminal justice system. The response to this must be integrated, minimising the 'hard edges'¹⁶ which individuals have previously experienced. For nearly all local areas in Scotland, and in particular those who have integrated all relevant health and social care functions, the provisions in the Bill run the risk of fragmenting the services response, undermining prevention activity, transition, and responses to acute, crisis need (the latter of which is of critical importance when considering Scotland's drugs deaths numbers). In respect of adult social work, we understand the logic that, in seeking to improve adult social care, Scottish Ministers require control of all the relevant levers, including social work. However, nothing in the Bill or the accompanying documents suggests to us that Scottish Government understands the levers they are proposing to control. Adult social work is presented as simply an intermediary between individuals and social care, undertaking bureaucratic assessment, procurement and care management functions. In this highly reductive and transactional framing of social care there is no room for the relationship based practice of social workers, or for their advocacy and protective roles. For our members, this presentation of social work is dispiriting, sapping people's confidence that the potential of a National Care Service will be realised.

In developing this submission many spoke of their concern that the Bill, as currently drafted, would result in adult social work simply becoming a 'delayed discharge service', focused exclusively on addressing the politically inconvenient reality that there are too few suitable options into which people can be safely discharged from hospital. Reflecting on the pressure applied by Ministers on this topic through current governance structures (i.e. Integration Joint Boards), some Social Work Scotland members expressed a worry that alleviating the immediate political problem (high numbers around 'delayed discharge') would supersede the medium to long-term priority (developing the breadth of care placements and packages of support), at the expense of thorough assessments of people's best interests and the suitability of available support. Certain policy decisions taken during the pandemic, for example around infection control measures for care homes, provide salutary examples of how Ministers and civil servants must balance many competing priorities in their decision making, in which individual choice and human rights are not always paramount.

There is an opportunity with a National Care Service to re-set the adult social care system, driving through a programme of investment and reform to a sustainable, compassionate, rights-based, person-led model. That future is only possible, however, if the functions of adult social work are actually understood by policy makers, and the conditions created in which social work's full potential can be realised. Empowering social workers to use their

skills and resources to work in partnership with individuals and families to identify and secure the support they need, evolving over time. Encouraging social workers to advocate for individuals within wider public service systems. And, where relevant, enabling social worker's potential to act to keep individuals safe from harm. Such actions require structures, processes, governance and leadership to be nurturing and facilitative of the profession. As yet, the Bill and its accompanying documents do not provide our members with the detail needed to judge whether the proposed National Care Service will provide that environment.

With a view to assisting the Committees in their scrutiny of the Bill, Social Work Scotland members provided a number of case studies to illustrate the actual reality of adult social work delivery, and the breadth of responsibilities and actions it involves. It is this complex professional role described by the three case studies below which needs to be accommodated and better enabled by a National Care Service. They also describe the context in which social workers are currently operating, with growing, complex demand on the one hand, and insufficient services or social care support on the other.

Case Study 1: Social Worker in a community Learning Disabilities service

"The thing is, I would never be able to accurately reflect what it's like to have the constant stream of thoughts that go through your head all day – which are potentially completely unrelated to your day but because you've got so many plates spinning in your head, you just move from one thing to another - so no one thing during the day gets all your attention".

A day in the life

08.30am – arrive at the social work office. I generally work from home due to arrangements made during the COVID-19 related lockdown and then social distancing measures, which reduced desk availability further (we had already been working within a "hot desk" environment). Pick up cash for delivery to "Andrew" (not the individual's real name) for whom I am Benefit Appointee – a decision taken because of Adult Support and Protection intervention. I am also Andrew's Welfare Guardian, as per the Adults with Incapacity (Scotland) Act 2000. I deliver cash to Andrew's place of residence on a weekly basis – however there is much more to this than just delivering money. This consistent, tangible action has facilitated a relationship between us. Andrew has a learning disability, as well as personality disorder, anxiety, problem substance use and physical health problems. All of which combine to make it very difficult for Andrew to trust and feel at ease with others – particularly professionals. I have worked with Andrew since 2019; it was not until 2021 that he presented as more "settled", and we have a good rapport now. I will deliver the cash later on in the day.

I log onto emails, and to the social work management system to check for Adult Concern Reports that have come in overnight. This has to be done in the office, as you cannot access the social work management system on a mobile device – you can access emails, but we only have 1 GB of data and the network is slow.

09.45am – leave office for first appointment. Arrive at 10am for first meeting.

