

# National Care Service (Scotland) Bill

## SUBMISSION TO SCOTTISH PARLIAMENT COMMITTEES (STAGE 1 BILL SCRUTINY)<sup>1</sup>

*02 September 2022*

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. The National Care Service (Scotland) Bill (“the Bill”) represents an unparalleled opportunity to put Scotland’s social work and social care systems on a road out of the current crisis, through recovery, to a sustainable, effective future. We have therefore considered the Committee’s questions carefully, and afforded as much time as possible for our members to reflect on the Bill, arguing its merits alongside its flaws.

### Overview of Social Work Scotland position in respect of the Bill at Stage 1

The conclusions we have reached, and set out in our responses to the Committee’s specific questions below, should not be interpreted as a position for or against a ‘National Care Service’. Social Work Scotland seeks reform and investment to redress the multiple crises which are impacting social work and social care. We support the intent of the Scottish Government to make changes which will embed human rights and social justice into the operation of social work and social care. We acknowledge the democratic mandate the Scottish Government and Scottish Parliament have to establish a National Care Service in Scotland, and we are committed to engaging with energy and openness in its development.

However, the Bill, as currently drafted, does not provide a robust process for delivering reform of such significance. Particularly in respect of the financial investment that will be needed in social work and social care. It is our hope that, in reviewing the feedback we and others are providing to the Scottish Parliament, Scottish Ministers will reconsider the approach they are taking to the development of a National Care Service, withdrawing or pausing this Bill until the detail of proposals has been properly considered and costed. If Scottish Ministers are unwilling to adjust their strategy, we recommend that MSPs reject the Bill at this initial legislative stage.

We believe an alternative approach to developing a National Care Service is possible, still based on a genuine partnership between those who rely on social work and social care,

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<sup>1</sup> <https://yourviews.parliament.scot/health/national-care-service-bill/>

and the staff who provide social work and social care. If this Bill was 'paused', all parties, including local government, should be able to engage in reform discussions constructively. The strands of co-design work necessary for the development of a National Care Service, many already identified by Scottish Government, could still begin immediately, with the lived experience of supported people, carers and staff helping to determine the detail. In fact, with the Bill set aside those strands would be freed from a political and legislative timetable which feels too restrictive, and proper consideration can be given to the strands sequencing and interdependencies, encouraging better policy development.

We appreciate that the Bill also includes sections which are not directly related to the development of a National Care Service; we recommend that Scottish Government use the upcoming Programme for Government to detail how these aspects can be realised in the near term (while the National Care Service co-design work progresses). The Programme for Government could also detail how a National Social Work Agency will be established as a public body, separate to Scottish Government.

With the Bill 'paused', a pace for the co-design work could also be set which acknowledges the hard realities of the current context. The Scottish Government's current approach to developing a National Care Service appears oddly detached from the pressures which Scotland's people are grappling with. Social work, social care and health services (those impacted most directly by the National Care Service proposals) are in the midst of the most serious capacity and delivery crisis in living memory. Waiting times for assessments, support and treatment are all increasing. In some social work teams over 30% of posts are unfilled, with vacancies receiving no applications over multiple recruitment cycles. A similar situation persists in social care. Sickness absence adds further workload on the remaining staff. Inflationary pressures are effectively cutting public sector budgets at a time when public demand for assistance is rising. And further budget reductions are now having to be identified in many critical public services. Most importantly, social work and social care staff are, like everyone, experiencing a cost of living crisis, and the continued adaptation we are all having to make to a post-pandemic world. Indeed social care staff, and the many para-professionals and administrative staff that support social work, are likely to be on relatively low rates of pay, and therefore under acute stress. A process of co-design requires the informed, active engagement of people. In the present context, invitations to co-design a National Care Service risk adding to existing stress and undermining the wellbeing of the very people this Bill purports to be about; staff, carers and supported people.

A more considered and outcome focused approach to NCS development will also allow for decisions around children's and justice services reform to be made, and for those seismic decisions to be properly incorporated into NCS policy development. In parallel to a cooperative programme of co-design, a rigorous plan for the investment in social work and social care can be developed and shared, indicating levels of funding over future years and setting out how funds will be sourced or raised. The ambition of a National Care Service will be determined by the extent of the resources at its disposal, not only by its underlying principles or governance structures. The Financial Memorandum accompanying the Bill

now before Parliament is largely taken up with organisational changes which are estimated to cost up to £500 million by 2026-27. The reforms that will really matter to people, for example around eligibility, are not included. We therefore do not know if a National Care Service is really going to represent a break with the recent history of systematic underfunding of social work and social care; largely because the investments needed have not yet been costed. Nor can we say whether the combined organisational and service investments indicated in the Policy Memorandum (but not all included in the Bill) are actually deliverable, from the perspective of the public finances. Indeed the seriousness of current crises demands that we consider where limited public resources might be allocated with the most value. The up to £500 million set aside for organisational restructuring may well be needed to protect Scotland's social work and social care services, as inflation steadily eats away at their budgets over the coming year. And if we are really intent on addressing social care workforce issues, some of the money could be put towards a higher 'Fair Wage' rate than is currently in place.

In considering how a National Care Service might be realised, or perhaps more importantly, how we can improve the availability of high-quality social work and social care services, we believe the potential to evolve existing structures should be explored more fully. Scottish Government may feel they have reviewed all the options and identified their current proposals as the only viable one. But that was a process done largely behind closed doors, without any real input from those responsible for delivering these services, or those who make use of the services. After years of personal, political and financial investment in health and social care integration arrangements, should we not be exploring the potential to build on these towards a National Care Service, rather than throwing them out and leaping towards unknown and untested arrangements? We do not believe that reform of Integrated Joint Boards is necessarily the right next step; but it is a viable one. We suggest it to the Scottish Parliament as an example of an alternative approach which, to date, has not been properly considered by Scottish Government.

Co-design work at a national level, involving organisations, professions and individuals with diverse interests, is unlikely to deliver consensus. We understand and expect that Scottish Ministers will eventually need to make decisions, not all of which will necessarily be our preferred option. But with a programme of reform as significant as this, our priority – and we believe the Scottish Parliament's priority – is to ensure that the Scottish Government's approach marries ambition with evidence, experience and practical reality. The decisions which Ministers take should follow detailed, transparent, collaborative policy making. If legislation is needed to give effect to those decisions, then a new Bill should be introduced to Parliament, complete with the detail MSPs require to provide proper scrutiny. The approach proposed by the current Bill precludes both good policy making and scrutiny, and therefore is not the best approach to delivering a National Care Service that will improve lives in Scotland.

