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Dear Gillian,

Thank you for your letter of 22 December 2022, following my attendance at the Health, Social Care and Sport Committee on 20 December, seeking responses to some further questions. Answers are provided below.

Immediate concerns in social care and rationale for the Bill

What is the Government's planned timeframe for overall implementation of the Bill?

As set out later in this letter, secondary legislation will be informed by the co-design process. This is the first time the Scottish Government has engaged in co-design on this scale to inform regulations and the overall implementation of the Bill will be dependent on the detail agreed through co-design. It is important that we do not stifle discussions about how to get things right for people moving forward by setting arbitrary deadlines. We have a twin approach of delivering improvements for social care now and working with people to ensure the new system better meets the needs of the people of Scotland long into the future. The current priority is to support the passage of the Bill and secondary legislation during this Parliament to create a strong framework for the future delivery of social care across Scotland.

The aim is to conclude this work in this Parliamentary Session.

How do you intend to address the growing disparity in social care wages for externally commissioned staff (when compared to public sector wages) as the cost of living continues to rise?

The Scottish Government is committed to improving fair work practices across the social care sector and we will continue to work in partnership with our key stakeholders to improve the lives and experiences of the social care workforce.

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Through the National Care Service (NCS), we will continue to improve terms and conditions for social care workers through the introduction of sectoral bargaining for the sector. However, we will not wait for the NCS to be established before we take action, and the Scottish Government has committed to continue to take all actions available within devolved responsibilities and budgets to address the current cost of living pressures. However, there have never been greater pressures on public finances, and we must balance the books while demand for government support and intervention are increasing.

From April 2023, adult social care workers delivering direct care in commissioned services will see their pay increase to a minimum of £10.90 per hour; in line with the Real Living Wage rate for the 2023/24 Financial Year.

The £10.90 minimum pay rate represents an increase of 3.8% from the £10.50 minimum rate that was introduced in April 2022 for adult social care workers delivering direct care in commissioned services. This represents a 14.7% increase for these workers in the last two years; with pay rising from at least £9.50 per hour in April 2021 to £10.90 in April 2023.

This uplift will be delivered through Local Government contracts and the Scottish Government will transfer £100 million to Local Government to deliver it; this investment takes Scottish Government recurring funding for adult social care pay in commissioned services to £0.6 billion per year

These are the minimum rates of pay for these workers and many providers choose to pay more than these minimums.

Given that you have said that local accountability will remain, and that you are already accountable for social care, can you explain what difference the Bill will make for people using services if they have concerns, or feel that their needs are not being met?

Currently, responsibility for the planning and delivery of social care lies with local authorities, mostly through Integration Joint Boards. Ministers can set out policies, in agreement with local authorities, and can provide funding to support delivery of those policies, such as supporting carers or increasing care workers' pay. But the Scottish Ministers have no statutory responsibility for the delivery of social care supports, and no powers to directly ensure those improvements are made. Management information, about the use of funding and about issues such as workforce and unmet need, is also limited and often inconsistent. Better information will support effective planning and the ability to make improvements in a systematic way.

The Independent Review of Adult Social Care, and Audit Scotland, have been clear that it is necessary to clarify the governance system in order to make integration of health and social care work more effectively and to improve standards and outcomes for people. In taking evidence on the Bill, committees have heard from people who say the current system is confusing, people are shunted from one organisation to another and cannot identify who is accountable. This underlines that the current system is not working for people.

The National Care Service will remove that confusion. People will be clear who is responsible for providing services and support. The local care boards will have a single line of accountability and a single source of funding and they will be clear what they are expected to achieve.

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The NCS Principles, backed up by the Charter of Rights will guide the way that the NCS works, locally and nationally. This will mean that Ministers and the local care boards will focus on delivering human rights based, person centred and outcomes based care and support for people.

I am providing more details about how we expect the NCS to lead to improved services for people below.

However, when things go wrong, because Ministers will be accountable for social care delivery, it will be possible to have a better, clearer complaints system. Alongside the Charter of Rights and Responsibilities and Independent Advocacy, the aim is to establish a complaints service that will empower people; deliver accessible recourse and greater accountability of service providers when rights are not met. We are proposing to establish a complaints and redress service for the NCS that provides a fair, effective and consistent approach to complaints and redress and one that provides a clearer pathway to make complaining easier and to minimise complaints being directed to the wrong organisation. At a national level, the NCS will be able to provide directions on the handling of complaints by the local care boards and oversee their performance on complaints. There will be further co-design with people with lived and living experience and key stakeholders such as organisations from sectors impacted to develop the details of this new system.

We also recognise the importance of independent advocacy in supporting people to access the care they need. Further co-design and engagement of stakeholders is needed to determine what independent advocacy will be needed to safeguard people's rights when the NCS is established with proposals to be set out in secondary legislation.

Co-design, timing, implementation and evaluation

What do you consider to be the overarching purpose and objectives of creating a National Care Service? Could you add more detail about what ‘improving consistency and quality’ will mean in practice? For example, witnesses have highlighted that despite Ministers being responsible and accountable for the NHS, services between and within health board areas vary significantly.

As stated in the Policy Memorandum, the overarching purpose and objectives of creating a National Care Service, through this Bill, is to improve the quality and consistency of social services in Scotland.

The national oversight and direction provided by having Ministers accountable for adult social care, as described above, will allow us to achieve consistency across the country about what support is provided and how it is done and to remove unnecessary variation in the support people access.

At a national level, through the NCS, Ministers will provide leadership, oversight, and accountability for social care, social work and community healthcare. The local care boards will be responsible for the planning and delivery of services and supports in their area. This means that Ministers will set standards and guidance but the local care boards will be responsible for meeting these in the way that best suits the needs of their local people and communities. Ministers will, in turn, have oversight of the delivery of care through performance monitoring of the local care boards. This will need to be done in a way that

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respects local accountability and flexibility whilst also ensuring the consistency of approach that people have told us is needed.

