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# Finance and Public Administration Committee

# National Care Service (Scotland) Bill: Financial Memorandum - Summary of Call for Views

## Background

In order to inform its scrutiny of the Financial Memorandum (FM) accompanying the National Care Service (Scotland) Bill, the Finance and Public Administration Committee included a number of specific questions in the general call for views on the Bill. The questions included in the call for views were the standard questions asked by the Committee when seeking views in relation to FMs and are included in this paper at Annex A.

The call for views was issued on 8 July 2022 and closed on 2 September 2022. A total of 218 responses were received to the general call for views on the Bill and these are published on the Parliament website. Of these responses, 92 answered at least one of the questions relating to the FM. These 92 respondents included:

- 18 local authorities
- 18 Integration Joint Boards/Health and Social Care Partnerships
- 8 NHS Boards
- 27 third sector organisations and other stakeholder groups
- 10 bodies representing employers or staff in health and social care
- 2 academic bodies / think tanks
- 2 public bodies
- 6 private individuals

In addition, three responses were submitted separately to the Committee (from CIPFA, Social Work Scotland and COSLA). The Fraser of Allander Institute has also published separate analysis in relation to the Bill, which includes consideration of financial aspects (at Annex C).

This paper summarises the responses received in relation to each of the questions. However, before analysing responses to the individual questions, a number of general issues are considered as these were raised by many respondents, but not always in response to the same question. These common themes are set out below under the following headings:

- Scope of the FM
- Role of secondary legislation
- Affordability and budget implications
- Lack of detail in FM
- Scale of proposed re-organisation
- Scope and scale of services to be transferred
- Implications of shift to central funding of social care
- VAT and legal status of new bodies
- Proposed transfer of local government staff and assets and liabilities
- Wider impact on businesses and third sector organisations

# Scope of the FM

Many respondents voiced concerns that the FM does not set out the costs associated with delivery of services over the period covered. The FM deals only with the administrative costs of setting up the new delivery arrangements, but makes no comment on the actual costs of delivering services over the period covered.

However, as explained in the SPICe briefing on the National Care Service (Scotland) Bill, the purpose of the FM is to consider the costs of the changes introduced by the proposed legislation. The legislation provides for changes to the structures in place for delivery of social care and this is what the FM is required to cost. As highlighted in the FM, the costs of delivering those services (and proposed further changes to social care investment) are not covered by the legislation itself, so are not required to be costed within the FM. The FM states:

> "Creation of the NCS will support many of [the planned social care] reforms; for example, it is intended that it will support greater consistency in the provision of services focusing on early intervention and prevention, and in ethical commissioning which will promote Fair Work standards for staff. However, these are policy decisions to be made or sustained under the new framework, not necessary consequences of the Bill provisions."

There was clearly some frustration from respondents around this approach, but it should be emphasised that it is not the role of the FM to look beyond the direct implications of the legislation under consideration.

The Fraser of Allander Institute noted that:

> "The financial information that has been worked on by officials and included in the Financial Memorandum only covers what is in the legislation. Whilst there are some gaps (e.g. the integrated health and social care record) and minor queries we have noted in our analysis, on the whole and given the exceptional levels of inflationary uncertainty at the moment, analysis provided by the Scottish Government is reasoned and logical."

CIPFA felt that the narrow scope of the FM might result in potential future costs being overlooked:

> "While it is correct that the FM considers only those powers conferred directly by the Bill and not those related to wider plans for policy reforms, the fact that many of the associated estimates are related to the current cost of services raises concern. Clearly, wider policy reforms could have serious and significant implications for the overall expenditure on services. For example, increasing pay, improving terms and conditions for social care staff, bringing free personal and nursing care in line with National Care Home Contract rates, and removing non-residential social care charges would have a significant impact on levels of spend of services, and therefore on the costs estimates for the NCS and care boards going forward."

Social Work Scotland also argued that ignoring the costs of the wider reforms recommended by the Independent Review of Adult Social Care (the "Feeley Report") meant that only a partial view could be obtained:

> "[The FM] does not cover the full costs of establishing and running a National Care Service in Scotland that meets the aspirations of the Feeley Report and the Scottish Government's own Autumn 2021 NCS consultation. Instead of seeing the social care reform programme as part and parcel of the National Care Service, these have been separated. That means that MSPs, civil society and the public, cannot see the total costs in order to be able to discuss any priorities or alternatives, or any required additional funding mechanisms (as Derek Feeley believed would be necessary and asked to be reviewed in his final recommendation). MSPs are entitled to be clearer about the overall affordability of the National Care Service including all the necessary service improvements during the Stage 1 scrutiny and debate."

The Scottish Commission for People with Learning Disabilities (SCLD) also acknowledged the rationale for the limited scope of the FM, but commented:

> "While this may be a legitimate approach, it is very unhelpful for many of us. It invites scepticism about the commitment and even the ability to invest appropriately in this flagship legislation."

Reflecting the role and purpose of the FM, this summary paper does not focus on comments made around the funding of social care more generally, as this is not the purpose of the FM. As the FM is intended to consider the costs of the legislation, this paper focuses on comments relating to those direct costs and not the wider issues around funding of social care.

Similarly, while some respondents offered views on the policy proposals in response to the questions on the FM, these are not considered in this paper. This paper focuses on the adequacy of the financial estimates set out in the FM, which will be the focus of the Finance and Public Administration Committee's scrutiny. Other Parliamentary committees will consider the nature of the proposals (the Health, Social Care and Sport Committee, the Local Government, Housing and Planning Committee, the Social Justice and Social Security Committee and the Education, Children and Young People Committee. The role of the Finance and Public Administration Committee is to consider the financial estimates in the light of the draft legislation, so this paper focuses on this area, rather than considering the views expressed on the broader principles and policy, which will be considered in depth by other committees.

## Role of secondary legislation

There was also some frustration from respondents that the Bill is "enabling" and provides a broad framework for the proposed changes, while leaving some of the detailed decisions to be taken at a later date and introduced via secondary legislation. As highlighted in the SPICe briefing on the National Care Service (Scotland) Bill, this means that these decisions (which could have significant financial implications) will not receive the same level of Parliamentary scrutiny as they would have done if they had been included in the primary legislation.

In its submission, CIPFA commented:

> "We note that the Bill as it stands is enabling, and "leaves space for more decisions to be made at later stages," and that some of those decisions will be implemented through subsequent secondary legislation. However, some of these later decisions may have significant financial implications and yet no financial estimates are provided to enable full scrutiny of the provisions of the Bill as drafted.
>
> CIPFA welcomes the fact that the Scottish Government commits to providing financial and regulatory impact assessments alongside secondary legislation, and that Parliament will have further opportunities to examine the associated financial implications. However, we understand that subsequent secondary legislation can significantly alter the financial implications of primary legislation, and there is the risk that secondary legislation provides fewer opportunities for robust scrutiny, even when subject to the affirmative procedure. It is crucial that stakeholders can voice their opinions and that the creation of the NCS harnesses sector knowledge at every stage."

Social Work Scotland also highlighted significant decisions to be left to secondary legislation, including the number and scope of local care boards:

> "The FM is largely confined to the establishment and running costs of the NCS Institutions – *nationally*, an expansion of the Scottish civil service at a net additional cost of between £83m and £124 million; together with an undetermined number of local Care Boards to replace Integration Joint Boards and take over social work and care functions of Local Authorities as

specified later in Ministerial directions or secondary legislation, at a net additional cost of between £142m and £376 million."

Reflecting concerns around the decisions yet to be taken, CIPFA suggested that the Committee might want to consider:

- "requesting that the Scottish Government provide an update to Parliament on the estimates in the FM following their forthcoming emergency budget, particularly in light of the changes in the wider financial and economic climate since the FM was prepared

- the proposed procedures attached to subsequent secondary legislation arising from the Bill and whether it will enable adequate consideration of the associated financial implications

- planning to undertake robust post-legislative monitoring and evaluation of the financial implications of the provisions in the Bill, particularly given that so much depends on decisions yet to be taken."

## Affordability and budget implications

Many respondents voiced concerns around the financial implications of the proposed reforms at a time when budgets are already stretched.

CIPFA noted:

> "The Scottish Government are committing a significant sum from their own budget at a time when the deputy first minister has announced cutting over £500m from planned spending, and at the time of writing, is planning a further emergency budget in the coming weeks. This raises serious questions about the affordability of this major transformation project at a time when the Scottish Government as a whole is facing serious financial uncertainty as a result of the wider financial and economic climate."

And further noted:

> "In the 2022-23 Budget, the Scottish Government committed to increasing social care spend by 25% by the end of the parliament, which equates to c. £840m. According to the amended Table 1 of the FM, establishing and running the NCS national organisation alone is estimated to cost between £331-£496m. Including the establishment and running of care boards, this equates to between £620m and £1.2bn over five years. This means that the Scottish Government is potentially spending £400m more than has already been committed, and on what could arguably be considered a transformation programme rather than directly on frontline services. A much greater level of detail is essential to conclude whether this is a worthwhile investment."

COSLA raised similar concerns, noting that:

> "The establishment of the National Care Service body alone will cost up to £250 million, with subsequent overall NCS running costs of up to £500 million per year spent solely on structural reform rather than directly on improvements."

Further adding:

> "We have significant reservations about the rationale for directing such substantial sums at this disruptive and time-consuming medium-term structural reform."

The Scottish Ambulance Service (SAS) expressed similar views, and noted specific areas of concern:

> "At a time when the financial challenges are at their most significant, SAS do not consider it is good financial probity to consider investing in unnecessary costs that would include:
>
> - The training and responsibilities of those deemed Responsible Officers in the NHS to assure the competency of medical and clinical staff for revalidation by the professional regulators and appraisals.
> - additional resources for the new governance arrangements
> - additional resources for a new leadership structure
> - additional resources for a new clinical leadership structure and the creation of competition for senior clinical leaders
>
> all creating an opportunity cost of this reform at the time of current financial challenge, that is likely to be experienced for at least the next 3-5 years."

The NHS Scotland, City of Edinburgh Council and CIPFA Directors of Finance made similar comments around whether spending significant sums on structural reforms is a sensible use of resources when budgets are already under considerable pressure. Many respondents expressed the view that these sums would be better spent on improving services within the current delivery arrangements.

## Lack of detail in FM

A major concern expressed by a significant number of respondents was the lack of detail in the FM, which respondents claimed makes it difficult to assess the reasonableness and/or accuracy of the FM.

CIPFA Directors of Finance said:

> "MSPs are essentially being asked to scrutinise a Bill with a Financial Memorandum which is incomplete and where the financial aspects of the "business case" are still "under development". In our view the question of what it will really cost to set up the National Care Service in a way that is able to deliver on all its ambitions, as well as how it will be sustainably funded is

unanswered at this point. It is difficult to see how such significant changes to public services can be properly scrutinised and agreed when there are such large gaps in the analysis and so many questions yet to be answered. The approach to the Bill and Financial Memorandum supporting it does not accord with the best practice on the preparation of business cases and options appraisals which Councils are rightly held to."

In its submission, CIPFA said:

> "There is lack of detail in describing the methodologies used to calculate many of the cost estimates provided (aside from the helpful detail on carers' breaks), which makes forming an opinion on the reasonableness and accuracy of the FM extremely difficult. We assume that in time there will be a detailed business case with accompanying extended financial information. However, without such information, conducting a comprehensive analysis of the estimates provided is problematic."

COSLA said:

> "We would like to see much more clarity and transparency around how the costs of the National Care Service will be managed and met, with detailed and costed options being developed and appraised at every stage as the design and implementation of the National Care Service progresses. This is essential to enabling effective Parliamentary scrutiny of the financial and policy detail of the Bill."

Further adding:

> "Some of the areas described above are acknowledged in the FM as requiring further work, but this work should have been done before the Bill was published. A Business Case should also have been produced, setting out the rationale, costs, benefits and risks of the National Care Service. This would have enabled Parliament and the public to adequately scrutinise the proposals and assess whether they represent Best Value."

City of Edinburgh Council acknowledged that the lack of detail in the FM reflected the lack of detail in the Bill itself:

> "The lack of detail in the Bill is reflected in the Financial Memorandum which has only been able to make very broad estimates for some of the costs and savings and includes a wide range of possible financial outcomes. As with the other aspects of the Bill, we have significant concerns with this approach."

West Dunbartonshire Health and Social Care Partnership said:

> "The provision of the Financial Memorandum is welcome, but note there remains a lack of clarity in respect of the costs associated with the Bill. The Board do have further concerns in respect of the level of due diligence undertaken, especially as not all services which could transfer to the National Care Service appear to be included in the Memorandum. Due to the level of

uncertainty reflected in the Bill the value of the financial memorandum is diluted. We recognise that this lack of clarity is referenced throughout the financial memorandum and question whether sufficient scrutiny can be applied to the financial implications of the Bill given this uncertainty."

Dumfries and Galloway's comments reflected the views of many other respondents:

> "Overall, it is deeply concerning how much is still unclear and how many questions remain unanswered by the Financial Memorandum and by the Bill."

West Dunbartonshire Council made similar comments:

> "Overall, the memorandum raises more questions than it answers and there is a need for greater clarity on exactly how this will be set up; what will transfer; what happens with staff, assets and funding (social care and back office support) and what will be left in the Councils."

Renfrewshire Health & Social Care Partnership said:

> "The Financial Memorandum is under-developed at this point and – whilst caveated that it is a 'best estimate' of costs – it does not adequately achieve its stated objective to 'set out the costs associated with the measures introduced by the Bill'. "

Many others noted similar concerns around the lack of detail in the FM, including Angus Council, City of Edinburgh Council, East Lothian Integration Joint Board, East Lothian Council, Angus Public Protection Chief Officers Group, Glasgow City Health and Social Care Partnership, Renfrewshire Council, Argyll and Bute Council, Glasgow City Council, North Ayrshire Council and North Ayrshire Integration Joint Board, Aberdeenshire Health & Social Care Partnership and East Lothian IJB.

Reflecting the lack of detail currently available, Audit Scotland recommended that cost estimates be reviewed as proposals develop and more detail becomes available:

> "Given the significant amount of uncertainty set out in the financial memorandum – from both the co-creation approach planned and other uncertainties as implementation is worked through – it will be critical to regularly update estimates of overall costs and other financial implications and report on these regularly to Parliament and local authorities."

## Scale of proposed re-organisation

Several respondents did not feel that the costings reflected the scale of re-organisation proposed.

Social Work Scotland said:

> "[The FM] is simply not up to the task of supporting a major piece of legislation. The Scottish Parliament, civil society, people who use social work

> and social care services, unpaid carers, family members, people who working the care system in Scotland, and the general public need to be able to see more robust statements of the costs of the National Care Service, including the essential investments in social care services that are urgently needed. What is included in the Financial Memorandum is alarming: up to £500 million of additional organisations costs by 2026-27, without the whole picture necessary for the affordability of the National Care Service to be established, and any necessary priorities or alternatives to be discussed."

East Ayrshire Council and East Ayrshire Integration Joint Board made a joint submission, which included the following comments around the scale of the proposals:

> "The financial implications of the proposals are likely to be significant and are not addressed within the document. With the establishment of the Integration Joint Board it has become necessary to develop and augment the support services provided through integration partners including additional management and delivery functions. It is anticipated that dismantling and separating Integration Joint Boards and Health and Social Care Partnerships and the subsequent creation of a National Care Service and Care Boards would result in additional costs both in administration and support services.
>
> The creation of a separate national body comprised of local social services, previously located within councils, will cause dramatic and substantial structural change within local government and have the potential to cause financial shocks as budgets and contributions are disaggregated."

COSLA said:

> "…in what may be the biggest organisational transformation in the public sector in recent memory, the corporate backing required to support extra structures and systems and/or to redeploy workers should not be underestimated in terms of both people and money."

The response submitted on behalf of the CIPFA Integration Joint Board (IJB) Chief Finance Officers (CFOs) said:

> "Structural changes are likely to require significant resource and stretch existing capacity. It is essential change is done at a pace which will not risk the continued improvements of the support we provide. Adequate additional resource must be provided to ensure any change is fully funded."

Angus Council also expressed concerns around the scale of change proposed:

> "Change on this scale and of this complexity probably hasn't been attempted before in Scotland and that points to a higher than average likelihood of higher costs to deliver along with longer timeframes than has currently been assumed."

## Scope and scale of services to be transferred

Many respondents highlighted a lack of clarity around the scope and scale of services to be transferred to the NCS and the difficulty this lack of clarity presented in seeking to assess the reasonableness or accuracy of the costs.

In their submission to the call for views, COSLA commented that:

> "There is a real lack of clarity regarding the impact of the National Care Service proposals on local authority budgets – especially given the different treatment of the NHS and Local Government in relation to the transfer of functions and in particular staff. As a result, it is extremely challenging to evaluate or make decisions on the basis of the FM."

Table 2 of the FM presents information on current levels of expenditure on social care, based on 2019-20 date, projected forwards using an assumption of 'inflation plus 3%', but taking no account of Scottish Government plans to increase investment in social care, or other commitments such as those relating to social care pay. While these baseline costs are not the direct costs of the FM, they do serve to reflect the scale of services that are intended to be covered by the legislative proposals. Therefore, if they are not accurate, the costs of the legislation could be higher or lower than currently estimated.

COSLA and many others noted that inflation is now much higher than when the FM was drawn up, with implications for the future scale of funding that will be covered by the Bill proposals.

COSLA also noted that these forward projections are:

> "…completely at odds with the reality presented by the Scottish Government's own Resource Spending Review, of a 'flat cash' settlement (a 7% real-terms cut) for Local Government and 2.6% real terms increase in Health and Social Care budgets over the next four years."

SOLACE and others raised similar concerns around the basis for the estimation of the baseline cost of services to be transferred. Renfrewshire Health & Social Care Partnership said:

> "The FM is not aligned with the Resource Spending Review, for example figures have been projected using inflation when that is not reflective of the flat cash settlement. A lack of alignment with the Review also fails to acknowledge the anticipated consequential impact on local government partner settlements, thereby leaving IJBs [Integration Joint Boards] in a precarious financial situation prior to any changes to implement the NCS. Figures used are also based on current service provision and not the desired service provision of the NCS. Changes required to meet unmet need, change/remove eligibility criteria and the removal of non-residential charging will all have an impact on the size and scale of service delivery and therefore the cost of service delivery and workforce required."

Social Work Scotland expressed similar concerns around the projections of social work expenditure and the inflationary assumptions:

> "…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 also do not appear to do any real work within the NCS estimates. In any event, future transfers from councils need to be based on local authority *grant funding* from the Scottish Government not on local authority *spending*, as that is also funded from council tax and non-domestic rates."

NHS Borders noted that current expenditure would not necessarily reflect the costs of delivery within a new system, due to the nature of costs, some of which are fixed or not directly transferrable:

> "For NHS services, it is noted in the Financial Memorandum that the scope of health functions to transfer to the Care boards remains to be determined. Financial estimates for health services in scope have been calculated using Scottish Health Service Costs book which includes allocation of indirect and overhead costs, including corporate and board functions which will not be directly transferrable to any new service.
>
> In addition, the direct service costs attributable to delivery of existing service models are assumed to be fully transferrable and there is no recognition within the cost estimates of the nature of fixed, semi-fixed or variable costs."

South Ayrshire Council and Integration Joint Board also noted similar concerns around estimating the costs of services to be transferred and the need to take account of shared services and physical assets:

> "It has been previously calculated that 48% of NHS Ayrshire and Arran's budget is delegated to the three Ayrshire IJBs. These allocations do not currently take into account the full costs, as property costs are not included in the health and social care budget. More importantly, the cost from the host of subsidiary support services, for example, Legal, Procurement and Finance & ICT and other services which are utilised by the IJB, to support and advance the aims and objectives of the partnership, are also not included and would require to be passed to the new body when the disaggregation of budgets takes place."

Glasgow City Health and Social Care Partnership also noted concerns with the basis for assessing the scale of services to be transferred:

> "Table 2 identifies the potential costs of services which could transfer to NCS based on 2019-20 [Local Financial Returns] and the Scottish Health Service Cost Book. Although used to illustrate the potential scale, it is not an

> appropriate base for a number of reasons and is not reflective of the actual funding available to support services on a recurring basis"

Argyll and Bute Council and CIPFA Directors of Finance raised similar concerns around the basis for the figures presented in Table 2 of the FM.

COSLA did acknowledge that the costs set out in the FM are described as "illustrative", but noted concerns that these figures could form the basis for calculating "the portion of Local Government funding that may be removed as a consequence".

Similarly, Audit Scotland said:

> "We note that the Scottish Government's aim in setting out these estimates is to provide illustrative figures 'to show a scale of the services in scope'. Nonetheless, in our view it is important to understand the limitations of the figures provided to support wider consideration of the financial implications of the Bill."

## Implications of shift to central funding of social care

Social care is currently delivered by local government, with local authorities able to access funding through the grant from the Scottish Government, but also through income raised from a range of sources.

CIPFA highlighted that, by transferring delivery of social care services to central government and away from local government, the Scottish Government would no longer be able to rely on local government income to support the costs of social care service delivery and this needed to be reflected in any costings:

> "The cost of services that could be transferred may not be considered as additional, but rather as a transfer from local government to the Scottish Government. However, the use of local government total expenditure as a basis means that this includes spending funded from locally raised income (eg council tax or non-domestic rates), which will represent an additional pressure to be planned for and identified from the Scottish Government's core budget. There appears to have been no attempt to quantify or assess the extent of this pressure."

SOLACE expressed similar views, stating that their response to the original consultation on the Bill highlighted that:

> "…there was no detail in relation to the relationship with the local government grant settlement, noting that social care is not fully funded through the settlement indicators and that local authorities, reflecting local prioritisation decisions, have taken spend decisions to subsidise this area of services. We also noted that there was no reference to modelling the scale of this subsidy or clarity on how the subsidy is incorporated into the financial modelling."

COSLA noted that:

> "It is essential that the Scottish Government undertakes further work jointly with COSLA and other stakeholders on the quantum of funding that would be transferred from Local Government to the National Care Service. The financial transfers cannot be based on the total actual expenditure of local authorities on social care, as this is funded from several income sources and not just Scottish Government grants. It would also disadvantage councils which have sought to protect social work and care budgets, compared to others."

CIPFA Directors of Finance commented:

> "The financial transfers cannot be based on the total actual expenditure of local authorities on social care, as this is funded from several income sources and not just Scottish Government grants. It would also disadvantage councils which have sought to protect social work and care budgets."

Aberdeen City Council also raised concerns around the current gap between central government funding and actual levels of expenditure by local authorities and how this would be addressed within a new system where local authorities are not responsible for delivery:

> "The funding mechanism does not necessary match the spending profile of Councils at present, with expenditure in the areas of care being greater than the value of funding inputs. If this is the case, then Local Government should not accept that the value of grant funding removed should be the full cost of current services as this may be detrimental to supporting and sustaining remaining services"

COSLA also highlighted a potential loss of efficiencies through the transfer away from local government delivery, that could act to offset any anticipated savings from the new delivery model:

> "…the FM anticipates savings or efficiencies through shared services across the National Care Service if significant numbers of staff and services are transferred. However, it fails to acknowledge the corresponding loss of economies of scale in Local Government arising from the loss of such a sizeable portion of its workforce, and the broader impact that that is likely to have. Local Government has been driving efficiencies for over a decade, particularly in central services, and there is a risk that a necessary critical mass will be lost for some services, such as audit and other professional services which are often provided by the same individuals or teams for the council and the integration authority."

SOLACE, CIPFA Directors of Finance, Angus Council and East Lothian Council voiced similar concerns around the potential loss of economies of scale for local government.

City of Edinburgh Council also noted that efficiencies might be difficult to achieve:

> "Audit Scotland report on police integration reflected the challenges of a proposal for change built on the assumption of efficiencies. Nationalising a

service does not necessarily result in efficiency especially when a service has experienced a historic budget gap. The Scottish Government should provide detail on any assumptions it is making about cost savings and efficiency in its options appraisal."

Glasgow City Health and Social Care Partnership noted:

> "There is a real possibility that supporting this new structure may actually result in additional costs rather than efficiencies given there will now be four organisations to be supported; Local Government, Health Board, National Care Service and Care Boards."

## VAT and legal status of new bodies

A number of respondents raised concerns over the lack of clarity around the legal status of the proposed care boards, including their VAT status. Local authorities are able to reclaim much of the VAT they incur, but if new bodies are not able to do this, there would be significant cost implications.

Social Work Scotland said:

> "The VAT position for the National Care Service appears potentially serious, and may increase costs significantly. Local authorities can reclaim VAT on non-business and other exempt activities, but government departments and the NHS cannot.
>
> …VAT is an important financial issue and we believe that MSPs are entitled to know the worse-case additional cost scenario."

CIPFA expressed similar views, saying:

> "The FM lacks detail on the planned nature of care boards in terms of their legal status and financial arrangements. It states that professional expert support will be required to identify costs in areas such as VAT, assets and pensions. All three of these areas will potentially incur significant costs, and no indication of the assumed cost is given for VAT or assets (pensions assumes a contribution rate of 20.9%).
>
> VAT is a particular concern. Currently local government bodies can reclaim most of the VAT they incur in conducting statutory functions under Section 33 of the Value Added Tax Act 1994. By contrast, NHS bodies fall under Section 41 of the 1994 Act and in general cannot reclaim VAT they incur (with some exceptions for contracted-out services). Should care boards be established in the model of health boards, then the resulting change to the VAT regime could result in significant VAT costs being added to those transferred costs of services estimated in the FM. There are also significant complications that may arise in the transfer of staff if there is any differential VAT regime between care boards and local authorities. The precedent of the centralisation of police and fire services shows that it is imperative that a favourable VAT settlement is reached before the NCS enters operation. It would be helpful to

have an estimate range of how much VAT would be incurred if a favourable VAT position was not available to the NCS and the care boards."

Comhairle nan Eilean Siar said:

> "We also supported concerns raised by other consultees that there was no reference to VAT status or indication of discussions with HMRC and that there was no detail on proposed financial arrangements for the National Care Service relating to borrowing, ability to hold reserves, audit or financial regulations. These were significant issues at the time of the establishment of Police Scotland, for example, and clarity on these matters is required at an early stage."

And, in its submission to the call for views, COSLA said:

> "A number of significant questions and risk remain, such as in relation to VAT as well as pensions and assets, each of which has major financial implications for the National Care Service itself and for local authorities; these are all acknowledged in the FM as requiring further work, but this work should have been done before the Bill and the FM were published to enable Parliament and the public to adequately scrutinise the implications of the Bill. There should also have been a Business Case produced before the draft Bill setting out the rationale, costs, benefits and risks of the National Care Service to facilitate meaningful scrutiny by Parliament, the public and affected organisations as to whether the proposals represent Best Value."

In their separate submission to the call for views, COSLA said:

> "The proposed structure and governance of the National Care Service is such that it is likely to be liable for VAT, at least unless and until arrangements can be made to exempt it. Clearly – as the FM itself acknowledges – this would significantly increase its costs of operating and consequently reduce the funds available to spend directly on social care support. Under HM Treasury rules, local authorities and certain other bodies are able to recover the VAT incurred on certain purchases – in order that VAT costs are not funded through local taxation – whereas other public sector organisations including the NHS cannot reclaim VAT incurred on many goods and services, which is therefore a cost that must be covered by departmental budgets."

The response submitted on behalf of the CIPFA Integration Joint Board (IJB) Chief Finance Officers (CFOs) raised concerns over:

> "…treatment of existing and future assets, control over revenue and capital, borrowing and debt repayments on assets and the fundamental question of the type of legal body Boards are likely to be. These issues will have a significant impact and the financial memorandum gave an opportunity to provide additional information which was sadly missed. While there is acknowledgement in the FM of additional work being required it is the view of the CFO network this work should have been significantly progressed as due diligence prior to publication of the FM to ensure the public and Parliament

can provide informed opinions.

> Had the FM been informed by a Business Case on implementing the NCS this would likely have given a more informed and robust financial assessment of estimated cost implications. Additionally, this would have then complied with the relevant Audit Scotland guidance."

Many other respondents also highlighted concerns around the lack of clarity over the legal status of the proposed new organisations, and the financial implications. These included SOLACE, Dundee Health and Social Care Partnership, Aberdeen City Council, East Lothian Council, West Lothian Council, Renfrewshire Health & Social Care Partnership, Angus Public Protection Chief Officers Group, CIPFA IJB CFOs, South Ayrshire Council and Integration Joint Board, Glasgow City Health and Social Care Partnership, Angus Council, Argyll and Bute Council, CIPFA Directors of Finance, Aberdeenshire Health & Social Care Partnership, North Ayrshire Council and North Ayrshire Integration Joint Board, East Lothian IJB, Highland Council, Scottish Borders Council, Audit Scotland and Scottish Borders Health & Social Care Integration Joint Board.

## Proposed transfer of Local Government staff and assets and liabilities

A number of respondents voiced concerns around the potential costs associated with a large-scale transfer of staff from local government to the new National Care Service, and the associated Transfer of Undertakings (Protection of Employment) (TUPE) implications and implications for pensions. There were also a number of responses that raised the issue of transfer of local government assets and liabilities, and the lack of clarity around the extent or nature of such transfers.

West Dunbartonshire Council said:

> "Other areas of financial risk which are not explicitly clear in the Financial Memorandum relate to pensions, TUPE (both areas of significant concern for our staff currently employed by the local authority) and the transfer of assets and liabilities. There is reference to considering assets directly linked to care delivery, in relation to question of whether ownership or leases will be transferred to new care boards however, this is non-committal and creates uncertainty with material financial consequences. It is further noted that the capital costs of any asset transfers or ongoing revenue costs are not included in the estimated costs of running care boards. Councils would need assurance that assets currently used for the delivery of care delivery would be transferred along with all liabilities associated with them, including all costs of borrowing."

COSLA highlighted concerns around the lack of detail in relation to any transfer of local government assets and liabilities:

> "With no clarity or detail about the financial treatment of assets – particularly whether they would transferred to new ownership or purchased – there may

be disincentives for local authorities to invest in them in the meantime. In addition, Council assets may not be easily disaggregated due to increasing co-location and integration of Local Government services, and there are also questions as to how the acquisition, financing and maintenance of the assets will be funded."

In respect of staff pensions for those transferring from local government employment, COSLA said:

> "The FM states that there is the potential for 75,000 staff to be transferred from Local Government to the National Care Service; this would have considerable implications for pension funds both for those that may no longer be able to remain members of the scheme and any impacts on the scheme for remaining members, which also do not appear to have been quantified. This is a very complex issue which will require significant expert consideration to enable accurate assessments and decisions to be made. For example, detailed assessment is required on whether and how this will impact on existing pension schemes, including viability given the Local Government Pension Scheme is a fully funded scheme, and whether or not the National Care Service would be able to be an admitted member of that Scheme."

Aberdeen City Council also raised issues around financing options for the proposed care boards and the implications this could have for future funding and investment during the transitional phase:

> "It is noted too that Aberdeen's HSCP has benefited from the funding from Aberdeen City Council's issue of bonds on the London Stock Exchange. It's not clear whether Care Boards will be able to benefit from access to Council financing options in the future and/or exercise these themselves. Without answers to these then there is little incentive for any further capital investment in social care services as retaining debt or cost implications not being transferred in full are a real risk currently. Any investment currently in progress, that coincides with the Council losing its statutory duties in relation to services, must call into question how this would be funded to completion beyond implementation date of NCS. If not completed, there would be no basis for the Council to exercise the power to borrow or for Prudential Indicators to reflect such commitments."

South Ayrshire Council and Integration Joint Board also noted concerns around the impact of uncertainty on capital investment plans during the transition phase.

Many other organisations raised concerns around the treatment of local government assets and liabilities and the TUPE implications relating to the transfer of staff. These included SOLACE, Renfrewshire Health & Social Care Partnership, Aberdeen City Council, Aberdeen City Health and Social Care Partnership, East Lothian Council, West Dunbartonshire Health and Social Care Partnership, West Lothian Council, Scotland Excel, CIPFA IJB CFOs, Shetland Integration Joint Board, South Ayrshire Council and Integration Joint Board, Glasgow City Health and Social Care Partnership, Angus Council, Argyll and Bute Council, CIPFA Directors of Finance, North Ayrshire Council and North Ayrshire Integration Joint Board, City of Edinburgh Council, Aberdeenshire Health & Social Care Partnership, East Lothian IJB, Highland Council, Scottish Borders Council, Audit Scotland, Scottish Borders Health & Social Care Integration Joint Board, Aberdeenshire Council.

## Wider impact on businesses and third sector organisations

The FM states that:

> "It is not anticipated that the establishment of the NCS and care boards, and the transfer of functions to those bodies, will have any financial implications for any other public bodies, businesses or third sector organisations, or for individuals"

As such, no costs for these bodies are presented in the FM.

In relation to the FM's assessment that there would be no impact on third sector organisations, Scottish Care said:

> "We believe this to be entirely untrue in reality and the failure to recognise these sectors as being part of the significant changes planned points to a wider lack of understanding or recognition about their contribution to social care, to Scotland's economy and to the wellbeing of citizens. This section does not even name the independent sector at all, which again reinforces Scottish Care members' lack of confidence in the Bill's objectives."

Support in Mind Scotland also commented on this:

> "Support in Mind Scotland is concerned that the financial memorandum does not account for additional funding for the third sector. If the third sector is to be considered an active partner in the NCS then this must equally be demonstrated through funding.
>
> …As has been previously discussed, a new system for health and social care records will potentially result in financial implications for the third sector – this includes the different IT systems used by social care staff across public social care and the third sector, and the chosen software to host the records. In order to have access to these records Third Sector social care providers may be required to update their systems and use new software's which would necessitate the suitable resourcing and funding. Similarly, new legislation comes with new procedures and practices which will require staff to be trained to ensure services are effective, consistent, and meeting the rights of services users. Support in Mind Scotland call for the Financial Memorandum to explicitly state that the Third Sector will receive funding or the relevant resources for both financial implications. As without there will not be equity of service or consistency throughout the NCS."

ENABLE Scotland said:

> “There is no mention of the impact on third sector providers of new requirements on compliance with the new Information Standard and the new social care and health record. We believe there should be an assessment of what these costs will be and how third sector providers will be supported to meet them.”

A number of other respondents disagreed with the assessment that there would be no impact on third sector organisations, including the Health and Social Care ALLIANCE and Mydex Community Interest Company.

The British Healthcare Trades Association also raised the potential impact on procurement practices and costs for businesses:

> “Section 56 [of the FM] says that the Scottish Government doesn't anticipate the establishment of the NCS and care boards will have any financial implications for businesses however it would represent a change to business relationships and , while contracts with external organisations will transfer it's clear there will be wider changes in terms of procurement and Fair Work which may alter requirements and contracts in future. This level of detail is not set out in the Bill and we note "will be subject to separate financial and regulatory impact assessment".”

## Specific questions in the Call for Views

This section of the paper considers the specific questions in the call for views. However, common themes that were spread across several questions have already been highlighted above.

### Q1. Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Of the 92 responding to questions relating to the FM, 57 (62%) said that they had taken part in consultation prior to the introduction of the Bill. However, many of these respondents (33) noted that this had not included any detailed consideration of financial matters, so they did not feel that this had provided an opportunity for meaningful comment on financial issues relating to the Bill.

Dundee City Council said:

> “…the Council did take part in the consultation exercise and made the point that there was no financial information contained in the consultation document about the cost of the National Care Service or how it would be funded, which made it difficult to gauge the scale of proposed investment or assess the adequacy of the investment to deliver the proposed outcomes.

West Lothian Council also noted concerns around the lack of opportunity to comment on financial proposals at the initial consultation:

> "This prior consultation noted that the proposals would have a cost to the public purse but no further information was given on the costs associated with the proposals. Given the significance of what was being proposed, this was very concerning to the council and a wide range of financial issues were raised in the council's response."

Similarly, Angus Council said:

> "The Council responded to the "A National Care Service for Scotland – Consultation" which ran from August to October 2021 and highlighted at that time the concerns about the lack of detail to assess the financial implications in that consultation.
>
> Our expectation was that the Bill and Financial Memorandum would provide more of the detail required to enable a better assessment of the financial implications especially for local government but … we consider that significant gaps in detail remain."

SOLACE stated that, in their response to the original consultation:

> "We highlighted the absence of any detailed costing of the proposed service offer to indicate the quantum of additional investment required and absence of any detail on how the finance to meet this investment would be raised. We also highlighted the lack of detail on a medium to longer term financial strategy to ensure that the required budgetary provision maintains pace with demand for the new service offers."

CIPFA noted that there had been "a lack of meaningful consultation and engagement with local government in the development of the proposals in the Bill".

Many others noted that the initial consultation had not provided any opportunity to comment on financial implications of the proposals. These included Glasgow City Health and Social Care Partnership, Argyll and Bute Council, Argyll and Bute Health and Social Care Partnership and Integration Joint Board, Aberdeenshire Health & Social Care Partnership, British Deaf Association Scotland, Shetland Islands Council, the Society of Personnel and Development and North Lanarkshire Council.

## Q2. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

Thirty-eight respondents gave a reply to this question. None of those responding felt that their comments had been accurately reflected in the FM, although 3 respondents felt their comments had been partially reflected. Twenty respondents stated that their comments on the financial assumptions had not been accurately reflected in the FM. A further 11 respondents repeated concerns raised in the first question that there had not been an opportunity to provide meaningful comment on the financial assumptions due to the lack of financial details in the initial consultation exercise.

## Q3. Did you have sufficient time to contribute to the consultation exercise?

A total of 63 responses were received to this question. Of those responding, the majority (41 responses, or 65%) felt they had not had sufficient time to contribute to the consultation exercise. Twenty-two respondents (35%) felt that they had had sufficient time to contribute.

SOLACE said:

> "It is the view of SOLACE Scotland that the period of consultation was unnecessarily short given the scale of implications for social work and social care users, carers, staff in the sector, provider organisations and for local government as a whole. It was also carried out at a time of unprecedented pressure on social care and social work services which limited the available capacity to consider and fully respond to such significant proposals, especially when attention needed to be focused on rebuilding the capacity of social care and social work services and on recovery from the impact of the pandemic."

## Q4. 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.

Sixty-five respondents replied to this question. None of these respondents said that the financial implications for their organisation had been accurately reflected in the FM, and many raised concerns which have been reflected in the analysis above.

Although reflecting issues for another organisation, rather than for itself, CIPFA noted concerns that cost implications for health boards had not been accurately reflected:

> "…no estimates are given for the financial implications of the legislation on health boards. The FM states that "Ministers will also have powers to transfer functions from health boards to the new care boards, and to delegate their own health functions as NCS functions". It suggests that they are "expected to be less significant," however given that many of the associated decisions remain to be taken, this would benefit from further clarification."

NHS Scotland noted that:

> "The potential impact on NHS Boards cannot be extrapolated in full at this stage but create significant uncertainty and therefore risk to NHS Boards' future financial arrangements."

The Care Inspectorate also raised concerns about the potential impact on the organisations:

> "…the financial implications of any potential structural change for the Care Inspectorate, as a consequence of the introduction of the Bill, are not reflected

> in the Financial Memorandum. It is not clear at this stage whether the National Care Service will have any significant impact on the work of the Care Inspectorate out with what appears in the Bill as introduced."

## Q5. Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

As with the previous question, there were 65 responses to this question. None of these respondents stated that the estimated costs and savings set out in the FM were reasonable and accurate and most offered further comment. Several respondents stated that their views had been expressed in responses to earlier questions, so gave no further details in response to this specific question.

Where responses were provided, a number of common themes emerged in relation to the reasonableness and accuracy of the FM and these have been covered in the analysis above as many similar comments were also raised in answers to other questions in the call for views.

## Q6. 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?

Fifty-three respondents gave a reply to this question. Only one (Public Health Scotland) stated that they felt their organisation could meet any costs associated with the Bill, but this was due to the fact that they were not anticipating any significant impact on costs or resources for their organisation. The other 52 respondents expressed concerns. These mostly related to issues raised earlier in response to previous questions, in particular, the lack of clarity around delivery models resulting in considerable uncertainty as to how the reforms might affect individual bodies. These have been summarised in the earlier analysis.

East Ayrshire Council/East Ayrshire Integration Joint Board stated that:

> "Local authorities cannot absorb any additional costs that arise because of the introduction of the Bill. If Scottish Ministers wish to progress this policy, they need to resource it adequately, if they are to succeed in their intentions."

Many other local authorities, Health and Social Care Partnerships/Integration Joint Boards that responded also expressed the view that any additional costs could not be accommodated (including Glasgow City Council, Aberdeen City Council, East Lothian Council, Comhairle nan Eilean Siar, Scottish Borders Council, Angus Health and Social Care Partnership, Shetland Integration Joint Board, South Ayrshire Council and Integration Joint Board, North Ayrshire Council and North Ayrshire Integration Joint Board, Argyll & Bute Integration Joint Board, Angus Council). SOLACE also made this point.

Community Pharmacy Scotland commented that it is too early to assess impact due to the lack of detail in the Bill and accompanying FM:

> "CPS believes that there has not been enough information produced to make an accurate assessment of the bill's effects on our organisation or the network of community pharmacies that we represent – it is simply too early to tell."

## Q7. 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?

Fifty-five respondents provided comments on whether the FM accurately reflects the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise. Most felt that the margins of uncertainty were only to be expected, given the lack of detail in the Bill.

Specifically in relation to timescales, CIPFA noted:

> "The proposed timescales (where they are provided) appear challenging considering the extent of the powers contained in the Bill, the uncertainty regarding aspects of implementation, the scale of structural change involved and the immense pressures already on the health and social care sector arising from Scotland's recovery from the pandemic, as well as the existing challenges of workforce shortages, demand for services and pressure on the provider market."

Angus Council also felt the timescales were optimistic:

> "The timescales for delivery of the proposed changes when set alongside the scale of further work required to determine issues such as staff transfer arrangements are potentially optimistic. There is a risk that the transition period and costs arising will be much higher than projected."

The Fraser of Allander Institute noted that there was no clear rationale for the assumptions made around inflation and that – given the current volatility in prices – using a range of inflation assumptions could be more appropriate. Audit Scotland made similar points around the outlook for inflation and the additional uncertainty this presents. Inflationary pressures – and potential impacts on costings – were also mentioned by the British Healthcare Trades Association and Aberdeen City Council.

Audit Scotland also noted the costs that had not been included in the FM and would add further to the uncertainty attached to the costings:

- the costs of any national care boards
- transition costs for Local Authorities and Health Boards, including double running.
- the impact of changes to VAT treatment
- the impact of any changes to pension scheme arrangements and associated contribution costs arising from pay harmonisation/ rationalisation

- the extent of potential changes to capital investment and maintenance costs
- the cost of the health and social care information scheme.

On the other hand, Community Pharmacy Scotland felt that the FM was sufficiently clear about margins of uncertainty (but that, as a result of the uncertainty, the estimates "cannot be taken as an accurate projection of costs").

The Royal College of Physicians of Edinburgh also felt that the costings were reasonable on the basis of what is currently known, but that further information would be helpful as more detail emerges:

> "The RCPE considers that [the cost estimates] are generally accurate based on current knowledge and information but understands the Scottish Government will need to monitor these costs very closely going forward."

Given the uncertainties inherent in the costings, the CIPFA IJB CFOs suggested that revised costings should be presented as the Bill progresses:

> "Given the level of uncertainty and lack of information the FM is of very limited use at this point in time. It is essential that much more robust costings and timeframes are provided as the bill progresses to give confidence that the NCS is best value and the most effective way of delivering care for service users.."

The Renfrewshire Health & Social Care Partnership, East Lothian IJB and Aberdeenshire Health & Social Care Partnership expressed similar views.

**Nicola Hudson, Senior Analyst, Financial Scrutiny Unit, SPICe Research**

**October 2022**

# Annex A: Questions for call for evidence

The Call for Views in relation to the National Care Service (Scotland) Bill included a number of questions specific to the Financial Memorandum (FM). These were the standard questions asked by the Finance and Public Administration Committee when seeking views in relation to scrutiny of FMs, which are as follows:

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

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

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

- 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.

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

- 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?

- 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?