For Social Work Scotland's members the establishment of a National Care Service, while important and significant in many ways, remains secondary to the core objective of

improving the lives of the many thousands of people who require support from social work and / or social care. We believe Scottish Government shares this core objective, and it is therefore against this objective that we have evaluated the Bill.

## **Part A: General questions on the Bill**

### **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?***

No, the Bill as introduced will not improve the quality and consistency of social work and social care services in Scotland. Over the past decade Social Work Scotland has taken every opportunity available to underline the pressing need for investment, paired with reform, across all aspects of social work and social care. The gap between Scotland’s policy rhetoric and our collective ability to deliver has steadily grown, fuelling disappointment, frustration and cynicism among both those seeking publicly-funded support and those employed to deliver it. Ten years on from the Christie Commission, the preventative model of public services that it described also remains, for many, some way off.

Closing this ‘implementation gap’ is a priority for Social Work Scotland’s members, and to that end, when Scottish Government consulted on proposals in autumn 2021, we gave our cautious support for the establishment of a National Care Service.<sup>2</sup> Many of our members hoped (and many still hope) that such a radical change in structures and power would act as the locomotive for the long train of change and investment that is needed. But we also made clear that, while we support reform, the detail matters. As does certainty over the levels of investment that will be made in services over coming years. We also noted that the complexity of the task ahead needs to be matched by the most rigorous and robust policy making, based on the experience and insight of those who understand the system ‘as is’, and what it will take to create the system ‘as it is to be’. Unfortunately that rigorous, implementation-focused policy making has not yet happened, and therefore this is not yet legislation we can support.

The Scottish Government itself acknowledges that this is a ‘framework bill’, equipping Ministers with the means by which to improve social work and social care, but not detailing how they would do so. But as we argued in our response to the Scottish Government consultation (2021), organisational structures do not, in themselves, deliver improvement. Structures matter, but only in reference to what they make more or less possible (e.g.

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<sup>2</sup> Social Work Scotland (November 2021) [Summary of response to Scottish Government consultation on proposals for a National Care Service](https://socialworkscotland.org/consultations/a-national-care-service-for-scotland/) (<https://socialworkscotland.org/consultations/a-national-care-service-for-scotland/>)

personal choice, professional autonomy, available funding, etc.). Without detail about how Ministers intend to use the proposed National Care Service structures to attend to the decades-old wicked issues which underlie the crises in social work and social care, it is not possible to say whether the Bill will deliver on its purpose. We urge members of the Scottish Parliament to withhold their support for the Bill until more of the necessary detail is available. A National Care Service may be the vehicle needed to deliver Scotland out of its worsening social care crisis, but to evaluate whether the potential benefits outweigh the immediate risks we need a sense of what the end-destination will look like (scope of services and staff, number of care boards, etc.) and the route Ministers will take to get there. Critically, we also need to know what both the journey and the end-point are likely to cost. Without the provision of that detail the Bill is simply an invitation for MSPs (and Scotland as whole) to trust Ministers, current and future, to chart and navigate a course at a later date.

Perhaps the most important detail needed is around finance. Determining the levels of public (and in some cases, personal / individual) expenditure that will be required to deliver the Bill's Policy Memorandum will be a complex and necessarily contentious piece of work. The outcome could only ever be an estimate, with so many variables at play. But such work, while difficult, is not impossible. Individuals and organisations exist in Scotland that can expedite it, offering into the debate robust assessments of what genuine 'delivery' of policy objectives is likely to cost.<sup>3</sup> And in turn this can help us to collectively determine whether Scotland can afford, or would be willing to pay for, such investment. We at Social Work Scotland believe strongly that further investment is necessary, over and above what Scottish Government have committed to, and we will be at the vanguard should a case have to be made to the public about the necessity of raising funds to pay for these vital public services. As a representative organisation for those working in such services now, we want to avoid a scenario where a National Care Service is forged through the smelting of existing structures, with the inevitable pain that will involve, only for it to deliver no real, substantive change because there are not the sustained levels of above-inflation investment that will be needed. Scotland's social work and social care systems are too important, with too many people reliant on them, for them to be broken up without there being even a rough estimate as to what future service provision will cost. And while Scottish Government may defend the Bill on the basis that no dismantling of the current system would take place until costs were understood, we cannot support such a significant transfer of power (from local to central government), such as this Bill represents, prior to those costs being better profiled and understood.

Furthermore, we do not think the Bill, as introduced, will be successful in achieving its core purpose because the implications of incorporating social work into a National Care Service do not appear to have been fully understood or accounted for. Two matters in particular

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<sup>3</sup> For example, see Fraser of Allander (26 August 2022) [Social Care Reform in Scotland: context, costs and questions](https://fraserofallander.org/publications/social-care-reform-in-scotland-context-costs-and-questions/) (<https://fraserofallander.org/publications/social-care-reform-in-scotland-context-costs-and-questions/>)

have not been sufficiently addressed. First, the practical, legal, governance and professional leadership implications of employing (or at least being responsible for) a profession whose functions extend to protective actions. Secondly, the implications for social work if, as it may transpire, the profession is split across different delivery and accountability structures.

On the first of these, we noted that the Bill itself makes no explicit reference to the protective responsibilities of social work, and therefore a future National Care Service. The only oblique reference to such duties is in Schedule 3, which lists the enactments giving rise to transferable local authority functions.<sup>4</sup> But the 'protective responsibilities' of social work are extensive, complex, sensitive, high-profile and, at times, contentious. At their most formalised, these protective responsibilities are set out in law as statutory duties, covering processes and powers relating to adult support and protection, mental health, the management of offenders, and child protection. These duties equip social workers with the means to take action to protect an individual from causing harm to themselves or those around them. They include powers to detain people, restricting their liberty. Such powers are necessary, but any potential infringement on people's human rights must be treated with the utmost seriousness and transparency. To ensure they are used proportionately, at present they are calibrated in well-developed systems of oversight and accountability. It is a particular and serious concern of Social Work Scotland's members that neither the National Care Service (Scotland) Bill itself, nor its accompanying documentation, reflect an understanding of the protective responsibilities which a future National Care Service may assume (through its inclusion of social work).