"Brenda" (not the individual's real name) is in hospital. She has never lived outwith a hospital environment. I am meeting with a potential provider to discuss concerns they have about their ability to manage Brenda's support needs. Brenda has a diagnosis of personality disorder as well as a learning disability and ADHD, Brenda's behaviour can be challenging, and she has a history of physical violence. It is my assessment that the ward environment exacerbates this, and that having a settled, private accommodation will result in a reduction of risk. I have worked with this provider in the past, in similarly difficult circumstances. These types of meetings are mentally and emotionally taxing, as you constantly negotiate on behalf of your service user. The reality though is that there is a limited number of providers anyway, and even less so when situations are particularly complex or challenging. Social Care and Housing providers need us and we need them.

12pm – Back to office for lunch whilst checking emails. An email has come in from "Carol's" GP. They wish to discuss some concerns they have regarding Carol's physical health. I am Carol's welfare guardian. There is an alert on all health IT systems that the welfare guardian must be advised of any concerns/contacts Health colleagues have with Carol; we fought hard to get this alert placed due to recurring situations in which Carol would make contact with Out of Hours health colleagues and receive prescriptions for anxiety related issues, which they would then misuse. I call the GP back and leave a message. (Writing this three weeks later, I have still not heard back from the GP, but have linked in with other colleagues regarding the highlighted physical health issue.)

1pm – late to next appointment. Meeting with “David’s” Power of Attorney to advise that, after a year in (non-charged) specialist respite, I have sourced permanent accommodation for David in their hometown. David has particular health needs and access requirements, which has made sourcing appropriate accommodation for him challenging. These health needs have also resulted in several hospital admissions over the past year. I have contacted every specialist care home that can accommodate David’s particular needs across the whole of Scotland with no success for over a year. I am delighted that David will be able to move into permanent accommodation.

2.30pm – Hospital Visit with Brenda. Updated Brenda on meeting this morning. I have worked with Brenda for a few years now and we have a very good relationship. I visit on average every two weeks, to spend some time with her and see how she is. I am Brenda’s Welfare Guardian. I also had to speak with the Senior Charge Nurse regarding established information sharing protocols. Despite the fact that there is a formal information sharing agreement in place, which is necessary due to the

30
Guardianship, the hospital ward is not sharing information in relation to aggressive incidents. I reiterated the statutory nature of this information sharing agreement. It has been agreed, by all professionals working with Brenda, including ward staff and the Mental Health Officer, that a variation of the Guardianship powers is required, to include restraint, to keep Brenda and others safe from harm during episodes of violence. In order to action this; evidence is required to be submitted to Local Authority legal colleagues so that they can support the application. This has all been agreed and recorded previously.

3.15pm Sat in hospital car park, picking up voicemails/making calls

4pm – Home visit to “Ellie”. Scheduled visit with Police. I had the role of Appropriate Adult. Also present were an interpreter and advocate. Ellie is the subject of multiple Adult Support & Protection concerns. As a result of these concerns and subsequent investigation and Case Conference, there is a Banning Order in place in relation to one individual. Police were interviewing due to a reported breach of the Banning Order by said individual. Mid-statement the Police Officers were called to an emergency – I took the opportunity of having the interpreter and advocate there to discuss other issues with Ellie whilst we waited for the police officers’ return. Police returned 20 minutes later and interview resumed. (During this appointment, I had to step out to call my partner to make alternative arrangements for picking up our child from childcare.)

6.45pm - Delivered cash to A; 7.15pm – Home

Case Study 2: Social worker in a substance use service

“What’s the role of the social worker? We find solutions that others can’t”

The ‘seen’ aspects in a typical week: home visits/office visits/hospital visits to service users; preparation of case notes, assessments, reports, chronologies; joint visits with health colleagues, including investigation of Adult Support and Protection concerns; liaison with Mental Health Officer teams regarding Adults With Incapacity and Guardianships; organising and attending case conferences and risk management meetings with partners; referrals to and engagement with Occupational Therapy, Fire Safety, Meal Service, Resource Allocation for personal care services, Community Alarm, etc; Referrals to Foodbank, Welfare Fund, Starter Pack, Advocacy services, clerical tasks, such as minute taking, data input, meeting organisation, etc. (as no clerical support available to the service); duty worker once a week, dealing with all queries which come into services ‘front-door’; supporting a social work student, coworking cases; ‘Duty To Inquire’ responsibility as a council officer (additional to the social work caseload); undertaking training; facilitating shadowing opportunities for colleagues in health and social care.

