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The Scottish Parliament

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28 March 2024

Dear Clare,

**NATIONAL CARE SERVICE (NCS) (SCOTLAND) BILL: SCOTTISH GOVERNMENT
RESPONSE TO STAGE 1 REPORT**

Thank you for the Committee's detailed consideration of the National Care Service (Scotland) Bill ('the NCS Bill') and the Stage 1 report.

I attach the Scottish Government's response to the points and recommendations made in the Stage 1 report in full. This follows on from my interim response of 28 February 2024, in which I wished to address points that the Committee wished to see in a faster timescale.

The National Care Service (Scotland) Bill has already been significantly influenced by a wide range of stakeholders and we have secured good engagement. However, we recognise the benefit of establishing an Expert Legislative Advisory Group (ELAG) to supplement and augment the current engagement and to bring specific focus, on this occasion, to the process for the further development of Stage 2 amendments. I am therefore pleased to advise you that an ELAG to support the next stage of work has been established, with the first meeting on 28 March 2024. The Scottish Government expects that a period of around 8-10 weeks will be required to ensure that engagement is thorough and robust to complete the necessary work that will be required to take the group's considerations into account.

The Scottish Government will therefore work constructively with the Parliament to agree timings for this Bill, particularly a Stage 2 deadline, that allows sufficient time for engagement and scrutiny to take place, whilst also recognising the role of parliamentary authorities and the time they need in supporting members ahead of amending stages of Bills.

The ELAG comprises members from the wide range of stakeholder groups established who have already been essential to the development of the policy intention for the NCS Bill. The first meeting will consider terms of reference for the Group and I will share these with the Committee once agreed.

If we are to maximise the benefit of the group, and work together meaningfully, the Scottish Government will need to engage with the group in relation to amendments that are proposed to be made. Whilst we have committed to providing the information requested in recommendation 108 as soon as possible, that material will require to be informed by the work of the group and it will not be possible to do that by 29 March 2024.

The full text of amendments intended to be lodged at Stage 2; a marked-up version of the Bill as introduced (incorporating the amendments in a highlighted format); an updated Policy Memorandum and Explanatory Notes, will be sent to the Committee no later than June 2024.

I hope that the detail provided in this response addresses the concerns of Members on certain elements of the Bill and that it assists the Committee going forward in Stage 2 of the Bill.

This information is reiterated in my response to the relevant recommendations (102 – 111), but I thought it would be helpful to highlight this to assist the approach for Stage 2.

I am copying this response to the other six committees who considered the Bill at Stage 1 with my thanks for their detailed scrutiny.



MAREE TODD MSP

Cc

Audrey Nicol MSP, Convener, Criminal Justice Committee
Stuart McMillan MSP, Convener, Delegated Powers and Law Reform Committee
Sue Webber MSP, Convener, Education, Children and Young People Committee
Kenneth Gibson MSP, Convener, Finance and Public Administration Committee
Ariane Burgess MSP, Convener, Local Government, Housing and Planning Committee
Collette Stevenson, Convener, Social Justice and Social Security Committee

RESPONSE

This paper provides the Scottish Government's response to the specific points and recommendations made by the Committee in their Stage 1 report.

For ease of reference, the Committee's points or recommendations are shown in bold text boxes and numbered in line with the report. The Scottish Government's response is given directly underneath those boxes. This response uses headings from the Stage 1 report.

NATIONAL CARE SERVICE PRINCIPLES

1. **The Committee notes generally widespread support for the principles set out in section 1 of the Bill. At the same time, it draws attention to significant areas where stakeholders feel the principles could be usefully clarified and strengthened. It therefore calls on the Scottish Government, in responding to this report, to set out what it will do to clarify and strengthen the proposed National Care Service principles specifically as these relate to:**
 - **Independent living**
 - **Right to rehabilitation**
 - **Self-directed support**
 - **Ensuring consistency of access and quality**
 - **Transferability across geographic boundaries and life transitions**
 - **Making reference to relevant equalities and human rights legislation**
 - **The "community first" principle**
 - **Fair work**
 - **Making direct reference to public protection powers and duties**
2. **The Committee highlights evidence that the principle that "services provided by the National Care Service are to be centred around early interventions that prevent or delay the development of care needs and reduce care needs that already exist"¹ is viewed by many as not suitably acknowledging the needs and circumstances of those in receipt of social care services who may be disabled, have long-term conditions or be approaching the end of life. The Committee calls on the Scottish Government to consider how this principle can be clarified, amended or supplemented to address these specific concerns.**
3. **The Committee calls on the Scottish Government, in responding to this report, to provide further detail on how adherence to the principles will be effectively monitored, evaluated and enforced as part of the creation of a National Care Service, including whether this would require additional provisions on the face of the Bill.**
4. **The Committee understands it is the Scottish Government's intention that the planned co-design process for the creation of a National Care Service will be informed and underpinned by the National Care Service principles. That being the case, it considers that further work to clarify and strengthen the NCS principles in the areas highlighted above should be completed to provide a suitable baseline of consensus for the co-design process to be defined and to proceed.**

Scottish Government response – recommendation 1

The NCS principles are key to setting the priorities for the NCS and our ambitions for social work, social care and community health. The Scottish Government has engaged extensively with a range of stakeholders and people with lived experience, including on all the areas set out in the Committee's recommendation.

The Scottish Government recognises the importance of all the areas noted by the Committee in this recommendation. As set out below, a number of these areas are already covered by the principles, and we will fully consider how the other areas identified may be reflected.

Independent living and right to rehabilitation

The Scottish Government is committed to respecting, protecting and realising human rights including Articles 19 and 16 of the Convention on the Rights of Disabled People (CRPD) regarding the right to live independently and be included in the community, and recognises the importance of rehabilitative care alongside early intervention and preventative care.

Individuals having access to person-centred rehabilitation at a time and in a format that suits them is an essential part of managing long-term health conditions and recovering from major health events. Officials have engaged with Chest Heart and Stroke Scotland and other members of the Right to Rehabilitation Coalition on how rehabilitation can be reflected in the principles and in the commissioning of services.

We welcome the evidence provided by the Committee with regard to independent living and agree with the views expressed by key stakeholders that support provided by the NCS will be essential in realising this right.

Self-directed support (SDS) and a "community first" principle

People with lived experience and stakeholders have repeatedly told us that if delivered effectively SDS could be a step change in realising article 19 of the Convention on the Rights of Persons with Disabilities ("CRPD"). We note the evidence from ENABLE highlighted in the Committee's report that reinforces what people with lived experience have told us, as well as making clear the importance of ensuring that people should be supported to access care in their own homes or in a residential setting dependent on their wishes.

The Minister for Mental Health, Social Care and Sport [recently wrote to the Health and Sport Committee](#) setting out the Scottish Government's ongoing commitment to the Coming Home Programme, and our commitment that everyone has a right to live in a home in their own community and to receive the support to do so.

However, because of poor understanding and low awareness of SDS, inconsistent availability across the country and other reasons, SDS has not yet achieved its potential. It is the Scottish Government's view that the NCS Bill provides the legislative underpinning for the systemic change required to provide consistent quality support across Scotland, including the improved implementation of SDS.

Ahead of the creation of the NCS, the Scottish Government is working in partnership with local authorities, third sector organisations and COSLA to improve the implementation of SDS through our SDS Improvement Plan, published last year. The improvement plan aims to ensure that the SDS principles of participation, dignity, involvement, informed choice and collaboration are fully embedded in social care support in Scotland. We are investing over £7m in the first year of the plan to support its delivery. In addition, we are relaunching our Support in the Right Direction Programme in April 2024 which provides local independent support, advice and advocacy to people who need social care.

The NCS principles will apply across NCS services and support and therefore do not include reference to specific services or approaches. It is therefore considered that it would not be appropriate to explicitly reference SDS here while not recognising the breadth of other services and approaches that will be key to the success of the NCS.

Ensuring consistency of access and quality, and transferability across geographic boundaries and life transitions

The NCS will provide the national oversight and improvement support required to ensure consistency of access to high quality community health, social work and social care across Scotland.

The Scottish Government notes the evidence provided from NHS Board Chief Executives recognising that there are geographical boundaries between bodies commissioning and delivering community health, social work and social care. This has been reflected by people with lived experience, some of whom shared negative experiences of moving between areas or feeling unable to move for fear that they would not receive the support they were accessing in their current area.

The Scottish Government will consider how this can be appropriately reflected in the principles.

In relation to children's social care, social work and community health services, the Scottish Government has a long-standing ambition to work across boundaries to improve outcomes for children and young people, move towards early intervention and prevention, create conditions to Keep the Promise, and uphold children's rights. It remains our priority to ensure that consistent and high-quality, joined-up support is available for children and families who need it, wherever they live in Scotland.

Extending the NCS principles, benefits and system improvements to children's services could create an opportunity to further our aspirations, may support achievement of strategic aims for delivering The Promise and, therefore, could result in improvements in children's services by presenting opportunities to:

- Address variation in access to and quality of services;
- Move to a more consistent national approach;
- Set standards of care and strategic planning;
- Reduce variation in thresholds for services;
- Improve accountability to Ministers and shift focus to early intervention;
- Improve alignment with community health services; and
- Improve transitions between children's and adult services.

Making reference to relevant equalities and human rights legislation

The NCS principles recognise care and community health services as essential to the realisation of human rights. This provision is deliberately broad to reflect the breadth of human rights engaged by community health, social work and social care.

Human rights for the purpose of section 1(a)(i), as introduced, encompass rights already ratified by the UK under international human rights treaties including: the European Convention of Human Rights; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination Against Women; the International Convention on the Elimination of Racial Discrimination; the UN Convention on the Rights of the Child (UNCRC); and the CRPD.

The NCS Bill itself, does not incorporate human rights instruments into domestic law. This reflects current domestic human rights legislation such as the Human Rights Act 1998 and the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act

2024, as well as the planned incorporation of additional human rights treaties through the planned Scottish Human Rights Bill.

Section 1(a)(i) recognises that services provided by the NCS are essential to the realisation of human rights, and section 1(e)(ii) sets out that opportunities are to be sought to continuously improve the services provided by the NCS in ways which advance equality and non-discrimination. It is therefore the Scottish Government's view that the legislative basis for the equality and Human Rights obligations are already addressed, and explicit reference would therefore be redundant.

The Scottish Government recognises the concerns of people with lived experience and stakeholders regarding the implementation of equality and human rights in service provision and support delivery. Through co-design, people shared experiences where their rights were not upheld, and staff shared barriers and challenges they faced in realising rights in their work. The NCS presents an opportunity to address these issues and initial work to realise rights and advance equality is already underway, including:

- Developing the NCS Charter of Rights and Responsibilities to support people to understand and claim their rights in relation to the NCS;
- Developing the NCS complaints service to enable people accessing care support to access complaints pathways and remedy when their rights are not met;
- Enhancing independent advocacy provision as a mechanism for empowering people to have their voices heard and participate fully in decisions about their care;
- Ensuring a consistent approach to inclusive communications so people receive information and express themselves in ways that best meets their individual needs;
- Undertaking an extensive programme of co-design to ensure that the development of the NCS is participatory and delivers for people accessing support; and
- Ensuring that any new public bodies under the NCS are accountable under relevant equality and human rights legislation.

This work will form part of a wider programme of work to advance equality and realise human rights in the NCS.

Fair work

The Scottish Government notes the various representations made to the Committee supporting the principle of fair work being embedded within the NCS. The Scottish Government has a long-standing commitment to support the delivery of fair work across the social care sector, in order to see standards, including pay, terms and conditions, raised above current statutory minimums in respect of commissioned services.

There is a considerable amount of work underway, ahead of the establishment of the NCS, to embed the five dimensions of fair work set out by the Fair Work Convention, across the sector. This includes supporting the payment of at least the Real Living Wage and, as called for by many stakeholders as well as the Committee, the establishment of a national Sectoral Bargaining Arrangement.

Sectoral Bargaining would allow the Government, local government, Providers and the Trade Unions to negotiate future pay, terms and conditions, underpinning the delivery of fair work across the sector in a sustainable manner and meeting the needs of both the workforce and the service users they support.

Making direct reference to public protection powers and duties

Within Scotland there is no legal definition of 'Public Protection'. It is a term used to describe the many different approaches used to prevent harm to the public including, in particular, vulnerable groups within society. It also encompasses protecting people from harm and supporting their recovery from it. Public protection areas can include child protection, adult support and protection, offender management, violence against women and girls, alcohol, drugs and other substance use and suicide prevention. Public protection requires to be understood as part of a continuum of services and support which spans prevention and early intervention, through to action which addresses high levels of risk or wellbeing need.

The Scottish Government and the SOLACE Public Protection Group are working together to understand how across local and national government we can improve 'public protection services.' The NCS Tripartite Group¹ are being kept updated on this work.

Chief Officer Groups (COGs), comprised of the Chief Executive of Local Authorities, the Chief Executive of Health Boards, and the Divisional Police Commanders are the accountable body for local public protection arrangements and will continue to hold this role. Together they have collective and individual responsibility for public protection, and its visible articulation within a number of statutory strategic planning and reporting requirements.

A National Public Protection Leadership Group (NPPLG) has been proposed jointly by the Scottish Government and the SOLACE Public Protection Group. It is intended that this group would address a gap in national multi-agency leadership of public protection. It would provide a space for local and national public protection leaders to bring vision and coherence to the public protection landscape, and to help drive continuous improvement across public protection areas. It is also envisaged that such a group could play a key role in sharing best practice, lifting the performance of areas to those who are implementing advanced practice. Further consideration will be given to how any proposed new National Public Protection Leadership Group would work with the roles and responsibilities of COGs, as well as with key national groups.

On-going consideration is being given to the nature of the assurance role for public protection which is intended as a function of the NCSB (NCSB). It is intended that the NCSB will have an assurance function for those services covered under the NCS.

We are considering opportunities to ensure that relevant individuals, organisations or parties who come into contact with adults at risk of harm are given a duty to co-operate with Adult Support and Protection (ASP) inquiries regardless of the design of future ASP services. This aims to remove discrepancy and delay in co-operation between parties who may wish to share relevant information but have uncertainty about the legal basis for sharing information where an adult may be at risk of harm.

Scottish Government response – recommendation 2

The Scottish Government welcomes this recommendation from the Committee and the evidence provided by stakeholders on the importance of services also centred on people with longer term conditions or increasingly complex needs at any stage in life, up to and including care around death.

Between 2013/14 and 2019/20, the percentage of time people spent in the community in the last 6 months of life increased from 86.4% to 88.2%. The number of deaths in Scotland is

¹ The Tripartite Group is a working group of officials from the Tripartite Agreement organisations of the Scottish Government, Cosla and the NHS.

projected to rise from around 61,000 (mid-2020 to mid-2021) to around 70,000 (mid-2040 to mid-2041), with implications for palliative and end of life care demand.

Projected estimates of palliative care needs in Scotland highlight particular increases in the number of people dying with a palliative care need amongst those aged 85 and over, and those with multi-morbidity (that is, with at least two diseases) by 2040.

It is the Scottish Government's intention that section 1(c) of the Bill reflects the ambition of the Independent Review of Adult Social Care's recommendation to "*shift away from crisis being the entry point to the system of social care support to a system that values prevention and early intervention.*" However, we note the concerns from organisations that provided evidence to the Committee that the framing of section 1(c) could be misinterpreted as a deprioritisation of continuing, palliative or end of life care and fail to recognise ongoing care support as essential in enabling people to live an independent life the way that they want.

We will continue to engage with stakeholders in relation to this, and consider how this can be best reflected in the principles.

Scottish Government response – recommendation 3

The NCS principles set out the core tenets by which the NCS will operate and will provide the legal foundation for our ambitions for the NCS. The Scottish Government is committed to ensuring that appropriate procedures are in place with regard to adherence to the NCS principles, as well as in relation to monitoring realisation of the principles across the system.

It is intended that through amendments to the Bill, the Scottish Government expects the National Care Service Board (NCSB) to be accountable to Scottish Ministers, local government, the NHS and the Scottish Parliament, including in relation to the NCS principles. We are engaging closely with stakeholders to ensure effective monitoring, scrutiny and performance improvement procedures are in place and, at this stage, it is anticipated that the NCSB will be required to set out how it will fulfil its agreed functions, including in relation to the realisation of the NCS principles; and through regular reporting set out how it has fulfilled its function, including in relation to the realisation of the NCS principles. In addition, it is expected that Integration Authorities will ensure the delivery of national standards and guidance align with the NCS principles.

The Bill, as introduced, also sets out that each care board must have an ethical commissioning strategy included within their Strategic Plan, which sets out their arrangements for providing services and how those arrangements have been designed to ensure they best reflect the NCS principles. Work is underway with partners to develop national principles, standards, guidance and practical support for ethical commissioning and procurement which will be agreed and set by the new NCSB, to inform the development and delivery of local ethical commissioning strategies.

Scottish Government response – recommendation 4

Co-design of the NCS is underpinned by the NCS principle that "services provided by the National Care Service are to be designed collaboratively with the people to whom they are provided and their carers" at section 1(d) of the Bill, as introduced.

Over 1,000 people with lived experience of accessing care or of providing support as a carer or of delivering care services as well as 112 stakeholder organisations have been directly involved in the programme of co-design on the NCS that has been carried out so far. Due to

the breadth of this work the co-design has touched on all of the NCS principles set out on the face of the Bill as introduced, as well as in relation to the areas set out by the Committee at recommendation one. For example, across the five co-design themes the following areas raised by the Committee have been explored:

- **Realising Rights and Responsibilities** – this theme has focused on how to realise rights through the NCS Charter of Rights and Responsibilities, including how the Charter can support equality, raise awareness of SDS and help people get the support they need to live independently. The importance of public protection was also raised throughout the development of the Charter and the need to balance rights to keep people safe.
- **Keeping Care Support Local** – this theme has actively aimed to address how support can be developed at a local level and how this might be achieved given geographic boundaries, as well as exploring questions in relation to the delivery of community health
- **Information Sharing to Improve Care Support** - insights from this work have supported the understanding phase exploration of the potential role of an integrated health and social care record, as well as exploring how people access information regarding their social care support
- **Valuing the Workforce** - extensive co-design regarding the workforce and fair work, including in relation to a potential workforce Charter.
- **Making Sure my Voice is Heard** – insights from this work have supported the understanding of potential improvements in relation to the role of independent advocacy as well as complaints.

As the programme moves into the next phase of work, insights from ongoing co-design engagements are being used to support the development of amendments to the bill, as well as providing opportunities for participants to engage in exploring options for how the NCS could work once live. All of this work remains aligned to the core principle of engagement as outlined above.

CO-DESIGN, TIMELINE AND SEQUENCING

- 5. While acknowledging the Scottish Government's intention to utilise co-design as a key mechanism for developing the details of the proposed National Care Service once the framework legislation is in place, the Committee has heard evidence from multiple stakeholders that there appears to be an ongoing lack of clarity regarding the definition, the precise scope and key areas of focus of co-design or the anticipated outcomes of the co-design process.**
- 6. The Committee calls on the Scottish Government to acknowledge concerns from many stakeholders that the consensus agreement concluded between it and COSLA and the way in which this was arrived at has undermined the confidence of many of those who have participated in co-design so far that their views and input are being taken seriously.**
- 7. The Committee considers that there is a common interest for everyone involved to proceed with the process of reform in as well-planned, incremental and transparent a way as possible. In this context and to ensure its successful delivery, the Committee calls on the Scottish Government to recognise the critical role the Scottish Parliament has to play in undertaking systematic stage-by-stage scrutiny of the implementation of proposals for a National Care Service as set out in the current Bill, including in relation to the outcomes of the co-design process.**
- 8. Given the extreme pressures currently being faced by the social care sector, the Committee seeks further reassurance from the Scottish Government that it is committed to ensuring the process of designing a National Care Service is managed in such a way as to avoid diverting attention from a necessary ongoing focus on the delivery of frontline care.**
- 9. The Committee acknowledges the updates the Scottish Government has provided regarding the most recent progress on co-design. At the same time, reflecting the evidence it has heard to date, it believes those engaged in co-design would find it helpful for the Scottish Government to set out an overarching plan that includes a clear definition of co-design, parameters and intended outcomes of the co-design work and a timetable for its completion. This co-design plan should also provide details of the support the Scottish Government will provide to enable key stakeholders to engage properly with co-design. It should also set out how the Scottish Government will keep the Scottish Parliament regularly updated on progress and outcomes of the co-design process.**
- 10. The Committee calls on the Scottish Government, in bringing forward amendments to the Bill as introduced, to provide detail of the extent to which and in what ways the co-design work undertaken to date has informed the content of these amendments.**

Scottish Government Response – Recommendation 5

We recognise the concerns that stakeholders have raised and will continue to work with our Social Covenant Steering Group and Key Stakeholder Reference Group to ensure we are providing the clarity and detail the Committee calls for.

Co-design in the context of the NCS programme is the process of::

- creating opportunities for people and organisations who will be affected by a policy to share their experiences i broaden understanding,
- asking their reflections on broader evidence gathered and how that is being interpreted by officials – do they disagree with any of our conclusions, have we missed anything they think is important, etc.,
- providing opportunities for them to work together with officials on generating and testing options for how things might be different
- and providing opportunities to play an active part in developing recommendations for change.

Co-design provides the Scottish Government the opportunity to test its understanding of what works, what doesn't, and where change efforts should be directed. It also helps ensure that proposals for change are practical, implementable, and created from the outset with continuous improvement in mind. Policy teams actively participate in co-design sessions with people with lived experience of accessing and delivering care and with stakeholders. The outputs of co-design sessions (insights and ideas for change) are shared widely across the programme when considering policy decisions. The outputs of co-design are reported publicly and how outputs have informed policy is tracked.

A key area of focus through Stage 2 will be development of proposals in relation to the NCSB and supporting operational mechanisms such as complaints and redress processes, the finalising of the charter of rights for those accessing care, the development of proposals around standards, and an escalation framework where standards are not being met or improvements not delivered. We provide more detail on the timetable for these and how outputs will be used in response to recommendation 9 (below).

Whilst we always publish reports on co-design activity, we recognise the opportunity, building on the Committee's recommendation, to publish summaries across all co-design activity of how that work has informed the Bill and operational delivery thinking and decisions. We will therefore look for the earliest opportunity to publish a report on how co-design has informed policy thinking and the Bill thus far, and commit to continue to do that as the Bill and the operational delivery of the NCS progresses.

Scottish Government Response – Recommendation 6

The Tri-partite Agreement between the Scottish Government, COSLA and the NHS on joint accountability provides the foundation upon which the detailed proposals for the National Care Service can be co-designed with people with lived experience and organisations. We recognise the concerns of stakeholders and continue to seek to provide every opportunity possible to co-design the detail of how that Tri-partite Agreement will work in reality.

Scottish Government Response – Recommendation 7

We recognise the critical importance of Parliament having the opportunity to effectively scrutinise the Bill. We are committed to ensuring that the lead committee (as well as any other committees considering the Bill) have the opportunity to review and scrutinise implementation detail and findings from co-design activity as they develop.

Scottish Government Response – Recommendation 8

It is important that we do not make change for the sake of it. Instead, we will keep the existing knowledge and good work whilst improving the areas we know desperately need reform. While the Bill as introduced set out provisions for new local care boards to be established as public bodies, we are of the view that intended reforms can be achieved within the existing structures and the creation of new local public bodies is therefore no longer necessary.

Notwithstanding the above, the Scottish Government remains of the view there is a clear case for reform, with significant changes needed at local level to realise the intended quality and consistency. In other words, the status quo is not acceptable. We therefore remain committed to working with everyone affected by the change to ensure any transition is as smooth as possible

Children's Services Reform Response

The Committee will be aware that independent research was commissioned to help us answer the question 'What is needed to ensure that children, young people and families get the help they need, when they need it?' This research has already provided considerable insight into care systems both at home and internationally. A solid evidence base is offered for improvements that can be made alongside structural changes. Therefore, while we explore how to best ensure that NCS principles, benefits and system improvements can be offered to both adults and children equally and consistently across Scotland, we continue working towards improving outcomes for children and families, and the workforce who care for them.