No provision is made for the fact that Scottish Ministers will be assuming direct control of a group of professionals who hold powers to restrict an individual's liberty; with the establishment of Police Scotland, this same issue was part of the rationale for creating the Scottish Police Authority, as a necessary buffer between Government and the police force. No section of the Bill or accompanying paper articulates how the existing structure of oversight and accountability, which relies heavily on the political and operational independence of local government, will be replicated or reformed in the context of a National Care Service. There is no reference to the Chief Social Work Officer, or to the unique responsibilities the individual holds. There is no acknowledgement of the legal requirements to have certain officers (such as Mental Health Officers) subject to different governance structures to colleagues they must work with (such as doctors), to ensure independence and challenge around decision making.

The absence of such important detail from the Bill is possibly reason enough to pause its passage through Parliament. But the Bill's deficiencies in respect of social work's responsibilities go deeper. In contrast to the popular portrayal of social work, the

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<sup>4</sup> The list includes the Social Work (Scotland) Act 1968, the Children (Scotland) Act 1995, and the Adult Support and Protection (Scotland) Act 2007, Management of Offenders, etc. (Scotland) Act 2005, among others.

profession's primary focus is prevention, taking action to protect individuals and communities from negative outcomes, preferably by building strength, resilience and capability. The profession's roots lie in the 1968 Social Work (Scotland) Act, with its provisions for local authorities to secure the general social welfare of their communities. Unfortunately, over recent decades legislative and funding issues have concentrated social work resources on crisis response. But if adequate funding could be secured, and lines of leadership and governance got right, it does not have to be that way. Social work could be freed to play a role akin to general practice in the NHS, a non-stigmatising service open to all individuals and families seeking support and assistance, while also working to monitor the wellbeing of people who are subject to risk, and escalating cases when necessary. We believe strongly that the central purpose and underlying principles of the proposed National Care Service (particularly those aspects relating to prevention and advancing equality) can only be realised if social work is enabled to fulfil the full scope of its responsibilities. If the Scottish Parliament's objective is improving people's outcomes, rather than just changing public service structures, the Bill must go much further in detailing how a National Care Service will be different, for the professionals who work in it, to the current environment.

In addition to the matter of social work's protective and preventative responsibilities, the Bill also does not adequately address the implications of splitting the profession across different delivery and accountability structures (i.e. adult social work in the National Care Service, children's social work in local government). This outcome is acknowledged in the Bill's accompanying papers, but analysis of what this will really mean for individuals and families seeking or requiring support, and the profession as a whole, is deferred to a later date. There is also much faith being placed, as articulated in the Bill's accompanying documents, on the power of a National Social Work Agency to overcome any challenges. A National Social Work Agency, we observe, that is not mentioned explicitly in the Bill itself. We support the establishment of a National Social Work Agency, and believe the organisation is an essential, although not on its own sufficient, part of the response to the discreet challenges facing social work. But on the operational issues that will flow from separating social work across different structures a National Social Work Agency can only ever have marginal influence.

For example, if children's and justice social work are not included in the National Care Service's scope, how will responsible Minister's ensure that a (relatively small number of) adult social workers retains the independence and authority necessary to act in the interests of individuals in the integrated health and social care environment? A social work service which can push back assiduously, as the profession had to do during the COVID-19 pandemic, on moves to turn people's homes into health care settings in the pursuit of infection control. Or to withstand pressure to release an individual out of hospital if there is not appropriate social care support available to keep them safe and well in the community. The current integration landscape is far from satisfactory, and the issues it has created for social work partly explain our support for reform. But while imperfect, the current system retains most of the checks and balances that, built up over decades, help prevent one part of our public services infrastructure from becoming dominant.

With the absence of any detail in the Bill about how professional responsibilities and services will be organised, we cannot see how those necessary checks and balances will be replicated in a National Care Service. Indeed, on the basis of what the Bill does say, power would be consolidated in the hands of Ministers; ostensibly to enable the change and improvements necessary, but ultimately that consolidated power could be used to whatever political priority emerges at a later date. Consolidation of power promises speed in delivering a vision. But what is lost? Friction in a system is not a bad thing when the protection of human rights and minority interests is a priority, or if we are interested in sparking innovation. A plurality of power keeps people and communities safe, by limiting the ability of any one professional or service from unilaterally making a decision and implementing it. The Bill does include references to complaints, Charters of rights, etc. but these should not be considered sufficient (or adequate) checks on the powers of a National Care Service, and they do not in any way speak to the issues we have outlined above, in respect of ensuring professional autonomy within the National Care Service. If any part of social work is going to be included in a National Care Service, we believe the Scottish Parliament should have the opportunity of interrogating, before the Bill progress further, Scottish Government's answers to questions such as these.

Finally, specifically on the Bill's objective to improve 'consistency', we share the public's frustration with the inequity that is sometimes evident in the social care system. There is too much variance in the system, both in respect of people's experience of interacting with professionals, etc., and in terms of what support is provided or action taken. We also fully agree with efforts to build and sustain, in every part of the country, a portfolio of high-quality services broad enough to enable *everyone* to lead a meaningful and positive life, as a part of society rather than isolated from it. But a focus on 'consistency', particularly when accompanied by references to "ending the post-code lottery", risks orientating the National Care Service around an 'anti-task', rather than the real task. The anti-task being "to achieve greater consistency", rather than "to build and sustain services to meet everyone's needs, everywhere in the country". In a relevant parallel from the NHS, much resource is now focused on the anti-task (getting waiting lists down) rather than the actual task (ensuring we build and sustain services which can meet the population's needs). Progress on the anti-task is nearly always in the interests of those accountable for a system, rather than those the system is responsible for. Partly because the anti-task is usually easier than the real task.

The experience of our members, interacting with communities on a daily basis, suggests that the public are not interested in 'consistency' per se; they are intelligent and informed, and appreciate that it is neither possible nor desirable to deliver 'consistent' social care services in a country as geographically, socially and demographically varied as Scotland. There is legitimate grievance within the public over people with similar needs and strengths being offered different degrees of autonomy and choice; a situation for which social work is partly culpable, and which we strongly desire to resolve. But that grievance does not translate into a simplistic desire for everyone to have access to the same things,



irrespective of where they live in the country. And the pursuit of such an objective would actually be pernicious for individuals and communities, potentially sacrificing choice on the altar of consistency. The economic logic of self-directed support, a philosophy and model strongly supported by Ministers, is more plurality and choice, not less. As individuals take greater control of their support, we may see more and more diversity in what constitutes 'social care'. A centralised model of social care, that privileges 'consistency' over genuine personalisation, is likely to offer people customisation, not choice.