The national level part of the NCS will work with local care boards to:

- Set standards and drive improvement in the delivery of care locally
- Develop strategy and policy for improvement of community health, social work and social care at national level, and a national level strategy and plan for community health, social work and social care to support local level plans and strategies
- As I have set out above, ensure a national complaints and redress service to uphold the NCS Charter
- Support and invest in the social work profession through the National Social Work Agency
- Improve the conditions of employment and training and development for the social care workforce (in so far as that is possible within devolved competence)
- Promote quality and ensure financial stability in the social care market
- Plan, commission and procure specialist care services where it makes sense to do so on a national basis to promote person-centred, human rights based approaches in a way that makes best use of public sector resources.

As we develop the NCS through co-design and engagement with our partners and stakeholders we will identify and develop the suite of standards and guidance that will be needed to meet our vision for the NCS and uphold the NCS Principles.

As the Committee has pointed out, despite Ministers being responsible and accountable for the NHS, services between and within health board areas vary significantly. As I have said, ensuring the right balance between national consistency and local responsiveness and flexibility will be a key challenge and we will, of course, look to learn from the experience of Integration Authorities and the NHS as we develop our approach to achieving this within the NCS.

What do you consider to be a realistic timeframe for completing co-design? Do you envisage the co-design process as something that will need to be completed before structural changes, such as the creation of care boards, can take place? Or do you envisage the co-design process and these structural reforms as running alongside one another?

During the meeting, you gave a commitment to provide the Committee with full details of the Scottish Government's planned approach to co-design, including what specific aspects of the Bill's implementation this will cover, intended outcomes from this approach as well as details of those stakeholders you have been consulting with on co-design to date. The Committee looks forward to receiving this detail from you in writing.

Many witnesses told the Committee that they had been engaging for years on setting out what reform is required. The Government also had a long-running programme considering social care reform before the pandemic. Could you also set out how the codesign process will incorporate and reference this engagement and work?

During the meeting it was pointed out that many people receiving care and support or who are carers find it challenging and onerous, as well as costly, to be involved in co-

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design work and events. How do you intend to support all those who wish to be involved, and what are the estimated costs for this work?

Co-design is working with people in an equal and reciprocal partnership in the design of services, policies, frameworks and interventions. Involvement starts from understanding the present to deciding what the future should look like and how to get there. In June 2022 we published a document setting out the strategy for using codesign to support the development of the National Care Service (NCS), it can be accessed via the following link: [Supporting documents - National Care Service and co-design - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/06/Supporting_documents_-_National_Care_Service_and_co-design_-_gov.scot)

There are three clear phases to NCS collaborative design:

1. Understanding – building our shared understanding of the current challenges
2. Sensemaking – what and how can we deliver improvement
3. Agreement – do the proposed changes address the issues raised by people

Once the policy and delivery position has been agreed within the co-design process there will be the need in some areas to develop regulations. In cases where regulations are required the following phases will follow:

4. Drafting of regulations – co-design conclusions will be developed into regulations
5. Review - it will be important to share the draft regulations back with people for review of the alignment with co-design process.

NB. To remain true to collaborative co-design, if under affirmative procedures the Parliament rejected any of the regulations then phases 4 and 5 above would need to be repeated.

Codesign and conflict resolution

The delivery of social care, social work and community health is currently diverse and complex. Given the range of models and experiences across the country there will likely be some areas where there are different views on the current challenges and what needs to be done to improve things.

Co-design is an iterative process which offers the flexibility to address, and minimise conflict from, differences in views fully as part of the three phases. Where differences and conflicts arise in the first instance people will be encouraged to talk through these with a focus on outcomes for people, using the National Care Service Principles set out within the Bill.

Where differences are unable to be resolved as part of the co-design phases expert advice, and a proposed solution where appropriate, will be sought from professional advisers aligned with the programme from social care, social work and health and shared back with people for agreement.

Successful co-design

- Is done in partnership with people who get or give social care support.
- Is accessible – available and usable for all.
- Includes a mix of different kinds of people who have different experience.
- Is all about relationships based on trust and safety.

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It will be vital to have regular evaluation of the NCS approach to co-design to ensure we are continuously improving. A tender for an initial piece of evaluation is currently being drafted for issuing by the end of this financial year.

National Care Service Co-design Themes

The initial NCS Co-design themes were launched at the NCS Forum in October 2022 and will focus specifically on the information needed to develop policy directly associated with the passage of the Bill.

1. *Information sharing to improve health and social care support* – data sharing
2. *Realising rights and recognising responsibility* – Human Rights and Charter Development
3. *Keeping health and social care support local* – Care Boards, geography and board representation
4. *Making sure my voice is heard* – Advocacy and Complaints
5. *Valuing the Workforce* – workforce charter

LEEP and Stakeholder Panel

Registration for the NCS participation panels to take part in this process opened on 21 September 2022 and there are two ways to participate. Individuals living in Scotland can apply to take part in our Lived Experience Experts Panel. The panel is made up of people who have real experience of using or providing social care support in Scotland. They will help to design the NCS by taking part in different kinds of research and design activities.

Organisations with an interest in health and social care which operate in Scotland can apply to take part in our Stakeholder Register, and will be advised of future opportunities to be involved in co-design activities. This will ensure that delivery partners and other key stakeholder organisations are also involved in planning and developing the NCS

Continuous Improvement

Recruitment of people to participate in co-design will continuously be examined to ensure we have the right mix of people, who are broadly representative of the people who receive and deliver care in Scotland, and are addressing the views and needs of key groups often overlooked.

We will be recruiting members of the Lived Experience Experts Panel and the Key Stakeholders Register and undertaking targeted recruitment where necessary to ensure we are addressing the full diversity of participants needed (for example to work with children and young people, to reach particular groups under-represented on the panel, and to ensure that we are providing opportunities for those who wish to participate but are not interested in joining the panel).

We will routinely review and publish data on the demographics of the panel, and will publish details about co-design planned, and outcomes of co-design work undertaken.

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Co-design activities

Importantly every co-design activity commissioned is designed around people. Prior to each activity it is important to meet ethics conditions about the purpose, questions to be posed and activity being scoped. This ensures that the outputs of activities build on the evidence already gathered and mitigates the risk of repeating engagement on the same matters with people.