By way of example, almost £80 million has been allocated in this year's Budget to support our ongoing commitment to The Promise and support investment in fostering, secure care and Children's Hearing System redesign. Some additional £500 million is being invested in the Whole Family Wellbeing Fund over the course of this Parliament to improve holistic approaches to family support. We continue working in partnership with COSLA and other key stakeholders to collaboratively advance an agenda of improvement, which will explain how tangible and meaningful improvements will be delivered.

We are also committed to working towards consistency for the workforce in improved pay and conditions and access to training and development.

Within the Programme for Government there is a commitment to supporting a minimum payment of £12 per hour to those delivering direct social care, including those providing direct care to children and young people in commissioned services. For the many workers who were previously only entitled to the National Minimum Wage, this would represent an increase in pay of 15.2% compared to April 2023.

This is a positive step towards parity across the children and adult social care sector. We are committed to attracting and retaining the right people, developing them in their roles and raising the status of social care as a profession.

We are working with SSSC and key partners to promote career opportunities, upskill and develop the workforce, address recruitment and retention issues, and ensure the sustainability of children's services in the long term.

Scottish Government Response – Recommendation 9

We remain committed to working with people with lived experience of accessing support and services as well as those who deliver care support and services, including carers, and stakeholders in order to ensure decisions made about the Bill and the operational delivery of the National Care Service drive the reform people and organisations have told us they need, reflects and supports what already works, and drives change where it is needed.

As the Bill progresses, we are clear that co-design will both continue to add detail to the decisions already made as well as surface new issues that may need to be addressed in secondary legislation or in delivery detail. To the extent that provisions are necessary in primary legislation, we believe we have completed the co-design work necessary for these. Where co-design is addressing primary legislation content, it is for the purposes of developing the implementation detail of these. For example, on the question of the composition of the NCSB, through engagement with key stakeholders and co-design we have already decided that Board membership must include people representing the Scottish Government, local government and the NHS as well as people with lived experience. What needs provision for in the Bill is those core membership categories. However, we also know that many others will have an interest in joining the Board. Therefore, future co-design will address the question of what other categories of board member the NCS should have.

We recognise the opportunities to improve how we engage people and organisations in co-design and thank the Committee for their suggestions, all of which we agree would be valuable. Responses on each point raised follow.

Definition of co-design

We have provided this in the answer to recommendation 5 (above). We will increase our efforts to ensure that people engaging are aware of this and will publish this alongside the plan for co-design in 2024/25 and details of how people can get involved.

Information and support for those involved in co-design

When people and organisations wish to engage in a co-design activity, we provide detailed information on co-design itself as well as the rationale, parameters and intended outcomes, including timetable, of the activity. We provide this information in written form and at information sessions that are offered to everyone with an interest in taking part. We recognise that more proactively publishing this information across all co-design activities would be helpful and will take steps at the earliest opportunity to put that in place.

Similarly, after an activity has completed, we provide those who took part with a report on the outcomes. We recognise that does not always help those who engaged see the impact of their input. Therefore, we will look to more clearly articulate the relationship between each co-design activity and aspects of the delivery of the Bill and the NCS. We will then look to publish co-design impact reports regularly as decisions are reached on areas of the National Care Service being co-designed.

Information on co-design progress and impact for the Committee

We propose that alongside the co-design outcomes reports the Committee already receives we provide co-design impact reports as discussed above and regular updates on co-design delivery against the high-level plan for 2024/25 set out below. It should be noted that in co-design new areas for co-design work may emerge as a by-product of the process itself, or in response to changes to the Bill as it proceeds through Parliament. We will ensure these are drawn to the Committee's attention in these updates.

Support for key stakeholders

We acknowledge the feedback on key stakeholder support the Committee has heard. Current arrangements include:

- promoting membership of the Stakeholder Register as a key mechanism to learn about and engage in co-design activities, hear about the outcomes of co-design, and feedback on co-design insights and proposals generated by others
- providing a range of online and in person opportunities to participate for the benefit of both those with lived experience and stakeholders
- work with key stakeholders on the locations and timings of events - for example on stakeholder feedback we ran sessions in the early evening and used venues recommended by stakeholders or close to key stakeholder workplaces
- the provision of information sessions to find out about co-design and how to take part.

We will work with our Key Stakeholder Reference Group and members of our Stakeholder Register to identify and put in place further improvements to the support they need to engage in co-design and report on these to the Committee.

Co-Design Plan 2024-25

The plan for co-design with people with lived experience of accessing community health and social care services and support, people with experience of delivering services and support, including carers, and stakeholders in the financial year 2024-25 is provided below. We have indicated where work is expected to be focussed, although it should be noted that in several cases work will extend beyond the year.

As before, it should be noted that participants may identify areas that have been missed, or different topics and approaches that may be needed in certain areas. Similarly, the results of other stakeholder engagement may lead to adjustments. We also recognise that as the Bill proceeds changes may be needed to respond to feedback from the Scottish Parliament and ministers. We will make sure the Committee's attention is drawn to any such changes through regular reporting.

Programme Delivery Area	Co-design Topics	Key Outputs	Programme Priority Areas Co-Design Will Inform	Impacts Decisions Expected In
NCSB March to September 2024	Feedback on NCSB scope / functions proposals.	Feedback on existing proposals for scope of functions, is anything missing, does anything feel unnecessary, how should these functions be delivered?	NCSB Outline Business Case.	Q1
	What does NCSB need to be able to do those things.		Define and agree NCSB Functions.	
	How can we ensure support and improvement is put in place when needed and is effective.	Support and improvement proposals.	Draft support and improvement framework.	Q1 & Q2
	Feedback on draft framework.			
	How should the NCSB membership be structured over and above the core	Numbers and categories of NCSB members proposals.	Agree membership.	Q1 & Q2

	membership already agreed?			
	What support should NCSB members be able to access to discharge their duties effectively? What kinds of skills, roles and responsibilities should all NCSB members have?	Identification of needs of NCSB members by category.	Agree NCSB membership.	Q1 & Q2
	How can we ensure the NCSB appointment process is effective and inclusive?	Identification of recruitment and appointment key needs by NCSB member category.	Confirm NCSB appointment process.	Q1 & Q2
	How can we ensure that the right kinds and levels of opportunities are in place for involving diverse lived experience and stakeholders in decision making?	Ideas for involving diverse people with lived experience and stakeholders Identification of needs of those people and stakeholders in order to be effectively involved.	Establish support for members and support structures for involving diverse lived experience and stakeholders in decision making.	Q1 & Q2
	Review of proposed accountability and oversight proposals.	Feedback on proposed accountability and oversight proposals.	Confirm accountability and oversight – including Memorandum of Understanding between Scottish Ministers, local government and health boards.	Q1 & Q2
	How will the NCSB and the IA's work together to improve care?	Identification of key requirements for effective shared accountability and governance.	Define shared accountability and governance with reformed IA's.	Q1 & Q2
	How can we introduce the board effectively and with minimal disruption?	Identification of key requirements for shadow and day 1 board.	Agree scope of shadow and day 1'	Q1 & Q2
Legislation	Review of NCSB regulations	Feedback on proposed NCSB regulations.	Delivery of the NCS Bill Legislative orders/regulations. Lay NCSB regulations.	Subject to Bill being agreed by Parliament
	Review of amendments – what do we need to do to deliver on these in practice?	Feedback on amendments	Agreement & laying of stage 2 amendments	Q3
	Review of any impact assessment revisions	Feedback on impact assessments	Revised islands impact assessment and any other IA where necessary	Subject to Bill being agreed by Parliament
NCS Functions	What standards should apply to deliver on the ambition and principles of the National Care Service?	Feedback on proposed standards and identification of proposed changes. Potentially, new standards proposals. Ideas on monitoring of	National social care standards. Monitoring & Reporting requirements and associated data	Q3

	<p>How can standards best drive consistency and quality?</p> <p>How should delivery against standards be monitored?</p> <p>Review the current health and social care care standards across social care support and the wider landscape</p>	standards.	collection.	
	<p>What data needs to be collected and how should it be reported to ensure the NCSB can monitor the delivery of social care?</p>	<p>Reviews of proposed data collection and reporting requirements.</p> <p>Suggestions for new data categories</p> <p>Ideas for simplifying and streamlining data collection and reporting to reduce duplication of effort</p>	Monitoring & Reporting requirements and associated data collection.	Q3
	<p>How can we ensure support and improvement is put in place when needed and is effective?</p>	Support and improvement proposals	Draft support and improvement framework.	Q2
	<p>Does the draft NCS charter cover everything it should, is it clear how and when to use it and what it means?</p>	<p>Improvements to charter contents and design</p> <p>Ideas for ensuring the NCS Charter is usable, accessible and inclusive and effective</p>	NCS Charter – draft Charter.	Q4
	<p>How can we ensure that national workforce planning supports the aims and principles of the NCS?</p>	Review of proposals, understanding tools, skills and structural requirements / dependencies and impacts for effective planning at local and national levels	Workforce planning	Q2
	<p>How do we ensure that when commissioning services we have understood what people need to support their lives, and what those who deliver support need to be able to do that?</p>	Ideas for standards, processes and guidance to support ethical commissioning	Ethical commissioning	Q4
	<p>How might we deliver ethical commissioning through procurement within the NCS. Including but not</p>	Ideas for standards, processes guidance and tools, to embed an ethical procurement approach	Ethical procurement.	Q4

	<p>limited to: How might we effectively involve people with lived experience within the procurement process?</p> <p>How might we support the delivery of fair work in the NCS through procurement, such as understanding what good looks like for the workforce?</p> <p>What might a human rights approach to procurement look and feel like, are their barriers to flexible outcome focussed care and how might we address these?</p> <p>How might we ensure that when procurements are happening, they, as proportionate and relevant, meet ethical commissioning standards, and consider the principles of the NCS and the sustainable procurement duty?</p>			
	<p>Review what we have learned about current complaints system – what works and what doesn't for those making complaints, those answering complaints and actions on complaints.</p> <p>Develop proposals for addressing issues surfaced.</p>	<p>Requirements and user (people making a complaint, people dealing with complaint and response) needs for complaints service.</p> <p>Evaluating prototypes of complaints services.</p>	<p>Complaints and redress</p>	<p>Q3</p>
	<p>Review what we have learned so far about independent advocacy (what people have told us, how different models of advocacy work, gaps that currently</p>	<p>Proposals to enhance the provision of independent advocacy and how this these will work within the structures of the National Care Service.</p>	<p>Independent advocacy.</p>	<p>Q4</p>

	<p>exist in provision) .</p> <p>Consider how improvements can be made to advocacy provision for people accessing social care support and community health services , and how these will work in relation to the NCSB and reformed Integration Authorities.</p>			
	<p>How should the NCS ensure that co-design continues to inform the design of local services and the work of the NCSB?</p> <p>What kinds of support do local delivery organisations, people with lived experience and stakeholders need to co-design services?</p>	<p>Proposals for scope of NCS support function for co-design</p> <p>NCS Design School requirements for delivery organisations, people with lived experience, and stakeholders</p>	<p>Define scope of NCS Design School support offer</p>	<p>Q4</p>
	<p>Does the National Commissioning Blueprint support the approach to ethical commissioning.</p>	<p>Feedback on the blueprint.</p>	<p>Agreement of national commissioning blueprint.</p>	<p>Q4</p>
	<p>Who should be involved in approving local strategic plans and what should the process to get there look like?</p>	<p>Feedback / thoughts on existing processes. Proposals for future processes.</p> <p>Proposals for who should be involved in approving.</p>	<p>Approval of local strategic plans.</p>	<p>Q4</p>
	<p>What role should people with lived experience and stakeholders play in strategic planning?</p> <p>What are the features of effective strategic planning that should be built into guidance?</p> <p>Do the conditions exist to deliver on the guidance, what needs to be in place to support this?</p> <p>Is the guidance usable and accessible?</p>	<p>Reviews of guidance proposals.</p> <p>Proposals for guidance scope and contents.</p> <p>Usability and accessibility testing.</p>	<p>Strategic planning guidance.</p>	<p>Q4</p>

	<p>Do the proposals for the Scottish Learning and Improvement Framework for ASC and Community Health help the NCS deliver its vision?</p> <p>The SLIF has been developed to focus and track improvement across the outcomes that matter to people.</p> <p>Is the framework usable and accessible?</p>	<p>Feedback on proposals and suggestions for implementation.</p> <p>Identification of any barriers or challenges that may impede delivery of the Framework.</p> <p>Usability and accessibility testing.</p>	<p>Complete understanding phase co-design for SLIF.</p> <p>Sensemaking phase testing on draft Scottish Learning and Improvement Framework, which has been co-designed for ASC and Community health.</p>	<p>Q3</p> <p>Q4</p>
	<p>How can we ensure that the workforce and leaders have the culture and leadership conditions needed to deliver on the vision of the NCS?</p> <p>How can we ensure that the workforce that will deliver services and support that fall under the remit of the NCS includes all the professions it should?</p>	<p>Prototype Culture & Leadership strategy</p> <p>Workforce definition feedback</p>	<p>Workforce Culture and Leadership - Prototype Culture & Leadership strategy for change ready for discussion with the NCSB</p> <p>Workforce definition (agreed definition of the workforce as it applies to the NCS Bill)</p>	<p>Q4</p>
<p>National Social Work Agency</p>	<p>What is the vision for the social work profession - what should it look and feel like, what should it support, and how should it function within the context of the NCS?</p> <p>What functions does the NSWA need to support the vision for social work?</p>	<p>Review of vision for social work in Scotland – is it right for the profession, the NCS and health and care system, and people who access social work services?</p> <p>Review of proposed NSWA functions.</p>	<p>Define and agree NSWA functions /shared services.</p> <p>Agree scope of shadow and go live</p> <p>Develop vision for social work in Scotland</p>	<p>Q2</p>
<p>Integration Authority Reform</p>	<p>Review proposed approach to direct funding.</p> <p>How should local and national boards work together?</p> <p>Review proposed governance arrangements.</p>	<p>Feedback on proposed approach to direct funding</p> <p>Identification of key opportunities for local-national working.</p> <p>Feedback on proposed local – national board</p>	<p>Define approach to direct Funding and develop funding formula</p> <p>Define governance arrangements with NCSB.</p>	<p>Q4</p> <p>Q4</p>

		governance arrangements.		
	What should board members be able to access to be able to discharge their duties effectively?	Identification of needs of board members by category.	Local board governance and chairing arrangements defined.	Q3
	How can we ensure the board appointment process is effective and inclusive?	Identification of recruitment and appointment key needs by board member category.	Local board membership and representation of lived experience voices agreed.	Q2
	What does 'good engagement' in communities look like and how can we ensure that is consistent across the country? How should communities and the workforce be engaged in the reform of localities?	Definition of good engagement Recommendations for ensuring consistency across the country while respecting local differences / needs. Recommended approach to community and workforce engagement in local reform.	Reform of localities and community engagement.	Q2
Integrated Health and Social Care Record	Further development of the intended Day 1 integrated social care and health record. Reviewing proposed integrated social care and health record iterative development plans and specification for what will be delivered at the inception of the NCSB.	Developing prototypes of the record based on insights from the previous Understanding phase. Testing and evaluation of the prototype record.	Agree 2026 deliverables. Prototype of the record developed and tested.	Q4
	How will a range of workforce roles use and access the Record?	Identification and articulation of wider workforce user needs	Additions to Co-design Service Blueprint for Integrated Social Care and Health Record	Q4
NCS Scope	How can we ensure that people transitioning from one set of services to another (for example from Children's Services to Adult Social Care Services) are supported in ways that ensure the transition is as smooth as possible?	Proposals for how to minimise that disruption. Prototype 'transition journey' to Adult Social Care Services	Development of pathway to delivery.	Q4

	How should community and mental health, alcohol and drug, social care and social work services work together to deliver services around the person in the most cohesive way possible?	Identification of key areas that may experience friction or challenge during incorporation.	Further define community and mental health, alcohol and drug services in scope of NCS and determine path to delivery and incorporation	Q3
	What would ensure that for people who access and deliver services the introduction of the NCS is achieved in a way that minimises disruption?	Identification of key needs of people transitioning, and the people and organisations involved in delivering services.	Agreement on approach to alcohol and drugs partnerships.	Q4

Scottish Government Response – Recommendation 10

We recognise the Committee’s call for further detail on way co-design work has and will inform the content of amendments. We provide information on these below and will provide a further update on future amendments.

Since February 2022 and March 2024, the NCS Programme has been engaging in a range of co-design activities in support of the development of the policy proposals underpinning development of the NCS bill.

We identified, through considering the findings of the Feeley Review and the Scottish Government’s consultation the key thematic areas where people expressed the strongest concern. These shaped the five co-design themes used in the initial understanding phase activity we have conducted, and the outputs of that work are now informing development of policy proposals across a range of areas. This work will continue with the next phase of co-design activity, which is focused on ‘sensemaking’ engagements to explore and test policy proposals at greater level of technical and operational detail.

Through this period of ‘understanding phase’ activity, over 1,000 people with lived experience, as well as 112 stakeholder organisations, were directly engaged in a range of co-design activities that sought to provide opportunities for people and organisations affected by a potential policy to share their experiences in order to broaden understanding. They also provided an opportunity for people and organisations to feedback on the interpretation of this evidence officials had made and to challenge on evidence or issues they felt we had missed. These activities included:

- a series of summer regional forums,
- a national forum,
- surveys,
- smaller group engagements including; working groups to look at sub-themes such as an External Working Group for complaints and redress, an islands engagement group, a charter stakeholder engagement programme, a series of organisations working as part of the ‘seldom heard voices’ programme of activity, co-design

sessions with unions, surveys for the 565 Lived Experience Expert Panel members, as well as bilateral engagements between organisations and policy teams.

The insights gained for all of this activity have been used by policy officials alongside other forms of commissioned research, evidence gathering and engagement in the development of policy instructions and the amendments to the bill. A summary of the key areas where co-design has informed work on the Bill are summarised below.

The charter

The co-design work supporting development of the charter has so far produced 95 core insights, each of which are an aggregation of perspectives and experiences that have been shared with us through the co-design engagement activities conducted to date. Officials have used these to develop an early draft of the Charter and will continue to explore them as development of the draft progresses.

Co-design and engagement in the first phase generated the themes required for the charter, then co-design activities in the second phase supported further development of content to create an early draft which will be further explored and developed in a third phase of co-design and engagement with both people with lived experience and stakeholders.

Insights have also generated potential recommendations which the Scottish Government is actively considering in advance of Stage 2.

National Care Service Board ('NCSB')

Work undertaken as part of summer regional forums and engagement with seldom heard voice groups has provided a range of co-design insights.

These have included:

- The proposal that NCSB members should be integrated into the local communities and should be from areas across Scotland.
- That members could be selected to the NCSB for a certain amount of time to avoid 'life membership'.
- That there needs to be a range of different methods for involving people in decision making, so that people could engage on their own terms.
- That lived experience representatives faced a range of challenges when taking part in formal decision making - including inaccessible papers, insufficient time to gather/understand the views of all those they represented, and insufficient importance attached to their views.
- That training, accessible, ongoing support, remuneration and structures to empower people with lived experience will all be required to ensure that people can meaningfully engage.
- That the NCSB should have a role in driving and monitoring continuous improvement.

There were also concerns that the NCSB would increase bureaucracy and clarity was needed on where the NCSB would add value.

We will continue to involve people with lived experience and stakeholders in deciding what 'good' looks like when it comes to measuring the success of the NCSB.

The NCSB should be transparent to ensure that it is adding value, to ensure that its membership is accountable and to ensure that it is meeting its objectives effectively. The NCSB will be required to provide appropriate support to ensure the participation of individual lived experience representatives, including ensuring that the membership of the NCSB

includes people with a lived experience of accessing care or working in care. It will also establish and support such structures beneath the Board, as are necessary to enable people with a variety of lived experience across Scotland to make a meaningful contribution to decision making.

The NCSB will have the ability to effect material change where monitoring indicates local performance has fallen below expected standards, and initial support has not resulted in necessary improvements.

Further details of governance and NCSB membership composition will be co-designed through the next phase of sensemaking co-design work.

Local delivery

Scottish Government engagement with Integrated Authority Chief Officers highlighted significant variation in the size of localities across Scotland and how they function. The independent review of adult social care stressed the importance of amplifying the voice of lived experience in every part of the social care system. It recommended that integration authorities and locality planners do more to build the user voice into their considerations. Stakeholders such as the Coalition of Care and support Providers in Scotland (CCPS) and the National Carer Organisations have provided feedback that the bill could do more to explicitly embed co-design with lived experience into the core processes of the NCS.

Through engagement with the Integration Authority Lived Experience Network, we heard that there is a lack of clarity on what is expected from the board member role and the support available to carry it out effectively. Although it is recommended that all members should receive an induction covering their post requirements, roles and responsibilities, there is inconsistency in the level of induction and training across Integrated Authorities.

The 'understanding phase' co-design sessions through the summer also identified key priorities for further targeted co-design and legislative amendments.

As a result of these co-design insights, we will enhance the voice of lived experience at all levels of decision making. We will take forward the recommendations of the independent review to give voting rights to all public partners on Integration Authority boards. We will be exploring the following via ongoing co-design work:

- Expanding the membership of Integration authorities to include additional lived experience representatives.
- Lived experience representatives should be empowered to contribute fully in decision making.

We will further explore how to reduce barriers to participation through:

- Ensuring lived experience representatives receive appropriate induction and ongoing training and development.
- Addressing logistical barriers to participation such as arranging paid care for representatives to attend meetings and providing reasonable expenses.
- Increasing the accessibility of documentation through providing papers in Plain English and easy read format.
- Improvements to those processes used to recruit and appoint lived experience representatives

- Creating opportunities for individuals with lived experience from the grass roots within localities their voices heard so that decisions are taken as close to the citizen as possible

We will explore how people with lived experience, and any other relevant stakeholders should be involved in the drafting of strategic plans for local integration authorities, as opposed to as consultees at the point a draft has been completed.

We will also develop the mechanisms for strengthening localities through co-design with stakeholders and locality managers.

Complaints and Redress

Through desk-based research, we identified what appears to be working well, and not working well in relation to complaints. We shared a summary of our findings with people during co-design understanding phase sessions and together explored our understanding of this. Insights from sessions with people accessing social care have told us that:

- They are confused about the current complaints process and do not find it easy to navigate.
- There is a lack of accessible information on how to complain.
- There are too many organisations that deal with complaint issues, and that it can be difficult to find the entry point for complaints.

The policy intention following these engagements is now three-fold:

1. To strengthen complaints and redress systems
2. To implement reforms, agreed as part of the co-design process, to how complaints are handled, including any redress.
3. Ensure the NCSB and any nationally commissioned/provided services delivered by the NCS are brought under the jurisdiction of the SPSO.

The insights have informed the development of intended amendments to support this policy development as well as also informing priorities and ideas to be explored further in the subsequent 'sensemaking' phase of co-design which is now commencing.

Justice Social Work

The co-design with justice stakeholders delivered via; specific in-person and virtual workshops, a reference group, and workforce panel in addition to participation in wider NCS co-design activity, has afforded a range of insights, including:

- The strengths and weaknesses of current justice social work (JSW) practice, including reflections on how this relates to structural changes
- Areas for development and, in some cases, clear actions which can be progressed
- Understanding the role of JSW and how this relates to the NCS and the ambitions therein. This includes reflecting joint working across the social work, social care and community health professions, whilst also being clear on the distinct 'justice' element of their role.
- A range of potential concerns and opportunities in regard to JSW becoming part of the NCS, including a positive response to the shared accountability agreement from different stakeholders.

Insights from all of this work have been central to the programme of work to inform a decision on the inclusion or not of JSW within a future NCS and to identify areas for supporting the future development of JSW.

Community Health

The 2023 summer forum co-design work resulted in a collation of 88 individual insights from people with lived experience and stakeholders in relation to the theme of local care support and community health services. These insights were each an aggregation of shared experiences and perspectives collated from all the co-design activities undertaken. These insights will be used to inform ongoing engagement with community health stakeholders to help to determine the scope of community health within the NCS and inform how the NHS will interface with the NCS in terms of the set-up and delivery of the NCSB, its Support and Improvement Framework and reform of local structures.