In conclusion, judging the legislation on the basis of what it says, rather than what Scottish Government promise to do, we do not believe the Bill will deliver on its core purpose. Through its representatives in the Scottish Parliament, Scotland is being asked to trust that Scottish Ministers will do the right thing. We are being asked to afford Ministers the powers to fundamentally reshape public services and local democracy, with the promise that those who work in social work and social care, and those who receive support, will inform and shape the design. But our experience tells us to be wary of such promises. As it stands the only thing that can be taken as certain from the Bill is that, if it becomes law, there will be a costly rearrangement of services and personnel to create a National Care Service, putting into question the future of local government, and in a different way, social work. With a reform of such significance, we believe the co-design work on the detail should come first, with the relevant parties feeling their way together towards practicable and costed solutions to the system's current problems. Then we can determine what structures are needed to best deliver those solutions. This is the approach being taken by the Promise Scotland, and somewhat the approach proposed for determining whether children's and justice services are included in the National Care Service. We are not arguing for the idea of a National Care Service to be withdrawn, or arguing for the status quo. Rather, before committing to it and putting so much at risk, we seek to better understand how a National Care Service will work for people in real time; what and how it will do differently than the current system, and what those differences mean for social workers, social care workers, unpaid carers and people who use or need services and support.

***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?***

Through both our members and project work, Social Work Scotland is closely involved in current efforts to improve the quality, consistency, availability and people's experiences of social work and social care services. We believe progress is being made, but acknowledge that the pace of change is too slow. Reform of structures and processes is needed to unlock the potential of both our social work and social care professions, and to deliver the person-led, rights-based and early intervention orientated services we aspire to provide. But reform of structures and processes is only part of the equation; and not, in our view, the most important part. Simply increasing public investment in today's social work and social care system is unlikely to deliver the transformational changes needed. However, without significant increases in public investment, no meaningful change is possible in any

structure. This is because limited resources (financial and human) are the primary reason why social work and social care services are struggling to meet the population's needs; let alone the population's wants. We can assert this with confidence, having a clear view on both demand and supply. The former is significantly outstripping the latter, and as a result we must increasingly focus on those with the most critical needs. Rearranging the structures of accountability and delivery, and introducing broad principles and charters, as the Bill proposes to do, will at best only make a very marginal impact on this present reality. By disrupting the current system, creating volatility and uncertainty, and by diverting money away from service delivery and onto structural reorganisation, the Bill may even make the current situation in social work and social care worse.

We do not believe that the public care greatly about how services are integrated or who is politically accountable for them. They desire there to be good quality support available to them when they need it, and if delivery of different services feels connected and coordinated, all the better. Achieving this aim must be our collective ambition, and as yet the Scottish Government has not provided the detail, beyond an outline of future structures, for how it would do so under a National Care Service. Their argument, articulated through the Bill's accompanying papers, appears to be that such detail can only be developed through a co-design process which follows the Bill's successful passage through Parliament. Although we do not believe it is the Scottish Government's intention to give an impression of such, but to some of our members the argument amounts to taking social work and social care improvement hostage till demands for greater central government power are met. Why can we not work together now to identify the resource demands social work and social care require, begin making the necessary investments in services quickly, and in parallel consider the structural reforms that would accelerate and facilitate improvement? To the best of our knowledge there is no legal or structural impediment in the way of Scottish Government and its 'co-design' partners approaching the task in this way.

Our alternative approach would, therefore, be simply to change the order of the Scottish Government's existing plan. Bring forward investment in relevant services, evidencing commitment to the people who work in and/or receive support from social work and social care. Initiate the co-design programme as planned, but in a considered (preferably co-designed) way, with strands of work sequenced and interconnected appropriately. In parallel, partners can undertake the work necessary to properly estimate the resources that social work and social care need (to meet demand within the current system, and to meet demand in the system we seek to build). With the outcome of these two strands established, discussions about structures can begin in earnest, with legislation following to give effect to final decisions.

We are mindful that some sections of this Bill are not directly related to the National Care Service. For example, Anne's Law. Taking a considered approach to the development of a National Care Service should not have to delay progress on these aspects. Instead, Scottish Government could use the upcoming Programme for Government to detail how

such aspects will be realised. The Programme for Government could also detail how a National Social Work Agency will be quickly established as a separate public body, with resources focused on addressing the various issues identified by the Scottish Government as needing a national agency's urgent attention.

In respect of the comment above about initiating a co-design programme in a considered, well-managed way, it is necessary for us to state the obvious: with so much change envisaged by the Bill, the careful management of the related co-design programme will be a massively complicated but essential job. From what we know so far of Scottish Government's current plans, it appears the level of complexity involved in building a National Care Service has not been sufficiently understood. The tight timescales risk giving a priority to speed of decision making over meaningful participation or efficacy of output. When attempting to build an untested service delivery structure on largely new theoretical foundations (e.g. human rights, alternatives to eligibility criteria, etc.), current plans will be found to be profoundly inadequate. What is more, the plans would be inadequate in the best of external contexts. But the external context in which this Bill is progressed is instead extremely challenging, throwing up numerous practical and ethical issues with the Scottish Government's co-design plans. Scotland's population is facing the most serious cost of living crisis in many decades; inflationary pressures which impact most significantly the already vulnerable in our society, such as people supported by social work services, many of those in receipt of social care, the elderly, those with complex health conditions, etc. Precisely the people we need to be actively involved in the process of co-design. And of course in respect of the 'workforce' which needs to be involved, the individuals are subject to exactly the same stresses, with many in low-paid roles.

Furthermore, aside from the pressures created by the cost of living crisis (which is increasing demand for services and support while simultaneously eroding organisation's own resources and capacity), social work and social care are still very much in post-pandemic recovery. Vacancy and absence rates are high, caseloads overwhelming, and burnout and fatigue evident in all service areas. Although few in relative numbers, the continued demand placed on social work by arrivals from Ukraine (and now, increasingly, the re-housing of arrivals from spring) is considerable, requiring the redirection of whole teams' time, and consuming the attention of managers and leaders. For children and families social workers, this is in addition to change activity they are trying to progress in delivery of the Promise. Inviting the workforce into (necessarily) challenging co-design conversations at this time may not just be impractical, but also insensitive.