There are a wide range of co-design activities including:

- Helping us fills gaps in our evidence through for example a survey, or a one to one interview
- Taking part in 'shared understanding' workshops
- Taking part in sessions to design proposals for change, or review other proposals for change
- Taking part in agreement reviews to consider proposed design decisions.
- Taking part in design workshops to develop ideas for how the NCS will work and what that will be like for the people delivering and receiving care.

At the start of each co-design activity clear outcomes will be sought. Examples of co-design outcomes are provided below:

- developing and agreeing working together principles
- helping us come up with ideas about what changes we might make
- helping us understand what our evidence is telling us
- helping us understand if the suggestions made will bring about the changes needed within health and social care that people have asked for
- sense checking insight and general direction of travel
- imagining different possible design solutions
- testing ideas (if and how they might work)

Training – learning about Co-design

Ensuring that people understand the National Care Service approach to co-design is important. People in this context includes those with lived experience of receiving care support, those delivering care support, carers and stakeholders and civil servants involved in co-ordinating the work.

Successful co-design can only happen when people have access to the information and training needed to take part in co-design, and the support to ensure that the barriers to doing that (such as transport, accessibility, and lack of practical and emotional support) are removed. It is important that the Scottish Government officials supporting the co-design of particular parts of the NCS understand the principles of co-design to ensure that people with lived experience are properly supported to take part and officials understand their role in creating the space for those open and reciprocal engagements to take place. A National Care Service Design School has been developed and is now co-ordinating guidance and training teams and people with lived experience to help them do that.

The National Care Service Design School has been co-ordinating a series of training opportunities since Autumn 2022. Training will continue throughout the programme and will evolve with need. A summary of training delivered to date can be found below:

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- **Members of the Public** - To support everyone to find out more about what co-design is, the phases of work involved and the activities and tools that can be used to support NCS co-design four introductory sessions have been held to date. These sessions have been made available on the Scottish Government website. They were promoted across our stakeholder partners, via the NCS Twitter account. To date, 157 individuals have attended with further dates being organised for 2023.
- As of 9 January 2023, LEEP has received 445 applications and the Stakeholder Register has received 223 applications. NCS Communications will continue to promote both the Panel and the Register via NCS Twitter, other channels and through regular engagement with stakeholders as appropriate.
- A total of 12 'welcome sessions' for new LEEP and stakeholder register members took place in November and December 2022. The aim of the welcome sessions was to get to know one another, share motivations behind joining LEEP and people's key priorities, as well as talking about ways of working to ensure the effectiveness of co-design activities. These sessions were well attended, with 184 LEEP members and 126 Stakeholder Register members attending.
- Discussions at these sessions revealed four key areas of interest and concern amongst participants: the co-design process itself, ensuring co-design is accessible and inclusive, the opportunity to participate in policy making more directly, and how to ensure that co-design really does allow them to participate in design and decision making differently.
- **Civil Service** – since July 2022 the office of the Chief Designer has been running monthly workshops on 'Design Awareness' to help officials understand the role of codesign in the National Care Service Programme. 104 civil servants have attended to date, with sessions continuing to run monthly to enable all officials who are engaged in the work to attend.

I gave a commitment to update the Committee on estimated costs of delivering entitlement to maternity pay for all social care staff.

The estimated cost of delivering enhanced entitlement of Maternity and Paternity Pay for all social care staff is £3m. This estimate is dependent on the actual number of maternity and paternity occurrences. The figures are based on national averages, but this could vary within the social care sector.

This estimate does not include Local Authority staff. These staff already benefit from enhanced rates while those in commissioned services are often only entitled to the statutory minimum.

During the meeting you set out challenges, largely to do with the number of providers, with tracking and monitoring social care staff pay increases. Without any material change in the landscape of providers, how will the NCS and more specifically the provisions set out in the Bill ensure public funds are fully traceable?

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Current position

To receive funding for the adult social care pay uplift, providers must sign contract variation letters which stipulate that all of the funding must be spent on uplifting pay. Whilst it is difficult for the Scottish Government to directly track and monitor how the funding is then implemented by providers, HSCPs do have the ability to do this as the bodies responsible for maintaining and assuring that their contracts are run in accordance with the agreed terms within these.

Alongside this assurance process that is managed at the HSCP level, the Scottish Government holds extensive troubleshooting sessions with key stakeholders, including the trade unions, to ensure that the uplift is reaching the workforce. The Scottish Government also set up a dedicated webpage to direct workers on what to do if they have not received the uplift to the minimum rate of pay.

Position after the NCS

Ethical commissioning and ethical procurement will become a cornerstone that the National Care Service will use to shape all commissioning and procurement decision making. Ethical standards will ensure we value and recognise the workforce by developing minimum fair work standards, ability to improve pay, improve terms and conditions, encourage sustainability of service and encourage positive reform.

We will continue to work with our key stakeholders to develop a framework for ethical commissioning and procurement. The recently established Adult Social Care Ethical Commissioning (ASCEC) working group has been set up to look at what improvements can be made to the current commissioning process and support alignment with the NCS. Early work is likely to include identifying existing best practice, barriers to ethical commissioning and cost of introduction. This group will work closely with colleagues across the Scottish Government to avoid duplication of effort. The group had its first meeting in November 2022 and a further meeting in December 2022.

Principles of the proposed NCS

What value do the principles of the NCS add to pre-existing principles as enacted through other legislation?

The NCS principles set out in section 1 of the NCS Bill provide the foundational values on which the NCS will be built: by virtue of section 2 of the Bill Scottish Ministers are required to promote a care service designed to secure improvement in the wellbeing of the people of Scotland and must do so in the way that seems to them to best reflect the principles.

The NCS principles recognise care and community health services as essential to the realisation of fundamental human rights, and that these services will have equality, non-discrimination, and the dignity of the individual at their heart. They enshrine in law our commitment to fair work, inclusive communication, prevention and early intervention, investing in care services as well as the innovative approach being taken to collaboratively design services.