This engagement will help determine priority areas for ongoing co-design engagement through the 'sensemaking' phase, where options will be explored and tested with stakeholders and people with lived experience.

Ethical procurement

Engagement with Chief Officers and Chairs of Integration Authorities highlighted some challenges related to delivery of Integration Authority Strategic Plans through procurement. Examples of these challenges were provided. This evidence is being used to develop a Bill amendment with the intention of providing for closer alignment between procurement strategies and integration authorities strategic plans. This would only apply to the community health and social care categories of spend and where a public body is delivering against the Integration Authority strategic plan.

Independent Advocacy

Insights from co-design engagements uncovered a range of suggestions in relation to the importance of independent advocacy in supporting people to participate fully in decisions about their care. A recurring theme has been the different models of independent advocacy – issue-based/professional, one peer, citizen and collective – and how these can empower people to have their voices heard. These models will be explored in the next stage of co-design – sensemaking – as we consider improvements. In addition, we will explore with people with lived experience the importance of independent information and advice.

Information Sharing

Co-design engagements on the topic of information sharing provided clear feedback that people desire to be able to access, and where appropriate, add to data pertaining to all of their social care support.

Intended amendments on the scope of section 36 of the NCS bill to include children's and justice services are underpinned by people's desire to be able to access, and where appropriate, contribute to data pertaining to all of their social care support.

The intended amendments also reflect the need for community health, social care and social work professionals to have access to the right data at the right time in order to address the issues raised in understanding phase of co-design.

National Social Work Agency (NSWA)

A range of co design activity has been undertaken with stakeholders and people with lived experience of social work which has informed us of the many issues affecting the social work profession currently including; variation in learning and development support, variation in pay

and grading, workforce issues including vacancies, high attrition rates and complexity in caseloads, lack of practice standards and long term career pathways.

All of this information is being used to inform the scope and functions of the NSWA and to develop a partnership approach with employers and leadership organisations from the sector to ensure the needs of the workforce are at its core.

Co design insights are informing the function and scope of the NSWA as well as the partnership approach which will underpin it. We have also built on early codesign work to begin development of a shared Vision for Social Work with key partners and frontline social workers. This engagement will also inform our Stage 2 amendment, which will ensure that the role of the Chief Social Work Adviser is strengthened to ensure their role in providing independent advice on social work issues and performance across the sector.

Prioritisation and models of care

People told us that they are concerned about moving as different approaches to eligibility criteria are taken by different local authorities. They also told us that they didn't understand eligibility criteria and that no-one had explained it to them. It has reinforced the evidence of need for section 36 of the NCS bill, which will create an appropriate legal gateway for the sharing of information in order to alleviate some of the issues identified so far through co-design.

The insights help us understand what is important to people who are subject to eligibility criteria and will continue to be valuable as policy options are developed. These findings will be used by the external working group who will be developing a set of policy options for ministerial and COSLA leadership consideration.

Rights to break from caring

The approach to the right to breaks legislation in the NCS Bill is based on co-design insights including the need for personalisation; a balance between easy-access breaks and breaks accessed via a support plan; and the ability to specify the types of breaks.

Various engagement events, including workshops at Carers Parliament; Public consultation and a Stakeholder working group have supported the design of the overall approach to the legislation in the NCS Bill and is informing the development of regulations and guidance. This has been used for developing the legislation in the NCS Bill and will be used for regulations and guidance when that stage is reached.

Scottish Learning and Improvement Framework (SLIF)

A programme of stakeholder engagement activity was undertaken to increase awareness of the SLIF and inform its development. The insights gained have helped shape the improvement outcomes that matter to people, included in the SLIF at section 6 and the planning for the next phase of development.

Stakeholders highlighted implementation challenges such as data sharing, performance management focus in the current system and system pressures.

In order to address the implementation gap, the development of the SLIF will include the co-design with stakeholders and people with lived experience of accessing and delivering social care support and services of the operationalisation of the framework into tangible actions and the development of the methodology for testing to ensure it is cognisant of the local context.

Children's Services Reform

Children and young people will be involved in the NCS co-design and development processes to ensure their needs and views are properly considered from the outset. Previous engagement activities which will be used to inform NCS design include co-design activity on the Children's Hearing System, Bairns Hoose and the care system for children - "A Good Childhood". Officials are currently in the planning stages of developing further co-design work in relation to transitions with young people, families and the workforce who support them.

We are committed to hearing the voices and experiences of, and working with, the broadest range of children, young people, carers and families. A review of some existing literature has been undertaken to assess gaps in our knowledge and identify lesser heard groups. Future engagement and co-design will aim to capture the views and ideas of those not yet heard.

Reports on the outputs of the co-design work will be produced and shared to ensure those who engage, key stakeholders and Scottish Parliament can be regularly updated on progress and outcomes.

FAIR WORK

11. The Committee is of the view that addressing workforce issues in social care is fundamental to the formation of the National Care Service. The Committee heard substantial evidence of the intrinsic link between fair work and ethical commissioning and considers commissioning and procurement to be the primary mechanism within the Bill to deliver on fair work commitments. We believe ensuring successful development and implementation of fair work practices across the National Care Service is key and ask the Scottish Government to strengthen the Bill in this area to reflect and maintain its stated commitment in this regard

12. The Committee therefore recommends the Bill should include the following:

- **A clear and comprehensive definition of "fair work" in the Bill under Chapter 2. This should set out how fair work principles will be incorporated within ethical commissioning and strategic planning processes.**
- **Clarity on how fair work principles will be applied consistently across all services provided by and on behalf of the National Care Service. The Committee believes this should include detail of minimum contract standards and a mechanism to ensure the collective voice of the social care workforce is heard within that process.**
- **Detail of how application of fair work principles will be enforced in practice across multiple and disparate providers.**

13. A crucial aspect of achieving fair work is improving pay, terms and conditions and parity in social care. We call on the Scottish Government to provide further detail as to how it plans to address these fundamental aspects of the fair work agenda.

14. The Committee considers implementing the recommendations of the Fair Work Convention's report on [Fair Work in Scotland's Social Care Sector](#) in 2019 as key to addressing workforce issues in social care. It therefore calls on the Scottish Government to set out the steps it will take and the anticipated timeframe to fully implement these recommendations as an intrinsic element of the creation of a National Care Service.

Scottish Government response – Recommendation 11

The Scottish Government has a long-standing commitment to the principle of fair work for the social care sector, and we are fully committed to improving the experience of workforce. We are continuing to develop ways to embed fair work practices within the culture and operations of the NCS, reflecting that one of the Principles set out in the Bill is that the NCS should be an exemplar of fair work practices.

Ethical commissioning strategies will be key to ensuring the consistent delivery of fair work in care and support services delivered through the NCS. Ethical commissioning and ethical procurement will look to provide, within the parameters of devolved legislative competency, care and support services that support the delivery of fair work practices and take account of the five dimensions of fair work described by the Fair Work Convention: Opportunities; Respect; Security; Fulfilment; and Effective Voice.

Scottish Government response – recommendation 12

Given legislation on employment rights and duties is reserved to the UK Parliament, we have not set out a definition of fair work within the Bill. Setting out a simple, but robust commitment to the Principle of fair work will also ensure that we have flexibility to build on and adapt current work which is underway to help embed fair work across the sector, in line with our ambition for the NCS to be an exemplar for others to follow. As far as current devolved competence allows, provisions relating to delivery of fair work will form part of contracts between commissioning bodies and those delivering services. Effective Voice (EV) will be underpinned through the deployment of an EV Framework which is currently being tested with the sector. Responsibility for ensuring compliance with contracts will be the responsibility of commissioners.

While there is no single definition of fair work, the Scottish Government's approach to Fair and Inclusive Workplaces sets out that fair work means employment with fair pay and conditions, where workers are heard and represented, treated with respect and have the opportunities to progress. This approach aligns with the Fair Work Convention's five Dimensions of Fair Work, as set out above.

Ahead of the introduction of the NCS, and taking into account these elements of fair work, specific workstreams of activity are underway to progress actions to improve fair work within the adult social care sector. These workstreams are being taken forward in partnership with stakeholders through the Fair Work in Social Care Group (FWISCG), and focus on improvements to pay, terms and conditions, strengthening effective voice, and developing a mechanism for Sectoral Bargaining.

As referred to in our response to recommendation 1, this work includes considering what we can do, within devolved competence, to introduce Sectoral Bargaining ahead of the NCS. Sectoral Bargaining would allow the Government, Providers and the Trade Unions to negotiate future pay, terms and conditions underpinning the delivery of fair work across the sector in a sustainable manner, and meet the needs of both the workforce and the service users they support. Within the current social care sector, the complex and fragmented delivery model coupled with significant government funding, means that this work is highly complex, but work is progressing through regular meetings with key stakeholders to provide options for consideration.

One of the agreed core functions of the NCSB will be to review and seek delivery assurance on local strategic plans and ethical commissioning strategies. As part of the Board's review, they will wish to ensure the principle of fair work is being applied consistently across the country. Ethical commissioning and ethical procurement of care and support services will therefore be a key tool in helping to embed fair work into the way services are planned and provided.

As noted in our response to recommendation 3, we are committed to ensuring that appropriate procedures are in place with regard to adherence to the NCS principles. We intend to introduce amendments to ensure that the NCSB is accountable to the Scottish Ministers, local government, the NHS and the Scottish Parliament, including in relation to the NCS principles.

Scottish Government response – recommendation 13

As highlighted under recommendation 12, through the FWiSCG workstreams we have already taken action to address these areas ahead of the introduction of the NCS.

As a result of our commitment to support improved pay and parity in social care we have provided the necessary funding in the next budget to allow an increase in pay of social care workers to £12 per hour, an increase that would mean that full time workers are £2,000 better off, over the course of the financial year.

We have also made progress through the FWISCG in terms of setting out a framework for minimum standards for terms and conditions and, from that, identifying Sickness Pay and Maternity/Paternity Pay as initial priorities. Discussions have also taken place on the importance of the Scottish Government and its delivery partners establishing a practical approach to delivery of these standards, within devolved competence. Any progress on implementing these minimum standards will be subject to fully developing costings for their delivery and affordability.

On the issue of parity, there are a range of employers for social care workers who currently, as in other sectors, determine their terms and conditions, including pay. This is in contrast to the position for the NHS, where the Scottish Government are able to negotiate pay for NHS staff in partnership with NHS employers. Once developed and introduced, we envisage Sectoral Bargaining will be a key mechanism which will help underpin improvements on pay, and terms and conditions, across the social care workforce.

Scottish Government response – recommendation 14

Implementation of the FWC recommendations are not dependent on provisions contained within the Bill. As set out above, we are already taking action to implement the FWC's 2019 report in advance of the establishment of the NCS through the Fair Work in Social Care Group's four workstreams. We are continuing to engage with stakeholders in the social care sector, and the FWC, as this work progresses.

The progress we have made in the areas of pay, terms and conditions, effective voice, and developing Sectoral Bargaining arrangements will be integrated into the NCS once it is established.

Scottish Government response on Children's Services Reform - recommendations 13 and 14

Within the Programme for Government there is a commitment to supporting a minimum payment of £12 per hour to those delivering direct social care, including those providing direct care to children and young people in commissioned services. For the many workers, especially those providing care to children, who were previously only entitled to the National Minimum Wage, this would represent an increase in pay of 15.2% compared to April 2023.

We are committed to working towards consistency in further improved pay and conditions, access to training and development and ensuring a career in social care is attractive and rewarding – and we are beginning to make those improvements now.

This is a positive step towards parity across the sector and we need to make sure that the enhanced fair work principles apply to both adults and children's services settings, providers and workforces.

TRANSITION TO A NATIONAL CARE SERVICE

15. The Committee highlights the multiple significant concerns that were expressed during its scrutiny of the Bill as introduced about the potential negative impact of transition to the originally proposed new governance structures involving the transfer of responsibility for social care from local authorities to Scottish Ministers and the replacement of integration authorities with local care boards.

16. In this context, the Committee will reserve final judgement on the extent to which the Scottish Government's revised approach to governance of the proposed National Care Service has addressed those concerns until it has had an opportunity to view the detail of amendments which the Scottish Government intends to bring forward at to reflect the consensus agreement with COSLA on shared legal accountability.

17. In particular, the Committee highlights that, as part of its further scrutiny, it will require a clear overview of the detail of the reforms to integration authorities the Scottish Government intends to bring forward via amendments to the Public Bodies (Joint Working) (Scotland) Act 2014.

Scottish Government Response – Recommendations 15, 16 and 17

As part of on-going discussions on the National Care Service, a consensus has been reached with COSLA and the NHS for a new national framework for social care and social work support, whereby local authorities and Health Boards will retain service delivery functions, staff and assets. Necessary amendments to the NCS Bill as introduced are currently being considered to reflect this. We are committed to providing further detail on intended reforms to integration authorities and will continue to co-design these proposed reforms with people with lived experience of accessing or delivering care support and services.

Our three key missions for local reform are:

- enhancing the voice of lived experience in decision making;
- improving governance structures;
- increasing transparency and accountability.

Enhancing the voice of lived experience

We have accepted the recommendation from the Independent Review of Adult Social Care to give voting rights to all public partners (i.e. service users, carers, workforce representatives) on Integration Authority boards to strengthen the voice of lived experience in decision making.

Furthermore, we will explore innovative and alternative ways of ensuring voices and views are captured and acted on. This includes reducing the barriers to lived experience participation, such as better induction, training and development, increased accessibility of documentation, and addressing logistical barriers such as by providing paid care for representatives to attend meetings.

We will strengthen the role of localities through secondary legislation so that the requirement for integration authorities to base strategic planning around two or more areas known as localities is implemented more consistently across Scotland to drive greater community engagement. Potential regulation may include greater involvement of locality representative or planning groups in carrying out needs assessments, geographical alignment with other

health and social care boundaries, including GP clusters or Community Planning Partnerships (CPPs), and greater use of participatory budgeting to give local communities a voice in how public funds are spent in their area. These reforms all seek to strengthen the voice of lived experience in decision making at every level.

Improving governance structures

We will look at existing governance structures and intend to continue to rely on certain order-making powers within the 2014 Act so that integration authorities can employ staff directly. We will undertake further co-design on terms of how these powers should be used but note the IRASC recommendation that integration authorities should have the ability to employ staff directly, including the Chief Officer and Chief Financial Officer to strengthen the lines of accountability. We will also be looking at the impact of the creation of the NCSB on local boards' reporting structure and will consider how we reform the role of the Chair of the local board. As part of this, we intend to explore further through co-design whether this role should become an independent appointment, directly accountable to the NCSB, appointed through an open and fair appointments process on behalf of the NCSB.

We are also continuing to explore options for mandating effective integrated management processes to better integrate the delivery of community health and social care through the NCS, as well as strengthening the role of Chief Officers as Directors of Health and Social Care and in decision making with the health board and local authority.

We intend to take forward the recommendation of the Independent Review of Adult Social Care to simplify governance arrangements by moving to a single model of integration, namely the Integrated Joint Board model. We will work with Highland Council and NHS Highland to ensure any such transition away from the lead agency model is supported and sustainable locally.

Provisions will also be made for greater regional co-operation between integration authorities and the formalisation of hosting arrangements. This will make it easier for reformed integration authorities to deliver shared services at a regional or national level if deemed appropriate. Boundary changes to integration authorities should be permitted where there is clear benefit in better meeting local need and there is agreement from local partners.

Increasing transparency and accountability

Reformed integration authorities will be accountable to the NCSB. To support this, the Board will be given powers to issue directions to reformed integration authorities and will be responsible for monitoring the performance of NCS services, as well as reviewing and seeking delivery assurance on local strategic plans and ethical commissioning strategies.

We intend to place a duty on reformed integration authorities to consult with people with lived experience in their area during the formulation of strategic plans, and we intend to set specific requirements for a population needs assessment to be produced. We are exploring giving reformed integration authorities greater flexibility for longer term strategic planning and will work with partners to determine the most appropriate mechanism to achieve this. Secondary legislation and guidance will also clarify how the delegating authorities should be scrutinising and holding to account the Integration Authority under the delegation scheme.

Finally, we intend to give Scottish Ministers the power to directly fund reformed integration authorities for specific purposes, such as regional and national commissioning of specialist services. This will promote transparency of spend in the system.

Response regarding Children's Services Reform on recommendation 17

The Committee will be aware that the current landscape for delivering children's health, social work and social care services is varied and complex, with a number of statutory strategic planning and reporting requirements. The Public Bodies (Joint Working) (Scotland) Act 2014 allows flexibility in terms of which services are delegated to Integration Authorities. Some Integration Authorities are operating with full delegated powers for Community Children's Health and Children's Social Care, and Social Work Services. Some Integration Authorities include no children's services, while others include children's health but not social work services. There is also variation in the health services which are delegated.

We continue exploring how the NCS principles, benefits and system improvements can best be offered to both adults and children equally and consistently across Scotland, however, it would be concerning if variations in local arrangements were to create a divide across geographical areas to the detriment of children and families accessing social care, community health, or social work services. For this reason, it would be desirable for the Scottish Government to have the ability to regulate the children's social care, social work and community health services sector, especially where alternative local arrangements cannot be put in place.

THE ROLE OF SCOTTISH MINISTERS

- 18. The Committee notes strongly divergent views on the merits or otherwise of transferring accountability for social care from local authorities to Scottish Ministers, which it heard during its initial scrutiny of the Bill as introduced.**
- 19. The Committee acknowledges the Scottish Government's subsequent decision not to proceed with this aspect of the Bill as introduced and instead to reach a consensus agreement with COSLA to create a governance structure for the proposed National Care Service based on a model of shared legal accountability.**
- 20. The Committee notes that, while this change of approach will be welcomed by many, particularly local government stakeholders, others will feel disappointed that it fails to reflect one of the core recommendations of the Independent Review of Adult Social Care that "Accountability for social care support should move from local government to Scottish Ministers, and a Minister should be appointed with specific responsibility for Social Care".**
- 21. The Committee will reserve final judgement on this aspect of the Bill until it has seen the detail of further amendments the Scottish Government intends to bring forward, including how a model of shared legal accountability will work in practice, detail on how Scottish Ministers will exercise strategic framework accountability for the proposed National Care Service as part of this model, beyond the accountability it already has, and the reforms to integration authorities it plans to make via amendment to the Public Bodies (Joint Working) (Scotland) Act 2014.**
- 22. Irrespective of the model of accountability, the Committee believes proposals for the creation of a National Care Service need to be accompanied by a reinforced role for the Scottish Parliament in undertaking regular, structured scrutiny of its implementation and the extent to which it is achieving its defined objectives. To support this reinforced scrutiny role, the Committee calls for the Bill to include provisions enabling the Scottish Government to keep the Scottish Parliament regularly updated on the operation of the National Care Service including, in particular, an assessment of the extent to which this is contributing to improved outcomes for those in receipt of social care.**

Scottish Government response – recommendation 21

The shared accountability framework agreed between COSLA Leaders and Scottish Ministers will improve the experience of people accessing services by introducing a new structure of national oversight to drive consistency of outcomes, whilst maximising the benefits of a reformed local service delivery. It will allow for better sharing of good practice and innovation, which we know is taking place right across the country.

The Scottish Government is committed to achieving the right balance between securing national consistency of service quality, while allowing flexibility for services to reflect local needs and circumstances. We are co-designing and consulting extensively with stakeholders on how best to provide an NCS that delivers both national consistency and local flexibility.

This shared accountability approach to governance of social work, social care support, and community health is unique and reflects the roles and different statutory responsibilities of

the Scottish Ministers, local authorities, and Health Boards. It is important that we take the time to get these details right, while also driving forward the reforms that are necessary to improve services and allow for Parliamentary scrutiny. I have set out further information in response to the areas the Committee has highlighted below.

Shared accountability will be exercised over certain social work, social care support, and community health functions delegated to an Integration Authority under the Public Bodies (Joint Working) (Scotland) Act 2014. This approach recognises and respects the existing responsibilities of local authorities and Health Boards and their continued role in delivering services, through health and social care partnerships, while also enhancing national-level governance structures and the role of the Scottish Ministers to provide for shared accountability over the whole system.

The NCSB will embody shared accountability through two routes. First, Board membership will include, as a minimum, representation from local authorities, Health Boards, the Scottish Government, and, importantly, people who access NCS services, workforce representatives and unpaid carers. This will ensure all partners are involved in the leadership, oversight, and accountability that the NCSB will provide. Second, the NCSB will report on its performance to local authorities and Health Boards, as well as to the Scottish Ministers, who will lay their annual reports before Parliament. This will ensure that each partner is able to scrutinise the performance of NCS services and have the information they need to help make improvements to the services that they remain responsible for delivering.

To ensure this approach functions effectively, we intend to agree a Memorandum of Understanding between Scottish Ministers, COSLA and Health Boards to underpin shared and consistent oversight of the NCSB.

Scottish Government response – recommendation 22

We recognise the critical importance and value of Parliamentary scrutiny of the implementation of the National Care service. In support of this scrutiny role, Scottish Ministers will lay documents in relation to the NCSB before the Scottish Parliament. This will include a corporate plan prepared by the NCSB. The corporate plan will set out how the NCSB will undertake its functions. Annual reports on the NCSB's performance will also be laid before the Parliament, which will detail how the NCSB is contributing to improved outcomes for people who receive community health and care services. This will provide opportunities for the Parliament to scrutinise the activities and performance of the NCSB in a regular and structured manner.

CARE BOARDS

23. The Committee acknowledges the Scottish Government's decision to no longer proceed with plans for the creation of local care boards as part of the governance structure of the proposed National Care Service and to retain integration authorities in a reformed state. It further notes that, as part of the consensus agreement with COSLA, the Scottish Government intends to create a National Care Service Board as part of a revised governance structure.

24. The Committee wishes to highlight a number of important areas where stakeholders had requested greater clarity and detail with respect to the provisions of the Bill as introduced that related to care boards which are equally applicable to the Scottish Government's plans for creation of a National Care Service Board. These include:

- **The remit of the proposed National Care Service Board, including whether it will have responsibility for delivery, commissioning, standards-setting or a combination of these;**
- **The extent to which responsibilities previously attributed to Scottish Ministers in the Bill as introduced will be transferred to the proposed National Care Service Board;**
- **Membership of the proposed National Care Service Board and whether all members will have full voting rights;**
- **How the proposed National Care Service Board will interact with integration joint boards and Health and Social Care Partnerships.**

25. The Committee further notes that it is the Scottish Government's intention to set out many of the details of the proposed National Care Service Board via secondary legislation, with these details having previously been informed by a process of co-design. The Committee calls on the Scottish Government to give further consideration to how the Scottish Parliament will be accorded an appropriate ongoing scrutiny role with respect to the establishment and operation of the proposed National Care Service Board.

26. The Committee highlights the substantial expectations of a broad range of stakeholders submitting evidence on the Bill regarding membership of care boards as well as mixed views on the merits or otherwise of giving all care board members full voting rights. The Committee believes that these expectations will equally need to be carefully managed and addressed with respect to membership of the proposed National Care Service Board. It further points out that the National Care Service Board's capacity to reach decisions effectively will be partly dependent on its overall membership numbers.

27. The Committee has heard concerns about the extent of powers originally conferred on Scottish Ministers by the Bill as introduced with respect to the establishment and abolition of care boards and the appointment and dismissal of care board members. It remains unclear to what extent Scottish Ministers will have similarly extensive powers with respect to the proposed National Care Service Board. If the Scottish Government's intention is that Scottish Ministers will have corresponding powers over the proposed National Care Service Board and its membership, the Committee takes a view that they will need to be subject to an appropriate level of parliamentary scrutiny and enhanced safeguards to ensure their exercise is appropriately motivated and politically

Scottish Government response - recommendation 24

NCSB remit

Our intention is to amend the NCS Bill at Stage 2 to create the NCSB. The overarching purpose of the NCSB will be to ensure consistent, fair, human rights-based social care support and community health services, underpinned by effective complaints mechanisms and enhanced advocacy services. At the same time, it will support communities to maximise the benefits of the reformed local delivery of services. It will therefore have responsibilities for driving improvement to NCS services, providing national level oversight, and managing shared accountability.