The unseen aspects of a typical week: Social workers support individuals that have complex needs, where minor events can escalate into a crisis very quickly and without warning. It is a very unpredictable job and difficult to articulate in simple terms. It is also a role where the worker, to minimise imminent risk, carries out tasks that would not generally be viewed as a ‘social workers’ role; the priority though is getting things done for the individual. We have to work with the complexities of their lives; and all lives, when you get close them, are complex. As such, the social work role is so varied, demanding and emotionally challenging. We develop and agree a plan of support with the individual, but factors in their life mean that they sometimes unable to engage with the plan. We must then adapt and adjust to the new context. Add into the mix the use of substances, poor mental health, poverty, disadvantage, stigma and domestic/financial abuse and this is where social work values, skills, knowledge and, critically, resilience, come into play.

We strive to build therapeutic relationships with people so we can support them to identify their motivation for change, and support them to find solutions to their situation, such as accessing support services. (Making support available, although increasingly challenging in the current financial environment, is not enough; social workers often have to put in extensive work to support an individual to access services, such as social care or health care.) Good partnership working is essential. Ongoing risk assessment, including risk to the person, to self and others, is critical. It is a social worker that provides the primary liaison between police, ambulance service, crisis team, hospital discharge, fire service, community justice etc. We are alongside people to minimize their risks such as overdose, self-harm, homelessness, exploitation, etc. And we, as social workers, experience the loss and grief when service users die through self-harm, overdose or long-term use of alcohol. It is fairly typical that social workers in drug and alcohol teams have had to organise the funerals for the individuals they have supported, who have no next of kin. As individual practitioners, colleagues and a service, we must therefore remain mindful of our own self-care, exposed as we all are to extremely traumatic experiences on a daily basis.

Case Study 3: Social Work Team Leader in a Complex Care Service

Today we have been working with an individual in hospital, but who has been assessed as fit for discharge. We have previously been supporting this person at home. They have recurring admissions to hospital for physical health needs. One of our team's social workers has been working on this case for six months, trying to get appropriate support in place. The individual has gone without a care package for a year. In that time, we have tried again and again to secure a provider, working with our contracts team (who are on their knees). To enable the individual to remain at home in the past, I am not ashamed to say that I have gone to the individual's house to make them breakfast or some cheese-on-toast, and a social worker in my team has been going out to deliver personal care to the individual. We could state clearly that such activity is not in our remit; they are social care tasks, not social work. But social care services are on their knees; so much that not even the emergency care that we've got within the local authority have the capacity to provide this support. And there's so many people requiring support, it just keeps growing. Any of the contingencies that we had in place are all being used up. Care homes don't have the staffing, so you can't even find a crisis placement.

We also have an outreach worker in the team. This was supposed to be a specialist post that provides crisis intervention to people with complex and co-existing needs; it was meant to be crisis support delivered on a temporary basis. This outreach worker has, instead, sustained one individual for over a year and a half, because there is no other resource available. The knock-on effect being that 311 people are waiting for the social worker's support, and they cannot get to them because they are filling this social care gap.

Another member of the team is trying to facilitate a young person's move into supported accommodation. They have specific health needs, which the provider is happy to meet, but staff need training from the health specialist before the person can move into the accommodation. The social worker in my team has been emailing the relevant health colleague every day for six weeks to try and get training arranged, and we still don't have a date. It's these knock-on effects that really impact. Other members of the team will be involved in completing complex care funding memos. We agree with the importance of evidence-based decision making; however, the gathering of evidence is tasked to the social worker, which means they spend a huge amount of time running around trying to get input from our health colleagues. Those colleagues are massively overstretched, and don't get back to us. That then adds to the strain in the social work service, in terms of capacity, as demand and cases back-up, but also delayed discharge for the individuals concerned.

In this typical day for my team, there are actually a lot of statutory tasks that are not being done – or certainly not within the legislative timescales – because we are constantly fire-fighting. Adult Support and Protection activity in my team has increased fourfold in the past year. A time in motion study recently conducted with my team confirmed that no one works less than 50 hours a week; a full time contract is 37 hrs per week. Caseload average was 50; an optimum number, within which it is possible to undertake relationship base practice, would be 25.

