Health, Social Care and Sport Committee

Summary of responses to the Committee's call for views

Introduction

The call for views was issued on 8 July 2022 and closed on 2 September 2022. A total of 216 responses were received to the general call for views on the Bill and these are published on the Parliament website.

A separate detailed analysis of the responses to the Financial Memorandum is also available.

Digital engagement was carried out over the same period and a summary of this is also available.

A SPICe Briefing to accompany the Bill has been published which also contains some analysis of submissions in relation to local government.

The call for views comprised the following set of general questions, followed by detailed questions on the specific provisions of the Bill. This summary covers the responses to the general questions. Respondents were free to answer any or all of the questions. Because of the breadth of the questions, rather than summarising responses according to the questions, a number of themes have been identified, and not every aspect of the Bill has been covered in detail.

General questions

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

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

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

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

5. The Scottish Government proposes that the details of many aspects of the proposed National Care Service will be outlined in future secondary legislation rather than being included in the Bill itself. Do you have any comments on this approach? Are there any aspects of the Bill where you would like to have seen more detail in the Bill itself?

6. The Bill proposes to give Scottish Ministers powers to transfer a broad range of social care, social work and community health functions to the National Care Service using future secondary legislation. Do you have any views about the services that may or may not be included in the National Care Service, either now or in the future?

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

8. The Bill is accompanied by the following impact assessments:

Equality impact assessment

Business and regulatory impact assessment

Child rights and wellbeing impact assessment

Data protection impact assessment

Fairer Scotland duty assessment

Island communities impact assessment

9. Do you have any comments on the contents and conclusions of these impact assessments or about the potential impact of the Bill on specific groups or sectors?

Overarching views

Many, if not most respondents support the goals of the National Care Service. But this support is often followed by some doubt that the Bill will create a system that could achieve those goals.

There are a number of overarching concerns with the Bill, such as the removal of control of social services from local authorities to Scottish Ministers, and linked, the blanket centralisation of a major public service. There is widespread scepticism that the Bill will provide the necessary basis, given challenges with other major structural reforms (Police Scotland, Health and Social Care Integration), that is required to bring about the necessary improvements to social care. The Bill proposes no radical steps to change how social services are to be organised or delivered. However, reform is being considered and developed through a co-design process with stakeholders.

Another major concern is that the Bill focuses mainly on structures and processes, and that the Financial Memorandum, because of the lack of detail, has wide margins of error, and only covers the costs, relating to this structural change, associated with the Bill – which is what it is meant to do. The concern is framed in most responses with the current fragile nature of social care, made more fragile by the recent pandemic, and combined with a fear that the proposed changes will not address the problems, and/or that they could lead to unintended consequences and delays in addressing urgent problems.

The vision for the Bill, recognised by a number of respondents is that the Bill could provide the framework for more consistent social service provision and that

establishing a national care service, accountable to Scottish Ministers, as described through the Policy Memorandum, could facilitate a reform programme that addresses long-standing, well-known problems in social care.

There is widespread frustration at the overall lack of detail because the Bill is a framework bill, and this also poses challenges for scrutiny. The Scottish Government explain their approach, recognising that reform is required across social care as highlighted by the Feeley Review (Independent Review of Adult Social Care), and they are in the midst of a co-design programme with stakeholders on the detail of these reforms. For some respondents, this approach provided reassurance that substantive reform would be 'bottom-up'.

Many welcome the national oversight and anticipate some parity for the sector with the NHS and what this could achieve for social care staff in particular. However, unlike the NHS, but, as is pointed out, there is not one single employer in social care, nor a single type of provider, but a 'mixed economy' of private, public and third sector provision.

> "I have a concern that this development is political. It is not analogous to the establishment of the NHS in that not all functions and providers will be, can or should be brought under the control of the NCS."(Sue Dumbleton)

Many also recognise the value of setting out the principles for the National Care Service, although even here, there is some disquiet about how these will be realised without legal duties attached. More specifically, the references to a human rights approach are criticised because of the absence of duties and means of redress associated with mention of rights, particularly where the Bill discusses particular rights: the National Care Service charter, a right to breaks for carers and 'Anne's Law for example.

Scotland Against the Care Tax refer to an understandable expectation of a 'national care service', that, like the NHS, would be 'free at the point of delivery', one of the founding principles of the NHS. They ask that this principle be added to Part 1 of the Bill.

> "The National Care Service with its use of existing demand management tools of eligibility criteria, assessment procedures, waiting lists and waiting times is well placed to look to the future. We hope that in 75 years' time the population of Scotland will look back at a "free at the point of delivery" National Care Service with the same fondness and desire to protect, that they have today to the National Health Service."

This priniciple is not in the Bill, but the principles do refer to equitable access, support for unpaid carers, to help them to continue to care, support for the workforce, continuous improvement and that the project of integration continues prioritising dignity and respect.

While this summary doesn't cover the Financial Memorandum, among the questions was one about long-term funding of social care. The Feeley Review covered this briefly. Long-term funding of social care was not strictly within remit, except

inasmuch as recommendations were sought for 'redesign of the overall system of social care to improve people's experience of care'.

Most respondents answered this question within the parameters of the Bill, rather than considering the means by which social care is funded in the longer term, but some were concerned that money that could be used to improve services now and over the period of structural change would instead be used on creating new bureaucratic structures:

> "We are concerned about the costs of setting up the infrastructure of the NCS. We have only recently seen the formation of Integrated Joint Boards and HSCPs. Our experience with these being set up was that funding went to structures not to services." (Cerebral Palsy Scotland)

From Community Integrated Care:

> "The Bill overlooks the huge task of ensuring economic stability within the sector before it becomes a National Care Service and doesn't acknowledge the paradigm shift in cultural, societal and behavioural norms that will be necessary to deliver a social care service that would meet the ambitions of current providers."

Audit Scotland advises caution in the context of challenges with other major reforms over the past two decades:

> "The affordability of the vision set out is not certain given the actual scale of the costs are not yet clear.
>
> With such fundamental changes in service arrangements there are many significant risks that will need to be managed in implementing the proposed changes, as seen with the challenges in implementing reform over the last 10-20 years e.g., Police, health and social care integration, community planning and the Christie principles. In our response to the 2021 consultation, we highlighted that the challenges go far beyond new structures… The intentions of the NHS 2020 Vision to shift the balance of care, and of health and social care integration to work more collaboratively to move resources into the community, have not been realised. Services are still fragmented and too focused on inputs and outputs rather than outcomes, and budgeting is short term."