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How will you reassure people that their rights to self-directed support and independent living will be realised?

The purpose of the NCS Bill is to ensure that Scottish Ministers have the levers to improve the delivery of support to people who need it. Making sure that Self-Directed Support (SDS) is fully implemented in accordance with the provisions of the SDS Act of 2013 is one of the key areas where we want to see that improvement.

People have told the Scottish Government that they are in favour of SDS and its role in realising independent living, and the NCS Bill does not amend this legislation. There are examples of excellent practice around the country which have been enabled by the existing legislation, and I don't want to change it in ways that might hamper that. However, I recognise that implementation of SDS has not been consistent across Scotland, and that challenges remain. Alongside the NCS Bill, we are continuing to work closely with partners to improve the implementation of SDS to ensure its principles and aspirations are fully realised as a cornerstone to NCS service delivery. This work is happening now, as part of SDS improvement work with COSLA and other key stakeholders.

There is no need to duplicate the legislation on SDS or other issues in the NCS Bill. All the relevant legislation relating to social work and social care is listed in schedule 3 of the Bill as enactments which confer functions on local authorities to be transferred to the NCS. When functions are transferred, the effect will be that local care boards, rather than local authorities, have responsibility for ensuring appropriate implementation.

We will continue to engage with stakeholders across Scotland, listen to the voices of lived experience and work closely with service delivery partners to ensure the NCS works for everyone.

What mechanisms will be used to ensure that the principles are upheld by the Scottish Ministers, by care boards and by providers?

Section 2 of the Bill requires the Scottish Ministers to promote a care service designed to secure improvement in the wellbeing of the people of Scotland and to do this in accordance with the NCS Principles set out in section 1 of the Bill. Scottish Ministers are held to account in delivering on their duties for example by the Scottish Parliament and importantly, by the people of Scotland.

Sections 6 and 7 of the Bill mandates that Scottish Ministers and Care Boards must prepare strategic plans for the delivery of NCS services. The strategic plans must set out ethical commissioning strategies for the delivery of NCS services, an ethical commissioning strategy being a strategy for ensuring that arrangements for provision of services best reflect the NCS principles (section 10 of the Bill). This will give effect to the principles in the commissioning and delivery of NCS services by Scottish Ministers, Care Boards and providers.

Having Scottish Ministers accountable for social care will provide national oversight and direction and facilitate the delivery of consistent and quality care support, including upholding the NCS Principles. Some variation in how the NCS Principles are applied is justified to reflect local circumstances, however, the NCS will work to continuously improve services in ways which uphold the NCS Principles.

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How will the Bill assist in social care being viewed as an investment in society rather than a cost to it, as set out in the principles?

As set out previously, section 2 of the NCS Bill places a duty on Scottish Ministers to promote a care service designed to secure improvement in the wellbeing of the people of Scotland and to do this in a way that seems to them to best reflect the National Care Service principles. As the Committee rightly notes, the NCS principles include the principle that the 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. This has the practical effect of mandating that, in the development and delivery of the NCS, Scottish Ministers must make decisions in a way that seems to them to best reflect that principle (along with the others enshrined in section 1). This provides a legal basis to support a cultural shift in how social care and community health are valued in Scotland.

Charter, complaints and independent advocacy

How will the complaints process envisaged as part of the creation of a national care service relate to existing complaints processes and structures? Is there a risk of creating confusion or unnecessary duplication by implementing these provisions of the Bill?

I have provided an overview of the approach to complaints within the Bill above. Section 14 of the Bill places an obligation on Scottish Ministers to establish a service for receiving and allocating complaints about services provided by the NCS. In line with our commitment to a human rights-based approach and underpinned by the PANEL principles, the complaints service will be co-designed with people with lived experience and relevant stakeholders, ensuring their meaningful participation and contribution to discussions and decisions. Alongside the Charter of Rights and Responsibilities and Independent Advocacy, the NCS vision is for a complaints service that will empower people and deliver accessible recourse and greater accountability of service providers when rights are not met.

I am cognisant of good practice in dealing with complaints in a number of areas and of the important role of independent oversight bodies such as the Care Inspectorate and the Scottish Public Services Ombudsman. The Scottish Government will work with these bodies, and other relevant stakeholders, to ensure their existing functions are taken into account when undertaking the co-design and implementation process to develop a service that builds on good practice already in place while delivering on the outcomes of co-design.

Respondents to the NCS consultation noted the complexity of the current complaints system for social care in Scotland and this was again raised by people with lived experience during the initial co-design on the Charter of Rights and Responsibilities. To improve overall delivery, we must ensure that the end-to-end process for complaints and redress meets the needs of all people through transparency and efficient processing.

I would also like to take this opportunity to provide further information to the Committee in relation to the planned timescales for development of the Charter of Rights and Responsibilities, independent advocacy and the complaints process. As I mentioned in my response to David Torrance MSP when I provided oral evidence on 20 December 2022, co-design on the Charter is well underway. I can confirm that we are working to provide a draft Charter to the Committee in late summer. This draft will reflect insights from co-design with

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people who access services under consideration for incorporation into the NCS, such as Children's and Justice services. However, the draft will not include direct reference to these services until a final decision has been made on their incorporation. Learning from co-design that is specific to these services will be captured for future use where required. Additionally, co-design is providing insight on the kind of information that people would expect to see included in the Charter on feedback, complaints and advocacy. As these services and approaches are yet to be developed placeholders, rather than full drafts of these sections, will be provided. These insights will be used to inform design and development of the complaints service as well as our approach to independent advocacy in due course.

Structural reform and care boards

During the meeting, you undertook to provide the Committee with further detail in writing on the make-up and remits of care boards, including whether these will be commissioning bodies, delivery bodies or both. The Committee looks forward to receiving this additional detail from you in writing.