From a political perspective, our recommended alternative approach may seem naïve; why embark on months of difficult work with no certainty of a clear outcome? However, we believe that our approach is more consistent with the steps implementation science would recommend. In the Bill's Policy Memorandum the Scottish Government itself explicitly acknowledges the implementation gap that has characterised social work and social care policy over the past decade. If the objective is to overcome that implementation gap then we must engage with the evidence properly. Evidence which, we think, runs strongly

counter to the approach this Bill proposes. To cite a recent review on this subject, already profiled to MSPs by the Scottish Parliament's Information Centre,

*"[...] those who work on the front line, whether managerially or professionally, know more about the challenges of delivery than national policy-makers. A crucial task for implementation support is, therefore, to tap into the perceptions and experiences of those whose behaviour will shape the implementation process."<sup>5</sup>*

The members we represent, a group of professionals with good claim to being essential to the operation of the current and any future system, do not feel they have yet been engaged by Scottish Government in any meaningful or systematic way. Should legislation to create a National Care Service proceed prior to that engagement taking place? We do not think so.

Further to our main argument outlined above, if we accept that reform of structures is a necessary precursor to 'unlocking' the public investment social work and social care need, the proposed version of a National Care Service is not the only viable (or even best) approach. Addressing some of the issues around Integration Joint Boards, identified by Derek Feeley and Audit Scotland, among others, could be done without the type of National Care Service currently proposed. There are also alternatives which incorporate much more extensive reform of the NHS; options theoretically possible, although not perhaps politically. The National Care Service (Scotland) Bill does seem, on the basis of the limited detail available, to be a backward step in respect to integrating health and social care. Social Work Scotland has made many criticisms of the current integration arrangements, particularly in respect to how they impacted social work leadership and delivery. However, we have also always acknowledged the benefits health and social care integration, done right, can bring for individuals and communities. Through the development of the National Care Service proposals, many of our members have voiced concern about the risks it poses to the local progress they have made in creating common cultures, and effective, integrated operating models. Some members have gone further, articulating disappointment that this Bill appears to disrupt rather than enhance partnerships, setting back the policy clock in Scotland. Other members have commented on the irony inherent in a government, until recently proudly extolling the progress made and benefits delivered in respect of integration, now advancing legislation that would disintegrate arrangements.

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<sup>5</sup> Bob Hudson, David Hunter & Stephen Peckham (2019) Policy failure and the policy-implementation gap: can policy support programs help?, Policy Design and Practice, 2:1

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

Addressing these in line with the structure of the Bill.

*Part 1: Section 1: The National Care Service Principles*

We agree with the notion of setting out clearly the principles on which a National Care Service is to be established, but as currently drafted, we question whether they provide a suitably robust foundation. They are laudable statements of intent, but they do not appear to have any real weight. Determining whether they have been 'realised' will be matter of subjective opinion, for there does not appear to be any provision for objectively and empirically adjudicating. And the wording of some render them useless as a tool by which to hold Ministers or a National Care Service to account; for example "opportunities are to be sought to continuously improve ..." affords so much latitude that it is effectively meaningless. Where there is some specificity, there is no obvious provision for redress if an individual feels a principle has not been upheld in respect of their experience.

The principles also do not provide for the full breadth of social work activity; especially if children's and justice social work are included in the scope of the National Care Service. In particular, there is no reference in any of the principles to how the National Care Service will fulfil its protective responsibilities, which it will assume with the social work functions of local authorities. These include duties, and associated powers, to ensure individuals who require support receive it, even if the individual actively rejects the assessment of their need and the offer of support. Although this represents a relatively small number of cases out of the total, they are cases that consume considerable time, energy and resources, and which often involve legal dispute and court intervention and risk of serious harm. They are cases that illustrate both the value and tensions associated with human rights, surfacing the fact that individuals' rights may be in conflict with each other, or even that the exercise of an individual's rights is not in their best interests. When such serious consequences as the deprivation of an individual's liberty is involved, we expect Ministers would want to be explicit about the principles on which the National Care Service will use such powers.

In respect of principle (b), we would welcome further detail on what constitutes financial stability, and how the Scottish Government intends to deliver it.

On principle (c), we strongly support the focus on early intervention, but question how the services provided by the National Care Service can be 'centred' on such activity, at least in the short to medium term. Levels of need in our communities are high and of a complex nature, and our current system is struggling, through lack of resource and good national planning, to reach it all. Resources and services will need to continue to be available to those with the most pressing needs once a National Care Service is established, and as yet it is not clear where the resources are coming from to finance the early intervention services that will have to be built alongside the existing 'acute' provision. This reality is mirrored in the NHS, where resources are increasingly consumed by acute need, making the case ever

stronger for earlier interventions, but shrinking the NHS' capacity to actually deliver those earlier interventions. It is a public policy dilemma, which in our view can only be overcome through concerted public investment over many years, effectively building and maintaining two systems at scale (one 'preventative' and one 'acute / crisis response') until such time as the preventative services significantly reduce the demand on acute services, allowing for disinvestment and decommissioning.

On principle (d), it should be amended to reflect that services are to be designed collaboratively with the people to whom they are provided, their carers, *and* those who work in the services at all levels. It should not simply be assumed or taken as implicit that those who work in a system, and who arguably understand its strengths and weaknesses best, are included in service design, evaluation and implementation activity. It is certainly not the case currently, despite much rich rhetoric about co-production and engagement. The value of the 'generalised' perspective professionals can bring, identifying themes and commonalities across hundreds of individual cases, feels to have fallen out of favour. But it is through the interaction of the professional and supported people's experience that we will identify a viable path of improvement.

Moreover, if the National Care Service is to realise the principle of advancing equality and non-discrimination, it will need to go much further than Scottish Government has to date in securing the whole continuum of lived experience; not just those with the means and desire to engage. This is particularly important if social work services are included in the National Care Service; the voices of those who receive support *from* social work must be heard, rather than just those who seek support *through* social work (e.g. social care support). And as Ministers have left open the possibility that a National Care Service will encompass children's social work and social care, and justice social work, it is essential that the voices of children, families and offenders are part of co-design work from the start. If not, the Scottish Minister's co-design programme will be inherently unequal, privileging one set of lived experienced voices over another.