Few respondents picked up on one of Feeley's main hopes: that social care comes to be seen as an investment in rather than a cost to society, which is also contained in the principles of the proposed NCS. If people referred to it, they spoke mainly of further investment that was required, but also respondents recognised the contribution the sector makes the Scottish economy.

Since the Scottish Parliament has started to use Citizen Space in its calls for views, the opportunity for more individuals to respond has increased. In particular, this includes frontline staff and service managers whose views previously might have been filtered through a general, corporate response. Citizen Space makes it easier for such staff to give their views, providing a little-heard voice of those who are

required to interpret, implement and abide by policy and legislation, and to provide and manage services – such as social work managers.

Themes

Transfer of powers – governance, accountability and structural change

A key, perhaps the key, change proposed in the Bill is the transfer of powers and accountability for social care services away from local authorities to Scottish Ministers and care boards whose members will be appointed by ministers. This would mirror the arrangements with NHS boards in Scotland.

Despite the many evidence documents and impact assessments produced by the Scottish Government, there is not one that considers the impact on local authorities by transferring accountability for and governance of social services.

COSLA and the local authorities that responded to the call for views were deeply concerned about what impact this transfer would have on local democracy – with a major function, social services being removed – but also on the ability of local authorities to continue to function efficiently. They also argue that as a consequence many council administrative services, such as finance, HR and legal services would still be required, and affected, but there would cease to be the funding to operate all remaining functions efficiently.

COSLA states:

> "This (Bill) runs counter to the view of the Christie Commission on the future delivery of public services, that "effective services must be designed with and for people and communities – not delivered 'top down' for administrative convenience." If the Bill is passed as introduced, Ministers will have wide ranging powers which in our view represents over-centralisation and control at the expense of services being designed and delivered locally, based on local knowledge and expertise.

They also argue that such a transfer of powers:

> "runs counter to the principles of the European Charter for Local Self Government Article 4 (3) – "Public responsibilities shall generally be exercised, in preference, by those authorities which were closest to the citizen." This Charter has been adopted by the UK Government and the Scottish Government are in the process of directly incorporating this into Scots Law. The 2014 Commission on Strengthening Local Democracy highlighted the extent to which Scotland is already the most centralised nation in Europe when considering the extent of its local democratic powers in relation to population and land area"

These concerns aside, the question is raised of whether the transfer of powers would or could address the Bill's stated aim to improve consistency and quality of social

services, and respondents state it is not necessarily evidenced when compared with the performance of NHS boards, where there is considerable variation. This is a reasonable comparison, because the model for the organisation and operation of care boards, and their relationship to the Scottish Ministers would be very similar.

Further concerns relate to the boundaries being created and removed, and that the move of some services and not others could undermine current collaborative working, or split up holistic social service provision. COSLA explicitly refers to housing, education, welfare advice and employability. All of these, like health and social care, are closely linked to community well-being. These issues are covered in more detail later in the summary.

NHS Board Chief Executives and Chairs argue that a simplistic replication of NHS organisation will not be straightforward because the ways in which social services are delivered are completely different, with services commissioned and procured from external providers, unlike the NHS:

> "Elements of the 'mixed market' fall outside of the scope of current legislation and the proposed Bill, and hence will not address Minsters' concerns"

This submission also raises concerns that some of the governance and accountability confusion that has beset health and social care integration arrangements are repeated in these proposals. It is intended that community health services will be delivered by NHS boards, but that they will be commissioned by care boards, presumably in a similar way to how they are commissioned currently by integration joint boards.

> "NHS Boards are accountable for performance / delivery to Scottish Government. The new arrangement will continue to see NHS Boards accountable to the Cabinet Secretary for Health and Social Care for delivery of a service they are not responsible for planning or commissioning. This will magnify what has been an ongoing issue with services delegated to Integration Joint Boards.

While they 'understand the logic' for legislating for ministerial accountability for social care, and for a fully integrated system, further detailed concerns are raised by the NHS Board Chief Executives and Chairs on this matter, such as:

- How local communities will hold care boards to account
- How NCS strategic planning should be congruent with NHS strategic planning, by introducing a duty on care boards to collaborate with Community Planning Partners in developing plans (Chapter 2 Section 8 Para 3 of the Bill)
- In reserving the right to participate in certain contracts(Section 41), they argue that as written it could enable NHS services to be subject to procurement, if an NHS service was transferred under section 28

Fears around the transfer of NHS services to the NCS were picked up by the Scottish Ambulance Service and they fear the consequences in terms of a very complex picture of accountability, governance and integrated health service

planning: “Staff delivering an NCS service while remaining employed by the NHS creates a complex professional and clinical governance environment.”

The same disquiet was expressed by others, including The Coalition of Care and Support Providers (CCPS).

The Coalition of Care and Support Providers (CCPS) are also concerned that there is not explicit mention of the third sector in the Bill. Unlike the NHS, most social care provision is through independent businesses, not-for-profit and voluntary organisations, so the system is completely dependent on this mixed market. CCPS say that there is a ‘need for third sector organisations to be noted and named as equal partners and deliverers of social care.’

During the previous Committee’s scrutiny of social care, the fact that voluntary sector organisations had no voting rights on integration joint boards was a constant frustration and they were unable to have an influential voice when they were such an integral part of the system. The reasons for this are understandable when the relationship of the third and independent sector with local authorities is a contractual one: services are commissioned and procured from them.

It is not yet clear who would sit on care boards, nor who would have voting rights.

Rationale and evidence for the Bill

Along with the Bill Documents, the Scottish Government has produced a number of evidence papers and impact assessments. The Policy Memorandum provides a detailed rationale for the Bill, along with some headlines stating that:

- Social services and integration have not been working as well as they should for a number of years
- The Feeley Review concluded that revision and redesign of adult social care was required
- The analysis of the Scottish Government’s consultation showed broad agreement in bringing social care and community health under national service accountable to Scottish Ministers

Superficially, the establishment of care boards, in terms of policy coherence, accountability and governance creates a parallel with territorial health boards, albeit it is unknown whether the geographical boundaries of care boards will match local authority or health board boundaries, or sit within newly created ones.