14 Social Work Scotland (November 2021) Summary of response to Scottish Government consultation on proposals for a National Care Service (<https://socialworkscotland.org/consultations/a-national-care-servicefor-scotland/>)

15 ibid

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

Please provide your response in the box provided.:

The Financial Memorandum is in many ways a disappointing document. Like the NCS Bill itself, it has a much narrower scope than either the Feeley Report itself or the Scottish Government's autumn 2021 consultation on a National Care Service for Scotland.

Almost all the cost estimates provided are for the organisational expenses in setting up the National Care Service, totalling £225 to £500 million by 2026-27. The information given in the FM on the calculation of these figures is not sufficient to fully support Parliamentary scrutiny.

None of this expenditure would expand the volume of services and support available to people, or deal with the current crises in social care, except insofar as it might influence some staff retention in three- or four-years' time. However, these organisational changes appear likely to consume much of the total funding available for the National Care Service, which is stated to be over £840 million by 2026-27 in the Scottish Government's May 2022 Resource Funding Review. In turn, this is about half of the total investment in adult social care alone that COSLA, Social Work Scotland, and others consider is needed.

The only service volume improvement included in the FM is for a very slow build-up of more support for respite breaks for carers, totalling only £16 to £27 million by 2026-27 and not reaching an estimate steady state of £116 to £170 million until 2034-35. These figures are at current prices, so need a commitment to update them for inflation.

The "effect on the NCS" of some very important "Scottish Government commitments" have been explicitly excluded from the FM (in paragraph 13) and so are not costed: increased investment in early intervention and prevention; and in social work services; Fair Work pay increases and improvements in terms and conditions for adult social care staff in commissioned services; increases in Free Personal and Nursing Care rates to cover more of the care costs in care homes; removal of charging for residential care; and investment in data and digital solutions to improve social care support. [Some items are missing from this list such as meeting existing unmet need, the reform of eligibility criteria, commissioning culture changes, improving performance and management information]. Such investment is necessary for the success of the National Care Service, and the estimated costs deserve Parliamentary scrutiny during Stage 1 of the Bill, as well as wider public discussion. Other Feeley Report recommendations were absent from the NCS consultation, and so also do not appear in either the Policy or Finance Memoranda for the Bill. Feeley recommended robust annual demography funding uplifts for adult social care. In 2018, the Scottish Government's Health and Social Care Medium Term Financial Framework estimated these at 3.5% per year – but this has never been implemented.

It is not clear from the Resource Funding Review that the Scottish Government has the revenue to implement a fully-funded National Care Service, even while reducing Local Government funding by over £1 billion in real terms by 2026-27, on now out-dated estimates of inflation. Overall, Scottish Local Government has protected children's social work services and then adult social care above all other services, but is unlikely to be able to continue do so on the flatline cash increases set in the Resource Funding Review.

It is also widely reported that social care services have not returned fully to pre-Covid levels and cannot recruit sufficient staff to maintain services at current levels. Meanwhile the lack of sufficient social care continues to impact on Scotland's hospitals through delayed discharges and admissions to hospitals that adequate social care, including support to unpaid carers, could have prevented. The priority problem is not the variation of service between local areas, but the fact that service volumes and available are too low in relation to need more or less everywhere.

The immediate task, surely, is to fix the problems as they are today, including care staff recruitment and retention, alongside developing the increased investment in early intervention and prevention work that is necessary for the future sustainability of a National Care Service, however delivered. That will mean an honest appraisal by all partners of why the preventative strategies in the Christie report from 2011 have proved so difficult to implement, without double running costs to fund the acute services while preventative services are built up and begin to impact over time to reduce future acute service costs. If a new National Care Service cannot be fully funded, then the Scottish Government should

agree to the last recommendation in the Feeley Report to consider and consult on options for raising new revenues to increase investment in social care.

Impact assessments

Please provide your response in the box provided.:

Social Work Scotland's members were consistently critical of the impact assessments accompanying the Bill, finding them limited in scope and reliant on questionable assumptions. Engagement with professional groups such as ours has been limited; and where discussion has taken place, our members have felt it to be performative, rather than genuinely investigatory. It is felt that conclusions have been reached in the assessment, for which there is a lack of evidence. Or where evidence is presented, it is out of date (e.g. from years preceding the pandemic).