#### *Part 1: Section 4: Establishment and abolition of care boards*

We believe this section should be amended to provide more detail (and narrow the scope of Ministerial discretion) on the proposed care boards. For instance, the number of local care boards should be made clear, as the implications of different options are profound.

Coterminosity with local authorities would enable local democracy to have a meaningful place in the National Care Service's governance, and facilitate links with other relevant public services (which are not proposed to be in the scope of the National Care Service, such as housing). But it would also tie the National Care Service to a level of administrative fragmentation which is, we believe, a drag on improvement in the current system. An issue exacerbated by the fact that some existing local government units lack the size and scale to commission the breadth of services that diverse communities increasingly demand. An alternative approach for local care boards would be coterminosity with territorial health boards. We can see the appeal in this for Ministers, promising easier integration between the national health and care services for which they will be accountable. The approach also

resolves the issues around economies of scale, creating units which would cover sizeable populations. But a National Care Service built on the same map as the NHS will make local democratic links difficult, if not meaningless (as some Care Boards will cover many and diverse local authorities). It would also increase the prospect of the National Care Service as a whole becoming an adjunct to the NHS, its funding, staff and activity largely focused on addressing the priorities of its bigger, well-established and more politically salient partner. A third, but by no means final, approach to local care boards would be to choose a number unrelated to either local government or NHS administration. That presents opportunities, but would, among many other challenges, create another set of administrative boundaries that need to be navigated.

In respect of special care boards, looking across to the NHS provides some indication of how Ministers have utilised this provision. And indeed the Bill's accompanying documentation gives some hints to how special care boards might be used to consolidate and coordinate workforce development, data, etc. (as is the case in the NHS). However, there is also scope for special care boards to provide services which are (determined by Ministers to be) best delivered 'once for Scotland'. We are not opposed to this idea in principle, but specific decisions will have profound implications on social work and social care. Should, for example, all mental health services be organised and managed through a special care board? Or all drug and alcohol services? We appreciate that no decisions have yet been taken, and we are confident that, as representatives for the leaders of social work, we would have a voice in any discussions. But irrespective of whether firm decisions have yet been taken, the singular absence in the Bill of even ideas / indications retards the quality of debate. We believe MSPs should be apprised about what some of the possible special care boards might be, so that they can make an informed judgement as to whether Scottish Ministers should have powers to make such changes.

As this exercise in working through some of the options around care board numbers hopefully illustrates, the decision will have profound implications, not just for the operation of the National Care Service, but for other public organisations. We cannot see how it is possible to evaluate the Bill properly without such essential detail (or even an indication at this stage of the Scottish Government's preferences / intentions).

Further to the issues of number and focus of care boards, we would also encourage amendment of schedule 1, relating to care boards' constitution and operation. In particular, we seek change to Part 6 of the schedule, to establish a requirement for all local care boards to have a Director of Social Work, who is a member of staff and an attending member of the governance board. The Director of Social Work must be social work qualified and be registered with the Scottish Social Services Council. This amendment would serve to carry over an existing legal requirement on local authorities to appoint a Chief Social Work Officer; a role specifically tied to the social work and social care functions which this Bill proposes to transfer to a National Care Service. But we are choosing to go further than just recommending the establishment of a 'Chief Social Work Officer' for each

local care board, on the basis of our members' feedback about the current issues and limitations of the role.

Since the removal of the requirement on local authorities to appoint a Director of Social Work (as part of local government reform in the mid -1990's), lines of accountability and professional leadership have become blurred or incoherent. The influence of the profession at all levels of decision making has waned, and we believe this has contributed to the loss of focus, nationally, on the mounting issues within social care. Today, Chief Social Work Officers sit in a variety of operational positions across local authorities; in some cases at some distance from the core executive team. We have concluded that it is not possible to fulfil the role, in letter and spirit, without the kind of authority which Directors of Social Work used to possess (in pre-1995 local authority structures). The Chief Social Work Officer role was designed to create, when necessary, friction in a system, advocating for the people who receive support from social work, and is empowered (indeed obligated) to comment on the validity of their partnership's approach to addressing local population needs. It is a role intended to be grit in the oyster. And it is the sort of role which will be more important than ever in a National Care Service; a centralised system under the direct control of Ministers. To fulfil the functions of such a role properly it will need authority, which is why we are recommending amendment to the Bill, ensuring a Director of Social Work clearly sits alongside the Chief Executive (and possibly other statutorily prescribed Directors) as the executive team. This would ensure a diffusion of power across senior executives, and redress some of the deficiencies of the Bill in respect of checks and balances. (The autonomy and agency of a Director of Social Work could be strengthened further if appointments were not the sole preserve of Scottish Ministers, but subject to a selection process involving those with lived experience, the Scottish Government's Chief Social Work Advisor and professional representatives.)

#### *Part 1: Section 11: The National Care Service charter*

We remain unclear about what the value added is of these provisions, over and above the existing structure of national standards and outcomes. Considering that the Bill states explicitly that nothing in the charter is to give rise to any new rights, or impose or alter any responsibilities, any value seems primarily for Scottish Ministers, providing opportunities to produce, review and re-publish a written output.

#### *Part 1: Section 13: Independent Advocacy*

Social Work Scotland has been closely involved in developments around 'independent advocacy' over recent years, and can attest to their complexity and sensitivity. We do not oppose Scottish Ministers having powers, by regulations, to make provision for such services in respect of the National Care Service; indeed it is likely that Ministers already have powers to establish equivalent services for the current system. But this section is another example of where Parliament's Committees may wish to seek more detail from the Scottish Government, on Minister's intentions or expectations. Different options entail very different implications for the delivery of social work and social care services within an NCS,



determining, to a degree, the extent to which it will mark a genuine break from the current system, or simply represents a repackaging of the same issues under a new banner.