This approach potentially provides the framework for greater parity of esteem between health and social services, and could provide greater consistency in certain areas of governance and funding. However, some of these things, such as regulation of care services and training of social care staff are already centralised.

Some respondents question the evidence for the claims to improving consistency and quality, as well as being critical of the imprecise language used, both in the NCS principles, as well as in the detail of the Bill. ‘Consistency’ could mean ‘one size fits

all', which works against personalisation. This meaning also undermines the notion of local variation, differing needs and circumstances, such as rurality and deprivation and particularly of local innovation. 'Quality' is also open to wide interpretation and means different things to different groups and individuals. It is also not clear whether it would be applied to quality of design, of inputs or quality of outcomes for individuals.

The main frustration for some who submitted was that they felt that nothing in the Bill would in and of itself necessarily result in, let alone guarantee what the government wish to see as set out in the NCS principles (Part 1, Chapter 1)

East Renfrewshire Council state:

> "The Scottish Government's stated aims for the National Care Service (timely, consistent, equitable and fair, high-quality services) are not addressed by the proposed structural change. The core challenges facing the social work and social care sector are systemic ones (sustainable funding, staff recruitment and retention and consistent national standards) that will not only persist but worsen if not addressed, independent of any organisational configuration."

East Lothian HSCP argues:

> "The quality of services in some areas is in fact very high and the requirement for such sweeping changes in order to achieve consistency is lacking in evidence or reasoning"

The Centre for Care, University of Sheffield made detailed comments, speaking in objective terms about some inherent tensions.

> "In social care, there is an existing policy mix which pulls in two directions: making the care system more formalised and centralised, and making the care system more informal and decentralised. These tensions run through the NCS proposals. Watson (2021) made a similar point in giving evidence to the Scottish Parliament, highlighting that the NCS calls for both more standardisation and more personalisation… Implementation of care policy repeatedly gets stuck, or fails to achieve its goals, because policy makers do not acknowledge or engage with the tensions of calling for fluidity, differentiation, informality and co-production whilst also arguing for standardisation, regulation, formality and risk avoidance."

They warn that how this key tension will be resolved through the reforms needs to be made explicit, and also warn that major policy reforms, such as Self-Directed Support, can be 'crowded out' by structural reforms.

Along with others, they also point out that there is 'long-standing evidence from the NHS that differences in performance and outcomes in health services remain despite centralised accountability and strategy (see e.g. IFS, 2022)

IRISS, an organisation that works with people and organisations across social services to help them access and use evidence and innovation to create change, state:

> "We know from research and experience of structural integration in the Scottish, UK and national contexts that structural reform is highly resource, time and energy intensive. To date studies on the impact of structural reform do not identify any benefits for the supported person; and limited benefits for the system in terms of efficiency, reduction in service fragmentation or better use of resources."

Lack of detail and the role of secondary legislation

Most respondents say there is a lack of detail in the Bill to be able to determine whether it will improve the quality and consistency of social work and social care services in Scotland. This view is summed up by Shared Care Scotland (National Carer Organisations)

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

Some felt that it was an appropriate approach given the scale of reform anticipated, and that the proposals provide a sensible framework to work from, based on the assumption that a national service is the best solution, as was recommended by the Feeley Review.

Many remarked on the problems linked to the framework nature of this Bill. The Fraser of Allander Institute puts it in quite stark terms in relation to the intent of the Bill:

> "Reforms that will have a direct impact on frontline services and will deliver the vision set out in the Policy Memorandum including 'timely, consistent and high-quality services' have not been developed to the point where they can be part of the Bill at this time.

Many of the comments about the lack of detail were in the context of so much being left to secondary legislation. Some felt that this meant that there could be no proper scrutiny of the major substance of the NCS, others that it would be a blanket 'power-grab' from local government to Scottish Ministers, giving wide-ranging but unspecified powers. The Scottish Parliament's Presiding Officer highlighted that:

> "The Bill, as drafted, provides Scottish Ministers with regulation-making powers to confer, modify or remove functions from Scottish Parliament Corporate Body (SPCB) supported officeholders".

The lack of detail makes it impossible to evaluate the full impact on local democracy, local governance and local government finance for example.

Another concern raised was the pace of change because of having to wait, possibly years, for secondary legislation to be developed. Concerns were raised that the challenges in social care are long-standing and deteriorating, that this Bill is a distraction from improvements that could be made now.

The Faculty of Advocates states:

> "It is recognised that the Bill anticipates a gradual transition from the current provision of services at a local authority level over to the newly created National Care Service, but there is little in the Bill regarding transitional arrangements. It may be the intention to furnish more detail about the logistics of transitioning the services in secondary legislation. As the Bill stands at the moment, however, it could be several years before areas which are currently worst served by social care services could hope to see any improvement. In the meantime, there is a lack of certainty regarding what the impact of the proposed changes will be for end users, and there are no interim measures proposed for areas or services which are recognised as being currently badly served."

Some include reference to the current economic situation, and would prefer to see the legislation paused.

The British Healthcare Trades Association said:

> "(We) would suggest that given rising inflation; workforce pressures and squeezed public sector budgets this is not the optimum time for a wholesale re-organisation which risks destabilising local government."

Definition of Care

Some respondents felt that it is important to define what is meant by care. The Royal College of Occupational Therapists said:

> "We require greater clarity on what is meant by "care" in the title National Care Service (NCS) as this means different things to different individuals and organisations. To meet the described model whereby the NCS is enabling there must be a clearer definition and collective understanding of the term care. To ensure that people are supported by the National Care Service to live their best lives there must be a shift whereby people stop viewing care as a passive "done for you" approach to a more enabling "do with you" approach."

A long-term carer wrote from a perspective of feeling they had been failed by legislation:

> "the wording must be clear and inarguable. Hence, I want a 'Duty of care to meet assessed needs' written into that Bill. As a long-term carer at the most intensive level (the clinical skills that I use daily are higher and more comprehensive than most nurses') I am painfully aware that carelessly worded legislation results in cavalier and often unlawful interpretation"

Strengthening the Bill

Respondents were asked how they would like to see the Bill amended, and if they thought anything was missing.