Ongoing discussions with stakeholders and co-design activity will help to inform the way in which the Board will operate in practice. We expect the activities of the NCSB will include:

- developing standards, guidance and operating frameworks;
- reviewing and seeking delivery assurance on local strategic and workforce plans and ethical commissioning strategies;
- monitoring system performance to ensure consistent, fair, human rights-based social care support and community health services, underpinned by effective complaints and advocacy for people;
- maintaining a Support and Improvement Framework which will aim to provide support to local areas when monitoring indicates that standards are not being met with powers of intervention, when required, as a last resort;
- ensuring an effective voice for stakeholders and people with lived experience in decision making;
- ensuring visibility of data, information, and analysis about social care support, social work and community health services through reporting on delivery;
- undertaking national commissioning and procurement by agreement for complex and specialist social care services, including prison social care;
- seeking assurance on public protection arrangements for NCS services;
- overseeing multi-agency national workforce planning for NCS services;
- monitoring portability of care packages across Scotland and UK territorial boundaries;
- providing support to local delivery partners;

The NCSB will not directly deliver social work, social care or community health services itself, and will only commission for specialist and complex services by agreement with local government.

NCSB interaction with local services

Reformed integration authorities will be accountable to the NCSB, which will work collaboratively with integration authorities and Health and Social Care Partnerships to drive forward improvement. This means building on the expertise that already exists within these bodies on strategic planning and on delivering services to reflect these approaches in national level guidance and frameworks, as well as to underpin more direct intervention where bespoke support is required. By better identifying best practice and embedding this in national structures, the NCSB can ensure that local bodies can more effectively learn from one another and have access to the tools they need to support service delivery. This will ensure local decision making is effectively supported within a clear national structure.

Where standards are not being met, the NCSB will be empowered to intervene more directly with integration authorities. This will be detailed in the Support and Improvement Framework. The early stages of the Framework will be premised on ensuring that additional advice and support to a local area, with stronger levers like directions reserved only for when that additional support is not enough.

Transfer of Ministerial functions in the NCS Bill

As we amend the NCS Bill at Stage 2, careful consideration is being given to the provisions currently in the Bill in relation to Scottish Ministers. As we have set out above, the NCSB will undertake a range of functions relating to improvement and oversight of NCS services and in doing so it will be guided by the NCS Principles. We will provide for new provisions in the NCS Bill to put in place the appropriate duties and powers for the NCSB.

We no longer intend to provide for duties and powers for the Scottish Ministers in relation to issues including powers of intervention, functions connected to the provision of care, and monitoring and improving the quality of services.

NCSB Membership

We fully recognise the substantial expectations and range of opinions on the membership of the NCSB. Careful consideration is being given to these views to ensure that the NCSB is able to function effectively to fulfil its duties by building on the expertise already within the system. Local authorities and Health Boards have extensive experience providing services and have continuously grappled with many of the challenges we face today. Their insights and key role in delivery are vital to understanding and improving the system. People with lived experience of care services have been at the forefront of calls for reforms and have often found their voices are not being heard. This includes both people who receive care services and who provide them. We have been clear that their voices must also be an integral part of the governance of the NCS, including by having full voting rights on the Board.

We have been clear that as a core minimum, the NCSB will include board members from local authorities and Health Boards and people with lived experience and that all members will have full and equal voting rights. It is essential, however, that we co-design the further details of board composition, to ensure we have a full understanding of all perspectives and the wider implications and practical consequences of any decisions reached. It is also important that we future proof Board membership requirements, by retaining the flexibility to reflect lessons learned and respond to changing circumstances. For that reason, some of the detail regarding Board membership will be set out in secondary legislation, which will ensure further opportunities for scrutiny by the Scottish Parliament.

Scottish Government response to recommendation 27

In line with our planning assumption that the NCSB will be a non-departmental public body, the Scottish Ministers will have a power to appoint and dismiss individual board members under certain circumstances. The procedures around dismissal and disqualification will be co-designed and provided for in secondary legislation. It is important that we maintain the appropriate powers to ensure that the board functions effectively and that individual members uphold the standards expected of them. Under the shared accountability aspect, we would expect any actions to be taken in consultation with COSLA and NHS partners.

However, the specific powers for Scottish Ministers to intervene in relation to Care Boards, as set out in sections 17, 18, and 19 of the NCS Bill as introduced will not be replicated for

Ministers in relation to the NCSB (although the power to dismiss members, outlined above, will apply). Nor will Scottish Ministers have the power to abolish the NCSB by regulation.

STRATEGIC PLANNING

28. The Committee will reserve judgement on those aspects of the Bill related to strategic planning until it has seen the detail of amendments the Scottish Government intends to bring forward which it understands, under the new revised governance model, will give the proposed National Care Service Board a defined role in scrutinising strategic planning by integration authorities.

29. At the same time, the Committee wishes to draw the Scottish Government's attention to a range of evidence it has gathered as part of its Stage 1 scrutiny of the Bill as introduced which may also be relevant to this Chapter of the Bill and any amendments that the Scottish Government subsequently intends to bring forward, namely that:

- **The requirement for the period of strategic plans to not exceed three years is considered by many stakeholders to be unduly prescriptive and not conducive to encouraging a longer-term approach to strategic planning, and that this provision should be replaced with a requirement for strategic plans to be reviewed at least every three years;**
- **Strategic plans should be required to have explicit regard to the principles set out in section 1 of the Bill;**
- **Further provision should be made to ensure appropriate alignment between any strategic plans developed as part of the proposed National Care Service and other pre-existing strategies, such as NHS strategic plans and local outcome improvement plans; and that making additional provision for an oversight function could help ensure appropriate alignment and consistency in strategic planning;**
- **The provisions on consultation on strategic planning, as set out in this Chapter of the Bill as introduced, would benefit from enhancement to reflect the Scottish Government's stated commitment to co-design and co-production as an integral part of the proposed National Care Service;**
- **To further facilitate effective strategic planning and the successful development and implementation of ethical commissioning strategies by the relevant governing bodies, this Chapter of the Bill should include a clear and comprehensive definition of "ethical commissioning"; and**
- **Strategic plans should equally fulfil a number of other important criteria, namely:**
 - **Being outcome-focused**
 - **Being subject to equality impact assessment**
 - **Making reference to Article 19 of the UN Convention on the Rights of Persons with Disabilities**
 - **Promoting a collaborative approach to planning**
 - **Addressing workforce planning and include a detailed and comprehensive training plan**
 - **Including provisions on standards and governance**
 - **Addressing the integration of homelessness and housing services.**

30. The Committee therefore calls on the Scottish Government to give careful consideration to this evidence in formulating its amendments to this Chapter of the Bill.

We welcome the recommendations from the committee regarding the value of long term planning, and agree that this offers a strategic outlook that supports the aims of the NCS, particularly in relation to ensuring consistency, and accessibility of services for all of Scotland's communities.

Scottish Government response to recommendation 28

As set out in response to the Committee's recommendations on care boards, the new NCSB will provide oversight and drive improvement for NCS services, including by reviewing and seeking delivery assurance of strategic plans. By improving the national governance of strategic planning, we will support integration, provide for more consistency, and ensure that best practice can be better shared across the system. As part of this oversight of strategic planning, we will carefully consider how the NCSNCSB can best reflect the important criteria and alignment with other strategies and plans, including on ethical commissioning, highlighted by the Committee in recommendation 29.

Duration of strategic plans

The Scottish Government agrees that a longer-term approach to planning would be beneficial, and so will carefully consider appropriate amendments to this provision, to this effect. We are exploring giving reformed integration authorities the flexibility for strategic planning, but with a continued requirement to undertake regular reviews.

The Scottish Government recognises effective strategic planning does not happen in isolation, and that many parts of the system must collaborate to ensure the delivery of strategic plans. The planned NCSB will work alongside local partners to ensure strategic planning supports the NCS aims and principles.

Strategic planning and the NCS principles

Strategic plans will be expected to be consistent with the NCS principles. Scottish Government would also expect Local boards to ensure that their strategic plans are in line with any statutory guidance issued by the NCSB.

The strategic landscape

We welcome the Committee's recommendation on making connections across the strategic planning landscape. Part of the NCS policy intent is to better align strategic planning with existing planning processes through closer collaboration with their community planning partners.

We understand that the strategic planning landscape is an ecosystem of interrelated plans and strategies overseen by different organisations and partnerships, this however does not diminish our aim of ensuring consistent delivery of high-quality care across Scotland. We will continue to collaborate with partners to ensure consistency of experience, while ensuring local flexibility for partners to plan collaboratively to meet their local population's needs.

Engagement and codesign

It is Scottish Government's intention that services should be designed collaboratively with individuals who use and deliver them.

We will use the co-design programme that is helping us shape the future NCS and any lessons we learn to embed the principles and practice of codesign in the day-to-day operation of reformed integration authorities and the NCSB. Further, we intend to place a duty on reformed integration authorities to consult with people with lived experience in their area during the formulation of strategic plans, and we intend to set specific requirements for a population needs assessment to be produced.

Ethical commissioning

Ethical commissioning will be defined through guidance, which can be changed and improved iteratively as national and local ethical commissioning strategies are implemented, through evaluation and engagement.

As stated in response to recommendation 83, work is underway with partners to develop national principles, standards, guidance and practical support for ethical commissioning and procurement which will be agreed and set by the new NCSB, to support and inform the development and delivery of local ethical commissioning strategies.

Workforce planning

The Scottish Government agrees with the Committee that strategic planning should closely align with workforce and training plans. Technical issues related to data and reporting suggests that workforce planning should be an independent function on which to triangulate strategic planning.

National Workforce Planning, as a function, should be held within the NCSB. This will have a strategic outlook, and is not intended to replace local workforce planning requirements

Key to ensuring successful National Workforce Planning is engagement and collaboration. Therefore, ongoing discussion and dialogue with partners will continue, ensuring that the long-term national workforce planning approach, local plans and delivery all work in tandem. This will ensure a sustainable social care system for all of Scotland's communities.

The Scottish Government thanks the Committee for their recommendation on criteria to include in strategic planning. We note that some of the criteria may be better served through the provision of statutory guidance, particularly elements which require iterative improvement.

It is vital that those experiencing, or at risk of, homelessness are considered in the implementation of the National Care Service. The new Housing (Scotland) Bill (introduced on 26 March 2024) includes duties on relevant bodies – including in areas such as health – to 'ask and act' about a person's housing situation. These new duties on homelessness prevention will be based on the principles of shared public responsibility and earlier intervention and we will work across Government and with stakeholders to ensure this aligns with the NCS principles and the Scottish Government's vision that everyone should have access to consistently high-quality social care support based on human rights wherever they live in Scotland.

In addition, the Scottish Government's 'Housing to 2040' strategy sets out a vision for housing in Scotland – building homes that are sufficiently flexible to meet the needs of people as those needs change over time.

A number of the issues raised in this recommendation are better suited to either secondary legislation, which can be more easily amended, if required, to address any implementation gaps or statutory guidance which can be regularly updated as plans are implemented and evaluated.

THE NATIONAL CARE SERVICE CHARTER

- 31. The Committee is sympathetic to the view expressed by many stakeholders that the creation of a Charter offers an important opportunity to give practical effect to the principles underpinning the proposed National Care Service. The Committee therefore calls for the sections of the Bill governing the creation of a National Care Service Charter to be amended to make provision that the Charter is to reflect the proposed National Care Service principles.**
- 32. The Committee acknowledges the Scottish Government's approach, in making provision for a National Care Service Charter, of following the model of the Charter of Patient Rights and Responsibilities, which stipulates that "nothing in the Charter is to give rise to any new rights, impose any new responsibilities, or alter (in any way) an existing right or responsibility". At the same time, following the model of the Patient Rights (Scotland) Act 2011 and to give clarity to those in receipt of social care services, it calls on the Scottish Government to consider the inclusion of a statement of pre-existing rights on the face of the Bill.**
- 33. The Committee supports the five year review period in relation to the National Care Service Charter, since this reflects review provisions with respect to the Social Security Charter and the Charter of Patient Rights and Responsibilities.**
- 34. The Committee will reserve final judgement on those sections of the Bill related to the proposed National Care Service Charter until it has seen the detail of any relevant amendments the Scottish Government intends to bring forward. At the same time, it already takes the view that, if the intention behind those amendments is to transfer those duties currently conferred on Scottish Ministers with respect to the Charter to the newly proposed National Care Service Board, these provisions should be accompanied by a reinforced role for the Parliament in undertaking ongoing scrutiny of the Charter.**
- 35. In this context, it believes a reinforced scrutiny role for the Parliament would be best achieved by following the model of the Social Security (Scotland) Act 2018 where the creation of the first Charter and any subsequent review is subject to approval by resolution of the Scottish Parliament. The Bill should also ensure sufficient time is given to Parliamentary scrutiny of the Charter.**
- 36. The Committee has heard evidence of concerns with what is meant by co-design in relation to the Charter and who exactly would be involved. The Committee notes the Minister's update in her most recent correspondence regarding progress in the process of co-design related specifically to the Charter. It welcomes the Minister's undertaking to share a draft of the Charter with the Committee once available. As part of a reinforced process of scrutiny of the Bill at Stage 2, the Committee will seek an update from relevant stakeholders to ascertain to what extent they are satisfied with the outcome of the co-design process related to the development of the Charter.**

Scottish Government Response – Recommendation 31

The NCS principles are key to setting the priorities for the NCS and our ambitions for social work, social care and community health. We agree with the Committee's recommendation

that the Charter should reflect the NCS principles and the NCS Bill as introduced already ensures that this will be the case.

The Bill, as introduced, requires that Scottish Ministers discharge their overall duty of promoting a care service in Scotland in a way that best reflects the NCS principles. Scottish Ministers must apply the NCS principles in this way in discharging their duties to create and review the Charter under sections 11 and 12 of the NCS Bill, as introduced. Therefore, it is considered that the Charter is already required to be developed in such a way that reflects the NCS Principles.

Co-design carried out so far to develop an early draft of the Charter very much aligns with the principles. For example, the Charter is being designed in collaboration with people accessing and delivering services, including carers, and advances equality and non-discrimination through focused involvement of seldom heard voices groups. While the Charter is for people accessing services and so does not cover Fair Work, it aims to value the workforce through using insights gathered through co-design which have contributed to the creation of a 'Mutual Respect' section.

Scottish Government Response – Recommendation 32

The Scottish Government welcomes the ambition of this recommendation from the Committee to support greater clarity for people accessing care to know and understand their rights. The NCS consultation demonstrated strong support for a NCS Charter of rights and responsibilities so that people know what to expect. The purpose of the Charter is to support everyone to understand their rights and provide information on the process available for upholding those rights. It is therefore our view that the Charter is the best mechanism to deliver on the ambition of this recommendation.

The Charter is intended to summarise rights already underpinned by domestic legislation but is not itself a legal document or instrument. This is important because people with lived experience have strongly expressed views that the Charter should be simple, concise and accessible which is perhaps not the case for everyone accessing legislation. Legislation details complex legal concepts in a format not easily accessible to the general public. Through summarising people's rights in a social work, social care and community health setting, the Charter will promote these rights and make them more accessible.

Additionally, people with lived experience have told us about the importance of sharing and raising awareness of the Charter to provide clarity on existing rights. Ways to do this will be explored further in future co-design and initial thoughts include amalgamation of sections into a leaflet, poster or one-page flyer for use where a shortened version may be appropriate. The Charter will also be made available in accessible formats and versions, e.g. Easy Read.

Similarly, evidence gathered through co-design with people with lived experience of accessing social care, social work and community health support indicated that individuals are often unaware of their rights or of the processes to follow when they feel their rights are not met. It is intended that the Charter will be a key document, setting out people's rights and responsibilities when accessing NCS support.

The Scottish Government agrees with the importance of ensuring that people have as much clarity as possible with regards to their rights, and this is reflected in the draft Charter. This recommendation is something that will be looked at by the Scottish Government in advance of Stage 2.

Scottish Government Response – Recommendation 33

The Scottish Government welcomes the Committee's support for the five-year review period in relation to the Charter as outlined at Section 12(3) of the Bill as currently drafted.

As noted by the Committee, this is in keeping with provisions with respect to similar Charters such as the Social Security Charter and the Charter of Patient Rights and Responsibilities.

In order for the NCS Charter to continue to support people with lived experience to understand their rights and hold the system to account where they are not being met, it is crucial that provisions allow for content to be updated to reflect any future changes in the views and experience of people accessing and delivering care support as well as potential changes in the policy and legislative landscape. This facilitates development of a Charter which achieves its aims and allows for continuous improvement.

Scottish Government Response – Recommendation 34

The Scottish Government notes the Committee's intention to reserve judgement on Charter provisions before reviewing any relevant amendments the Scottish Government intends to bring forward.

The Independent Review of Adult Social Care in Scotland highlighted support for a NCS which is accountable to Ministers and has a human rights-based approach at its heart. Given the Charter's position as a foundational document in delivery of that human rights-based approach, the intention is that it will remain the responsibility of Scottish Ministers to prepare and review the Charter.

This Ministerial responsibility is in keeping with provisions related to other Charters and Standards. Including at Section 1 of the Patient Rights (Scotland) Act 2011 in relation to the Charter of Patient Rights and Responsibilities, Section 15 of the Social Security (Scotland) Act 2018 in relation to the Scottish Social Security Charter, and Section 50 of the Public Services Reform (Scotland) Act 2010 in relation to the Health and Social Care Standards and in relation to the National Health and Wellbeing Outcomes.

Scottish Government Response – Recommendation 35

The Scottish Government notes the Committee's recommendation that provisions be amended to allow for the first Charter and any subsequent review to be subject to approval by resolution of Parliament.

It is intended that the draft Charter will be shared with the Committee, alongside a paper which provides an overview of the co-design process and links to further findings from each phase of co-design in due course. The Scottish Government is also committed to sharing a final version of the Charter with the Committee, following the conclusion of the final round of co-design, nearer to the launch of the NCS.

The Charter is being co-designed with people with lived experience of accessing and delivering services. While it is important for Parliament be able to consider the detail of the first version of the Charter, and any subsequent versions, people with lived experience of accessing and delivering services have the primary role in reviewing and scrutinising the Charter so that it meets their needs and expectations. It is important that the Scottish Government do not – however unintentionally - undermine the co-design process. It is the

Scottish Government's view that the Bill, as introduced strikes the balance between co-design of the Charter and the important role of Parliamentary scrutiny.

Scottish Government Response – Recommendation 36

The Bill, as currently drafted, provides that Scottish Ministers must consult any person they consider appropriate when preparing and reviewing the Charter. In doing so, Scottish Ministers must have particular regard to the importance of eliciting the views of individuals to whom the NCS provides a service and also the persons who provide services on behalf of the NCS. The process of co-design is the means by which views of these groups are being gathered.

In line with the approach being taken across the wider NCS Programme, the design and development of the Charter is being driven by the outcomes of three core phases of co-design. These are the 'understanding' phase, the 'sensemaking' phase and the 'agreeing' phase. The first two phases of co-design on the Charter have been completed, with over 500 people involved. This included people accessing and delivering community health, social work and social care support, as well as unpaid carers, young and young adult carers, family members, lived experience panels and third sector stakeholder organisations and their members.

Consistent with the human rights-based approach being taken in developing the wider NCS programme, Charter co-design to date deliberately sought to recruit people with diverse views and to ensure that seldom heard voices were involved throughout.

Particular focus is being applied to ensure that the Charter co-design is inclusive and captures the views of vulnerable or seldom heard groups. Protected characteristics, as defined in the Equality Act 2010, were used as an initial basis on which to target recruitment. In addition, given inequality of access has impacts beyond protected characteristics, further work was done to identify and include other marginalised or stigmatised groups including: people who have experienced homelessness; people who have experience of substance use; people who have been the victims of crime; and people who have experience of mental ill health. While, at the time of writing, decisions on whether the scope of the NCS will include certain children and young people's social care and social work and justice social work have yet to be made, the perspectives of people accessing these services were gathered through co-design so that the Charter can meet their needs.

The Scottish Government welcomes the Committee's plans for further scrutiny by seeking an update from relevant stakeholders to ascertain to what extent they are satisfied with the outcome of the Charter co-design process. The co-design engagements are designed to gather views from across multiple groups and individuals and to provide insights that in turn form the evidence base for proposals. We look forward to making further updates alongside people with lived experience during the next phase of co-design.

The Scottish Government notes the Committee's acknowledgment of recent correspondence regarding progress in the process of co-design related to the Charter and appreciates that the Committee welcomes the commitment to share a draft with them in due course. It is intended that the draft Charter will be shared with the Committee, alongside a paper which provides an overview of the co-design process and links to further findings from each phase.

INDEPENDENT ADVOCACY

- 37. The Committee will reserve final judgement on section 13 of the Bill until it has seen the detail of any amendments the Scottish Government intends to bring forward. It notes that the regulation-making powers conferred on Scottish Ministers by this section of the Bill are currently subject to the affirmative procedure. Depending on the detail of those amendments, the Committee may wish to see the scrutiny role of the Parliament with respect to the exercise of these powers further reinforced through the use of a different procedure.**
- 38. The Committee has heard a range of concerns that the provisions of the Bill relating to independent advocacy are insufficiently clear and robust to deliver the "coherent, consolidated and consistent approach" promised by the Policy Memorandum. In an effort to strengthen these provisions in the current Bill, the Committee recommends that the Scottish Government refers to the corresponding provisions of the Social Security (Scotland) Act 2018 as a potential template for the independent advocacy provisions of the Bill, in particular, the right to advocacy, the definition of "advocacy services" and the development of advocacy service standards provided by that Act.**
- 39. The Committee requires more detailed costings related to independent advocacy in the Financial Memorandum accompanying the Bill. Before proceeding to Stage 2 of scrutiny of the Bill, the Committee calls for the Scottish Government to bring forward further details regarding estimated costs for the delivery of independent advocacy and how it intends this will be funded.**

Scottish Government Response – Recommendations 37 and 38

The Scottish Government welcomes the Committee's recommendation to consider corresponding provisions relating to independent advocacy in the Social Security (Scotland) Act 2018. In the sense-making phase of co-design, it is our intention to work with stakeholders – those with lived experience and those providing services – to consider how we can enhance the provision of independent advocacy and through that improve the experience for those accessing care. By including rights, definitions and service standards on the face of the Bill now, it would restrict our ability to build-in insights from co-design as they emerge.

Provisions in Section 13 of the NCS Bill as introduced are broad enough to allow Ministers to include a right, a definition and service standards in secondary legislation if the process of co-design evidences a need for this, and we will be looking to enhance independent advocacy provision as a mechanism for empowering people to have their voices heard and participate fully in decisions about their care. Secondary legislation will be subject to the affirmative procedure, ensuring appropriate scrutiny from the Parliament.

We also note in the Stage 1 report that the Committee has highlighted oral evidence given by the Scottish Independent Advocacy Alliance (SIAA) calling for a duty to provide independent advocacy to be on the face of the Bill. Officials are considering written evidence that has been provided to the Committee in relation to duties for independent advocacy. The views expressed by stakeholders are varied in terms of what exactly stakeholders wish to see a duty on and with some referring to duties for Scottish Ministers and others to duties at a local level. Social Work Scotland in its evidence noted social work is already subject to a number of specific legal duties in respect of advocacy, while COSLA noted local authorities

can find it challenging to uphold their existing duties. Officials will continue to engage with stakeholders on these issues to assess whether any legislative duties for independent advocacy should be included in secondary legislation.

Scottish Government Response – Recommendation 39

It is the Scottish Government's intention to take an asset-based approach to the provision of independent advocacy in the National Care Service. This will mean working with current advocacy providers across the country to identify gaps in provision and find solutions to plug these gaps in a sustainably funded way. Throughout the understanding phase of co-design – the first phase – the Scottish Government has, in relation to independent advocacy, engaged with not only people with lived experience of accessing and delivering social care support but also the Scottish Independent Advocacy Alliance (SIAA) and several of its members as well as other organisations including Glasgow Disability Alliance and Inclusion Scotland.

Furthermore, the Support in the Right Direction (SiRD) programme is already in place nationwide for support, independent advice and advocacy for people who use Self Directed Support (SDS) to access social care. This programme is funded by the Scottish Government and supports the entitlement introduced in the Social Care (Self-directed Support) (Scotland) Act 2013. (As detailed in the relevant statutory guidance, supported people have the right to the provision of independent advocacy.) A new phase of the SiRD programme will begin in April 2024 until 2027 supported by £3.3 million per year.

Independent advocacy provision for the National Care Service will therefore build on this existing programme, and on the local statutory provision that already exists under the Mental Health Care and Treatment (Scotland) Act 2003 and the Adult Support and Protection (Scotland) Act 2007. Within the Financial Memorandum there is a provision for £2m of grant funding for external organisations. The Scottish Government will continue to engage with partners about sustainable funding levels and models of advocacy to support people accessing the National Care Service.

COMPLAINTS

40. The Committee has heard evidence of the key features stakeholders would like to see reflected in any complaints system supporting the proposed National Care Service, namely:

- **It enables complaints to be resolved locally wherever possible and only to be escalated to a national system if no local resolution can be found;**
- **It should be independent;**
- **It should make suitable provision for penalties and redress in the event a complaint is upheld;**
- **It provides access to appropriate support for people making a complaint.**

The Committee calls on the Scottish Government to ensure that any such complaints system reflects these key features in its design.

41. The Committee shares stakeholder concerns about the regulation-making powers conferred by section 15 of the Bill, particularly in light of their direct impact on the statutory functions of the Scottish Parliamentary Corporate Body.

42. The Committee recommends that these provisions be made subject to a procedure that would enable a further enhanced level of parliamentary scrutiny than is offered by use of the affirmative procedure.

Scottish Government Response – recommendation 40

Improving complaints and redress processes for people accessing social care services is vital. This was one of the recommendations of the Independent Review of Adult Social Care, and has been strongly reinforced through engagement and co-design carried out over the last year.

The Scottish Government is committed to delivering this; and the NCS provides a vital opportunity to create a system and culture that encourages people accessing services under the NCS to be actively involved in providing feedback, including complaints, to drive forward continuous learning and improvement across the system. As part of this we are committed to co-designing a complaints service for the NCS with people with experience of accessing and providing social care support, social work and community health services, as well as with relevant stakeholders.

Ensuring there is a fair, effective and consistent approach to complaints and redress, and that accountability is delivered for people, is central to this and the Scottish Government is committed to improving how complaints about NCS and wider social care services are handled and associated redress processes.

The complaints service, as required via section 14 of the NCS Bill, will direct people's complaints to the appropriate body, reducing the complexity and burden currently placed on people to navigate this themselves. The detail of the service is being co-designed with people accessing and delivering services as well as with stakeholders. The purpose of the complaints service is not to act as an escalation point – rather it will act as a single point of

entry to reduce confusion and complexity for those both accessing and navigating the current complaints system. Existing routes of escalation will remain.

The Scottish Government welcomes the Committee's recommendation around the key features stakeholders would like to see reflected in the complaints service. While co-design of the service is still at a relatively early stage, there are consistencies in some of the insights emerging from this, particularly in relation to:

- The need to support people to better navigate the complexity of the current complaints landscape;
- Ensuring that complaints are an effective route to upholding people's rights when they are not being met;
- Intervening early to resolve issues and encouraging resolution throughout the complaints process; and
- Having clear accountability for complaints, such as the option to escalate the complaint to an independent oversight body.

We will ensure the areas highlighted by the Committee are explored further as we move into the next phase of co-design.

Scottish Government Response – recommendation 41

Section 15 of the Bill is proposed so that it is possible to effect legislative reforms that may be needed to bring improvements devised through the co-design process. Depending on the outcome of co-design, this is required to ensure we are able to reform complaints in a way that is not possible under existing powers.

This power is subject to the affirmative procedure which means that no regulations can be made under the power unless the Parliament has approved them. We recognise that the Scottish Parliamentary Corporate Body (SPCB), as the sponsor of some public bodies, has an interest in legislation that would affect those bodies.

The Bill, as introduced, therefore includes a power of veto by the SPCB in relation to any draft regulations laid before parliament which may confer a function, or modify or remove an existing function of a person listed in schedule 6 of the Public Services Reform (Scotland) Act 2010 i.e. a body sponsored by it (through section 15 (4) and (5) of the NCS Bill as introduced).

Following positive and constructive engagement – and correspondence between the Presiding Officer and the Cabinet Secretary for NHS Recovery, Health and Sport which has been copied to the Committee - clarification and reassurance has been provided to the legislative and financial concerns raised. The Scottish Government and the SPCB will continue this constructive dialogue to explore any financial implications and the practicalities around the SPCB consent process.

Scottish Government Response – recommendation 42

As outlined above, regulations made under section 15 would be subject to the affirmative procedure. This procedure is combined with an additional control in that draft regulations brought forward by Scottish Ministers, which would confer, modify or remove a function of person listed in schedule 6 of the Public Services Reform (Scotland) Act 2010 would require the prior consent of the SPCB before they can be laid.

The Scottish Government is of the view that this current level of scrutiny is suitable.

SCOTTISH MINISTERS' POWERS TO INTERVENE

43. The Committee will reserve final judgement on Chapter 4 of Part 1 of the Bill until it has seen the detail of any amendments the Scottish Government brings forward, including as these relate to the development of an Improvement, Support and Escalation framework.

44. At this stage of the Committee's scrutiny, it remains unclear whether and to what extent the Scottish Government intends to transfer those powers currently conferred on Scottish Ministers under Chapter 4 to the newly proposed National Care Service Board. The Committee nonetheless wishes to highlight widespread concerns it has heard during its scrutiny of the Bill to date regarding the nature and extent of those powers.

45. The Committee calls on the Scottish Government to ensure these concerns are suitably addressed in the detail of any relevant amendments the Scottish Government brings forward.

Scottish Government Response - recommendations 43 to 45

All partners to the shared accountability model are agreed that the NCS must focus on improving quality, consistency and outcomes for people. A key focus for the NCSB will therefore be the identification and dissemination of good practice, and the provision of enhanced support where necessary. A proportionate and progressive approach to providing this support will be set out in a Support and Improvement Framework, the details of which will be co-designed. The purpose of this framework will be to set clear expectations and procedures for how the NCSB will support integration authorities where local areas have identified particular challenges they are experiencing, or where monitoring indicates performance has fallen below expected standards.

As set out above in response to Recommendations 23 to 27, our intention is that the NCSB will work collaboratively with integration authorities in supporting them to undertake their functions. It is our expectation that the early phases of the Support and Improvement Framework will involve additional support and advice, with direct intervention reserved only for when strictly required.

It is important, however, that the new NCSB is equipped with the right powers to intervene as a last resort where standards are not being met. This view has been expressed strongly and consistently in our engagements with people with lived experience of accessing community health, social work and social care support services.

While the details of the Support and Improvement Framework – including the way in which it will interact with existing regulatory and improvement bodies' activities - will be co-designed, our intention is to amend NCS Bill to ensure that the NCSB has the ability with the powers to take material action when initial support has not produced the necessary improvements at a local level.

The shared accountability agreement concluded that local authorities and Health Boards would retain responsibility for delivery functions (through health and social care partnerships) for social work, social care support and community health services, including through the procurement of independent or third sector service providers. As Scottish Ministers and the NCSB will not routinely hold contracts for these services, it would not be appropriate for Scottish Ministers to have powers to intervene with those contractors. If in line with our

planning assumption, the NCSB will be a public body, it will have the ability to enter into contracts for other kinds of goods and services to support the delivery of the Board's core functions, and for any agreed nationally commissioned services. We would expect those contracts to be managed through standard contract management, rather than through specific provisions within the Bill to allow for intervention. As such, sections 20 – 22 in the Bill as introduced will no longer be required, and we intend to remove these at Stage 2.

RESEARCH AND TRAINING

- 46. The Committee acknowledges the Scottish Government's stated intention, via amendments, to transfer the research and training functions set out in sections 23 and 24 of the Bill as introduced to the proposed National Care Service Board. It will reserve final judgement on these sections of the Bill until it has seen the detail of these amendments.**
- 47. The Committee seeks further clarity concerning the degree to which those functions currently attributed to care boards in these sections of the Bill will be transferred to integration authorities under the revised governance structure now envisaged for the proposed National Care Service.**
- 48. The Committee acknowledges the widespread support for the provisions of the Bill relating to research (section 23) and training (section 24) as well as strong support for these provisions to be further strengthened. With particular regard to section 24, the Committee supports making the provision of training and training grants mandatory, such as may be required to enable members of the workforce to fulfil their roles to a suitably high standard. The Committee further believes that the additional associated costs of training need to be reflected in the Financial Memorandum accompanying the Bill.**
- 49. The Committee has heard extensive evidence in support of the development of a comprehensive framework underpinning the training provisions of the Bill and overseen by a single body. This evidence suggests such a framework should include:**
- Clear and robust governance arrangements**
 - Clear provisions setting out what categories of training are or are not covered and are mandatory or part of continuous professional development**
 - Clear alignment of training plans with workforce development and planning**
 - Clear alignment with the Advance Practice Framework for social work**
 - Close involvement of independent professional associations in decision-making**
 - A requirement to work closely with the SSSC as the body responsible for setting qualification and CPL requirements for the social care sector**
 - A system of sanctions with respect to providers that fail to meet agreed training standards**
 - Provision for data gathering to help inform continuous improvement in training outcomes.**
- 50. As outlined earlier in this report, the Committee believes the provisions set out in section 24 should be matched with a requirement for a comprehensive training plan to be prepared as part of the strategic planning process set out in Chapter 2 of Part 1 of the Bill.**
- 51. The Committee would also like to see further provision made with respect to section 24 of the Bill to ensure members of the workforce are adequately supported to be able to participate in relevant training in a way that does not financially disadvantage them or otherwise impinge on their normal working hours.**

52. The Committee would like to see the wording of section 24 amended to ensure any such training is appropriately commissioned from suitably qualified and experienced professionals.

Scottish Government response to recommendation 46 and 47

The powers set out in sections 23 and 24 of the NCS Bill as introduced are based on existing powers that the Scottish Ministers have in relation to social care support and social work under the Social Work (Scotland) Act 1968. These are broad powers to undertake and support research and provide for training. These powers are designed to accommodate a range of situations in which such activities may be undertaken. Stage 2 amendments will be introduced with the intention of conferring powers relating to research and training on the NCSB to ensure it has the relevant powers to support its functions.

We welcome the Committee's reflections and recommendations. We agree that good strategic, workforce planning and workforce development are interdependent, and should consider the relevant skills and knowledge the workforce needs now, and in the future. In addition, we recognise the value that Fair Work can bring to good workforce planning and workforce development, and would refer the Committee to the Scottish Government's responses to the Fair Work recommendations 11 - 14 for further information related to this. Ministers must also take account of reserved powers and existing legislation which limits the way in which an NCS can operate, as regards to employment matters.

SUPPORT FOR OTHER ACTIVITIES

53. As for the previous sections of the Bill, the Committee acknowledges the Scottish Government's intention, via amendments, to transfer the functions set out in section 25 of the Bill as introduced from Scottish Ministers to the proposed National Care Service Board. Again, it will reserve final judgement on this section of the Bill until it has seen the detail of those amendments.

54. To help further inform the process of drafting these amendments, the Committee draws the Scottish Government's attention to evidence it has received arguing that this section of the Bill would equally benefit from amendment to clarify what activities may be funded through this provision and who may qualify for funding.

55. The Committee also seeks assurances from the Scottish Government that, if loans are to be issued as part of the financial assistance provided for by this section, it will issue clear guidance setting out rates of interest for loans and how these will be managed.

Scottish Government response to recommendations 53 to 55

Section 25 of the NCS Bill as introduced sets out a power similar to an existing power the Scottish Ministers have under the Social Work (Scotland) Act 1968, to provide funding for supporting activities related to functions. The power in the 1968 Act is currently used for a variety of purposes associated with the promotion of social welfare. This can include supporting third sector organisations to provide leadership and make strategic connections to improve governance, supporting people with lived experience to engage with policy-making, and supporting organisations to deliver services aimed at people with long-term conditions.

At this stage, we have not identified specific activities for the NCSB to fund. As the NCSB takes on responsibility for oversight and improvement of NCS services, however, it may identify areas where improvements could be made by funding specific activities. It is important that the NCSB has the appropriate powers to provide funding to support such activity where it identifies the need to do so. While existing examples of funding may provide insights into the kind of activities which are likely to be funded, further definition within the NCS Bill itself could risk unintentionally restricting the scope of the NCSB to fund activities in the future.

It is important that the NCSB is open and transparent about any funding it does provide. As mentioned earlier in this letter, our intention is that the NCSB annual reports – setting out the way in which the Board's functions have been conducted – will be laid before the Scottish Parliament. This will ensure full transparency around any funding activities, and provide an appropriate opportunity for Parliamentary scrutiny. Further consideration is being given to how the NCSB can provide clarity and certainty around any funding it may provide, including where any loans are issued and the conditions attached to them.

COMPULSORY PURCHASE

56. The Committee notes concerns that the wording of section 26 should be amended to provide stronger safeguards that the powers it confers will only be used as a last resort. The Committee notes suggestions this should include a requirement to collaborate with local partners to fully explore other options for making best use of existing public assets before this power can be exercised.

57. The Committee recognises that, based on provisions as originally set out in the Bill as introduced, there could have been a conflict of interest between Scottish Ministers having the power to authorise the compulsory purchase of land and to make the decision to compulsorily purchase land in the first place. The Committee will reserve final judgement on these provisions until it has seen the detail of any amendments the Scottish Government intends to bring forward. If the powers of compulsory purchase are to be retained in some form, in the broader interests of transparency, it believes that the exercise of these powers should be made subject to a process of appeal.

Scottish Government response to recommendations 56 and 56

Following the change to the broader approach to the NCS and the decision not to transfer delivery functions to new bodies, we intend to amend the Bill at Stage 2 to remove section 26 on compulsory purchase.

POWERS TO TRANSFER FUNCTIONS

- 58. The Committee notes significant concerns raised by multiple stakeholders during its Stage 1 scrutiny of the Bill as introduced regarding the potential impact of the powers conferred by sections 27 to 29 - that is to transfer functions out of local government control - being exercised. It therefore welcomes confirmation from the Scottish Government that, under the new consensus agreement with COSLA, local government will retain functions, staff and assets and, as a consequence, these provisions will no longer be required.**
- 59. The Committee notes the Scottish Government's intention to make alternative provision for functions to be transferred between statutory partners if there is a rationale and clear local agreement to do so. However, it will reserve final judgement on this point until it has seen the full text of its amendments.**
- 60. In those circumstances where functions are to be transferred, the Committee also emphasises the importance of ensuring absolute clarity around the scope of functions to be transferred and of undertaking proper prior consultation with those potentially affected.**

As the Committee has noted, as part of ongoing discussions on the National Care Service, a consensus has been reached with COSLA and the NHS for a new national framework for social care and social work support, whereby local authorities and Health Boards will retain service delivery functions, staff and assets.

We now believe that we can achieve our aims of local reform through reforming existing integration authorities rather than creating new public bodies. Local authorities and health boards will continue to delegate their statutory functions to integration authorities rather than functions being transferred over to new public bodies.

CHILDREN'S SERVICES AND JUSTICE SOCIAL WORK

61. In light of the widespread concerns expressed to it and other committees taking evidence on the Bill at Stage 1 about potential implications of transferring children's services and justice social work into the proposed National Care Service, the Committee welcomes the Scottish Government's change of approach.

62. At the same time, the Committee will need to take further evidence from stakeholders as part of its further scrutiny of the Bill to determine the precise implications of this revised approach for the future delivery of children's services and justice social work, taking due account of any relevant amendments the Scottish Government brings forward.

Scottish Government response – recommendations 61 and 62

I am pleased that the Committee welcomes the decision not to pursue a transfer children's and justice social work services functions from local authorities onto Scottish Ministers. The shared accountability agreement confirms that the staff, functions and assets will be retained by local authorities.

The establishment of the NCS will change the social care, community health and social work service landscape in Scotland. People access a range of services, and it is therefore important that access is seamless from the point of view of those accessing children's and justice social work services. The establishment of the NCS will ensure better outcomes for people accessing support, in addition to improving the experience of those delivering services.

The Scottish Government intends to bring forward an amendment at Stage 2 to ensure that NCS principles, benefits and system improvements can be offered to both adults and children equally and consistently across Scotland. To achieve this, we will make a provision to enable Scottish Ministers to mandate delegation of children's and justice social work services to reformed Integration Authorities. Discussions continue with COSLA and other key partners on how this provision could be implemented locally in the future. These discussions are also considering where local and national government can further work together to strengthen children's and justice social work services across Scotland.

I understand that any future changes in governance arrangements for children's and justice social work services will require further parliamentary scrutiny. I welcome this and will ensure that we work with the Health Social Care and Sport Committee, and any other relevant committee, to facilitate this.

I would also like to thank the Education, Children and Young People Committee for its scrutiny. I welcome that Committee's report on the impact of the potential inclusion of children's services in a National Care Service. Our response to this report is included in **Annex A**.

OTHER SERVICES

63. During its scrutiny of the Bill, the Committee heard evidence from many stakeholders highlighting a lack of clarity as to how the planned transfer of adult support and protection and mental health services into the proposed National Care Service would be managed. It notes similar concerns with respect to alcohol and drugs support and homelessness services and wishes to highlight evidence of the risks potentially posed to the continuity of service provision in these areas as well as to effective integration with other related services if such transfers are not carefully managed.

64. In light of these concerns, the Committee broadly welcomes the change of approach to proposed governance structures in reducing the risk of disruption to ongoing delivery of these other services but will again reserve final judgement until it has seen the detail of relevant amendments.

65. The Committee further notes the Minister's commitment to share with it further details of delegation arrangements for other services early in 2024 and intends to use this additional information to further inform its final conclusions with respect to the Bill as it relates to those other services.

Scottish Government response – Recommendation 63 to 65

There will no longer be a transfer of health functions to the National Care Service. Community health services within scope of the NCS should mirror the current prescribed delegated functions in the Public Bodies Act (Scotland) Act 2014 as closely as possible to avoid unnecessary disruption and to promote integrated services for people. It has also been agreed that, in principle, children's community health services should be included in the scope of the NCS alongside adult community health.

There is a presumption in favour of integration where there is currently inconsistency, in recognition of its benefits in providing greater continuity of care. Services which 'must' be delegated should be compulsory and not optional and there should be a consistent approach to delegation across Scotland. However, further clarity is required on the arrangements for specific services which 'may' be delegated such as Drugs and Alcohol and Prison health and social care with the presumption that these should be delegated. Public and Population Health should have a clear role in the planning and delivery of community health and social care support and services.

We will work with community health partners through engagement and co-design to ensure effective integration, governance and accountability of services and to understand how services including mental health may be planned for by the NCS under commissioning arrangements agreed by Integration Authorities.

In relation to Adult Support and Protection, the shared accountability agreement between national and local government included agreement that statutory delivery functions would remain with local government and Health Boards respectively. There will be no backtracking on achievements accomplished through the 2014 Act in terms of integration. Rather, reforms should build on what has already been achieved. There should be a presumption in favour of integration where there is currently inconsistency, in recognition of its benefits in providing greater continuity of service provision.

TRANSFER OF STAFF, PROPERTY AND LIABILITIES ETC.

66. During its initial scrutiny, the Committee heard concerns raised by many stakeholders concerning the implications of transferring staff, property and liabilities from local government to the proposed National Care Service, as originally provided for in the Bill as introduced. In this context, it acknowledges the Scottish Government's significant change of approach towards governance and accountability and the reassurance this should hopefully provide, particularly to staff currently working within the sector.

67. At the same time, the Committee will reserve final judgement on these sections of the Bill until it sees the detail of relevant amendments brought forward by the Scottish Government and has an opportunity to take further evidence from relevant stakeholders as part of its further scrutiny of the Bill.

Scottish Government response – recommendation 66

As the Committee has noted, a new national framework for social care and social work has been agreed by Scottish Ministers and COSLA and NHS leaders as part of ongoing shared accountability discussions on the National Care Service (Scotland) Bill.

This means that Local Authorities will retain responsibility for all current functions and the delivery of social work and social care services and there will be no transfer of staff or assets. Similarly, There will no longer be a transfer of health functions to the National Care Service. As a consequence, sections 27 to 33 of the Bill will no longer be required and we propose to remove those provisions.

We will improve the experience of people accessing services by introducing a new structure of national oversight to drive consistency of outcomes, whilst maximising the benefits of a reformed local service delivery. We are currently considering necessary amendments to the NCS Bill to reflect this, and will provide details in due course.

NATIONAL SOCIAL WORK AGENCY (NSWA)

68. Given that the proposed remit of a National Social Work Agency, as described in the Policy Memorandum, is to include responsibilities to "monitor and improve the quality of the services that the NCS provides" and to oversee and support education, improvement and scaling up of good practice, workforce planning, training and development and terms and conditions including pay, the Committee requests clarification from the Scottish Government as to why its scope is limited to the social work profession rather than addressing these important issues with respect to the wider social care workforce.

69. The Committee recognises stakeholders' concerns that, if it is set up as currently proposed as a department within the Scottish Government, the NSWA will lack the requisite operational independence to be able to fulfil its role effectively.

70. The Committee therefore calls on the Scottish Government to undertake further engagement with relevant professionals to explore:

- **what scope there might be for such an agency to assume responsibilities beyond the social work profession to include the wider social care workforce;**
- **how the operational independence of such an agency can be assured to enable it to fulfil its role effectively; and**
- **how the future role of Chief Social Work Officers and their ongoing relationship with this agency will be addressed and managed.**

71. The Committee further calls on the Scottish Government to set out to what extent and in what ways the ongoing development of its proposals for the establishment of a NSWA have taken account of the concluding recommendations of the Independent Review of Inspection, Scrutiny and Regulation in Scotland.

Scottish Government response – recommendation 68 to 71

There are intrinsic links between social care and social work, but it is important to be clear of the distinction between the two functions. Social work is a statutorily prescribed role which involves assessing need, managing risk, and promoting and protecting the wellbeing of individuals within a distinct legal framework. Social care is the umbrella term for adult, children's and justice services which are in place to directly support people to meet their personal outcomes.

The IRASC recommended establishing a "specific Social Work Agency for oversight of professional development" and this is what we will do in partnership with the social work profession. Social workers have a protected title and are responsible for the discharging of statutory duties, on behalf of their local authority (often within multi-disciplinary settings), within a complex legal framework created to protect the human rights of individuals. The scope of the National Social Work Agency (NSWA) will therefore be limited to social work, given the specific role, qualifications and legal responsibilities of our social work professionals. An advisory group of stakeholders, including COSLA, SASW, SWS, SSSC,

NHS Education for Scotland (NES), Care Inspectorate and Unison has been established to help inform the role and remit of the NSWA. They agree that the focus should be on social work.

The National Care Service will build on the work underway within the Scottish Government focusing on oversight, fair work practices, ethical commissioning and procurement, as well as organisations such as SSSC and NES to support the training and development of the wider social care workforce. It is recognised that there is a need for professional leadership for social care and we are in discussion with partners about where within the NCS this is best located.

The NSWA will ensure our social work profession is fit for the future and Scotland's social workers are supported, have parity with other professionals and can continue to champion human-rights and social justice.

In relation to the form of the NSWA, discussions are continuing between the Scottish Government, Social Work Scotland and COSLA on a partnership approach to establishing the NSWA. The intention is that it should be jointly accountable to both central and local government, recognising the need to collectively address the workforce issues affecting the sector. The agreed form and structure of the agency has yet to be concluded – the clear objective being to deliver the maximum benefit and support for the social work profession. The future role of Chief Social Work Officers and their ongoing relationship with the NSWA will be addressed and managed through its partnership with Social Work Scotland and local government. This will ensure the views and the role of Chief Social Work Officers is strengthened and informs the work of the agency and is at the heart of how it supports frontline social workers.

NSWA has firm and compelling support from the social work sector including frontline social workers. They want their profession to attract and retain a workforce for the future – they have said the profession needs a national voice and national leadership, a national workforce plan and education strategy.