The bill as introduced makes provision for transferring existing local authority functions to new care boards, meaning all Care Boards will be constituted both as commissioning and delivery bodies, with the option of whether to deliver service internally or through outsourcing to be made at a local level. At the same time, we expect that the current diversity of care and support delivery will be maintained, with social work and social care support continuing to be delivered by a range of public, private and third sector partners as it is now, and healthcare will continue to be delivered by Health Boards. This includes our intention that local authorities will continue to deliver social care support locally on a commissioned basis and is consistent with our stated position that the delivery of front line services by care boards themselves is not a foregone conclusion.

What is your planned timeframe for having new structures (e.g. care boards etc.) in place?

At this stage, to give a detailed timeline for Care Board implementation would be to prejudge the outcomes of the co-design process and engagement with delivery partners.

It is imperative that there is smooth transition that leaves no gaps in service delivery. We are committed to working with our partners to ensure this. Phasing of the transfer of functions will need to be based on delivery readiness assessments. Clear and transparent local transition plans will be developed with partners so that everyone affected is comfortable with what is happening where and when.

What evidence do you have that the structural reforms proposed will directly improve outcomes for individuals?

The Independent Review of Adult Social Care found the current ways of working have not fully delivered the improvements intended to be achieved by integration of health and social care and recommended the creation of a NCS, with Scottish Ministers being accountable for adult social care support, in response to this. It called for Integration Joint Boards to be reformed and strengthened, to be funded directly by the Scottish Government and to take on further responsibilities such as procuring services directly. People who access care have told us clearly that the current approach is not delivering the quality of services they need, and that there is a postcode lottery. It is therefore right that we take this opportunity to act on the

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recommendations within the review. The Scottish Government considered a number of options for social care, as outlined in the policy memorandum. However, the establishment of care boards is considered the only way to achieve the level of change needed to deliver a consistent standard of social care across the country.

How will integration principles be upheld and silo mentality avoided in the creation of new discrete public bodies in the shape of the proposed new care boards?

We recognise that, while inconsistent, there have been many successful examples of integration across Scotland and intend to build on these as we transition to a new care board structure. In 2018, Audit Scotland reviewed progress against the Public Bodies (Joint Working) (Scotland) Act 2014 and concluded that integration worked really well in some places, but had not made enough consistent progress around the country. Past reviews have highlighted key issues with integration including governance structures, partnership working and leadership, control and agreement of budgets. They found that decision-making was not localised or transparent in some areas.

Our ambition is to create a comprehensive community health and social care service that supports families and smooths transitions between different categories of care. Services will continue to be planned, designed and delivered at a local level by the local care boards, with the input of those with lived experience so that there is a person-centred, outcome-focused approach to care. These local bodies will be supported by the NCS at national level that will be, in part, responsible for ensuring collaboration between the local boards. The NCS at national level will help to identify and spread good practice across the local care boards. This is in marked contrast to the current system where some good practice may not be getting shared due to the lack of co-ordination.

As outlined earlier in this letter, the NCS at national level will oversee local delivery, including by monitoring the performance of the local care boards, and this can include ensuring that integration is working well at local level. Ministers will be responsible for both the NCS and the NHS and will therefore be able to ensure integration at a national level to foster and support integration at all levels from national through to the local.

In their local areas, Local Care Boards will work with partners to ensure that support and services for people are safe, effective, seamless, and person centred. Local people will be embedded in the design, development and delivery of support and services.

Commissioning, regulation, procurement and fair work

What progress is being made towards full implementation of the Fair Work Convention's recommendations made in 2019?

The Scottish Government, in conjunction with COSLA, established the Fair Work in Social Care (FWiSC) Group to take forward the recommendations of the Fair Work Convention Social Care Report.

The Group's work was organised into three workstreams around pay, the development of minimum standards of terms and conditions, and establishing minimum standards to enable Effective Voice at a local level. A fourth dedicated workstream on Sectoral Bargaining has since been established.

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From April 2023, adult social care workers delivering direct care in commissioned services will see their pay increase to a minimum of £10.90 per hour; in line with the Real Living Wage rate for the 2023/24 Financial Year. The Scottish Government have provided £100m of additional funding to uplift pay from April 2023 and will continue working with stakeholders to secure improved terms and conditions. This £100 million investment takes Scottish Government recurring funding for adult social care pay in commissioned services to £0.6 billion a year.

The Group developed a set of minimum standards for terms and conditions reflecting Fair Work principles. These standards include sickness pay and maternity / paternity pay to assist with recruitment in the sector, and ways to promote Effective Voice at a local level. Work to investigate how these standards can be implemented within devolved powers is being taken forward in collaboration with key stakeholders.

On 22 August 2022, Scottish Government officials held a session to start the initial exploratory work on sectoral bargaining with key members of the FWiSC Group. This meeting was attended by COSLA, trade unions and provider representatives. Regular meetings with these and other key stakeholders are now taking place to move this work forward.

On 19 December 2022, the Scottish Government and COSLA issued an updated joint statement of intent outlining how they will continue to work together to deliver key commitments in response to the Independent Review of Adult Social Care in Scotland. This included the commitment to develop and agree shared ethical commissioning principles and establish core requirements for ethical commissioning to ensure that in future, fair work requirements and principles are met and delivered consistently across Scotland.

The Scottish Government and Local Government have continued to progress in partnership a number of key projects to champion elements of these ethical commissioning principles in respect of Fair Work that will lead to better terms and conditions and more rewarding roles for the adult social care workforce. The Adult Social Care Ethical Commissioning (ASCEC) working group, established in November 2022, will complement that activity through work such as identifying existing best practice, barriers to ethical commissioning and cost of introduction.

Certain witnesses giving evidence to the Committee have described the level of detail on ethical commissioning in the Bill as “thin”. Are you open to considering the inclusion of more prescription and detail on ethical commissioning?

Commissioning is the process of deciding how goods or services should be obtained, whether that is through in-house provision, external procurement including tendering and alliances, or through grants. The Bill defines ethical commissioning as ensuring that the arrangements for providing a service best reflect the National Care Service principles. That is what we want care boards and Once for Scotland at a national level, to achieve.

To do this, our approach to ethical commissioning and procurement will be co-designed with input from partners, providers and representative users. Where procurement is chosen, the Scottish Government is developing a set of Ethical Procurement Standards to support consistency of the ethical procurement of social care and support throughout Scotland. The Standards will be developed with input from the organisations which commission, procure and coordinate the delivery of care to ensure they can be implemented. Importantly, information and experiences shared with us through the wider co-design process from

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individuals who have experience of care, and those who care for people, will also be considered in the development of the Standards, so that procurement exercises ultimately result in services and support that meet the needs of people and their local communities.

A working group has been set up to look at improvements that could be made to the current commissioning process including identifying existing good practice. The group held its first meeting in November 2022 and a further meeting in December 2022, and in the course of its work we expect that the principles of ethical commissioning will be discussed in more detail, particularly what they mean in practice and barriers to implementation. These principles include:

- person-centred care first
- human rights approach
- full involvement of people with lived experiences
- fair working practices
- high quality care
- climate and circular economy
- financial transparency, sustainable pricing and commercial viability
- shared accountability.

How would the Bill's provisions reform the remit of national regulators and current national standards and registration requirements to create greater consistency and quality of services? What further national oversight is envisaged?

The provisions in the Bill will not reform the remit of national regulators and current national standards and registration requirements.

Health and social care standards already apply across Scotland and are used by regulatory authorities when carrying out inspections of care services. The NCS will mean that this can continue while allowing us the opportunity to work with the local care boards and to monitor their performance, as described earlier in this letter, to ensure consistency of standards in the way that care and support is delivered in practice.

As the Committee is aware, an Independent Review of Inspection, Scrutiny and Regulation (IRISR) is underway.

The IRISR will look at how social care support services are regulated and inspected in Scotland, and will ensure scrutiny keeps up with an evolving landscape and changing skills required of the workforce. It will also consider the interactions with community health, and other services which support people.

The IRISR is not a review of organisations. It will look at how regulation and inspection of social care and related services can deliver improved outcomes for people within a regulatory framework that meets the needs of the National Care Service.

Is there any plan to establish a further body 'to support and invest in' the social care profession (as distinct from social work), as described in relation to the NSWA in paragraph 75 of the Policy Memorandum?

No plans are currently underway to establish a further body distinctly for the social care sector, however it should be noted that this role already exists within the remit of the Scottish Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

Social Services Council (SSSC). As the independent professional regulator for social services in Scotland, the SSSC are responsible for the promotion and regulation of the sector's learning and development and are also the national lead for workforce development and data collection.

Continuity of integration and transition: Community health, mental health, homelessness

Would you accept (as the Committee has heard from many witnesses) that there is a need for much greater clarity around how the Government will manage the process of transition from existing to new structures? If so, how can this greater clarity be provided?

We recognise it is vital that the structure and practices put in place for Care Boards are fully implementable and deliver the anticipated positive change for people with lived experience. We have been working, and will continue to work, collaboratively with those providing and receiving services to ensure smooth and fully implementable transition routes are identified. In addition, where appropriate, changes will be tested through pilots and tests of change to make sure there will be no impact on current standards of service delivery. As stated previously, we continue to review existing good practice in the community health and social care landscape and to learn from that to build positive integration pathways.

What do you intend will happen to existing integration joint boards as part of this structural reform process?

During the implementation phase we will continue to work closely with Integration Joint Boards (IJBs) to ensure services continue without disruption for individuals. We will also work closely with local authorities and other social care providers to manage the transition and design their roles within the NCS.

Going forward, as part of NCS reforms, the new local care boards will replace the current IJBs. Local care boards would be the sole model for local delivery of community health and social care in Scotland to ensure the ambition for consistent, quality delivery across services. Safeguards will be put in place as IJBs are dissolved and functions are transferred to care boards, ensuring no discontinuity of service. These safeguards may include phased implementation of local care boards, and/or local care boards initially operating in a 'shadow board' capacity.

How will the transfer of social work staff be managed in a way that ensures adult and child protection responsibilities remain clearly located.

Public protection is of paramount importance and existing statutory duties for both adult and child protection will remain in place and continue to operate through the existing multi agency public protection arrangements during any period of transition.

We will ensure that public protection arrangements are developed to reflect the new landscape with clarity of responsibilities across public agencies. In doing so we will ensure that adults and children at risk of harm continue to be supported and protected as part of development of the NCS. To inform this work we are developing a Scottish Government public protection structure to take forward detailed considerations and will work with our existing public protection networks and groups to ensure future arrangements are informed

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by the existing statutory responsibilities and good practice that exists. This will include the NCS Public Protection Working Group established by SOLACE, the National Child Protection Leadership Group and the Adult Support and Protection National Strategic Forum.

What is the timeline for transferring social work services for adults to care boards?

No decisions have been taken at this stage on the employment of qualified social workers or the delivery of social work services under the NCS. These decisions need to be taken as part of the commitment to a co-design process in developing a NCS focused on the views of people needing care and support. Neither is there intent to privatise social work services or outsource social workers, but to implement a consistent approach to commissioning across Scotland. Any consideration of the delivery of social care services and supports either in house by Care Boards, or through outsourcing to a range of providers including Local Government, private and third sector organisations, will be considered locally as part of an ethical commissioning strategy.

Anne's Law and breaks for carers

Are you in a position to share the revised directions for Anne's Law provisions with the Committee?

Work is ongoing to finalise the Directions for Anne's Law and they are subject to further engagement with the sector including members of Care Home Relatives Scotland, care home providers, Public Health Scotland and a detailed clinical and legal assessment. It is my intention to share the final Directions with the committee at the earliest opportunity so that they can be properly considered by members.

Additionally, in response to questions on Anne's Law from the Committee on 20 December, I agreed to write to the Committee with information on the number of complaints to the Care Inspectorate about visiting restrictions, other information on outbreaks and visiting restrictions in care homes, and the complaints process that relatives can follow if restrictions are imposed or still in place. This information is attached in the Annex to this correspondence.

What is being done to address the barriers to the effective implementation of the Carers Act, and why do so few carers have carer support plans in place. What is being done to raise awareness of carers' rights under the Act?