The lack of detail notwithstanding, some felt that the Bill could be more precise in its use of language and that this lack of precision was either a sign of lacking ambition or not fully thinking through the implications of terminology used. For example, there is an assumption that a human rights approach will be taken and that services that are part of the NCS will 'protect and fulfil people's human rights'.

The Bill is also designed to set minimum standards for care. Some respondents want a more ambitious approach with statutory duties placed on providers to meet certain national policy standards, for example, the General Standards for Neurological Care and Support.

Human Rights

In particular, the lack of substance and assurance around the 'human rights approach' was raised by many respondents. This was both in general – people asking what was meant by 'embedding a human rights approach', or feeling overall that the Bill does not do enough to make this happen; and in the specific parts, such as the rights to breaks for carers or Anne's Law. These concerns also came through in responses to the Digital Engagement. The Minister made a statement before the Bill was published placing human rights at the centre of plans for social care reform.

> "…if we are to improve people's experiences of social care, we need to create a comprehensive system that cares for and supports people in a holistic way that empowers them to thrive. Human rights must be at the heart of all that we do here." Kevin Stewart, Minister for Mental Wellbeing and Social Care – Scottish Parliament, 16 November 2021

The Law Society in particular raise a number of points on the different parts of the bill, relating to rights and duties, accountability and enforcement, any statutory basis for the co-design process, and safeguards to ensure that the process is meaningful, inclusive of all relevant stakeholders and 'that Scottish Ministers are appropriately held to account by Parliament for the design and implementation of the National Care Service.'

The Scottish Human Rights Commission (SHRC) states that the Bill 'could embed more concrete human rights standards and duties throughout the Bill'. They state that the Bill should anticipate legislation that encompasses a wide range of conventions or covenants covering different rights.

The SHRC questions the absence of any mention of eligibility criteria in the Bill, and refers to them as 'a gateway to accessing social care'. They argue that any criteria should be defined with a focus on the societal barriers people face when they have a disability for example, rather than any impairment. Currently, eligibility is based on need, and criteria can be applied somewhat subjectively. If a person is assumed to

have a right to care in order to live an independent, fulfilled life, then eligibility criteria would be in a very different form to their current ones.

The SHRC, as others have stated, argues that the difference in the way eligibility criteria are applied across the country leads to inequity.

Chapter 3 of Part 1 of the Bill requires the Scottish Ministers to prepare and publish a Charter of rights and responsibilities, following appropriate consultation and engagement, including with those with lived experience. As a minimum the Charter will set out:

- The rights and responsibilities of those who access community health and social care services

- The processes available for ensuring these rights are upheld

The Policy Memorandum states that 'The NCS Charter will set out what people can expect from the NCS and provide a clear pathway to recourse should their rights in the Charter not be met.' The government argues that providing accountability is a 'fundamental tenet' of the human-rights based approach in terms of access and claiming their specific rights. However, this hasn't 'worked' with the NHS Charter of Rights and Responsibilities as established by the Patient Rights (Scotland) 2011 Act.

The Faculty of Advocates points out:

> "there is no reference to the principles requiring to be reflected in such a charter. Indeed, section 11(4) specifically limits the import of the charter by highlighting that it is not to give rise to any new rights, impose any new responsibilities or alter any existing right or responsibility. This underlines the fact that the National Care Service principles would not be intended to form part of any such charter, or at least only in the limited form of discretionary guidance"

Comments about the sections on the rights to breaks for carers, proposed by Section 38 of the Bill that would amend the Carers (Scotland) Act 2016 and 'Anne's Law', Section 40, also question whether and how these rights will be realised in practice. This informal Keeling schedule shows how the 2016 Act would look like with the amendments.

The SHRC argues that 'a human rights approach requires explicit consideration of the human rights relevant to the issue at hand…that all aspects of those requirements are engaged with and built into the provisions of the legislation.'

They go on to insert what they view would be a suitable framework in the context of international human rights systems.

The challenge of adhering to such systems begs the question of the avenues of redress that people have and should have in a publicly funded system of social care, or health for that matter. Presumably, people would prefer to have access to the services available in an equitable way, without an undue wait or without a high bar or requirement of extreme need through the application of eligibility criteria. If rights are

enshrined in legislation, then redress is normally exercised through the courts if people feel rights have been ignored or infringed. Currently, the Scottish Public Services Ombudsman deals with complaints about care, service failure or treatment from individuals, once the person has made a complaint about a public service through the relevant public body – in this case, the local authority social work department (or NHS board). The Ombudsman then investigates how the complaint was dealt with. One outcome is that public bodies learn from these complaints and findings feed into a continuous improvement programme.

Inclusion Scotland and the Policy Led Policy Panel call for specific means of legal redress when people are victims of service failure. Scottish Care and a number of other respondents flag up that there are no means of redress written into the Bill in relation to the Charter and complaints process. The Scottish Association of Social Work (SASW) suggest a practical approach, agreeing with Common Weal's analysis:

> "the charter presents an opportunity to "set out clearly the rights of people needing care, informal carers and the workforce, the concomitant responsibilities of the NCS and the creation of new procedures that would allow rapid and simple means of redress to people whose rights are ignored… Rather than rule out giving rise to new rights, the National Care Service charter should explicitly mention the rights people already have when seeking social care or support."

Collaboration and co-production

These terms appear frequently through the submissions. Collaboration is used in different contexts – often referring to relationships between parts of the system (which some fear might become fragmented if social work functions are split up, and if Community Health sits outside the NHS), some of which would not be included in the NCS, at least initially, such as homelessness and drug and alcohol support. More specifically children's services and justice social work would not move across.

Collaboration is also used with reference to collaboration in the design and development of services. There is not a consensus on where people believe these activities should happen.

The Centre for Care, University of Sheffield describe the challenge for policy which seeks to provide person-centred care in a collaborative and co-produced way when under a centralised structure:

> "Implementation of care policy repeatedly gets stuck, or fails to achieve its goals, because policy makers do not acknowledge or engage with the tensions of calling for fluidity, differentiation, informality and co-production whilst also arguing for standardisation, regulation, formality and risk avoidance."