Some Social Work Scotland members have noted the low profile National Care Service proposals continue to have among independent children's social care providers; the debate perceived as something happening to adult social care. Relatedly, the children's rights impact assessment is seen as insufficiently thorough and complex around the possible impacts of children's social work and social care moving into National Care Service structures. Unlike in adult social care, the majority of children's social care is provided directly by local authorities, and independent provision is dominated by voluntary sector organisations, with a large percentage of placements managed through nationally agreed framework agreements. Disruption to these arrangements is likely a necessary step in the realisation of the Promise; but that must be planned and managed disruption, rather than the unintentional outcome of National Care Service developments.

Consistent with the limitations of the Financial Memorandum, a defence of the impact assessments may be that they speak only to the limited proposals sketched out by the Bill. Without the necessary detail about how the National Care Service will be structured or operate, it is not possible to properly assess impact. But really this is no defence; instead it is admission that this approach to developing a National Care Service is back to front, frontloading legislative scrutiny of impact and costs at a point where we cannot properly assess them.

Questions about the Financial Memorandum

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Please provide your response in the box provided.:

Yes, Social Work Scotland provided extensive responses to the 2021 Scottish Government consultation on the National Care Service, which included separate papers on the overall finances (13 pages) (<https://socialworkscotland.org/wp-content/uploads/2022/01/SWSNCS-Supplementary-Response-FINANCE.pdf>) and also on residential care charging (12 pages) (<https://socialworkscotland.org/wp-content/uploads/2022/01/SWS-NCS-Supplementary-Response-RESI-CARE-CHARGES-1.pdf>).

The SWS NCS Finance submission noted that the Feeley report included several important financial recommendations, but none (except those on charging for care) were addressed in National Care Service consultation paper. In our opening summary, we said that: "[...] we are concerned that the additional funding being proposed, at "over £800m" will not allow all the investment recommendations of the Feeley report to be fully implemented, even when these figures are revalued to 2026-27 prices. Many of these recommendations are yet to be costed, including those which Feeley said were needed to "strengthen the foundations" of social care, such as Fair Work contracts and pay increases for social care workers and other low paid staff, and increased support for Scotland's now one million unpaid carers. Other un-costed Feeley recommendations and NCS proposals include the reform or abolition of eligibility criteria, acknowledged as a key barrier to accessing social care; the adoption of an ethical and collaborative commissioning culture; better uses of technology; the collection and analysis of better data to improve decision making; new agency organisational costs; among others.

The figure of over "£800 million more by 2026-27" is far too small. Those recommendations that the Feeley Review were able to cost in their short timescale already totalled £660M in 2019-20 prices. This did not include paying social care workers more than the £9.50 per hour agreed in May 2021, and the Feeley report estimated that every £1 above this level would cost £100M – a significant

underestimate, discussed later in this submission. Nor did Feeley's £660M total include the new right for unpaid carers to take a break from care, or any of the many other important un-costed recommendations briefly mentioned above, and also discussed later.

These, and the other un-costed Feeley recommendations mentioned above, will increase the full implementation cost significantly -- certainly to over £1.5bn for adults only. The NCS consultation proposal to widen the scope of the new National Care Service to include children and families social work and care services, and community justice and prison social work, will also require investment to meet unmet needs and unfunded pressures in these services, in addition to the investment needed for adult social care. In addition, the Feeley Review cost estimates mainly used 2018-19 data, repriced to 2019-20, and therefore did not include the costs of restoring services to their pre-Covid levels.

These high costs are necessary to fix a social care system that has been broken by years of under investment. Feeley found that 3.5% growth, over and above inflation, was needed year on year to meet the needs of increasing numbers of older people and of people of all ages living with disabilities, on the best research evidence available. Such investment was made at lower rates before the decade of austerity, and during that period not at all."

We argued that the earliest possible investment should take place to increase Fair Work minimum hourly pay rates for social care workers to help ameliorate the current recruitment and retention crisis, and also that care services and support to unpaid carers should be restored to pre-Covid levels. Investment in prevention is essential to the sustainability of an NCS:

"Social Work Scotland considers that a wider engagement on prevention is now needed, jointly with COSLA and other partners, including investment in community development, welfare rights, mainstream services, and community organisations. This will also need to consider the continuing relevance of the Christie Report (2011) recommendations, including the question of why these have been so difficult for the public sector to implement during the decade of austerity. Shifting funding from acute provision upstream to prevention, for example, has proved impossible without double running costs during the period of change."