Most of the duties under the Carers Act are for local authorities and integration authorities. We are fully funding the implementation of the Act and have invested an additional £20.4 million in the 2022-23 local government settlement. Added to similar (baselined) increases in previous years since the Act came into force in April 2018, this brings the total additional investment to £88.4 million per year.

The Carers Rights and Support Steering Group - involving local authorities, health boards, COSLA, third sector, and carer representatives - is guiding our work; with priorities set out in an agreed [Carers Act Implementation Plan](#). That includes local and national work on communications to improve awareness. Our [Carers' charter](#) sets out carers' rights under the Act. Our [national marketing campaign](#) (December 2020 and March 2022) was designed to help more people recognise when they are in a caring role and access support.

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The implementation plan also covers work to improve understanding of local implementation, including support plans under the [Carers Census](#). Despite significant improvements in the latest survey, this still does not provide a comprehensive picture. We know that local approaches to support plans vary and that improvements to local systems are still being made, so some of the data is incomplete. Some areas initiate formal support plans with all carers looking for support, while other areas use less formal support planning for most carers. Consistency in support planning approaches is one issue we are looking at for the next iteration of the implementation plan.

Housing and transitions between types of accommodation as people's needs change

In addition to the Committee's questions, Gillian Mackay MSP asked about transitions between different types of accommodation as people's needs change. I agreed to write to the Committee about the review of Housing for Varying Needs guidance and the new Scottish Accessible Homes standards for Building Standards, and what stage they were at.

While the Housing for Varying Needs design guide still provides an excellent standard, we want the guide to help better meet the needs of an ageing population, to help people to live in their homes for longer, and to learn lessons from the pandemic by recognising the importance of outdoor space, and space for home working or study. We are currently in the process of reviewing the guide and we plan to consult on proposed changes this spring. It is intended that the review of Housing for Varying Needs will directly inform the development of the Scottish Accessible Homes Standard, which will be implemented through changes to building standards and guidance from 2025-26. This will improve the accessibility and adaptability of new build homes from the outset. We will seek to engage with disability groups and those with experience of living in homes delivered to Housing for Varying Needs standards, as well as those involved in the delivery of new homes, as part of the consultation process.

I hope the Committee finds these responses helpful.



Kevin Stewart

Minister for Mental Wellbeing and Social Care

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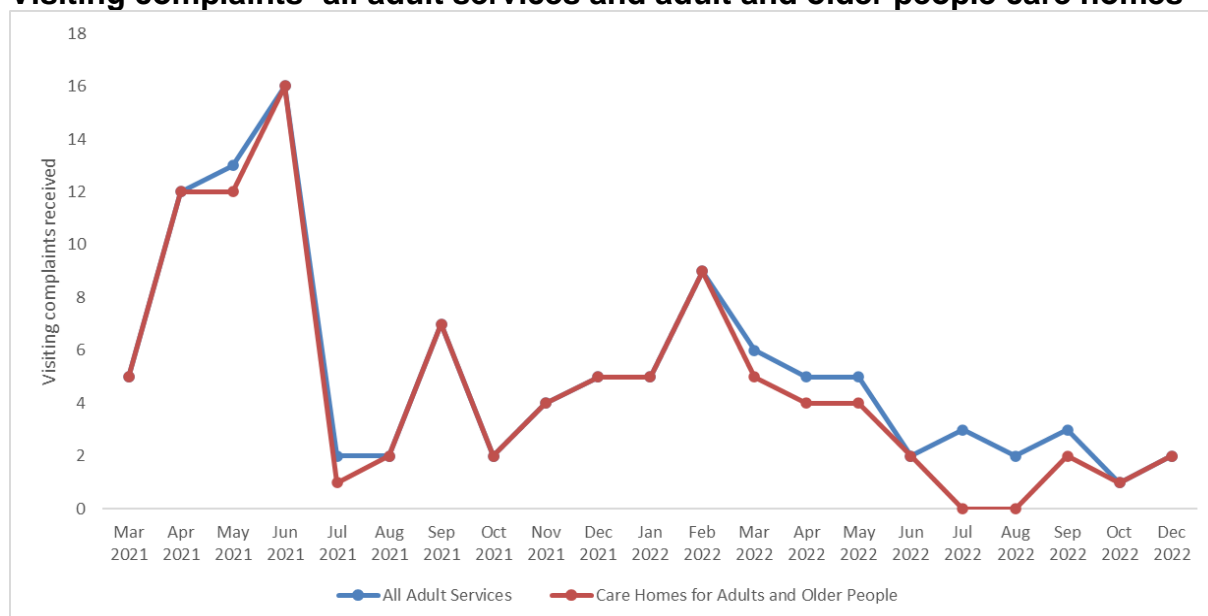


Response to questions on Anne’s Law from the Committee on 20 December 2022

Care Inspectorate – visiting complaints

The below data shows the monthly number of Visiting complaints¹ received by the Care Inspectorate for all adult services and care homes for adults and older people. Care homes for adults and older people received the majority of visiting complaints for adult services. I can confirm that the Care Inspectorate continue to prioritise complaints related to visiting and where there are issues they follow up with providers and services to constructively find solutions and support them to adopt the guidance.

Visiting complaints- all adult services and adult and older people care homes



- In the 2021/22 inspection year (April 21 to March 22) there were 80 complaints about visiting received for care homes for adults and older people. This was 3.1% of total complaints for care homes for adults and older people. This has fallen to 0.8% for the 2022/23 inspection year to date (up to end of December 22); where we have had 15 complaints about visiting up to end of December 22.
- The number of complaints received about visiting has decreased over time, with 3 or fewer such complaints per month over the last 6 months.