Community Integrated Care, while recognising the importance of 'human rights and carer's rights being realised and measured within the implementation plan of the NCS', the focus of their submission is to embed co-production and collaboration.

Many other respondents referred to collaboration and co-production as occurring between – individuals, IJBs, health boards, third sector organisations and local authorities.

The Scottish Federation of Housing Associations (SFHA) would like to see the housing sector, homelessness and housing support recognised as

> "key strategic partners at national and local level, this will provide opportunities to embed collaborative approaches and innovation to deliver better outcomes for people who need care and support. As far back as 2018, Audit Scotland's update on progress toward health and social care integration identified that housing should have a more central role in integration"

According to the Glasgow Council for the Voluntary Sector, TSI Scotland argues that via the NCS we commission:

> "…'bottom up' community led services based on a collaborative model with interfaces between prevention, acute and recovery elements. Integral to this would be the involvement of communities and service users in the planning and delivery of commissioned services."

Many respondents refer to the co-design process, co-production and collaboration in differing contexts. The Scottish Government is clear that services will be redesigned using co-design, but this suggests a top-down approach. Co-production happens at a local level, working closely with geographic communities and communities within the local context to find the best solutions for those communities.

There is then, some confusion about these three 'C's inherent in the plans for the NCS. The Bill purports to support local decision making and flexibility, early intervention and preventative support, but the conflict identified by the Centre for Care isn't addressed. Are services to be designed by the Scottish Government or locally? How is the term 'service' to be defined?

Inclusion Scotland and the People Led Policy Panel, who are working closely with the Scottish Government on proposals, say that:

> "For the bill to be successful in its purpose, we agree that all of its aspects need to be designed from the bottom up, in co-design with supported people and their unpaid carers, then with the involvement of providers, commissioners, etc."

However, this still presents challenges, and arguably is still working at a top-down level when organisations are joining the government's agenda for design, rather than acknowledging where the boundary lies between the elements of the NCS that are appropriately 'national' and consistent across the country, and what should be left to local co-production and and local design. Can all voices (for example, frail elderly people with dementia), be fully reflected and represented on panels working at a national level which, to function, have to be limited in size?

A bottom-up approach would start with people on the ground – staff, individuals and local organisations – creating local solutions within a national framework of legislation and policy. This doesn't appear to be the approach for the NCS currently.

Inclusion Scotland reflect on the consultation and engagement processes that connected to the integration of health and social care.

> "On the whole, disabled people and their organisations felt excluded and ignored by the various consultations and events that took place leading up to the establishment of the Integration Authorities. They were unclear as to how they would be engaged in future plans and engagement activities.
> Furthermore, they reported a great deal of concern that this lack of consultation has resulted in HSCI being a very health-dominated process that excludes the principle of independent living for disabled people and would reduce them to passive recipients of health-focused care.
> Only 12% of those who responded to the project's baseline survey felt that their [Integration Authority (IA)] was in a position to understand the needs of disabled people in their area, or that feedback from disabled people would be used by the IA to focus on their needs within the local area and the way that services will be delivered."

There was a general call that this collaboration at a national and a local level of governance should include the full involvement of the voluntary sector and that more recognition given to its central role in helping to shape and provide joined up services. Some argued that the combination of the pandemic, the 'cost of living crisis', the fragile system and the short-term funding that the sector has to rely on creates burnout for staff working in the sector, not only those who they seek to support. This parallels what MSPs on the Social Justice and Social Security Committee heard in their recent inquiry into debt and low income.

Different contexts – remote and rural areas

Rurally based organisations and authorities expressed concern that centralisation would have an impact on provision, consistency and quality in rural and remote areas where circumstances for staff, communities and individuals is very different from those in urban areas. This can be summarised as one version of the dislike of the 'one size fits all' approach that a number of respondents had.

Providers find it more costly to deliver services in rural areas because of transport and other costs.

Comhairle nan Eilean Siar does not believe a national care service will help address workforce shortages, worse in rural and island areas. It is also concerned because:

> "There is a particular difference between the delivery of Social Care functions in the Western Isles (and other islands and rural areas) and other areas of Scotland, in that the vast majority of residential, and all home, care is directly provided by the local authority. It is far from clear why a local authority which had neither political responsibility for such services, or the employees to provide them could or would continue to act as a provider of care services.

> There is already evidence that the number of Care Home providers is reducing at a concerning rate."

This raises questions for other authorities where the provision of services is mainly 'in house', delivered by local authorities and their staff. It is not clear whether there will be the capacity for care boards to deliver services directly.

Data sharing and collection

Respondents discuss data in relation to the data sharing between statutory bodies as proposed in the Bill, with third sector organisations asking why, given their role in the delivery of services, they are not included. Some form of shared care record has been called for for many years by the public and professionals alike, so that people don't repeatedly have to tell health and care professionals what their needs or conditions are. However, this is balanced by fears over the security of data and what use could be made of it.

Data is also discussed as part of a required infrastructure and monitoring for a national care service, to enable co-ordination, understanding fully what is happening, what is needed, by whom and how successful any reform might be.

The ALLIANCE consider this aspect in detail in their submission. They state that 'data gathered should monitor and evidence the impact of changes stemming from the implementation of the NCS, and be used to ensure equitable access to social care.'

They recommend:

> "the Bill should create a duty for systematic and robust data gathering by local and national public bodies on people who access social care, disaggregated by all protected characteristics, as well as other relevant socio-economic information like household income and the Scottish Index of Multiple Deprivation (SIMD)… (a)prioritisation of both qualitative and quantitative data is essential if people's personal outcomes and rights are to be monitored and measured with a view to ensuring continuous improvement and progressive realisation of people's rights. A mixed methods approach that embeds a human rights based approach (as is used by the Care Inspectorate, or in My Support My Choice) would help to ensure that appropriate weight and priority is given to people's experiences alongside nationwide statistics."

From the position of considering data sharing, Mydex CIC provide a comprehensive response. Mydex is a community interest company seeking to promote the concept of people having ownership and control over their own data.

When data is isolated in different systems, systemic disconnects in the health and social care system persist, argues Mydex CIC.