We also recommended that "a working group should be set up as soon as possible to consider the reform or abolition of eligibility criteria, with work then done to cost the recommendations or proposed options" and that a programme of work be established to address unmet need. Feeley's recommendations on annual budgetary recognition of demography was also supported. The submission also included sections on charging for care; better support for unpaid carers as "the largest social care workforce"; funding pressures in Children & Families social work services, and in Justice Social Work services; commissioning culture changes, and the risks of "value leakage"; and monitoring data, evaluation, outcomes.

A short section on 'fair funding' distribution issues urged the Scottish Government to set up a working group as soon as possible to review the distribution methodologies for a National Care Service. Other National Care Service costs were more briefly considered including: organisational costs, the proposed electronic social care and health record, the current LA role of provider of last resort, transfers of assets and liabilities, and the unclear VAT position of a new National Care Service.

In respect of the specifics of the Bill, and its Financial Memorandum, Social Work Scotland was not invited to any consultation exercise (other than general briefing events), nor were we consulted privately for input on the assumptions and calculations which would be used. Throughout the process leading to this Bill we have communicated our willingness to support such work.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

Please provide your response in the box provided.:

No. This is only partly because the "effect on the NCS" of some very important "Scottish Government commitments" have been explicitly excluded from the FM (in paragraph 13), and so are not costed: increased investment in early intervention and prevention; and in social work services; Fair Work pay increases and improvements in terms and conditions for adult social care staff in commissioned services; increases in Free Personal and

Nursing Care rates to cover more of the care costs in care homes; removal of charging for residential care; and investment in data and digital solutions to improve social care support. (Indeed, some Feeley recommendations are missing from this list, such as meeting existing unmet need, the reform of eligibility criteria, commissioning culture changes, improving performance and management information). All such investment is necessary for the success of the National Care Service, and their estimated costs deserve Parliamentary scrutiny during Stage 1 of the Bill, as well as wider public discussion.

Social Work Scotland believes that the Scottish Parliament needs to see more than a “framework Bill” and a Financial Memorandum that excludes the social care reform programme that is integral to the National Care Service and necessary to its success. That said, even within these narrowed confines, there are key financial issues that Social Work Scotland and other have raised during the NCS consultation that should be in the FM but are missing. The first is the affordability of the NCS and care reform programme within the total funding envelope of “more than £840 million”. The fact that the FM estimates for the additional NCS organisational costs at national and local levels total between £225m and £500m creates concern that even less will be available for the as yet un-costed and extensive social care reform programme than we thought in November 2021, when these costs alone looked more likely to be £1.5 billion. No-one was expecting that up to 60% of the NCS funding available (£840M) could go on additional organisational costs.

The social care reform programme, and the pressing needs to restore pre-Covid care services and address the social care staffing crisis, are greater and more immediate priorities than investing in new organisational expenses. Without that investment the NCS will fail, and the NHS be left in greater jeopardy – for it depends on an effectively functioning social care system, not one in crisis. And if it is the case that there is insufficient funding available to create the National Care Service as envisaged in the Feeley Report, then the Scottish Parliament needs to have the information soon to discuss alternative options and priorities for the funding available, including measures to deal with the current crisis in social care staff recruitment and retention, and restoring service capacity to pre-Covid levels. Regard would also be needed to Feeley’s final recommendation, to give “careful consideration to options for raising new revenues to increase investment in adult care support”.

The second issue is financial sustainability. The FM focussed on the NCS organisational costs, and the two other issues in the Bill than require legal changes – carer’s right to a break, and Anne’s law¹⁷, about the rights of adults in care homes to see people important to them even during outbreaks of infectious diseases. But the actual Bill, limited as it is, is wider than that, for its first page contains laudable principles on which the NCS is to be based. The first of the National Care Service principles state that NCS services “are to be regarded as an investment in society that is essential to the realisation of human rights, enables people to thrive and fulfil their potential, and enables communities to flourish and prosper”. We fully agree that social work and social care services are such an investment¹⁸, and that this should be a founding principle of a National Care Service for Scotland.

Then the second and third principles state that “for them to be such an investment, the services provided by the National Care Service must be financially stable in order to give people long-term security”, and “services provided by the National Care Service are to be centred around early interventions that prevent or delay the development of care needs and reduce care needs that already exist”. The final principle is that “the National Care Service is to be an exemplar in its approach to fair work for the people who work for it”. So, the principles of the NCS in the Bill include financial stability, early intervention and prevention, and fair work. None of these principles have zero cost over the period of the current Scottish Parliament, and yet they have either been ignored, or explicitly excluded, from the National Care Service Bill Financial Memorandum.