Furthermore, it is worth noting that social work is already subject to a number of specific legal duties in respect of advocacy. Legislation pertaining to adults with incapacity, adult support and protection, and mental health, among others, require social work to ensure independent advocacy is available, as part of processes where liberty could be restricted or where investigations into an individual's personal affairs is being undertaken. From the detail provided in and alongside the Bill, we are unclear about how Scottish Government intends to deliver these discrete and specialist functions (which will, in a National Care Service, be the responsibility of Ministers) alongside the more generic 'independent advocacy' model described in the Policy Memorandum, focused on supporting individuals to articulate needs and secure social care support packages

*Part 1: Section 19: Transfer of care board's functions due to service failure*

In continued pursuit of checks and balances within the proposed National Care Service, we would welcome amendment to this section to proscribe Ministers' power to define 'failure'. The pandemic provided many instances where the performance of public authorities was, possibly, seen as failure by Scottish Ministers, when viewed through a prism of infection control or social care delivery. But we are not convinced that Ministers being empowered to take direct control of such authorities would have made any discernible improvement on the narrow criteria about which they were making a judgement, and their preoccupation with said criteria may have put at risk equally important activity which lacked, in that particular moment, political saliency.

*Part 1: Section 27: Power to transfer functions from local authorities & Part 1: Section 28: Power to bring aspects of healthcare into the National Care Service*

Our principal concern with these sections is the missed opportunity they represent. Across the United Kingdom populations and governments are rightly proud of the National Health Service, and commitments to its services and workforce are, understandably, priorities. But few NHS staff would defend it as a perfect system. A number of Boards have ongoing challenges in respect to culture, and the performance of some services has been, over many years, sub-optimal. Why then should we exclude NHS functions from the scope of the National Care Service? If a National Care Service can provide the improvements needed in adult social care, why cannot it not also realise such improvements for services such as Child and Adolescent Mental Health? If embedding human rights, choice and control are valid objectives for social work and social care, why not for healthcare? As yet our members have not heard a credible explanation for why the Bill mandates this disparate and unequal approach to health and social care. For all their challenges, current integration arrangements are at least premised on a partnership of notional equals, with local authorities and the NHS delegating functions to an Integration Authority. This Bill appears to be based on a different assessment of the respective value of health and social care services.

*Part 1: Section 31: Transfers of staff*

Related to our comments immediately above (on sections 27 and 28), the inequity in how the transfer of staff will be managed between local authorities and the NHS is felt deeply by our membership. We understand and appreciate that proposals to transfer NHS staff would likely elicit strong opposition and vocal resistance. But if the objective of the Bill's reforms is improving the quality and availability of support to Scotland's communities, surely no public sector worker's position is sacrosanct. We are not advocating for the transfer of NHS staff, but we believe the development of a National Care Service should be built on a parity of esteem between the various, affected professional groups. In the Bill that would translate to Ministers having powers to transfer all relevant staff.

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

Our position, set out in our previous answers, is that much more detail about the National Care Service itself, and its operating model, should be included in the Bill. Or at least in draft / indicative secondary legislation, provided alongside the Bill. Such detail is essential if the Scottish Parliament is to scrutinise these proposals properly, weighing potential benefits against costs and risks.

Of the many additional elements we would like to see in the Bill, we would single out here the National Social Work Agency. The Bill's Policy Memorandum notes that:

*“The [National Social Work Agency] will contribute to meeting the Scottish Ministers’ duties to provide a national care service, reflecting its principles and human rights based approach, and to monitor and improve the quality of the services that the NCS provides, since those services are expected to include social work as well as social care.”*

We are pleased to see the potential value of a National Social Work Agency acknowledged by the Scottish Government. In our analysis of why social work and social care systems have struggled to evolve and improve at the pace required by policy and service demand, Social Work Scotland has highlighted the absence of national structures for national professions as part of the problem. In our response to the Scottish Government's consultation on a National Care Service in autumn 2021 we said:

*A National Social Work Agency is no panacea or silver bullet for the challenges facing social work and social care. But for those working in and leading the profession, the establishment of National Social Work Agency is a vital piece in the jigsaw of reform, providing the levers we collectively need to plan, develop and improve social work in Scotland. It should be complimentary to existing bodies, assuming responsibilities that currently no one holds, and bringing greater coordination in areas where various partners have a role but at present no clear lead.*

*The current national arrangements for social work are messy and inefficient, with Scottish Government, employers, SSSC, Social Work Scotland, improvement bodies and many others all separately ‘leading’ on aspects of social work’s development. At best the current arrangements serve to hold things together. But if we are to affect the changes in social work systems and practice outlined by the Independent Review of Social Care and the Promise, and which the profession itself has called for, we need to create an enabling context. The National Social Work Agency alone cannot deliver that context, but conversely, the context cannot be created without the kind of functions and leadership a National Social Work Agency will provide.*

The Scottish Government's initial plans for the National Social Work Agency, in terms of focus and function, align with our recommendations, and we are looking forward to working with officials and other partners to develop plans more fully. Most immediately we see the benefits it can bring to improving pathways into and through the profession, responding to the evolving demands of communities and supported people.

However, we are disappointed that there is no reference to the National Social Work Agency in the Bill itself. The Policy Memorandum states the intention is to establish the National Social Work Agency "within Government as part of the NCS structure"<sup>6</sup>. This ambiguity is unsatisfactory for a number of reasons. Firstly, it does not provide social work with certainty that a National Social Work Agency will be delivered, or that it has any long-term security. In the 'co-design' period to follow the successful passage of the Bill, it is possible that Scottish Government's enthusiasm for the idea wanes. Consistent with our general critique of the Bill and its approach, the current proposals around the National Social Work Agency feel like a promise of action if support is given; "back the Bill and a National Social Work Agency will be delivered". But if the Scottish Government share our analysis of the factors limiting social work's development, and are committed to establishing a National Social Work Agency as part of the solution, why not confirm that commitment on the face of the Bill itself, as they have with Care Boards?

Moreover, on the point about long term security, being part of Scottish Government leaves a future National Social Work Agency open to rapid change (even deletion) without any reference to the profession or other stakeholders. It is a strength of the core civil service that teams can be reorganised quickly in order to meet the demands of the day; recently around COVID-19, and currently for arrivals from Ukraine. But for a team / organisation that will need to make and implement plans over 10+ year cycles (as is necessary with workforce development), such fragility and vulnerability is unwelcome. There are also questions about the type of people who would be eligible and interested in working for a National Social Work Agency that is part of the core Scottish Government (and who are therefore conventional 'civil servants'), as opposed to an Agency that sits at arm's length. A degree of planning for the future is needed too; should the political party in control of Scottish Government change, a National Social Work Agency that is part of Scottish Government might disappear overnight. If the agency sat outwith Scottish Government, underpinned by legislation, Parliament as a whole would need to consent to change.