Mydex CIC also raise questions about the Bill proposals regarding the shared care record:

- What data would be included – not an easy one to answer because it is difficult to know what is enough information? - they say '80% of health and care outcomes can be accounted for by factors unrelated to the provision of health and care services' (no reference provided)

- Who would have access to the data and for what purposes and how would this be monitored

- Consent and trust – how would mechanisms work?

- Security

They propose an alternative model, one in which each citizen owns and curates their own data store, which they can allow services to access as and when required.

Impact on local government, views on current services and existing financial commitments

The views of COSLA and local authorities are summarised in the SPICe Briefing to accompany the Bill.

From Feeley, the Scottish Government's consultation and the Parliament's Call for views, there is qualified support for a national care service in the hope that it will improve consistency, as well as addressing the perceived failures in the current system, as delivered by local authorities. As Shared Care Scotland notes:

> "The predominant reason for supporting this shift was the perceived failures in the current system and a call for a radical shift in the way social care is resourced valued, alongside the desire improved processes, services, and pathways to support.
>
> "I support a National Care Service because my local authority has failed me and no-one is willing to accept accountability"

The qualification and frustration with the proposals comes from the lack of detail, exactness of wording and general vagueness. Also frustrating for people, is that the Bill is shifting the 'machinery', at substantial cost, without indicating any substantive change to how care and support will be delivered.

> "Notwithstanding the overall support for a national care service and fundamental change in the delivery of social care, we remain concerned that the Scottish Government's proposals are too focused on structures and processes and not human rights and enabling people to live their best lives.
>
> "The Bill focuses on structures; how can we know how this will deliver real change?" (Shared Care Scotland, on behalf of the National Carer Organisations)

Some people hope that the Bill will herald an end to charging for care and eligibility criteria. However, Social Work Scotland state that a number of Scottish Government

Commitments have been explicitly excluded from the Financial Memorandum (para 13).

- “Increased investment in early intervention and prevention; and in social work services;
- Fair Work pay increases and improvements in terms and conditions for adult social care staff in commissioned services;
- increases in Free Personal and Nursing Care rates to cover more of the care costs in care homes;
- removal of charging for residential care;
- and investment in data and digital solutions to improve social care support.

Some items are missing from this list such as meeting existing unmet need, the reform of eligibility criteria, commissioning, culture changes, improving performance and management information]. Such investment is necessary for the success of the National Care Service, and the estimated costs deserve Parliamentary scrutiny during Stage 1 of the Bill, as well as wider public discussion.
Other Feeley Report recommendations were absent from the NCS consultation, and so also do not appear in either the Policy or Finance Memoranda for the Bill. Feeley recommended robust annual demography funding uplifts for adult social care. In 2018, the Scottish Government’s Health and Social Care Medium Term Financial Framework estimated these at 3.5% per year – but this has never been implemented.”

Some argue how the effect of the cost of care to people is linked to employment. 83% of the social care workforce is women, mainly in their 40s and 50s, and often with dual caring roles for children, grandchildren and elderly relatives. These are the very people who might have to give up care work to look after dependents.

> “Eligibility criteria should be abolished as should charging policy as it probably costs more to enforce these aspects. Eligibility criteria ensure that no preventative support is provided and that no recovery can be achieved by an individual. Charging ensures that people who don't want to care for their loved ones are left with little option but to give up work as the alternative is they are charged excessive amounts out of their salaries which leave them in a situation which means they are better off not working.” (Approved Brokers Community Of Practice Cic)

Centralisation vs local responsiveness

COSLA have made their opposition to the Bill clear but do state that they:

“recognise improvements that could come through a National Care Service which is designed to complement, not disrupt, local service delivery. Whilst retaining local

accountability, a National Care Service could provide national leadership on matters such as workforce planning, training, terms and conditions, national standards, ethical procurement, registration, inspection and improvement"

Impact on progress of integration

Audit Scotland have tracked the progress of integration since its inception. In their submission their analysis of what is required of a national care service is clear, and that prevention and early intervention:

> "Although a lot of money is spent on social care, progress in moving to more preventative approaches to delivering social care has been limited. This has led to tighter eligibility criteria being applied for accessing care and increasing levels of unmet need. This has consequences for those people needing services, their families and carers. Greater progress with addressing prevention across social care and public health is critical.
>
> To ensure the success of the vision for the NCS and protect and support the most vulnerable members of our communities, the Scottish Government needs to ensure that the NCS and the NHS address the current and future needs of the population by adopting a whole system response that is sufficiently resourced, both in terms of financial and workforce resources"

Shared Care Scotland warn that:

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

UNISON argues that integration has failed at the structural and leadership level, and remain fragmented and budgets are not integrated. Whereas 'frontline staff have formed pragmatic and effective partnerships"

Ethical Commissioning

It is hard to place this within the structure of the summary because commissioning of services is the fundamental premise of how social care services are procured and delivered. Commissioning is carried out locally, and the intention is that care boards would continue to commission and procure services, with more focus placed on ethical aspects.

Scotland Excel supports public sector commissioning and procurement in Scotland. It has responsibility and ownership for a number of national arrangements such as secure care, the National Care Home Contract, Social Care agency workers, social care cast management software systems, children's services etc etc.

Their submission to the Call for Views highlights a number of questions about the Bill, and its silence on many aspects related to commissioning:

- Which will be delivered nationally/locally
- Impact on the workforce
- Changing role of Excel
- Fair working practices – the NCS is to be an exemplar, but there is no detail on how
- Details on the inclusion of Human Rights into commissioning plans and contracts

These commissioning and ensuing procurement processes allow social services to fulfil their statutory duties to assess and to assist people in need of care and support. However, in the context of wider wellbeing, it is clear that many other factors contribute to the entirety of 'social care', such as the local environment, community safety, opportunities for socialising and good housing for example.

Third sector and community development organisations naturally work across boundaries, and are key, not only in providing the core commissioned services but in providing the community 'logic': recognising local complexity and need, and frequently applying low cost, innovative solutions that make a huge difference to people: lunch clubs, walking groups and befriending schemes for example. They recognise that successful communities are primarily about connections, context collaboration and co-production.