Care homes closed for visiting

I continue to closely monitor visiting in care homes and I am regularly provided with data collected through the Safety Huddle TURAS tool. Data on visiting is published here:

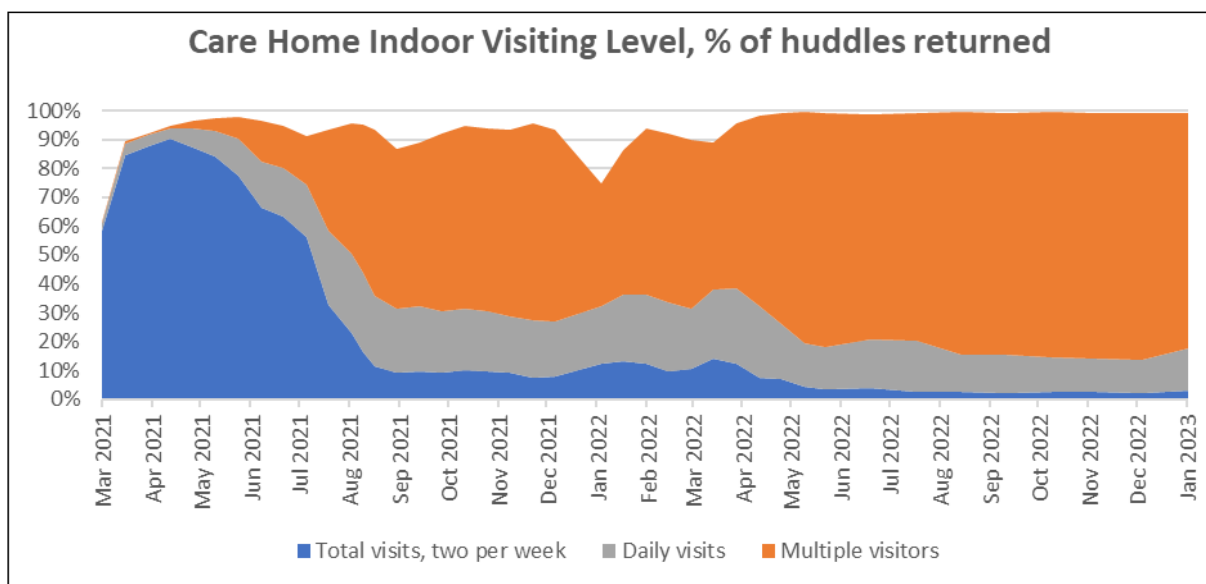
<https://publichealthscotland.scot/publications/>

The Safety Huddle Tool has been developed by Scottish Government and NHS National Education Scotland (NES) Digital as part of the response to the COVID-19 pandemic.

¹ Data provided by the Care Inspectorate, 9 January 2023
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This tool helps support the development of visiting policy and implementation of the 'Open With Care' visiting guidance: [Coronavirus \(COVID-19\): adult care homes visiting guidance - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/open-with-care-visiting-guidance/pages/1-introduction.aspx) This guidance has for some time recommended care homes enhance opportunities for connection within and outwith the care home to ensure that people are supported to enjoy fulfilled, meaningful lives free from restrictions as far as possible.

The below data shows care home indoor visiting status since March 2021.



I can confirm that recently, and for all adult care homes who have completed a return within the last 30 days, as at Sunday 8 January 2023:

- 905 adult care homes (or 90% of the 1,009 homes registered on the huddle tool who completed a return within the last 30 days) indicated that they supported indoor visiting. This proportion increases to 99% when we consider only homes which provided a huddle return for the week ending 8 January, similar to the week ending 11 December (99%).

Of the care homes supporting indoor visiting (905):

- 26 (3%) supported the minimum of up to 2 visits per week in the week ending 8 January, compared to 836 (86%) on 17 May 2021, the first date for which this breakdown was published.
- 136 (15%) care homes indicated they supported daily visits in the week ending 8 January, compared to 85 (9%) on 17 May 2021
- 743 (82%) care homes supported multiple visitors in the week ending 8 January, compared to 46 (5%) on 17 May 2021
- Overall, since May 2021, the increase in care homes supporting daily visits and multiple visitors shows that care homes are supporting more frequent visiting. It is positive to see a smaller proportion of homes are supporting the lowest indoor visiting level and a larger proportion are offering daily visits/multiple visitors.

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It is rare to see a care home closed for visits. I know that care homes work exceptionally hard to help maintain and maximise meaningful connections, this was evident during the Omicron wave and the recent spike in Covid-19 and influenza cases this winter.

I would like to reassure the committee that I keep a very close eye on ensuring that visiting continues to be supported, and is maximised, so that people living in care homes can maintain that contact with their friends and relatives. I fully expect care homes and local health protection teams to support people living in care homes to have visits from loved ones, even in an outbreak situation.

Anne's Law will underpin visiting rights by statute in the context of any future health threats and ensure consistent adoption of strengthened visiting guidance and the two new Health and Social Care Standards.

The two new Health and Social Care Standards I published in March 2022 have a strong emphasis on helping residents and their families stay connected and the Care Inspectorate considers how care service providers are upholding them in relation to registering and inspecting care services.

The Health and Social Care Standards can be found here: [Health and Social Care Standards: my support, my life - gov.scot \(www.gov.scot\)](https://www.gov.scot/standards/my-support-my-life)

When the two new Health and Social Care Standards were launched the Care Inspectorate issued guidance to services on implementing these which was sent to all services.

This guidance can be found here: [Health and Social Care Standards on visiting - guidance for providers - edit.pdf \(careinspectorate.com\)](https://www.careinspectorate.com/guidance/visiting)

In addition to the guidance the Care Inspectorate has also put in place a new quality indicator in their Quality Framework used at inspection. This states ' People experience meaningful contact that meets their outcomes, needs and wishes'. This covers visiting and provides examples of good and weak practice. Since 1 April 2022 all care homes inspected will have had this quality indicator assessed and evaluated/graded by the Care Inspectorate.

I have provided additional support and resource to the Care Inspectorate (£276,000 over the next two years) to enhance their role in supporting visiting rights through the 'Anne's Law and Connection for People in Care Homes project'.

This additional resource will enable the Care Inspectorate to proactively champion the implementation of the new standards and rigorously monitor its progress. This package of additional measures, materials and resources will provide support for care homes to develop new policies and help prepare the sector for Anne's Law.

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