The Committee asked to what extent the proposals for the NSWA have taken account of the concluding recommendations of the Independent Review of Inspection, Scrutiny and Regulation of Social Care in Scotland (IRISR). Scottish Government has accepted all 38 recommendations made by the IRISR and published its response on 6 March 2024. It is worth noting that the Chair and Vice-chair of the Review met with a variety of subject matter experts to inform their work, including the Office of the Chief Social Work Adviser. The Scottish Government will continue to work closely and collaboratively with regulators, providers, partners and with those who have lived and living experience of social work, social care support and linked services in implementing the recommendations. This will ensure that implementation has the impact intended, is proportionate and builds on some of the good practice highlighted in the IRISR report. The NSWA will support proposals which support an inspection, scrutiny, and regulatory system that works better for those using and those providing social work and social care services.

We will look to bring forward Stage 2 amendments to strengthen the role of the Chief Social Work Adviser in providing advice to Ministers in terms of social work issues, including performance of local services.

HEALTH AND SOCIAL CARE INFORMATION

72. The Committee believes that a single electronic health and care record is fundamental to the success of the proposed National Care Service and calls on the Scottish Government to complete this as a matter of urgency.

73. A majority of witnesses submitting evidence to the Committee agreed with the need for a single electronic record, but concerns were also raised about various aspects, including data security, access to and ownership of data, and cost. Ahead of Stage 2, the Committee calls on the Scottish Government to provide:

- **a secondary Data Protection Impact Assessment (DPIA) which looks beyond just the framework, to show how it is taking into consideration the privacy risks which could result from the exchange of personal data;**
- **confirmation of who will be able to access, view and update health and care records;**
- **details of how federated access to the care record will be achieved; and**
- **clarification of who will have ownership of the data recorded.**

74. The need for enormous investment to achieve Part 2 of the Bill was highlighted to the Committee along with concerns that even an estimate of costings was omitted from the Financial Memorandum accompanying the Bill as introduced. The Committee agrees with the Finance and Public Administration Committee that indicative costs for implementation of Part 2 of the Bill need to be included in the Financial Memorandum and calls on the Scottish Government to provide these in advance of Stage 2.

75. In light of the considerable concerns raised by a broad range of stakeholders about the many implications of implementation of the data and information provisions of the Bill, the Committee believes that the regulation-making powers conferred by section 36 must be subject to a further reinforced process of parliamentary scrutiny than is currently afforded by use of the affirmative procedure.

Scottish Government response – recommendation 72

We acknowledge the recommendations in relation to Part 2 of the National Care Service Bill. In particular, we are pleased that the need for an integrated social care and health record (“the integrated record”) has been recognised and validated by the Committee’s Stage 1 report.

It is important to clarify that Part 2 of the NCS Bill provides for a broad information sharing power that allows Scottish Ministers to create a scheme for sharing information for the purpose of the efficient and effective provision of services, and the production of information standards. Whilst these powers can be used to support the creation of the integrated record, it is important to confirm that these provisions do not in themselves create the integrated record nor create any particular technology or product or compel the creation of any particular technology or product. The purpose of the section 36 is broader than simply the

creation of an integrated care record, and is intended to be used wherever information is shared for the purpose of efficient, effective provision of services by and on behalf of the NCS and NHS. We will ensure this broader information sharing purpose is reflected in the title of section 36.

Scottish Government response – recommendation 73

We recognise and understand the concerns that were discussed in evidence given to the Committee. Although recommendation 73 refers specifically to the integrated record, we respond to the concerns raised in the wider context of the provisions in Part 2 of the Bill.

- **Data Protection Impact Assessments (“DPIA”)** – Ensuring individual’s personal information remains protected is essential for all actions of public services. Officials will undertake the relevant impact assessments for the full processes involved, which will ensure due consideration is given to protect people’s information and rights. The DPIA is key to ensure this, and officials are leading on the development of, while engaging with delivery partners and external bodies including the Information Commissioners Office.
- **Access to records** - As per current legislation, information will only be shared with appropriate individuals who have the appropriate need to access that information. This is in line with our obligations under the Data Protection Act 2018 and UK GDPR. As the Committee knows, we will be working to co-design the integrated social care and health record with people, for example those in receipt of care and those with experience in the delivery of services. This process will help to identify specific needs and requirements for processes include accessing and/or updating records, ensuring the integrated record is built around the person and meets their needs, through defining suitable and appropriate routes of access and having appropriate controls in place to manage and monitor access.
- **Federated access** – The detail of creating the integrated record is being actively progressed by officials and potential delivery partners. It is imperative that we prioritise the safety and security of individual’s information at each step when undertaking this work. We will update the Committee in due course as appropriate details become available, including on the approach to identity management.
- **Ownership of data** - The Scottish Government must comply with UK-wide Data Protection Legislation, including UK GDPR, which does not recognise ‘data ownership’ as a meaningful legal concept, instead focusing on data controllers, data processors and data subjects as the defined entities. It is anticipated, in relation to the integrated record, that public sector organisation(s) will be the data controller(s) of information in the integrated record, with appropriate agreements in place to support access of information and delivery of services. Specific roles and relationships will be confirmed as the delivery of the integrated record progresses and clearly articulated in associated data protection information assessments and accompanying privacy notices.

We would also note that concerns relating to the wider aspects of data security, and access to data, are being taken forward through the Scottish Government and COSLA’s joint Digital Health & Care and Data Strategies. An update on the Scottish Government Digital Health and Care and data delivery progress is due to be published shortly.

Scottish Government response - recommendation 74

Whilst we acknowledge that delivering on an integrated record will require additional investment, the costs associated with implementing Part 2 of the Bill are considerably lower,

as they principally relate to the establishment of a legal scheme to allow the sharing of information for the purpose of the efficient and effective provision of services and the setting of information standards.

Section 36 (information sharing) will allow the Scottish Government to create a legal 'gateway' that aims to remove some of the ambiguity and uncertainty that exists in some organisations over whether they are allowed to share certain information with other organisations. It is anticipated that in many cases this can be achieved using existing technology, therefore the costs associated with this section are in relation to the staffing required. For Section 37 (information standards), this is broadly analogous to powers that have existed in England for over a decade through the Health and Social Care Act 2012 (and updated to be mandatory for all health and adult social care providers through the Health and Care Act 2022). The costs associated with Part 2 are therefore costs more closely associated with establishing the necessary mechanisms, including staffing.

We do recognise the Committees' desire to understand the costs associated with delivering on an integrated social care and health records. These are not covered in the Financial Memorandum for the reasons set out above, however work is in hand to accurately project these costs, and this will be clarified through the development of a dedicated business case which will be fully scrutinised as part of the overall Health & Social Care portfolio's considerations for priority investments. We will endeavour to share the outcome of the business case with the Committee in due course.

Scottish Government response – recommendation 75

We note the Committees concerns regarding the Parliament's ability to scrutinise regulation making powers conferred by section 36 of the NCS Bill. We will continue to engage with the Committee to address these concerns. In doing so, we would seek to assure the Committee that as highlighted in recommendation 75, regulations made under section 36 are subject to the affirmative procedure, meaning they can only be made following approval from the Parliament.

The Scottish Government is of the view that this current level of scrutiny is suitable.

Section 37

We would also like to acknowledge, that no recommendations or concerns have been identified in relation to Section 37 of the Bill relating to Information Standards and welcome the support of the Committee in relation to this provision.

MONITORING AND EVALUATION

76. The Committee believes that a comprehensive process for the monitoring and evaluation of the National Care Service is a fundamental prerequisite for measuring the extent to which it has successfully achieved its objectives. It is also going to be vital in enabling the Scottish Parliament to effectively fulfil its role in undertaking ongoing scrutiny of the implementation of proposals for a National Care Service.

77. Ahead of Stage 2, the Committee calls on the Scottish Government to bring forward amendments to the Bill making appropriate provision for effective monitoring and evaluation of the National Care Service. This should include provisions enabling the Scottish Government to keep the Scottish Parliament regularly updated on implementation of the Bill and operation of the proposed National Care Service.

Scottish Government response to recommendation 76 and 77

The NCSB will have a key role in monitoring and reporting on system performance for NCS services. This will enable decision-makers to have access to information on the state of services within their localities and across Scotland. This information will support work on improvement and identify where additional measures are needed where standards are not being met. Access to information is one of the areas we have identified as in need of improvement. This includes streamlining existing reporting requirements across the system. This information will be critical to understanding and evaluating the impact of the NCSB.

The NCSB will prepare an annual report on its performance. This report will be sent to the Scottish Ministers, local authorities, and Health Boards, and will be laid before the Scottish Parliament. The annual report will ensure that the Scottish Parliament can regularly scrutinise the performance of the NCSB.

The NCSB will also have a responsibility for the visibility of data to ensure that appropriate information is published and available for scrutiny from a wider audience. This will enable a wider understanding of NCS services and promote openness and transparency about performance across the system.

We are undertaking further work to develop the framework for monitoring and intend to set out the detail in regulations and guidance rather than on the face of the Bill. We believe this is important so that we can ensure that such provisions are practicable and comprehensive, and can be amended if needed, in light of experience and to reflect developments in data requirements, capture and processing over time.

CARERS

78. The Committee strongly supports the personalisation agenda, whereby individuals have choice and control over their care and support. We recommend the Scottish Government should include further detail on the definitions included in this section, particularly in relation to what constitutes "sufficient breaks" as well as how it plans to ensure any such provision can be flexible, person centred and accessible, and aligned to the principles as set out in section 1.

79. The Committee welcomes provisions in the Bill detailing the rights to breaks for carers, but remains concerned these implementation gaps will persist unless the right to breaks is matched by action to:

- **increase appropriate respite (and supportive) care provision and associated funding, and**
- **improve flexibility and responsiveness to individual needs and circumstances.**

80. The Committee asks the Scottish Government to provide clarity on how the right to breaks for carers will be funded and what steps it will take to ensure any associated implementation gap is avoided.

Scottish Government response – recommendations 78 - 80

We absolutely agree with the focus on personalisation and choice. The intention is that these provisions will amend existing carers' rights under the Carers (Scotland) Act 2016 so also benefit from the focus on personalisation throughout the existing Carers Act statutory guidance; and in carers' rights to adult carer support plans and young carer statements, as well as their rights to all the self-directed support options. Establishing the National Care Service will help ensure quality, fairness and consistency of breaks under the new right, to meet individuals' needs.

We intend to set out the additional detail needed on 'sufficient breaks' etc. in regulations and guidance rather than on the face of the Bill. We believe that is important so that we can ensure that these provisions work well for the wide range of individual caring situations; and can be refined if needed in light of experience. We have made a good start on this, with a working group involving carers, practitioners and local and national carer organisations. However, we intend consult more widely on key issues such as the meaning of 'sufficient breaks' and the types of breaks to be made available before putting forward such regulations.

We are already providing £8m per year for voluntary sector short breaks; in addition to £88.4m per year Carers Act funding in the local government block grant. The National Care Service Bill Financial Memorandum (as updated in December 2023) shows the cost of the right to breaks legislation building up over a 10 year period. We expect demand to grow steadily over this period with additional short break provision growing alongside. Funding of these responsibilities will be a matter for future spending decisions and guided by updated cost estimates, taking into account monitoring of uptake.

Local authorities currently have responsibilities to promote a variety of short break provision in their areas. Further work to prepare for implementation of the right to breaks from caring will be put in place once the legislation is agreed and a start-date is decided.

CARE HOMES

81. The Committee welcomes the commitment to Anne's Law and considers it should be fully implemented as soon as possible to ensure a human rights-based approach to care.

82. The Committee further calls on the Scottish Government to consider bringing forward amendments to these provisions of the Bill to address the following:

- **Provisions covering redress and a complaint process should these rights not be realised in practice.**
- **Development of a guidance framework to ensure transparency and consistent decision making across all settings.**
- **Potential extension of Anne's Law to include wider health and care settings.**

Scottish Government response to recommendation 81

I welcome the Committee's overwhelming support for Anne's Law which the Scottish Government remains absolutely committed to the delivering within the NCS Bill. I have noted the Committee's recommendation that Anne's Law should be implemented swiftly. Once the NCS Bill has passed and is enacted, the Scottish Government will look to implement Anne's Law as soon as is practically possible. As the Committee has noted, steps have already been taken to lay the foundations of Anne's Law already using our existing powers by strengthening the Health and Social Care Standards and updated guidance for care homes.

Scottish Government response to recommendation 82

The Committee has suggested that consideration be given to a number of amendments for Anne's Law within the Bill. At the outset the Committee will wish to note that based on feedback from stakeholders, the Scottish Government is currently reviewing the provisions within in the Bill, to ensure they reflect the aspirations of Anne's Law that people remain connected to their loved ones. Taking the Committee's specific suggestions in turn, I offer the following responses.

Provisions covering redress and a complaint process should these rights not be realised in practice

In general, the social care complaints system for visiting worked reasonably well in the pandemic. Depending upon the circumstances, complaints were made to Health and Social Care Partnerships, Health Boards or the Care Inspectorate depending on their nature. The Care Inspectorate sought to resolve issues through early resolution to ensure that people remained connected. This process worked as part of the Care Inspectorate's existing complaints system which in relation to care home visiting is robust and flexible enough to ensure that matters are dealt with quickly and in the right way. Although complaints about visiting are now rare, this approach still operates and is reinforced by two new statutory Health and Social Care Standards on visiting and an associated inspection framework which includes a visiting indicator. There are existing provisions in place to manage complaints about visits which specifically relate to Anne's Law.

However, I intend to take further soundings on this suggestion from the Committee. It is worth noting the work highlighted above in relation to sections 14 and 15 of the Bill specifically around complaints and our commitment to co-designing a complaints service for the NCS that delivers accountability, with people with lived experience. While the work to date has not focussed specifically on visitation rights as part of this, the Scottish Government considers that it could be possible to consider these issues as part of the co-design process.

Development of a guidance framework to ensure transparency and consistent decision making across all settings

I welcome the suggestion from the Committee to develop a guidance framework to support decision making across all settings. It is important that all parties are clear in their role to support the aims of Anne's Law to ensure that people are supported to remain connected to their loved ones. It is the Scottish Government intention to prepare and issue suitable guidance. In the meantime, current guidance and the new Health and Social Care Standards support the promotion of opportunities for meaningful contact both in and away from the care home. This is being reinforced by the Care Inspectorate who are supporting care homes in preparation for Anne's Law through webinars, podcasts, and self-evaluations tools.

Potential extension of Anne's Law to include wider health and care settings

I welcome this suggestion from the committee to consider the extension of Anne's Law to other settings. The Scottish Government's priority is to deliver Anne's Law as soon as possible for adult care homes taking account of the terms of the original petition. While the Scottish Government is open to consider extending to other settings, initial consideration of other areas has shown that, in the main, other settings did not experience the same issues for visiting as people living in adult care homes. However, the Scottish Government will continue to engage on this and will carefully consider an extension to other settings that builds on the engagement already taken place with stakeholders.

In the meantime, the Committee will wish to note in relation to children's social care settings, contact arrangements for children living away from their families is governed by a wide range of existing legislation which affords legally established contact rights to children and young people through assessments, Care Plans, reviews, Children's Hearings and inspections, and so on. We are, therefore, of the view that children's care settings should not be included within the provisions of Anne's Law which has been developed in response to specific concerns in adult care settings.

ETHICAL COMMISSIONING AND PROCUREMENT

We appreciate the Committee's thorough reflections and recommendations related to ethical commissioning and procurement. To provide additional clarity to support our response to the Committee, we have provided information on the definitions of commissioning and procurement. The definitions are occasionally used interchangeably by stakeholders and while commissioning and procurement are interrelated, they are different process and have diverse legislative parameters.

Commissioning in its most basic form, is medium- to long-term planning that determines the choice of services and supports. The commissioning strategy is part of the Strategic Plan, and it will include the decision on whether to buy something from someone else or provide it within the organisation, often referred to as the "make versus buy" decision. This means the term commissioning is applicable to in- house and services provided by external parties. Where external provision is the chosen method, this will either be through grants or procurement. The decision on whether to use a grant or follow a procurement process will be based on the legislation applicable to the public body which details the circumstances for which a grant can be used.

Procurement, in its most basic term, is the process by which public bodies buy services from external suppliers. Procurement is a result of the commissioning process and is used when the commissioning process identifies the need to purchase a service from a provider or range of providers to meet identified needs. Only Public Sector procurement is required to comply with the following:

- Procurement Reform (Scotland) Act 2014
- Public Contracts (Scotland) Regulations 2015
- Procurement (Scotland) Regulations 2016
- The World Trade Organisation's Government Procurement Agreement
- Any relevant case law

Other commissioning methods including grants, in-house provision, and service level agreements between public bodies, are not required to comply with procurement legislation.

ETHICAL COMMISSIONING

83. The Committee notes that discussions are ongoing with COSLA and the NHS to agree details of "how operational commissioning and procurement should be delivered at a local and national level". It further notes that the outcome of these discussions will determine whether amendments will require to be brought forward to those provisions of the Bill related to procurement and ethical commissioning. The Committee will reserve final judgement on the relevant provisions of the Bill until it has been updated on those outcomes and the detail of any amendments.

84. The Committee is of the view that ethical commissioning is fundamental to the success of the National Care Service, as both the mechanism to deliver on fair work commitments and to address both workforce and service-delivery issues. However, the Committee is concerned that there is too little detail on ethical commissioning within the Bill as introduced.

85. The Committee acknowledges that ethical commissioning will form part of the Scottish Government's planned co-design process. However, as already stated in relation to strategic planning, the Committee calls for Chapter 1 of Part 1 of the Bill to include a clear and comprehensive definition of ethical commissioning. The Committee recommends that any definition of ethical commissioning must include fair work principles, including pay, terms and conditions and parity considerations.

86. The Committee agrees with views expressed by stakeholders that ethical commissioning should embody the personalisation agenda as established within self-directed support legislation, ensuring choice and control for individuals to ensure the best possible outcomes. The Committee commends the model embraced by the Granite Care Consortium and its outcomes-focused personalised approach to care delivery, its emphasis on providing freedom and autonomy for staff to plan care, and to offer plurality of provider to ensure that local care meets the needs and preferences of individuals. The Committee considers this and other alternative models could provide the basis for development of a best practice approach to the implementation of ethical commissioning practices. The Committee calls for further research into the development and delivery of these models to determine how they can be adapted to represent all providers in an area.

87. The Committee also agrees with stakeholders that oversight in commissioning is crucial to ensuring the legislation does not lead to further implementation gaps. As such, the Committee recommends:

- **provisions for rectification should be included within the Bill, alongside a complaints and whistleblowing process, should ethical commissioning and fair work practices not be realised in practice;**
- **national ethical commissioning guidance is developed to inform individual ethical commissioning strategies; and**
- **the Bill should include a requirement for a review of ethical commissioning practices to take place, within 3 years of the relevant provisions coming into effect.**

Scottish Government response - Recommendation 83

The National Care Service (Scotland) Bill, as introduced, places duties on both Scottish Ministers and on care boards to produce ethical commissioning strategies as part of their strategic plans in relation to the services they provide. In agreement with COSLA and the NHS, the proposed local model of delivery would now be through reformed Integration Authorities, as opposed to Care Boards, and through the NCSB at a national level.

We have also agreed that Local Government and Health Boards will continue to be responsible for delivery of their integration authorities Strategic Plans and ethical commissioning strategies.

Local Government will not be required to bid in procurement processes to provide social care services and supports. They will deliver services and supports either in house or through securing external provision as is current practice.

Work is underway with partners to develop national principles, standards, guidance and practical support for ethical commissioning and procurement which will be agreed and set by

the new National Care Service, to inform the development and delivery of local ethical commissioning strategies.

Scottish Government response - Recommendation 84

An ethical commissioning strategy is currently interpreted in the NCS Bill at section 10 as the “arrangements for providing the service which best reflect the National Care Service principles”. In the Bill, the NCS principle (g) states that the NCS will be exemplar in its approach to fair work.

Ethical commissioning strategies will be key to supporting the consistent delivery of fair work initiatives in care and support services delivered by the National Care Service. Ethical commissioning and ethical procurement will look to provide, within the parameters of devolved legislative competency, care and support services that take account of fair work standards, which will include: improving pay and terms and conditions; encouraging sustainability of service; and supporting positive reform.

The detail of ethical commissioning will be better suited to guidance, which can be changed and improved iteratively as national and local ethical commissioning strategies are implemented, through evaluation and engagement.

Scottish Government response - Recommendation 85

Ethical commissioning will be defined through guidance, which can be changed and improved iteratively as national and local ethical commissioning strategies are implemented, through evaluation and engagement.

As stated in response to recommendation 83, work is underway with partners to develop national principles, standards, guidance and practical support for ethical commissioning and procurement which will be agreed and set by the new National Care Service, to support and inform the development and delivery of local ethical commissioning strategies.

Ethical commissioning strategies will apply to the delivery of all care and support services delivered by the NCS, whether that is done in-house; through grants; or procurement.

The Adult Social Care Ethical Commissioning (ASCEC) working group have agreed draft national ethical commissioning and procurement principles, to support delivery at a local level, which include fair work:

- Person-led care and support
- Outcomes-focused practices
- Human rights approach
- Full involvement of people with lived experience
- Fair working practices
- High quality care and support
- Climate and circular economy
- Financial transparency, sustainable pricing and commercial viability
- Shared accountability

Scottish Government response - Recommendation 86

In partnership with COSLA, the Adult Social Care Ethical Commissioning (ASCEC) working group was established in November 2022 to look at improvements that can be made to the current commissioning and procurement processes and support alignment with the NCS.

The working group has undertaken to define, identify and review areas of good practice. Early work of this group has focused on developing the principles of ethical commissioning and procurement, to ensure a shared understanding of what constitutes good practice.

The Granite Care Consortium model, was delivered through a procurement process. It was identified as an area of good practice and included in this review.

In partnership with stakeholders, we are considering ways to embed such models to support the practical implementation of an ethical approach to commissioning throughout Scotland.

Scottish Government response - Recommendation 87

The National Care Service will address the implementation gap by improving commissioning and procurement practices, through better alignment between legislation, strategies and guidance, and local practice.

The NCSB will provide national oversight through agreeing and setting national principles, standards, guidance and practical support for ethical commissioning and procurement which will inform the development and delivery of local ethical commissioning strategies.

The ethical commissioning strategy will be included in local strategic plans and will therefore be reviewed alongside the strategic plan. The current period of a strategic plan in the Bill is 3 years.

RESERVING RIGHT TO PARTICIPATE IN PROCUREMENT BY TYPE OF ORGANISATION

- 88. The Committee notes the Scottish Government is considering a potential amendment to section 41 of the Bill to modify the definition of qualifying organisation. It will reserve final judgement on this section of the Bill until it has seen the details of this amendment. It nonetheless calls on the Scottish Government to give due consideration to the points raised in this section of the report in determining its approach to amending this section of the Bill.**
- 89. The Committee has concerns that there is an inherent contradiction between reserving the right to participate in procurement by type of organisation, and the principles of ethical commissioning. The Committee heard evidence that competitive tendering, as reflected in the “call for competition” set out in the Bill by reserving rights to participate in procurement, is not compatible with ethical commissioning and that it promotes transactional procurement related to cost that, to date, has led to time and task approaches and unfair work practices in the provision of social care, irrespective of whatever guidance is in place.**
- 90. The Committee recommends the Scottish Government should undertake a review of procurement practices and develop a strategy to remove competitive tendering from social care procurement, in favour of a collaborative approach to commissioning and procurement which is underpinned by ethical commissioning principles. This should include a clear definition of ethical commissioning. The Scottish Government should further set out detail on how the Parliament will have an ongoing scrutiny role in this area.**
- 91. Notwithstanding the Committee's concern as to whether this section is compatible with the Scottish Government’s commitment to ethical commissioning, the Committee has heard further concerns over how this provision (reserving right to participate in procurement by type of organisation) would work in practice if enacted.**
- 92. The Committee has concerns that reserving the right to participate in procurement by type of organisation implies a judgement on the types of organisations that provide quality care. We have further concerns that such a provision could unintentionally have a negative impact on outcomes for individuals, particularly in relation to already established and valued local provision and future sustainability of services. We also require further detail from the Scottish Government on the extent to which commissioning and procurement will be undertaken at either a national or local level or both, and how consistency of approach will be ensured while still allowing for local variation.**

Scottish Government response - Recommendation 88

As noted by the Committee, we have listened to stakeholder feedback and work is underway to amend section 41 of the Bill. This policy intention of the amendment is to change the criteria of the definition to third sector and social enterprises. We are committed to working with stakeholders, including third sector representatives to develop the definition.