This Bill clearly recognises the importance of these factors in the NCS principles, that its services are to be an investment in society that :

- Enables people to thrive and fulfil their potential. And
- Enables communities to flourish and prosper

Community Integrated Care ask for a commitment to co-production, and highlight what a social care model can offer by way of learning to the NHS. Others have expressed a fear more starkly that the NHS will remain/become the 'loudest voice' and that by enacting the proposed structural changes, the culture of social care will become more medicalised and deficit focused, rather than asset based.

- "An opportunity to end the regional variation in and 'lowest priced' focus of commissioning. Outcomes based commissioning is key, not the race to the bottom on pricing.
- Commissioning must favour organisations with a commitment to social value. Public money must be invested in organisations that drive public good.
- A commitment to enabling and advocating for the other drivers of effective commissioning and care delivery, including innovation funding, technology, research and development, and housing. At a

local and national level, the NCS need to recognise the non-health and care-based enablers of wellbeing.

Glasgow Council for the Voluntary Sector highlighted one of the problems with current commissioning and procurement, despite ethical commissioning processes, and the direct relationship this has with low wages in the social care sector:

> "Commissioning by cost means a sector often unable to pay decent wages, offer job security.
> Uneven competition between the sectors for a limited pool of staff alongside uncertainty and short termism for funding combine to create instability for charities and community groups – made worse by the COVID pandemic.
>
> As we enter yet another national crisis, yet more is likely to be asked of our sector when many organisations and workers are exhausted and running out of reserves."

UNISON argues that the Bill 'retains and expands the failed market approach to care thereby investing in unfair work and poor care quality.'

Feeley mentioned Alliance Contracting as an alternative to conventional contracting arrangements to spread the 'stake' of the contract across all participants in the contract. It is not the same as framework, otherwise known as collaborative contracting (by Scotland Excel) IRISS suggest that alliance contracting should be considered:

> "To radically improve people's access to, and experience of public services we need to design- in collaboration towards a shared goal in local areas."

The Coalition of Care and Support Providers Scotland also ask that procurement law is reviewed and that there is a move away from transactional commissioning.

Inclusion of other services and remits

According to the Policy Memorandum, Section 27 of the Bill limits the functions that can be transferred from a local authority to enactments listed in Schedule 3 of the Bill. These match the functions which can be delegated to Integration Authorities, and cover: social work and social care for adults and children, including local authority mental health support, adult and child protection and justice social work.

As children's services and justice social work are explicitly identified as requiring further consultation before they might be transferred to care boards, initially it can be assumed that it will only be adult social work and social care services that are transferred.

Adult Support and Protection legislation has been considered as part of the Scottish Mental Health Law Review . It is proposed that local authority mental health services would be transferred to the NCS to allow for a more holistic approach for individuals needing support with their mental health.

Given that there is a National Mission for drugs currently focus on reducing drug deaths in Scotland, it is not clear from the PM how drug and alcohol services will be delivered in future by the NCS.

Homelessness is mentioned briefly, and Schedule 3 does not include the Housing (Scotland) Acts that were included in the functions that could be delegated to integration authorities. The government's view is that few integration authority areas have chosen to delegate homelessness services and they fit best with housing services. The PM states that the NCS will be subject to the shared prevention duty under the 'Ending Homelessness Together Action Plan.'

Many submissions queried the proposed transfer of services, perhaps not fully recognising the government's logic, that the proposals follow on from the functions that could be delegated to integration authorities. Regardless, the potential to transfer social work services relating to adult social care, and then children's and justice social work to an undefined body, the care board, from long-established local authorities raises alarm and appears arbitrary to many. Some feel that all social work services should be moved across together, if any are, whereas some are against any move. They argue that the social work profession will be split, with social workers subject to different delivery and accountability structures.

Some fear that focus and implementation of the Promise will be disrupted (as some argue happened with Self-Directed Support when integration of health and social care was being implemented).

A number of submissions felt, at the very least, the structural changes would halt progress on all ground-level reform and improvement because of:

- uncertainty over implementation plans,
- time before regulations appear,
- staff transfer and associated personal uncertainty for many staff

The Scottish Federation of Housing Associations has reservations about what it calls an 'overcentralised approach' and points to the success of collaboration and a local approach, pointing, unsurprisingly, to the commitments set out in Housing to 2040 with its proposals for a shared agenda between housing, health and care.

> SFHA would like to see a vision for collaboration with housing and homelessness reflected in provisions in the bill and associated guidance, recognising the role that good quality, energy efficient housing plays in improving wellbeing, reduce inequality and support independence.

Fair work and staffing

There is concern from unions, local authorities and others about the disruption for staff, particularly social workers.

North Lanarkshire Council (Des Murray) wrote:

> "The Bill has frontloaded disruption and tension into an already unstable system. The lack of detail on the human resource impact for staff is concerning."

But he suggests that

> "Work at a National level to review levels of pay, role standardisation and improved support for building future workforce resilience through funded training and practice would be welcomed as part of a wider solution to the longstanding problem of workforce pressures."

A number of social work staff responded to the call for views and some express fear that the profession is under threat and will be eroded by the legislation.

IRISS believe, having learned from the organisations they work with that:

> "Well intentioned legislative change efforts over the last few years have added to, rather than reformed, the system. This has made social work and social care increasingly more complicated and difficult to work in, navigate and use.

Social work

This Bill's title suggests that it concerns mainly social care, and therefore social care staff, whose pay, terms and conditions are known to be poor even though the work is mentally, physically and emotionally challenging. More immediately however, it is likely to have a much more profound impact on social workers. They could, in the early phases of implementation, be employed by care boards instead of local authorities. The lack of detail led a number of respondents to express their concerns. Some feel singled out for criticism and undervalued:

> "Scottish Government created IJBs without a thought to Social Work. Care management is not social work but has some aspects of social work involved…Where is the evidence that social work needs quality and consistency improved?..Why does the Bill want to govern Social Work but not seek to address the delivery of OTs and others currently in IJBs/HSCPs?"

Scottish Borders Council take this further, saying that:

> "There is a lack of attention in the Bill paid to the governance and accountability for the professional Social Work role and function. The fragmentation / separation of professional Social Work alignment comes with added risk and will leave different parts of the profession accountable to different bodies."