Financial stability and sustainability covers three of the topics we raised in our 2021 NCS Finance response – demography, inflation, and prevention. Feeley recommended robust annual demography funding uplifts for adult social care. In 2018, the Scottish Government’s Health and Social Care Medium Term Financial Framework estimated these in real terms at 3.5% per year, plus 0.5% for higher-than-average inflation, less 1% assumed savings – but this has never been implemented in the local government finance settlements.

As for inflation, a 25% social care funding increase over the five years from 2021-22 to 2026-27 represents an average compound increase of 4.6% per year – easily eroded by the current rates of inflation. Yet inflation is not dealt with properly in the Financial Memorandum. The only place where inflation receives attention is in the section around

Table 2 on the “illustrative” costs for local authorities in “providing services that could be transferred to care boards”. Here local authority gross expenditure on social work and social care in 2019-20 is updated for each year to 2026-27 using forward inflation projections provided by the UK Office for National Statistics, plus 3% for demographic change and pressures above inflation, less unspecified savings. But local authorities have not received full inflation or received demography funding in the local government finance settlements; and the May 2022 Resource Spending Review flat-lines local government funding going forward in cash terms, meaning an annual reduction over £1 billion in real terms by 2026-27 compared to 2021-22. So, the figures in Table 2 are an illusion, and do not appear to do any real work within the NCS estimates. In any event, future transfers from council need to be based on Scottish funding not local authority spending, which is also funded from council tax and non-domestic rates. Carers rights to a break have been costed at 2022-23 prices according to a helpful footnote, and we understand from communications between COSLA and the Scottish Government that 2% per year has been assumed for the care board costings, with 2-3% for the national NCS costs - this information is not given on the FM

The third element implied by the sound principles on the face of the Bill is the increased investment in early intervention and prevention work that is necessary for the future sustainability of a National Care Service, however delivered. That will mean an honest appraisal by all partners of why the preventative strategies in the Christie report from 2011 have proved so difficult to implement, without double running costs to fund the acute services while preventative services are built up and begin to impact over time to reduce future acute service costs.

17 This is costed at one-off costs of £276,000 for the Care Inspectorate over the next two years: “thereafter, improvements to visiting will become embedded in the sector and we estimate that costs will fall away from year 2024/25 onwards” [page 22].

18 The wording in the Bill that the NCS services “are to be regarded as an investment in society” reads oddly as a prescription upon belief. Who is under a duty to so regard them?

Did you have sufficient time to contribute to the consultation exercise?

In relation to the Scottish Government’s consultation in 2021, no. The range and complexity of issues, and the need to consult with our members on our overall stance of the proposed National Care Service, meant we had to ask for an extension to Social Work Scotland’s response.

Did you have sufficient time to contribute to the consultation exercise?

No

If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

Please provide your response in the box provided. :

No. The Bill has financial implications for our members, the majority of whom are social workers in local government management and/or leadership roles. The section, on page 15, of the Financial Memorandum which considers the transfer of staff from councils is fairly opaque, and does not set out the assumptions of costings for rationalising the “different pay rates and terms and conditions” between councils “which will need to be rationalised within a single service”. While such rationalisation may be desirable, it still wants justification give the great variation in housing, transport and other living expenses between different areas of Scotland. In addition, the FM states that the figures in Table 8 for “Additional costs for Care Boards” have been “have been baselined against current assumptions on Fair Work”, without explaining these assumptions or any of the costing estimates. There is simply not enough information upon which to found a belief that the financial implications for our members have been “accurately reflected”.

With regard to Social Work Scotland as an organisation, we may be affected by the establishment of a National Social Work Agency, which we called for in our submissions to the Feeley Review, and subsequently supported in our responses to the Scottish Government’s NCS Consultation. However, we were expecting a more detailed separate consultation paper on the National Social Work Agency, including whether this is best set up as part of the civil service – which is the implication of the brief information on page 12 of the FM, and what is said also on pages 14-16 of the Policy Memorandum – rather than as something more arms-length to protect the independence of “national leadership to the social work profession”. These issues need more discussion.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

Please provide your response in the box provided. :

No. In our consideration of the Bill we have undertaken extensive analysis of the Financial Memorandum, and have provided the output of this (in the form of short reports) to the Clerks of the Health, Social Care and Sport Committee.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Please provide your response in the box provided. :

[Not applicable to Social Work Scotland.]

Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Please provide your response in the box provided. :

Possibly. There are wide ranges in the estimated organisational costs given for the new National Care service, at both national and local levels, but the relevant calculations are only described, if at all, very generally, and not at a level of detail that permits appropriate Parliamentary scrutiny. On this basis we cannot know if the cost estimation range accurately reflects what we might consider reasonable margins of uncertainty. Too much is left in the dark. The timescales for organisational change also seem too tight, notwithstanding political commitments, because there is considerable work still to do. The position for the Financial Memorandum estimates given for support for unpaid carers, via the new right to a break from caring, is much the same, except that it is underpinned by a well-structured Funding Model to which Social Work Scotland has access as a member of a working group which advised on the development of the model (but was not responsible for the values given to the various variables in the model).

There are problems with the timescales for carers' support. The NCS funding for personalised carers breaks and replacement care is phased over 10 years from notional commencement in 2025-26 to a fully implemented steady state in 2034-35. This uses 2020-21 data from the Carers Census to estimate the numbers of carers assessed per year. For adult carers that is estimated to be 27,000 which is then divided into the steady state figures of assessed carers (34% of all adult carers = 285,260) to get the estimated 10-year phasing. The first problem is that the Carer Census data is unreliable due to missing records, as the FM later acknowledges¹⁹, which is why it is badged by the Government Statistical Service as "data under development" and not as "official statistics" or even "experimental statistics". Secondly, there is other data, from the Health and Care Experience Survey collected every two years, which provides higher assessment figures for 2019 (58,000) and 2021 (49,800), which may be lower due to Covid and/or changes to the format of the question (this is explained in an Annex to more detailed critique on the carers' support costing which Social Work Scotland will make available to the Committee clerk). These figures suggest a phasing of 5 years. Thirdly, policy considerations also favour a faster phasing – improving support to carers is a key element in prevention strategies, as the FM acknowledges in its analysis of "savings due to breaks" on pages 21-22.

¹⁹ "The Carers Census already aims to collect information about breaks provided under the existing Carers Act. However, this information has proven challenging for organisations to return and so the data available is largely incomplete. The Carers Census is currently being reviewed and work is ongoing to support local areas to improve the collection". [FM page 21]

National Care Service principles (Section 1)

Please provide your comments on the National Care Service principles in the box provided.

Use text box provided:

Accountability to Scottish Ministers (Sections 2 and 3)

Please provide your comments on Scottish Ministers' overarching responsibilities for the National Care Service in the box provided.

Text box provided below:

Establishment and abolition of care boards (Sections 4 and 5 / Schedules 1 and 2)

Please provide your comments on these sections of the Bill in the box provided.

use text box below:

Strategic planning and ethical commissioning (Chapter 2)

Please provide your comments on this part of the Bill in the box provided.

use text box below:

National Care Service Charter (Sections 11 and 12)

Please provide your comments on these sections of the Bill in the box provided.

Text box:

Independent advocacy (Section 13)

Please provide your comments on this section of the Bill in the box provided.

text box below:

Complaints (Sections 14 and 15)

Please provide your comments on these sections of the Bill in the box provided.

use text box:

Ministers' powers to intervene (Chapter 4)

Please provide your comments on these sections of the Bill in the box provided.

text box:

Connected functions (research, training, other activities and compulsory purchase (Chapter 5)

Please provide your comments on these sections of the Bill in the box provided.

text box below:

Transfer of functions, including scope of services (Chapter 6 and Schedule 3)

Please provide your comments on these sections of the Bill in the box provided.

text box:

Inclusion of children's services and justice services (Section 30)

Please provide your comments on this section of the Bill in the box provided.

text box:

Consequential modifications / Interpretation of Part 1 (Chapter 7 and Schedule 4)

Please provide your comments on these sections of the Bill in the box provided.

text box:

Health and social care information (Part 2)

Please provide your comments on this section of the Bill in the box provided.

text box:

Right to breaks for carers (Sections 38 and 39)

Please provide your comments on these sections of the Bill in the box provided.

text box:

Implementation of Anne’s Law (Section 40)

Please provide your comments on these sections of the Bill in the box provided.

text box:

Reserved right to participate in certain contracts (Section 41)

Please provide comments on this section of the Bill in the box provided.

text box:

Regulation of social services (Sections 42 and 43)

Please provide comments on these sections of the Bill in the box provided.

text box:

Final provisions (Part 4)

Please provide comments on this part of the Bill in the box provided.

text box: