25 Barns Street
Ayr
KA7 1XB
Tel: 01292 270240

Dear Ms Martin,

Thank you for your letter dated 30th November following the opportunity to act as a witness to the Health and Sport committee.

I hope to answer your questions below:

Ethical commissioning

The five principles are ones which I have posited over the last year, based upon many years of experience of working in various parts of the social care system. They have developed out of partnership working and I hope they may be useful in determining the concept of ethical commissioning. Fundamentally, the development of the National Care Service is an act of ethical commissioning where commissioning is understood to be the planning of delivery.

The symbiotic relationship between commissioning and procurement has meant that commissioning decisions are often affected by procurement practices. This is also impacted by the false construction of a competitive market in social care. With a monopsony there is an unfair dynamic of power and fiscal realities which undermine good commissioning practice by forcing providers to 'race to the bottom' where social care value is defined by short-term cost implications rather than the more sustainable and human rights-based approach of long-term impact. This distortion in the market has led to compromise in provision and yet it could be solved through better commissioning practices.

- Collaboration not competition

The myths surrounding competition have often prevented those across the system from working together collaboratively, instead forcing providers (whether independent or statutory) to work against each other leading to bureaucracy, duplication, and gaping cracks through which individuals accessing care and support can fall.
If instead a collaborative approach is taken, involving each part of the system in planning and delivery as an expert, including those who access care and support, it is possible to reclaim this space, close the gaps and redefine the meaning of value in social care.
We are already beginning to see good examples of this working in practice such as the Fife Care at home collaborative who through working together across partners; HSCP and providers have significantly reduced travel time for social care staff thus having a positive impact on the social care workforce, financials, and the environment.

- Respect, not Trust

Previous thinking proposed that trust was necessary to enable good commissioning. In principle, yes, it is, but with changes to personnel, and to systems, it became evident that it is not always possible to build trust in the time necessary to effect the change required. Instead, we must shift our focus to what creates the conditions for trust and pave the way through mutual respect and a commitment to transparency. Mutual respect can be shown through equity, parity, and a recognition of skillset. Transparency can be supported by better data and intelligence capture and analysis in a system where the individual accessing care and support only needs to '*tell their story once*' rather than to a variety of professionals involved in their lives.

- Progress not perfection

In science we learn by testing out a hypothesis within a controlled environment, then we take that learning and try something different continuously improving as we go. Across systems, we call this method of improvement appreciative inquiry. In addition, the shared experience of the pandemic has taught us vulnerable leadership as we brought our whole selves to work amid challenging circumstance. Ethical commissioning should build upon both, creating the space for vulnerable conversations and a safe space for safe failure. This would enable truly person-led care and support which will enable innovation and improvement driving sustainable care for the future.

As our learning, expectations and access to technology evolves, we need to allow space to design for the future. This means allowing safe space to try new models of care and support which will enable a fulfilling person-led social care sector that is optimised both at the point of delivery and across systems.

- Fair Work principles

A system which underlies and enables the adoption of Fair Work principles throughout, as per the recommendations of the Fair Work Convention: https://www.fairworkconvention.scot/. But also, in a way that ensures parity across health and social care, in contrast to current conditions which allow for a registered care professional to be paid the same as a hospital cleaner and a care home manager of a 40-bed home to be paid the same as a manager of Costa coffee.

- Choice and Outcomes for People not time and task

Increasing need and proportionally decreasing budgets have driven an approach distracted by short-term crisis intervention. We have seen the allocation of time and task as a way of managing people and services instead of focussing on the difference that the care and support should and could make to them.

An example of this is the inappropriate application of electronic call monitoring in homecare whereby care providers are financially penalised for spending more or less time than allocated with a person regardless of what is going on for them at that point in time. In addition, we see many professionals engaged in people's lives for very short periods of time putting burden on both the individual and the system.

Ethical commissioning must be underpinned by human rights for both the individual accessing care and support and for the workforce. Creating the conditions for flexibility and a multi-skilled professional approach augmented by technology will set the foundation for a more effective relationship-based approach which will only allow not only the individual accessing care and support to flourish, but also the social care workforce.

An example of this exists in England where homecare workers are learning skills that were traditionally seen as health based. This allows one care worker to spend more time with individuals, creating a more personalised environment of relationship-based care and support thus improving the wellbeing of both individuals in addition to reducing travel time and duplication across the system.

Co-design of the NCS

The National Care Service is a once-in-a-lifetime opportunity to make a difference for the people of Scotland. It is a legacy which I am proud to be able to contribute to. I spoke in session about the lack of clarity and equity in the Bill process. There has been no place for the independent care sector to be effectively represented in the process, yet there has been significant opportunity for some who may not support an independent care sector to get their point of view across. It is impossible for a fair and knowledgeable decision to be made in the absence of all facts and viewpoints. There needs to be unbiased and transparent exploration of the role, purpose, and cost of social care. For example, the local authority spends double what the independent care sector gets to deliver the same care and support.

Scottish Care worked with Studio AndThen to co-produce a vision for the independent review of adult social care, and subsequently the national care service (which we called a framework to avoid the power imbalances of the word service).

These reports can be found here:

- Time for Change – Conceptualising a National Care Framework https://scottishcare.org/launch-of-time-for-change-conceptualising-a-national-care-framework-report/
- Coileanadh – manifesting a flourishing social care future for Scotland https://scottishcare.org/wp-content/uploads/2021/03/Coileanadh-SocialCare-FutureLandscape.pdf

- What if and why not? Making the future of social care a reality https://scottishcare.org/wp-content/uploads/2020/11/SC-What-If-and-Why-Not-Making-the-Future-of-Social-Care-a-Reality-Nov-20.pdf

I am also attaching a link to our work with the Health and Social Care Alliance on climate change action in social care as I believe that the NCS has a role to play in creating the conditions for Just Transition: https://www.alliance-scotland.org.uk/blog/opinion/keeping-the-climate-crisis-on-the-agenda/

Lastly, this report by Audit Scotland should be considered in the development of the NCS Audit Scotland have reported clearly on challenges and opportunities for the social care here https://www.audit-scotland.gov.uk/publications/social-care-briefing

Scotland Excel

- *What has been your general experience with Scotland Excel and what would be the impact if Scotland Excel were no longer involved in commissioning arrangements for social care?*

The working relationship with Scotland Excel has been varied. I believe there is intent on both sides to work together on a collaborative package for social care, but limited capacity in their NCHC team and in the National Procurement Framework team has led to delays and limited outcomes.

The National Care Home contract when designed, went a long way to reducing competition and enabling sustainability in the sector. Latterly however it is acknowledged that the cost model no longer aligns to the range and complexity of care and support delivered today nor does it incorporate the changes that Covid-19 brought in terms of additional staffing and IPC requirements. Scotland Excel have been hosting work on redesign, but there is concern from Scottish Care about delay and their limited engagement with the independent care sector in this process. We are now in a position where redesign is occupying the space of urgent and immediate pressures which risks the sustainability of the sector in the here and now.

There is a need to co-design contracts for the future which acknowledge reciprocity and expertise. Whilst the experience of developing the national procurement framework took steps in this direction and has created greater opportunity for a sustainable rate of care, operational feedback mechanisms has limited the experience for some. Providers have told us there remains uncertainty in the new processes and that for some the experience remains like a tender as they do not know whether the rate that they have submitted is acceptable, or where they sit in terms of market preference. This references the desire for providers to put continuity of care and employment ahead of financials, but which the tendering process has undermined with a race to the bottom.

The redesign of any contractual process should recognise the need for collaboration and mutual reciprocity in the contractual process. For example – if the implementation of Fair Work is required, then the contract should create the conditions to enable that. For too long the finger has been pointed at independent care providers when the reality is that those who set rates for tenders do so without understanding the true costs involved, or, to manage their own financial constraints.

Profit in Care

The National Care Home Contract cost model and local tendering practice for homecare sets the rate for the provision of government funded care and support which effectively puts a cap on return. For the National Care Home Contract, this currently sits at 4%, and our members tell us that for homecare it sits in the region of between 3 and 4%. The power dynamics linked to a monopsony means that the purchaser has leverage. Importantly, for a bank to consider a business to be financially viable, return needs to sit at 7.5% or above. To give examples from the service industry, it might be helpful to know that a hairdresser makes around 11% and a hotel 14%. Return is not simply profit, but also the money to be reinvested in the organisation. This means that the long-term practice of underfunding has led to a destabilisation of the sector and limited reinvestment in for example, buildings, furnishings and in people. This is worsened with the introduction of new guidance Care Homes for Adults – The Design Guide https://www.careinspectorate.com/images/documents/6583/Care%20Homes%20for%20Adults%20%E2%80%93%20The%20Design%20Guide.pdf

Much of the data on profit in care is UK wide which skews the analysis. Most providers in Scotland are small family run organisations, but the effect of prolonged underfunding has also led to a changing market with many small providers exiting as they are not able to make the economies of scale to retain financial viability. This shift risks continuity of care and support, putting those in rural and remote parts of Scotland most at risk.

Strategic planning for services

- *How do we ensure that the National Care Service is an 'investment in society' rather than a cost to it?*

With an enabling human rights and person-led approach, social care has the capacity to support people to live healthier for longer, enabling them, as per the health and social care standards to make a positive contribution to society should they so wish. Such an approach is also founded in prevention, a place where early intervention can prevent crisis, something which comes at much greater personal and financial risk.

First and foremost, collaboration should be invested in as a priority. It is only through working together on a shared vision that we can reduce bureaucracy, and maximise opportunity, resource, and potential. The collaborative models developed in Fife are an excellent example of how we can move in this direction.

Social care's role in community wealth building should be considered. Many care homes purchase products and services from local businesses and social care and support enables people to access their local communities including for example, attending local cafés and entertainment venues. Some care homes have arrangements for local citizens, or collaborations with local early years centres to allow for shared use of facilities such as communal spaces, and therapy pools.

The National Care Service should have a focus on the adoption of enabling technology in a way that augments the human experience of care allowing for intervention that can support an individual to have more control over how they meet their personal outcomes and allow those working in social care to focus on the individual rather than the process.

The role of health and social care data should also be considered as key to unlocking the potential of strategic planning and commissioning of service to make sure that people get the right care and support in the right place at the right time, and in doing so, reducing bureaucracy and duplication.

The Women's budget group present compelling evidence about how social care is a key sector for providing green jobs, thus tackling the implications of climate change, but also presenting an opportunity to bridge the gender pay gap through investment in a mostly female workforce https://wbg.org.uk/wp-content/uploads/2022/05/FGND-Labour-market-changes.pdf

There is also a role for social care to play in Just transition through for example, working with Infection Prevention Control experts to safely reduce waste, creating the conditions to collaborate on travel, reducing routes to reduce fuel for cars and investment in the built environment to reduce energy use.

- *To what extent are social care and support services currently planned and commissioned according to the strategic planning guidance for health and social care integration?*

There are places across Scotland where the Public Bodies (joint working) (Scotland) Act 2014 is making excellent progress towards integration, but not in all. Technically, this question is a difficult one to answer as the independent care sector is not always included in planning as

it should be and therefore the details unclear however it could be argued that in itself is evidence of failure.

There are a few areas in Scotland where there is involvement in strategic planning groups and even at IJB level. It is fair to say that where there is greater partnership working in commissioning there is more effect and equitable delivery. One of the key barriers however is capacity of the sector to engage. Some HSCPs fund an independent sector lead who is hosted by Scottish Care to undertake this role. Positive examples of where this has led, such as the Granite City Care Consortium and collaborative commissioning in Fife, are given in this recording: https://scottishcare.org/partners-for-integration-event-recording-13-october/

As you will be aware there is a review of the guidance currently underway, and Scottish Care is contributing to that process in a more formal manner. We would be happy to share any input with the Committee as fit. In the meantime, I would point to the work of audit Scotland https://www.audit-scotland.gov.uk/publications/health-and-social-care-integration-update-on-progress

- *What are the benefits and challenges of having a 'mixed economy' in social care provision (compared with the NHS model)? What specific changes would you want to see to the Bill that could enable this fundamental difference between health and social care provision to be addressed?*

There is no NHS model of social care. The NHS is an emergency service, this requires a structure and response that is hierarchical in nature – clear parameters and directions to enable short term immediate intervention. Social care in comparison is person led. It is about creating the space for individuals to flourish. This requires an approach which is flexible and individualised, with a focus on choice and control. A mixed economy of social care provision enables greater choice in the system. Take for example where you choose to live. Some of us prefer a new flat in the city centre, others an older home in the countryside. Some like noisy home full of activity, others a quieter place. A mixed economy of care offers a mixed model of care whether that is in a care home, or in someone's own home. This person- led approach delivered by a mixed economy of care is more agile, allowing for more opportunities for innovation.

During pandemic response, a role of oversight was created for Executive Nurse Directors and Directors of Social Work. This led to a change in practice in care homes which in many cases limited the experience of the resident and the staff. Whilst in current times the landscape of oversight is shifting, it remains expensive and clinically led and a practice which in some areas is detracting from the person-led care and support that residents deserve and

is undermining the skillset that professionally registered care staff including managers and nurses have. Oversight has at times undermined the role of regulation and is creating duplication in the learning space. Using an appreciative inquiry approach there have been some positive outcomes, but lack of equity in the process and in resource will continue to restrict development of this model. There is opportunity in the National Care Service to create conditions for a cross-sector partnership approach based upon learning from this experience if the independent care sector is included as an equal partners with its own identity and skillset, and with appropriate resource https://scottishcare.org/the-ingredient-for-growth-care-providers-experience-of-regulation-oversight/

- *What are the benefits, challenges, and disadvantages of providing social care services directly as opposed to commissioning them from external providers? To what extent do you think direct provision of social care services would be possible and/or desirable under the reformed structures proposed by the Bill?*

Benefits

Fully funded delivery would remove competition and deliver equity in workforce terms and conditions e.g.

- Fair Work

In year uplifts e.g. the uplift for care staff pay to £10.50 applied during winter resilience in 2021. There is currently no quick mechanism for passing on payment as it required contract amendments between the following actors: Gov and COSLA, Local government and Local providers. It is important that financial forecasting is applied for the length of the contract and that mechanisms are created to enable in-year uplifts should they be required in extraordinary circumstances.

Terms and conditions for staff need to be levelled up across the sector to stop local competition between parts of the sector, including agencies. An example of this is that providers in one HSCP are losing staff to the local authority who can pay £3 per hour more. A levelling up of the system would offer a sustainable rate of care to all social acre staff, supporting recruitment and retention and importantly, enabling continuity of care and support.

- Market shaping

The National Care service presents the opportunity to bring together ethical commissioning across HSCP boundaries. This, alongside improved data, and better connections to town planning will allow for a better understanding of what provision is required now and in the future. Allowing the regulator a role in market oversight will augment this by highlighting and enabling the monitoring and response to the impact of commissioning and procurement decisions on sector stability.

- Agencies

Agency staff play an important role in contingency and resilience however the recruitment and retention challenges have increased demand which is creating an inflated pricing model for their use. This has in turn, led staff who feeling overburdened as a result of staffing shortages and low paid by comparison to e.g. their NHS equivalent, seek employment in agencies where they are able to secure higher wages. A national care service would allow for greater control across boundaries where sometimes local authorities compete for access to staff, and for the coproduction of innovative solutions to ensure continuity of care.

- Charities

Social care provision often evolved out of necessity in a local area. In this way it has been delivered by families, businesses, and the third sector over many years. Volunteers might deliver services in all three of these business models e.g. activities or companionship. Care providers who operate as charities have similar operating costs as those who are privately run. They are also registered with OSCR and their work must meet their charitable purpose – they must also not be seen to fundraise for a cause which should be paid by other means. Therefore we have seen charities reduce the care they provide as it has become less affordable for them to do so. This is linked to the rate that care providers are paid, and not the proposals under the NCS.

Challenges

- Transparent cost of care

  It currently costs Local Authorities twice as much as the independent sector to deliver the same service. The shift to a national care service would require transparency of the true cost of care and support.

- Data sharing standards and agreements

To make better use of data currently collected and to make sure that the data collected is useful will require collaborative work on data collection, the setting of data standards and data sharing agreements. These will need to be drawn up anyway across statutory provision. Data has an important role to play in the commissioning of health and social care, including workforce planning. After hosting a series of roundtables on social care data, a vision and principles for social care data were published in the report Seeing the Diamond in Social Care Data https://scottishcare.org/wp-content/uploads/2021/06/Data-Report-Seeing-the-diamond-in-social-care-data.pdf

- Care Boards

There is a risk that energy will be put into the design of the National Care Service which would ultimately result in the creation of Care Boards which duplicate the role of Integrated

Joint Boards, but without any real change in practice or culture. There needs to be greater clarity on governance arrangements, and they must incorporate the independent care sector as an equal partner, sufficiently resourced to contribute effectively.

Disadvantages

- SDS (Self Directed Support)

If we move to a statutory service across the board this introduces limits to 'choice and control' as desired by the Social Care (Self Directed Support) (Scotland) Act 2013.

- Cost

As mentioned above, it currently costs the local authority twice as much to deliver the same standard of social care and support as the independent sector. Nationalising care would result in additional cost pressures at a time when the system is already struggling to meet increased demand.

- Innovation

The independent care sector can pivot much more quickly that the statutory sector, on top of this, its varied nature, designed around person-led care and support makes a place for innovation. For instance, the work of trialling and embedding Care Technologists in social care https://scottishcare.org/the-care-technologist-project/ To create a vanilla care service risks stagnating development and growth for the future.

I would like to finish by thanking you for this opportunity to respond further to the Committee. I do apologise for this has turned into a rather lengthy response, but that is perhaps down to the complexity of the proposals, and the need to get this right for the people of Scotland. I would be happy to take any further questions or queries.

Kind regards,

Karen

Karen Hedge

Deputy CEO