Des Murray, North Lanarkshire Council, fears that a profession and services already in 'crisis' will not be supported by the Bill's provisions and that the role of Social Work has not been fully represented – the complexities of interventions with and within families, carers, communities, having to balance sometimes conflicting rights, always with a focus on the best outcomes for all concerned.

Local authorities too expressed concerns about the transfer of staff. Inverclyde Council list theirs, which summarise the concerns of others who responded:

> "In relation to Care Boards as employers Inverclyde Council has significant concerns about the transfer of local authority staff;
>
> • There is a lack of clarity as to who will make the decisions on employment, and this is unsettling for our workforce,
>
> • It is unclear why it would only be local government employees (and not Health Board or independent/third sector staff) in scope to move,
>
> • The Bill is silent on the TUPE implications leading to additional concern within the workforce,
>
> • The work of the Council reaches into all aspects of our lives, including employment, environment, housing, and education, all of which impact on improved health and wellbeing with complex interdependencies. This potential breaking up of the local government workforce would have a damaging impact on cohesion, efficiency and effectiveness,
>
> • There would also be significant implications for Council Corporate Services such as Finance, Communications, HR, Payroll, Legal, Property, Facilities Management, Transport and Procurement which currently provide a service to the HSCP, and
>
> • It is unclear who is responsible for any associated redundancy costs in the event there are fewer posts required under the new arrangements than currently provide support to the transferring functions.

Social Care Staffing

Fair work is usually discussed in relation to the social care workforce, which tends to be low paid, done mainly by older women and can have poor terms and conditions attached. The work is not well valued, despite its essential nature, and there is no parity of esteem with healthcare staff. This has, for many years led to difficulties in recruitment and retention of staff. The work is demanding, emotionally, physically and mentally, and other work for similar pay is often more attractive. Efforts to improve retention have included creating a career path, as well as training and progression, and ensuring minimum rates of pay.

Fair Work principles are to be embedded into the NCS if the Bill is passed, but many respondents asked what would materially change for the social care workforce. Some feel that without concrete measures, and a halt on reform while structural changes are implemented, the situation could even worsen.

Personal Assistants are a discrete sector of the social care workforce, not subject to the same regulation as other staff and providers, yet they perform a critical, flexible service to many people who employ them through Self-directed Support arrangements. It is not clear whether they would be viewed as separate from other care providers in the NCS.

NHS Staff

There was some confusion about why the Bill is explicit in the prevention of transfer of NHS staff to care boards and that this is not sufficiently explained.

Confusion was also evident in responses by the possibility that NHS services could be transferred, which would mean that NHS staff could be working under different governance arrangements, albeit that they look similar on paper, and both NHS boards and care boards would be accountable to the Scottish Minsiters.

Known unknowns: unmet need, unpaid carers, unknown sustainability of funding

Submissions express hope for the National Care Service, but recognise that the current problems are not easily fixed. When asked about an alternative approach to the Bill, there were shared views that more funding should be made available, either instead of investing in structural change, or to ensure that necessary improvements can be implemented in the meantime. This is linked to the staffing issues and the support available to unpaid carers:

> "More funding should be made available to improve our existing services. The Care situation is in crisis due to the lack of resources which undervalues staff which means we cannot recruit or retain staff, help unpaid carers or administrate properly the structures that already exist."(The Thalidomide Trust)

There is also some urgency over the known demographic changes which will lead to increased need for social care support as the population ages and as fewer people are born. Aside from this is the current level of unmet need, which, by its nature is hard to measure. One measure to estimate unmet need could be through what we know about unpaid carers, which number around 839,000 according to Scottish Government estimates. How the NCS would address unmet need is not addressed by the Bill.

Implementation and evaluation

In common with all legislation, no 'implementation' memorandum or implementation plans exist. As a Bill is a set of proposals, and Stage 1 scrutiny is only to agree the general principles of the legislation – to establish a national care service accountable to Scottish Ministers – this is understandable. However, such plans, with timelines, and evaluation timetables, would allow for less uncertainty, especially in the case of framework legislation, and policy in general. (See SPICe briefing: What's so important about health policy implementation?')

The Scottish Government recognise what has been dubbed the 'implementation gap',and is referred to in relation to the implementation or failure of implementation of Self-Directed Support. As Inclusion Scotland state:

> "the Self-Directed Support (Social Care) (Scotland) Act 2014 had good policy intentions and, with input from disabled people and our organisastions, referenced the human right to independent living. However, when it was enacted, it did not have the resources needed to meaningfully implement it; it was not co-designed or co-produced; and it failed to deliver meaningful change for a significant proportion of its users (see, Self Directed Support Scotland and the Alliance 2020 'My Support My Choice: People's Experiences of Self-directed Support and Social Care in Scotland' https://www.sdsscotland.org.uk/wp-content/uploads/2020/10/MSMC-Scotland-Report-2020.pdf).

The ALLIANCE says that while the bill offers a significant opportunity to improve social services: 'implementation and robust accountability mechanisms, including evaluation measures, are key to ensuring the success (or otherwise) of the proposals.'

Respondents fear that the costs are underestimated, especially in the transfer by TUPE arrangements of staff, other staff disruption, and that underfunding will result with diverting resources from improvements needed now to the structural changes. Some also say that there is no estimate of, or commitment to the investment required for social care in the medium to long term, even to meet the aspirations of the Feeley Review.

Progress will be tracked by Audit Scotland and by Parliament, but, it is not clear what benchmarking for comparison will be available to ascertain whether or how the proposals will lead to better outcomes for people requiring care and support than current provision.

Glasgow City IJB asks for delay:

> "A delay to progressing the Bill would also give exhausted staff the space to recover from the pandemic. GCIJB would urge the Committee to consider viewing the creation of the NCS through an implementation context and ask whether the workforce and the system generally has the capacity at present to achieve this. It is the view of GCIJB that it does not."

IRISS argue that an early focus on implementation is required but that:

> "We know from research and experience that legislative interventions in a complex system like social work and social care support are surprisingly weak levers for change. Legislative interventions can be strengthened through acting elsewhere in the system. This might include ensuring approaches are co-produced; building consensus for change and focussing early on implementation"

Anne Jepson, Senior Researcher, SPICe Research

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