Scottish Government response to Recommendation 91 and 92

We appreciate the Committee's feedback regarding our approach to procurement into the proposed extension of the reserved process. The ability for public bodies to restrict participation in a tender exercise to supported businesses has been part of national procurement legislation since 2006. The provision within the legislation which makes this possible is also referred to as "Reserved Contracts". Importantly public bodies have the flexibility to determine whether to use the reserved process, which is currently available for supported businesses, on a case by case basis. This flexibility will continue to apply when the reserved process is extended to third sector bodies, including social enterprises for social care services through the NCS Bill.

The third sector is a valued part of the social care market, delivering essential and quality social care across Scotland. In recognition of the essential role the third sector plays within the provider landscape, the Bill contains provisions to enable public bodies to reserve health and social care contracts for third sector bodies, that meet the specific criteria as detailed within the Bill.

As noted by the Committee, work is underway to amend section 41 of the Bill. This is in response to stakeholder feedback indicating the current criteria would exclude many third sector organisations and social enterprises. The policy intention of the amendment is to respond to this feedback and change the criteria of the definition, to be more inclusive of third sector bodies, including social enterprises. We believe the reserved process is wholly compatible with ethical commissioning principles and intend to move forward with this amendment. We are committed to working with stakeholders, including third sector representatives, to develop the definition prior to Stage 2.

This flexibility of application of the reserved process, will continue to apply within the National Care Service. Local Government and Health Boards, in their role as delivery partners to the Integration Authority, will evaluate the available procurement routes and make the decision on whether to use the reserved process on a case by case basis. Procurement of NCS services is expected to be aligned to the integration authorities' strategic plans and ethical commissioning strategies. Through consideration of the Strategic Plan and the ethical commissioning and procurement principles the contracting authority will determine the best procurement process to apply.

Scottish Government response to recommendation 89 and 90

The Light Touch Regime threshold of £663,540 currently applies to community health and social care contracts. This threshold determines the contract value at which the procurement regulation apply. This means contracting authorities can, where appropriate, award contracts without a formal competitive process for any social care services under this value.

In recognition of the feedback regarding contract durations, and the real time value of the light touch regime remaining stagnant since implementation, we are considering options to enable the amendment of the value of the light touch regime for community health and social care services. Where the regulations apply, they provide a legal framework which mitigates against risk, as well as supporting services providers by ensuring equality of access to contracting opportunities. Without this, new entrants to the market may miss out on contracting opportunities including opportunities to collaborate and partner with other providers. Therefore, any decisions on using an unregulated procurement route, need careful consideration, balancing the benefits with the risks. Competition can be used to determine that contracts are awarded to services providers who demonstrate that they meet and are committed to delivery against the national care service principles. Therefore, when

used in the right way, competitive procurement practices, alongside collaboration, supports the vision of the National Care Services.

We welcome the Committee's acknowledgment of good practice models such as the Granite Care Consortium (GCC). Existing models like the GCC demonstrate it is already possible to embed collaborative approaches within the current procurement legislation and practice. Importantly these collaborative models still require an element of competition to enable due diligence in deciding on who to partnership with. The element of competition should focus on quality not cost. It is a means of evaluating the quality and compliance, including health and safety and financial stability, of the available service providers and ensuring that they can meet the needs of people with lived experience. The result of this form of competitive process is a contract, and the associated public funds, being awarded to the most suitable provider based on the evaluation criteria. We believe competitive tendering, when used in the right way, is compatible with ethical commissioning. Ethical commissioning and procurement principles will set out expectations for how procurement should operate within the National Care Service.

We are committed to reviewing the current social care procurement guidance including the light touch regime, and how it is implemented. We intend to work in partnership with stakeholders, the sector and people with lived experience, to develop, within legislative parameters, guidance and tools to support and embed ethical procurement. This will include fostering collaboration within the market, working in partnership with service providers and utilising competition in an appropriate way. This means focusing competition on evaluating quality of service, fair work, human rights, person led and flexible care as opposed to cost.

National Commissioning

As part of the shared accountability discussions between SG, NHS and COSLA it has been agreed that one function of the new NCSB will be to nationally commission complex and specialist care services, by agreement, on a Once for Scotland basis. In the majority of cases, local bodies will be responsible for the planning and delivery of services and supports in their area. The Scottish Prison Service has agreed to prison social care being nationally commissioned by the National Care Service and we are currently working with them to make improvements to social care delivery in prisons in preparation for the service becoming the responsibility of the NCSB. Where agreed, some other services may benefit from being commissioned on a national basis.

REGULATION OF SOCIAL SERVICES

- 93. The Committee wishes to highlight stakeholder concerns around responsibility for care provision following cancellation of a care service's registration and that this could have negative consequences for individuals' outcomes if there is no capacity and resilience within the local social care system to respond quickly and to provide alternative, appropriate care in these situations.**
- 94. The Committee requires further assurance in the legislation that every effort will be made to ensure a timely continuation of service delivery for those affected and to minimise disruption in their care and that such decisions do not place undue pressure on other service providers in the marketplace. The Committee notes a suggestion from certain stakeholders that the Care Inspectorate should have a wider market oversight role, similar to that of the Care Quality Commission in England and asks the Scottish Government for its view on this suggestion and how it will ensure there are no oversight gaps.**
- 95. The Committee also believes that there is a case for strengthening collaboration in relation to improvement work and sharing information, when there are concerns about the quality of care in advance of any service closure and in the registration of new services. The Committee would welcome further detail of this on the face of the Bill.**
- 96. The Committee has heard evidence from stakeholders that the regulation landscape across health and social care is complex, with different systems in operation across different sectors and services. The Committee wishes to highlight stakeholder views that further consideration of regulation may be needed rather than only focusing on instances of service closure. We would welcome further detail on how the National Care Service will ensure consistent regulation and oversight across all services provided by and on behalf of the National Care Service.**

Scottish Government response - recommendation 93

The intention is that the new powers would allow the Care Inspectorate to forego the issue of an improvement notice in certain prescribed circumstances where, in their professional judgement, the service provider is not in a position to meet the fit and proper person requirements and/or sustain the requirements of an improvement notice. This will enable the regulator to speedily take action with poor performing services, better protect social care users, and drive up the consistency and quality of care expected across all social care services in Scotland. It is not intended that the Care Inspectorate exercise this power lightly or indeed often but with the sole objective of being able to move more quickly to take action against poor providers in the infrequent cases which arise.

Application to the sheriff for cancellation of any registered care service is a last resort and will continue to require the Care Inspectorate to evidence serious risk to life or wellbeing. The circumstances of any such application are always very closely scrutinised by the court. Sheriffs have been interested in the past to hear about the alternative care arrangements to ensure continuity of care for people before deciding on the application for cancellation. Whilst that 'duty of care' rests firmly with the placing authority (which in the case of care homes for adults for example, is usually the relevant Local Authority / Health and Social Care

Partnership (HSCP) for the individual adults), the Care Inspectorate will continue to monitor these arrangements maintaining contact with the relevant parties and provide Scottish Government Ministers and officials with briefings on progress, in particular if there are any challenges in securing alternative care arrangements. In extremis, the COSLA led National Contingency Planning Group would be convened if multiple Local Authorities/HSCPs are impacted to help coordinate arrangements.

A cancellation of a care service will not necessarily be due to Adult and Support and Protection (ASP) concerns. However, Iriss has developed an Adult Support and Protection Large Scale Investigation (LSI) Framework that local authorities and their multi-agency partners – including the Care Inspectorate, NHS and Police Scotland - can utilise to assess and support individuals. LSI procedures could be relevant where a service has been identified to have more than one adult potentially at risk of harm from the same or similar circumstances. Scottish Government has recently commissioned Iriss to supplement the framework with multi-agency Large Scale Investigation Guidance. This is currently being designed with input from Chief Social Work Officer representatives, Police Scotland, Social Work practitioners, health representatives, and Adult Support and Protection Lead Officers and Convenors.

ASP processes are applicable across all settings; therefore, ASP inquiries – and subsequent assessment of risk, where necessary - within and outside of any care service should be undertaken in circumstances where the adult meets ASP criteria. ASP provides a framework for multi-agency assessment of risk and identification of where the council might need to intervene in order to protect a person's well-being, property or financial affairs.

In relation to those who have a duty to co-operate with ASP inquiries, the proposed amendment for Stage 2 aims to broaden the wording so that other parties, who fall outside the current definition of “public bodies or office holder” must co-operate with the Council in their inquiries. This aims to remove discrepancy and delay in co-operation between parties who may wish to share relevant information but have uncertainty about the legal basis for sharing information where an adult may be at risk of harm. Expanding the category of parties who can be specified as having a duty to co-operate will facilitate the addition of other individuals, organisations or parties, or any new configuration of services as a result of the introduction of the NCS Bill, to section 5 more efficiently in future. This amendment aims to ensure that relevant individuals, organisations or parties who come into contact with adults at risk of harm are given a duty to co-operate with ASP inquiries regardless of the design of future ASP services.

Scottish Government response - recommendation 94

The [IRISR Recommendation Report](#), published in September 2023, made 38 high level strategic recommendations spanning five key themes all with a strong emphasis on outcomes and continuous improvement becoming a stronger focus of inspection, scrutiny and regulation. *Recommendation 14 was that “Scottish Ministers make appropriate arrangements for market oversight and sustainability in the social care sector”*

In accepting all of the recommendations it was acknowledged that there was significant amount of work that is already underway, that will in part or fully address a large number of the recommendations.

Through work to deliver the National Care Service a workstream to consider market shaping has been established. The objective of the project is to develop a framework to enable

market shaping of the adult social care market by the NCS. Part of this work is to consider and makes recommendations related to how the role of oversight fits into market shaping.

Scottish Government response - recommendation 95

The Independent Review of Adult Social Care (IRASC) recommended that there should be “a new approach to improving outcomes – closing the implementation gap, a new system for managing quality”.

A Steering Group was established co-chaired by the Scottish Government, COSLA and SOLACE with representation from across the social care support and community health sector, to co-produce the draft “Scottish Learning and Development Framework” (SLIF).

The draft Scottish Learning and Improvement Framework (SLIF) has been co-designed to focus and track improvement across the outcomes that matter to people.

It sets out the vision and priorities for improvement in Adult Social Care Support, Social Work and Community Health that have been agreed across the system.

It will support a move from a predominant focus on scrutiny and measuring performance, to an approach which builds improvement and quality management into the system.

Scottish Government response - recommendation 96

An Independent Review of Inspection, Scrutiny and Regulation of Social Care in Scotland (IRISR) was launched in September 2022, chaired by Dame Sue Bruce, to look at ways of strengthening the inspection, scrutiny and regulation of social care support and linked services.

The [IRISR Recommendation Report](#), published in September 2023, made 38 high level strategic recommendations spanning five key themes all with a strong emphasis on outcomes and continuous improvement becoming a stronger focus of inspection, scrutiny and regulation. The IRISR emphasised that further consideration is required to minimise duplication of inspection activity and to ensure that where gaps exist these are addressed.

The Scottish Government has accepted all 38 recommendations made by the IRISR and the [Scottish Government response](#) was published on 6 March 2024.

Our regulators play a critical role in assuring consistent and high standards of social care support and linked services. The Scottish Government will continue to work closely and collaboratively with regulators, providers, partners and with those who have lived and living experience of social care support and linked services in implementing the recommendations. This will ensure that implementation has the impact intended, is proportionate and builds on some of the good practice highlighted in the IRISR report.

Taking a phased approach to the implementation of the Review recommendations is an opportunity to improve and strengthen the inspection, scrutiny and regulatory system so that it is flexible to support the needs of the National Care Service and the wider landscape of social care support and linked services. This supports the achievement of better outcomes for the people of Scotland.

ANCILLARY PROVISION AND REGULATION-MAKING POWERS

97. The Committee has heard significant concerns about the regulation-making powers conferred on Scottish Ministers by sections 4 (Establishment and abolition of care boards), 27 (Power to transfer functions from local authorities), 28 (Power to bring aspects of healthcare into the National Care Service), 29 (Power to re-organise the National Care Service), 31 (Transfers of staff) and 32 (Transfers of property and liabilities, etc.) of the Bill. It therefore welcomes indications from the Minister that, as a consequence of the consensus agreement with COSLA that legal accountability for the proposed National Care Service will be shared between the Scottish Government and local government, these powers will no longer be required and will be removed from the Bill via amendments at Stage 2.

98. In some areas, particularly relating to technical provisions, the Committee is sympathetic to the Scottish Government's view that using secondary legislation is a suitable mechanism to ensure flexibility and enable changes to be implemented as identified through an iterative process. However, we are concerned that an across-the-board approach, as set out in the Bill, is not appropriate and could reduce the scope for effective parliamentary scrutiny.

99. Given the lack of detail on how the key provisions in the Bill will work, as this is to be set out in future regulations, the Committee recommends the following changes to the regulation-making powers set out in section 46 of the Bill:

- The regulation-making powers in section 15 (Dealing with complaints) should be subject to review. In particular, the Committee highlights the recommendation in evidence from the Presiding Officer that “any measures proposed by the Scottish Ministers which have the potential to affect the SPCB in any aspect of the exercise of its functions” should “follow a legislative route which affords proper scrutiny and ensures parliamentary approval”.
- Regulations in section 36 (Care records) should be subject to a further reinforced process of parliamentary scrutiny than that afforded by the affirmative procedure.
- The regulation-making power in section 41 (Reserving right to participate in procurement by type of organisation) should be subject to review given the Committee's view that section 41 is incompatible with the policy intent of ethical commissioning. We recommend the section, and hence the associated regulation-making power, is removed.

100. The Committee urges the Scottish Government to bring forward the necessary amendments to give effect to these changes.

101. One of the challenges the Committee has faced with this Bill has been the lack of available detail at the start of our scrutiny. The Committee believes that should the Bill be enacted, post-legislative scrutiny of the Bill, including the regulation-making powers contained within it, will be essential. We ask the Scottish Government to mandate a review of the regulation-making powers of the Bill and of any regulations made using these powers, within 3 years of each of the corresponding provisions coming into effect.

Scottish Government Response – recommendations 97 and 98

I thank the Committee for welcoming our proposals for Stage 2 in relation to the tripartite agreement with COSLA and the NHS, which would remove the regulation-making powers relating to establishing care boards (section 4), transferring functions (sections 27 to 29), and to transferring staff and assets (sections 31 and 32).

Scottish Government Response – recommendations 99 and 100

The Committee's recommendations on specific regulation-making powers in section 46 of the Bill.

As set out at recommendation 42, the power at section 15 of the Bill is subject to the affirmative procedure which means that no regulations can be made under the power unless the Parliament has approved them. The Scottish Government recognises that the SPCB, as the sponsor of some public bodies, has an interest in legislation that would affect those bodies. The Bill, as introduced, therefore includes a power of veto by the SPCB in relation to any draft regulations laid before parliament which may confer a new function, or modify or remove an existing function of a body sponsored by it (through section 15 (4) and (5)).

The Scottish Government is of the view that this current level of scrutiny is suitable.

We note the Committee's concerns regarding the Parliament's ability to scrutinise regulation making powers conferred by section 36 of the NCS Bill. We will continue to engage with the Committee to address these concerns. In doing so, we would seek to assure the Committee that as highlighted in recommendation 75, regulations made under section 36 are subject to the affirmative procedure, meaning they can only be made following approval from the Parliament.

As detailed in response to recommendation 92, the Scottish Government believe the reserved process is compatible with ethical commissioning principles and intend to move forward with the power in section 41 as set out in the Bill as introduced. However, we intend to work with stakeholders to amend the criteria and definition within the Bill, to ensure it meets the policy intent of application to third sector providers.

RECOMMENDATION ON THE GENERAL PRINCIPLES OF THE BILL

- 102.** The Committee draws its conclusions and recommendations on the Bill to the attention of the Parliament.
- 103.** As reflected by the Independent Review of Adult Social Care, the Committee recognises the case for reform in social care to address existing inconsistencies in access across local authorities, to ensure consistent application of guidance and legislation, to address ongoing challenges in workforce, including terms and conditions of employment, and capacity, to improve commissioning and procurement and, ultimately and most importantly, to improve outcomes for those in receipt of social care and support. It therefore welcomes the intentions underlying the Scottish Government's proposals for the creation of a National Care Service.
- 104.** However, the Committee has expressed concern that the Scottish Government has so far been unable to provide details of amendments which it will bring forward to clarify the details of its revised proposals. While the Committee understands that this is a framework Bill, the lack of detail at this stage on what that framework will look like is concerning, and has made the work of the Committee less effective as a consequence.
- 105.** The Committee is also concerned that the Scottish Government has so far been unable to articulate and communicate a model of how the proposed National Care Service would operate. We understand that the Scottish Government intends to share this information prior to the Stage 1 debate and look forward to receiving it.
- 106.** The Committee's recommendation therefore remains conditional on the Scottish Government addressing the concerns it has set out in this report and agreeing to facilitate significant further scrutiny of the Bill at Stage 2, ahead of the formal Stage 2 proceedings taking place.
- 107.** The Committee notes calls from a key stakeholder to establish an expert legislative advisory group for the Bill to help guide the co-design process and encourages the Scottish Government to fully explore this possibility and report to the Committee prior to Stage 2.
- 108.** To enable it to undertake effective ongoing scrutiny of the Bill, the Committee calls on the Scottish Government to publish:
- the full text of any amendments it intends to lodge at Stage 2;
 - a marked-up version of the Bill as introduced incorporating these amendments in a highlighted format; and
 - an updated Policy Memorandum and Explanatory Notes.
- 109.** The Committee further gives due notice that, subsequent to receiving the items outlined above, it will require additional time to take further oral and written evidence from key stakeholders prior to commencing the formal process of considering and disposing of amendments at Stage 2.
- 110.** That being the case, in order for the Committee to be in a position to conclude its Stage 2 scrutiny of the Bill in a timely manner, it calls on the

Scottish Government to publish the documents outlined above ideally prior to 26 February 2024 and certainly no later than 29 March 2024.

111. Subject to these conditions, the Committee recommends that the general principles of the Bill be agreed to.

I responded to these recommendations in my interim response of 28 February 2024, in which I wished to address points that the Committee wished to see in a faster timescale, but wanted to add to that response here.

The National Care Service (Scotland) Bill has already been significantly influenced by a wide range of stakeholders and we have secured good engagement. However, we recognise the benefit of establishing an Expert Legislative Advisory Group (ELAG) to supplement and augment the current engagement and to bring specific focus, on this occasion, to the process for the further development of Stage 2 amendments. I am therefore pleased to advise you that an ELAG to support the next stage of work has been established, with the first meeting on 28 March 2024. The Scottish Government expects that a period of around 8-10 weeks will be required to ensure that engagement is thorough and robust to complete the necessary work that will be required to take the group's considerations into account.

The Scottish Government will therefore work constructively with the Parliament to agree timings for this Bill, particularly a Stage 2 deadline, that allows sufficient time for engagement and scrutiny to take place, whilst also recognising the role of parliamentary authorities and the time they need in supporting members ahead of amending stages of Bills.

The ELAG comprises members from the wide range of stakeholder groups established who have already been essential to the development of the policy intention for the NCS Bill. The first meeting will consider terms of reference for the Group and I will share these with the Committee once agreed.

If we are to maximise the benefit of the group, and work together meaningfully, the Scottish Government will need to engage with the group in relation to amendments that are proposed to be made. Whilst we have committed to providing the information requested in recommendation 108 as soon as possible, that material will require to be informed by the work of the group and it will not be possible to do that by 29 March 2024.

The full text of amendments intended to be lodged at Stage 2; a marked-up version of the Bill as introduced (incorporating the amendments in a highlighted format); an updated Policy Memorandum and Explanatory Notes, will be sent to the Committee no later than June 2024.

I hope that the detail provided in this response addresses the concerns of Members on certain elements of the Bill and that it assists the Committee going forward in Stage 2 of the Bill.

Annex A

Response to the Education, Children and Young People Committee Stage 1 Report

I welcome the report of the Education, Children and Young People Committee on the impact of the National Care Service (Scotland) Bill (the Bill) on children and young people and the potential inclusion of children's services in a National Care Service (NCS).

As I confirmed in my letter of 6 December 2023 to the Health, Social Care and Sport Committee, following tripartite discussions with COSLA and NHS, we have agreed to progress a shared accountability model for the National Care Service. This agreement means statutory delivery functions will remain with local government and health boards respectively, along with assets, employment and relevant funding. Consequentially, there are provisions in the Bill as introduced which no longer reflect the intended approach.

This annex provides the Scottish Government's response to your report in the context of the shared accountability model.

Independent research

The Centre for Excellence for Children's Care and Protection (CELCIS) was commissioned to carry out independent research to help us answer the question: 'What is needed to ensure that children, young people and families get the help they need, when they need it?' This study, which consisted of four strands of research, began in September 2022 and ended in December 2023 with a concluding summary report.

The CELCIS research is clear about the challenges facing children, young people and families and those supporting them across Scotland. The research has already provided considerable insight into care systems both at home and internationally. A clear evidence base is offered for improvements that are required, alongside and beyond consideration of any structural changes. We are committed to making effective use of the research and as such we are currently using the findings to inform the development of a programme of work to plan, deliver and implement improvements to Children's Services in Scotland.

Strand 1 provided evidence of the vital components for effective integration, such as committed leadership and adequate resource and time allocated to this. The need for supportive relationships between all parties was also highlighted and the importance of children and families having a voice and ongoing involvement in the design and implementation of the services they can access.

Strand 2 emphasised the length of time necessary for effective change to be implemented and for any outcomes of this to be measurable. The case studies highlighted the benefits of having a national approach to some functions to provide consistency although the crucial level of service delivery was found to be at the locality level.

Strand 3 recommended that more clarity is needed around the current complex delegation arrangements for children's health and children's social care services across the country. It also advised there is still work to be done to improve upon the data that is gathered about the needs and experiences of children and young people and how this information is used. External factors such as poverty can impact on outcomes for children and young people so the overall context must be considered within any improvement plans.

Strand 4 reported that although passionate and committed, the workforce is in crisis and feels under-staffed, under-resourced and under pressure. The rising level of need has led to crisis-driven rather than early intervention. Differing eligibility thresholds between adult and children's services and a lack of clear pathways makes transition difficult. Integrated services can help to reduce inefficiency and support with better planning around health and social care needs.

The concluding summary report advised that children, young people and families need timely access to services where they are able to build supportive, trusting and consistent relationships with professionals. They need support to be provided at a local level and smooth transitions between children's and adult services. Consideration needs to be given to the best structures to facilitate what needs to be achieved to improve the lives of children, young people and families and how to effectively work across system and service boundaries. Having some functions, such as policy, guidance and data structures led at a national level gives consistency but day to day work and relationships at local level is key to supporting integrated working. Children, young people and families must have meaningful involvement in service design.

The findings from the research will support with addressing some of the concerns raised in your report.

The Bill and secondary legislation

(59) The Committee is of the clear view that, given the Bill's potential to alter a wide range of existing health and social care services for children and young people, then any secondary legislation delivering such a change would require more detailed parliamentary scrutiny than that afforded by the affirmative procedure. The Committee noted the Minister for Wellbeing and Social Care's undertaking when giving evidence that he would reflect on this. The outcome of that reflection would clearly be welcome before any Stage 2 proceedings. [linked to 58]

I note the Committee's views on the use of a Framework Bill and its concern that much of the detail of any future transfer of children's services would be through secondary legislation and that this approach would not allow for sufficient Parliamentary scrutiny. Using a Framework Bill, however, allows for those with lived and living experience of accessing and delivering community health, social work and social care support, particularly children and young people, to be involved in the co-design of future services.

I understand that any future changes to children's services will require further parliamentary scrutiny. I welcome this and will ensure that we work with the Committee to support them in scrutinising any such changes.

Additionally, we are continuing to discuss with COSLA and other key partners the appropriate parameters for the exercise of any relevant powers. I will ensure that the Committee remains updated on any progress made.

(64) The Committee notes the wide range of legislation relating to children and young people that could be amended by this Bill. Further, as currently drafted, these powers do not appear to be contingent on children's services being transferred to the National Care Service.

(65) The Committee therefore recommends that the Scottish Government provides clarity as to the circumstances under which it envisages section 27 being used, should a decision be taken not to include children's services under a National Care Service.

(66) The Committee recommends that the Acts listed in schedule 3 should be kept under review to ensure that any changes to existing children and young people's health and social care policy are made only where strictly necessary and where it is in the best interests of children and young people.

(270) The Committee therefore believes that the Scottish Government should model a range of scenarios to assess what the impact would be on children and young people, and the services they rely on (e.g. no change to current arrangements, children's services outwith a National Care Service or children's services within a National Care Service). This modelling should also include consideration of what might happen, should the Scottish Parliament reject any secondary legislation seeking to bring a children's service or services under a National Care Service. The key focus of this modelling, should be how best to bring about transformational change and remove barriers between children's and adult services. [linked to 268 & 269]

The shared accountability agreement means that the staff, functions and assets will be retained by local authorities and each party will have legislative responsibility for different aspects of the new system. This will improve the experience of people accessing services by introducing a new structure of national oversight to drive consistency of outcomes, whilst maximising the benefits of a reformed local service delivery.

We continue engaging with key partners and stakeholders to explore how the benefits of national oversight, improved outcomes and reformed local service delivery can be offered to both adults and children equally and consistently across Scotland.

We remain committed to upholding the United Nations Convention on the Rights of the Child (UNCRC), as set out at paragraph 161 of the policy memorandum for the Bill, and as such the best interests of children will be a primary consideration in developing children's services.

Improvements to Children's Services

(77) The Committee acknowledges that improvement is needed. It is clear that there is a significant gap between policy intention and how children and young people experience those services in practice. There are also specific issues in relation to transitions between children's and adult services. However, outwith this Bill, there are a number of approaches which could be taken to address this.

(78) There is an urgent need to improve the delivery of children's services. There should be no delay to ongoing or planned improvements, regardless of the decision on whether children's services should be included under a National Care Service.

The independent research is clear about the challenges facing children, young people and families and those supporting them across Scotland. It has provided considerable insight into care systems both at home and internationally and a solid evidence base is offered for improvement that can be made alongside structural changes.

I am pleased to confirm that there is consensus across Scottish Government, Local Government, stakeholders and other sectoral partners, affirming the shared opportunity to collaboratively advance an agenda of improvement.

We are committed to develop a multi-year improvement plan, which will reflect work already underway as well as what more we need to do. We will set out a long-term strategic approach to reform, which will empower us to build on best practice and improve quality and consistency of service. This will include support for our workforces, improved prioritisation and sequencing of legislative, policy and delivery priorities, enhanced data standards and practices, simplification of the currently complex landscape, and much more.

(265) The Committee heard that, whilst there may be sound policy and legislation governing children's health and social care in place, in practice, children and young people are not always getting the services that they need. The Committee acknowledges that the current experience for children and young people, and some groups of children and young people in particular, is not good.

(266) At the same time, the Committee acknowledges that there are areas where the current models of integration have brought improvements in terms of consistency, communication and co-operation between children's services and other services at a local level. Such good practice should be at the core of what comes next.

(267) However, that is not true of all areas, given the integration of children's services remains mixed across Scotland. The Committee notes that some Integrated Joint Boards currently have children and families social work delegated to them, some have children's health delegated, some have both elements delegated and others have no delegation of children's services at all, meaning they remain with the Local Authority.

(268) Should the Bill proceed and a National Care Service be created, it is clear that children and young people will be impacted by the changes this Bill brings, regardless of whether children's services themselves are brought under a National Care Service.

(269) If, for example, the decision is taken to transfer only adult services to a new National Care Service, then those areas where children's services are currently fully integrated will be required to disentangle children's services from adult ones. Similarly, should a decision be taken to bring children's services under a National Care Service, then those areas with the lowest levels of integration, will be required to make significant changes to ensure that those services become fully integrated.

(271) The Committee did not hear strong support for children's services being included under a National Care Service. Given that the policy detail of any changes will only become apparent when secondary legislation appears, stakeholders were only able to talk in theoretical terms of what change might mean. Where opportunities arising from change were identified, these were often heavily caveated and any support was dependent on the eventual model chosen.

The Public Bodies (Scotland) Act 2014 requires an integration scheme to be established between the local authority and health board for each local authority area. The Act allows choice in each area as to the delegation of children's social work and social care support, and children's health services such as community health services and Child and Adolescent Mental Health Services (CAMHS). This means, as the Committee rightly observes, that in some areas local authorities and health boards have delegated all of these services to the Integration Authority, some have delegated some services and some have delegated none.

The CELCIS research found consistent challenges around access to services and in successfully translating the aims and vision of change into improving outcomes for children, young people and families. The findings confirmed that structures matter as an enabler to the workforce to provide the support that children, young people and families need, when they need this. More specifically, Strand 3 of the research highlighted the complex and cluttered children's services landscape as a barrier, and advised that greater clarity is needed on the delegation arrangements for children's health and social care services.

The establishment of the NCS will change the social care, community health and social work services landscape in Scotland. It will provide opportunities to strengthen systems and secure better ways of cooperative working. It will also ensure better outcomes for people accessing support, in addition to improving experiences of those delivering care.

It is therefore right to consider how NCS principles, benefits and system improvements could be consistently applied to children's social work and social care services.

Within the context where local authorities retain their functions, staff and assets, we need to consider what 'inclusion in the NCS' means and whether consistent delegation of services might be required to prevent creation of differences in standards of and access to care across geographical areas.

It would be concerning if variations in local arrangements were to create a divide across geographical areas to the detriment of children and families accessing social care, community health, or social work services. For this reason, we need to have the ability to secure greater consistency of services in Scotland where local or alternative legal arrangements cannot be relied on to ensure consistent applicability of NCS features and principles.

Engagement and co-design with children and young people

(79) There is already a clear evidence base setting out children and young people's views, particularly in relation to care-experienced children and young people, and this should be used as a starting point for improvements.

(80) However, it is vital that consultation takes place with a much broader range of children and young people, accessing the full range of children's health and social care services. This should include, but not be limited to, those with learning disabilities, mental health needs, children living with domestic abuse, young carers and neurodivergent children and young people.

(260) The Committee would welcome clarity from the Scottish Government as to how it plans to meaningfully engage with the broad range of children and young people who access health and social care services across Scotland.

To ensure effective use of the existing evidence base a review has been undertaken which considers learning from a range of published and unpublished research and reports from previous engagement. The information reviewed provides insight on the views and experiences of children, young people and families who have accessed support. The aims of the review were to sense check 'what we've already been told' from previous engagement and to assess gaps in our knowledge and consider how best to capture the voices of those not yet heard.

Children, young people and families have already provided significant insight to the consideration of issues with the current system and how services could be improved. The findings from engagement activity overlap strongly with the views expressed by the children's services workforce in Strand 4 of the CELCIS research: the importance of consistency for building but of course trusting relationships; difficulties with access to services and prolonged waiting times; the importance of joined-up working between services and delivery partners; the need for early planning and co-ordinated support for transitioning from children's to adult services.

We know children and young people have already told us what is wrong with the current system therefore future co-design will focus on sense-checking what we have been told and provide opportunities for children, young people, families and those who support them to have a voice in shaping the services they would like to see in the future.

Engagement with lesser heard groups is ongoing and will continue to inform the future delivery of children's services. Additionally, I can confirm that children and young people will be involved in the NCS co-design and development processes to ensure their needs and views are properly considered from the outset.

(262) The Scottish Government should incorporate learning from co-design with children and young people to improve service delivery, irrespective of whether children's services are included under National Care Service.

(284) The Committee urges the Scottish Government to commit to implementing the improvements suggested via co-design with children and young people, regardless of any decision whether to include, or exclude, children's services from a National Care Service.

(289) The Committee acknowledges that Scottish Government stated that ongoing improvement work would not be delayed due to the potential passage of the National Care Service (Scotland) Bill. Where difficulties are identified and improvements suggested via this co-design process, they should also be actioned without delay, where it is feasible to do so.

Scottish Government officials have already engaged with Children's Hospices Across Scotland (CHAS), Young Scot, The Health and Social Care Alliance Scotland (The ALLIANCE), Young Carers, a sub-group of the Disabled Children and Young People Advisory Group (DCYPAG), families with opioid addiction, LGBT Youth Scotland and the National Deaf Children's Society, and are currently in the process of commissioning Action for Children to engage in co-design regarding transitions from children's to adult services. Work is continuing to develop an ongoing engagement strategy for children with lesser heard voices including those experiencing homelessness or domestic violence, those in conflict with the law, and sensory impaired young people, amongst others.

The creation of an NCS will bring change to the way children's community health, social work and social care services across Scotland are delivered. It will require adaptation of local partnership working and ways we deliver support for children, young people and families. However, we remain committed to driving forward the improvements required to Keep The Promise by 2030. The outputs from current engagement and co-design work will ensure those being supported by and delivering services have an active role in improving services for the future.

We also continue to implement actions to improve services now such as establishing the Whole Family Wellbeing Fund, embedding a human rights-based approach through the incorporation of the UNCRC, co-designing a Bairns Hoose for Scotland and refreshing policy and practice materials for Getting it Right for Every Child.

Co-design and human rights

(240) The Committee supports the Scottish Government's aspirations to place human rights at the heart of the National Care Service (Scotland) Bill. However, it notes the evidence from Cameron-Wong McDermott of CYPSC (explored in more detail above and in the Co-design section of this report), that co-design requires intense participation and that participation should take place early in the design process. As such, the Committee believes it would have been preferable for the codesign process to have been much more advanced, prior to this legislation being introduced.

(241) The Committee recognises that no decision has yet been made on whether to include children's services under the National Care Service. However, the evidence is clear that, regardless of which scenario is pursued, children and young people will be affected by the changes this Bill proposes. As such, their needs should be considered, and taken into account, from the earliest stages of planning and consultation.

(259) The Committee notes the Scottish Government's assertion that, should the National Care Service go ahead, that co-design will ensure that services meet the needs of those who use them. However, the Scottish Parliament has not had the opportunity to scrutinise what a co-design approach will mean in the context of this Bill. As such, it remains unclear exactly how this will work in practice.

(261) The Committee draws the Scottish Government's attention to the comments made by stakeholders in relation to effective co-design. It asks the Scottish Government to carefully consider how it can ensure children's needs and requirements are at the heart of this process by a) making sure co-design with children and young people commences as soon as possible; b) using co-design methods that are age appropriate, accessible and relevant to children's life experience and c) that mechanisms are built in to provide feedback to children and young people so they can know how their views have made a difference.

The NCS will be developed through co-design and engagement with those who have lived and living experience of accessing and delivering community health, social work, and social care support. I can confirm that children and young people will be involved in the NCS co-design and development processes to ensure their needs and views are properly considered from the outset. This is in line with the CELCIS research which strongly advises that those with lived experience should be meaningfully involved in the design and implementation of services which aim to support them.

We remain committed to upholding the UNCRC, and delivering a proactive culture of everyday accountability for children's rights across public services in Scotland. Article 12 of the UNCRC states that children have the right to be heard, listened to and taken seriously in all decisions which will affect them. We will ensure that children and young people are invited to participate in co-design within a forum that meets their needs collectively and individually, where their voices can be heard and responded to.

(242) The Committee also welcomes the creation of the Charter of Rights and Responsibilities as a means of helping people understand and enjoy their rights. The Committee recognises that some children find it harder to enforce their rights than others. It is therefore crucial that work to create this Charter allows for the meaningful participation of the wide range of children and young people potentially affected by the Bill.

The NCS Charter of Rights and Responsibilities is being developed and designed through multiple rounds of co-design and engagement with people with lived experience. This

includes experience of children and family services so that these views are embedded from the start. To date, the views of children, young people, parents and carers, have been gathered by representative organisations, to inform the initial development of the Charter. Additionally a co-design session was held with young and young adult carers to gather their insights and we have also engaged with several carer organisations who represent the views of young carers. Co-design on the Charter is ongoing and we look forward to engaging further with children, young people and families as the co-design process continues.

The Charter will be continually developed and refined before it is finalised ahead of the launch of the NCS. Further design work will be carried out to ensure that the Charter is accessible to and fully reflects the rights of children and young people in regard to the NCS.

(283) The Committee notes that the National Care Service is to be co-designed by children and young people. However, as previously highlighted, the Committee also recognises the risks associated with awaiting the results of such co-design before any planning for the future of children's services takes place. The Committee strongly believes that co-design work with children and young people should have commenced before this Bill was introduced.

Although co-design activity specifically relating to the NCS did not take place prior to the introduction of the Bill, work has been undertaken to include children and young people in the co-design of services they use.

Considerable work was undertaken through the Independent Care Review to understand the changes which need to be made to the children's care system. Over 5,500 voices were heard throughout this review, over half of which were children and young people. We will continue to incorporate the findings of previous learning, while building on this with ongoing co-design with children and young people to improve the delivery of children's services in Scotland.

Transitions

(105) The Committee recognises that there is a significant opportunity for improvements to be made in relation to transitions between children's and adult services.

(106) The debate around a National Care Service has brought a welcome focus on this issue. However, irrespective of the inclusion (or otherwise) of children's services, there is already a significant evidence base supporting the need for improvement, both in relation to transitions and across children's services more generally.

(107) The Committee notes the work that is already underway to improve young people's experiences of transition, including the work being piloted by ARC Scotland on Principles into Practice, which the Committee understands is due to be rolled out across Scotland in Spring 2023. It also acknowledges the Scottish Government's intention to produce a National Transitions to Adulthood Strategy.

(108) The Committee recognises that there is a significant opportunity for improvements to be made in relation to transitions between children's and adult services.

I very much welcome the Committee highlighting in their report the need for improvement in the transitions for young people from children's to adult services. Work is underway to improve children and young people's experience of transitioning to adulthood irrespective of the decision on whether to include children's services within the NCS.

As noted in paragraph 107 of the Committee's report, work to produce a National Transitions to Adulthood Strategy- to ensure there is a joined-up approach to supporting our disabled young people as they make the transition to adult life - continues to be jointly led by the Minister for Children, Young People and Keeping the Promise and the Minister for Equalities, Migration and Refugees.

Our Statement of Intent on the strategy, which is based on what we've heard through research and engagement to date, was published on 28 September 2023. This Statement of Intent, co-developed with our Strategic Working Group formed in March 2023, sets out the improvement focus and proposed, vision, and priorities for the strategy. This has been an important step to sense check what we have heard so far, and to gather wider views on whether the draft vision and priorities are the right ones. We are now using this feedback to further develop the strategy, including proposed outcomes and actions, which we hope to consult on more widely in Spring 2024, before aiming to publish the strategy by the end of the year.

As the Committee also noted, we have supported the Association for Real Change (ARC) Scotland to trial 'Principles into Practice' in 10 local authority areas between 2020-23 to identify, design and test changes that transform how young people with additional support needs are supported in their transition to young adult life. The purpose of the trial was to improve the lived experiences of young people who need additional support to make the transition to young adult life, and to test and bring Principles into Practice and its associated resources to completion.

Through the trials, we also funded the development of Compass - a digital application developed in partnership with young people and parents and carers, to help them and the professionals who support them navigate the transition to adulthood. The trials concluded on 31st March 2023, and the revised [Principles into Practice framework](#) and [Compass](#) were launched in June 2023 and are now freely available for use across Scotland. ARC Scotland

have been successful in their bid to the Children, Young People, Families and Adult Learners (CYPFAL) Third Sector Fund, for funding to support the wider implementation of Principles into Practice and Compass until March 2025.

As noted in paragraph 77 of the Committee's report the Scottish Government is already implementing a range of actions to improve the experience of transitions for young people which are not contingent on the inclusion of children's services within the NCS. This includes the promotion of effective planning for transitions for all children and young people in our Getting it right for every child (GIRFEC) policy and practice materials, and further development of 'Getting It Right for Everyone' (GIRFE). GIRFE builds on existing adult best practice and the learning from GIRFEC, supporting individuals as they transition from children's to adult services and taking a person-centred multi-agency approach.

As the Committee heard, the transition from children's to adult social care support and social work services can be a complex process for young people and their families. This is backed up by the CELCIS research which advises that addressing the differing thresholds between adult and children's services and lack of clear pathways would support with improved transitions.

Workforce

(184) The Committee heard the anxiety the children's services' workforce is experiencing in relation to service delivery under current arrangements.

(185) With specific reference to a potential National Care Service, the Committee urges the Scottish Government to engage with the workforce as soon as possible to provide staff with the opportunity to discuss areas of particular concern, including in relation to terms and conditions and pensions. In doing so, the Scottish Government should also take the opportunity to seek out ideas from those with current frontline experience as to how improvements can best be made to the quality of children's services.

(186) The Scottish Government should also consider providing targeted information to staff to ensure that they are aware of key milestones in the potential roll out of a National Care Service.

(291) The Committee recognised that there was significant uncertainty for the health and social care workforce. This should be addressed without delay. Staff need to have reassurance both in relation to their terms, conditions and pensions - and any additional resource that a National Care Service might bring to help ease workloads. The Committee notes that in many services existing staff are over-stretched amidst an ongoing recruitment crisis.

Under the shared accountability agreement, there will now be no transfer of staff. Work has been undertaken with key partners, including COSLA, Social Work Scotland (SWS) and Scottish Association of Social Work (SASW) to consider a joint improvement plan to address some of the issues affecting the social work workforce. A workshop was held with Chief Social Work Officers to identify key issues relating to pay and conditions, career pathways, out of hours and workforce planning. This helped identify possible solutions for key workforce pressures and challenges with the aim of developing a plan with collective responsibility, including regular updates to COSLA leaders.

We are working with key partners to develop more robust data collection, in the hope that this would lead to better workforce planning for delivery of services. Some engagement is

happening with NCS Adult Social Work workforce and fair pay colleagues and we plan to continue and strengthen this going forward. Work is underway to develop an effective voice of the workforce in the care sector which will include representative engagement with children's services workforce.

Work is ongoing to improve entry routes into the sector and career progression. There is also work underway to develop longer term sustainable improvements for the social care support workforce relating to pay, better terms and conditions, the introduction of sectoral bargaining, improved training and development opportunities and better recognition and representation – particularly in respect of trade unions, and more rewarding roles.

Finance

(145) The Committee recognises that this is a Framework Bill, and that much of the policy detail associated with a new National Care Service is still to be established. As such, it is not possible to form a view on the financial robustness (or otherwise) of the Bill's proposals as they relate to children and young people, based on the information currently supplied in the Bill's Financial Memorandum.

(146) Should the Bill proceed, and should children's services be brought under a National Care Service, it is essential that greater financial information is provided when any secondary legislation is proposed, in line with the enhanced scrutiny sought by the Committee earlier in this report.

(147) At present there is insufficient information and a lack of detail in the Financial Memorandum to reassure the Committee that the implications of the Bill for children's services, regardless of whether they are in or out of the National Care Service, have been properly costed. The suggestion that these costings will be provided only at the point that secondary legislation is laid is a point of particular concern.

(148) In advance of any Stage 2 considerations, the Committee urges the Scottish Government to provide detail of the financial modelling undertaken to date in relation to children's services. This modelling should include consideration of a range of scenarios, including the costs associated with a) children's services being brought under a National Care Service, b) children's services remaining outwith the National Care Service and c) reconstituting current integration arrangements for children's services across Scotland.

(281) The Committee was extremely concerned by the lack of detail provided either in the Financial Memorandum on this subject or in the evidence provided by the Minister for Wellbeing and Social Care and the Minister for Children and Young People. As previously stated, it is inevitable that change to children's services will occur as a result of this Bill and therefore there should be a clear understanding from the outset of what this might cost, regardless of the final approach taken.

(282) The Committee shares concerns over the robustness of the overall costs of the Bill as outlined in the Financial Memorandum and would not be content to wait until any secondary legislation was laid for further detail. The Committee recommends that ahead of any Stage 2, detailed financial modelling should be undertaken and shared with the Scottish Parliament to allow for greater financial scrutiny.

I note the Committee's concerns around the financial information. The Financial Memorandum includes the potential costs of incorporating certain children's services within the NCS. There was provision for the transfer of staffing, including those providing children's social work and social care support. There is also provision within the Scottish Administration costs for a new team to assist in any transition and associated work. We do not however expect that a change in reporting or accountability lines will have a material impact or create additional costs.

Children's Rights and Wellbeing Impact Assessment (CRWIA)

(277) Children's services should have a human rights-based approach, regardless of whether children and young people are included in a National Care Service.

(278) Whilst a partial Children's Rights and Wellbeing Assessment has been drafted on this Bill, on the understanding that further assessments will be produced once the way ahead is clearer, the Committee believes there is scope to do more now to ensure that children and young people's rights are protected.

(279) In the course of scrutinising the Bill at Stage 1, the Committee spoke to organisations representing disabled children and young people, neurodivergent children and young people, children affected by domestic abuse, young carers, children and young people affected by poverty, children and young people in conflict with the law, children and young people with mental health needs and care-experienced children and young people. The National Care Service has the potential to impact on these groups in very different ways, so there is potential now to produce an impact assessment which will ensure that their needs are fully considered as plans to implement the National Care Service are progressed. This assessment should explore the potential impacts of children's services sitting both within and external to a National Care Service.

Since the publication of your report further work on the consideration of children's rights has been undertaken. A Children's Rights and Wellbeing Assessment with a specific focus on the potential inclusion of children's social work and social care support services within the scope of the NCS is being undertaken. This assessment considers the possible impact on a diverse range of children and young people, additional advice has also been sought from the Children and Young People's Commissioner Scotland's office. This will continue to be monitored and further assessment undertaken as the co-design of certain children's services develops.

Kinship care allowances

(290) Current inconsistencies across Scotland in relation to kinship care allowances for children and young people are an example of something that could be addressed now, without the requirement to await the results of the CELCIS research or codesign processes.

On 29 August 2023, Scottish Government introduced the Scottish Recommended Allowance (SRA) for foster and kinship carers. Although the policy of providing allowances to foster and kinship carers is not new, having a standard national allowance is a new policy and the introduction of the payment means every eligible foster and kinship carer will receive at least a standard, national allowance which recognises the valuable support they provide, no matter where they live.

On 7 November 2023, additional guidance was published on gov.scot to provide additional information about eligibility, calculation, and payment of the SRA (<https://www.gov.scot/publications/scottish-recommended-allowance-for-foster-and-kinship-carers-information-for-carers-and-professionals/>). The Minister for Children, Young People and Keeping the Promise subsequently gave evidence at the Social Justice and Social Security Committee on 9 November 2023 regarding the rollout of the SRA and wider kinship care support.

Work is ongoing to plan a review of the implementation of the SRA, which will commence in 2024. Similarly, conversations are ongoing about future uprating mechanisms of the SRA.

The conversations have been constructive, yet challenging, given the wider financial environment and because the Scottish Government is operating with a fixed budget and limited fiscal powers.

Risks and evidence

(288) The Committee heard evidence which identified risks that in moving children's services to a new National Care Service, this might break existing operational links between education, social work and other local services and impact on the preventative and early intervention work which they currently deliver together.

We recognise that there are potential benefits and risks of including certain children's services within the scope of the NCS, and particular risks in areas where the links between education and children's social work and social care support currently work closely and well together.

We remain focused on retaining and strengthening the existing integration at a local level particularly between education and wider children's services. Discussions with COSLA and NHS partners will consider how we can remove the financial and organisational barriers to encourage national consistency and multi-disciplinary working.

Getting it right for every child lies at the heart of all our policies and services to support children, young people and families. As our national approach, it can help tackle siloed working through its firm foundations as a child-centered, rights-based, holistic and multi-agency approach. It provides the framework for delivery of high-quality universal and targeted support across public services, the third sector and community partners building a flexible scaffold of support.