The proposal of a National Social Work Agency situated within Scottish Government, as part of the National Care Service, also begs a number of practical questions about links across government, and the future role of the Scottish Government's Chief Social Work Advisor. At present, the Office of the Chief Social Work Advisor (CSWA), although notionally based in the Directorate for Children and Families, facilitates cross-Government connections and helps ensure that public policy relevant to social work takes into consideration the profession's insights and expertise. How will the National Social Work

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<sup>6</sup> Policy Memorandum, p.16

Agency, as proposed, continue to fulfil this function? And what impact will it have on the CSWA role?

Furthermore, for a National Social Work Agency to be credible with the profession and effective in delivering its functions, it will require a degree of separation and quasi-autonomy from Scottish Ministers. Not 'independence' (such a position would be neither viable or beneficial), but sufficiently arm's length to reassure the profession that its activities are determined by more than Ministerial priorities, its resources ring-fenced for its core purposes, and its senior team confident to speak up for the profession when necessary (possibly in opposition to colleagues within government). One of the barriers to progress with social work education is the absence, among social work organisations, of a robust mandate to lead improvement and deliver change. A National Social Work Agency situated within Scottish Government would not necessarily provide that, being little different to current arrangements. A mandate set out in legislation is likely needed.

The development of a National Social Work Agency must also be considered in the wider context of reform of social work, as proposed by this Bill, and in particular the impact changes will have on the professional leadership. Current social work structures within Scottish Government reflect the fact that the profession's leadership sits outwith central government direct control, in the form of local authority Chief Social Work Officers. The relative independence of Chief Social Work Officers provides the Government's Office of the Chief Social Work Advisor with influence, as the conduit between Ministers / officials and an 'independent' group of professional leaders. When a proportion, or possibly all, of the profession's leadership sits within a centralised National Care Service structure, how will the Chief Social Work Advisor (presumably based in a National Social Work Agency) maintain the necessary scope to robustly articulate the profession's perspective?

For these reasons we believe the plans for a National Social Work Agency should be set out in legislation. However, we remain consistent with our overall position that the legislative process should be paused while much of the necessary detail around the National Care Service is worked out. Therefore we recommend that provisions for a National Social Work Agency be set out either in regulations, through powers already sitting with Ministers under existing law, or as part of a relevant upcoming Bill.

In response to question 3 we also suggested a number of specific additions to the Bill. Among these proposed amendments, the most relevant here is the introduction of provisions for a 'Director of Social Work' position in local care boards. This would be a qualified and experienced social work leader, providing a range of similar functions to that of the Chief Social Work Officer in current local authority and Integration Authority arrangements. In view of how many critical processes (assessment, public protection, etc.) will run through the social work professionals located within a National Care Service, it will be necessary for the Director of Social Work to have a status, operational power and authority necessary to get things done. Social Work Scotland's members have been clear on the importance of positional power within governance and delivery structures, noting that

direct operational responsibilities are integral for social work leaders being able to fulfil their statutory functions according to the profession's values. Social work leadership roles positioned outwith day-to-day budget, management and delivery decision making were felt to be constrained in their ability to influence developments.

For these reasons, among others, we advocate for the position of a 'Director of Social Work' to be confirmed in the Bill. However, our proposal is offered primarily to address a gap in the legislation, as it is currently drafted. We are very aware that, should such a role be established within Care Boards, it may significantly complicate the profession's leadership structure. What does it mean, for example, for the current primacy of the Chief Social Work Officer? Indeed our primary concern with the Bill is its total silence on issues pertaining to social work leadership. This is despite the fact that existing legislation places numerous, specific and unique responsibilities on a number of professional social work roles, and in particular that of Chief Social Work Officer. It is a Chief Social Work Officer who acts, on behalf of the local authority, as a guardian in situations where an individual lacks capacity to make decisions for themselves. It is the Chief Social Work Officer who authorises a child's placement in secure care. And although current integrated arrangements have complicated lines of accountability and authority, the role of the Chief Social Work Officer remains generally understood and respected by other professions. It is also understood that, in order for the functions and powers of a Chief Social Work Officer to be carried out properly and timeously, tiers of senior social work management are necessary; a partnership such as Glasgow could not function without authority properly delegated across an extensive social work leadership team.

At the time of writing, Social Work Scotland (representing the senior leadership of the profession) have had no formal discussions with Scottish Government Ministers or officials about the future of the Chief Social Work Officer role, or their ideas for how professional leadership and governance will work in a National Care Service. We have no sense of how officials propose to overcome the complications the proposed reforms will create. Considering the statutory responsibilities of social work, this absence of discussion, planning and detail around the future of social work leadership feels like a significant omission. There has been no consideration, to the best of our knowledge, about what the lines of accountability and / or authority would be between senior social workers employed within the National Care Service and senior social workers employed by local authorities; or how it would work across the potential three-way split, with justice social work leaders sitting in structures outwith both a National Care Service and local government. Moreover, with children's social work so central to the delivery of the Promise, it is surprising that detailed work has not already been undertaken to assess the implications of different structural permutations.

The answer from Scottish Government to this is likely to be that such aspects will be attended to as the Bill progresses. But this specific matter, along with many others, are of direct significance to the future of social work (and obliquely, of local government's role in public protection). Understanding how such aspects will work in a National Care Service is

a prerequisite to forming a view on whether a National Care Service will be an improvement on current structures (and therefore worth the risks inherent in disruption and reorganisation). Worked through detail on how social work leadership will be realised through, and possibly between, future structures is a key area we believe MSPs should be appraised on before taking this Bill further.

**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?***

We have addressed the question of specific detail extensively in our previous answers, so our response here concentrates on the ‘framework bill’ approach in general. Such an approach is not, we believe, appropriate to either the task (improving social work and social care) or a real-world context characterised by fatigue, volatility, uncertainty and fear. An approach which exacerbates the uncertainty, and which delays discussion and investment, cannot be the right one.

On the utility and problems inherent in ‘framework’ or ‘skeleton’ bills, we draw MSPs attention to the extensive work done by UK Parliament colleagues<sup>7</sup>, and that of the Hansard Society<sup>8</sup>. The conclusions of this work have consistently been critical of such an approach to making law, albeit acknowledging that there are some exceptional circumstances in which it may be appropriate, such as responding to a new pandemic. While the need for reform and investment in social work and social care is urgent, this is not one of those exceptional moments.

Within the material relating to this issue from the UK Parliament, the report by the House of Lords’ Select Committee on the Constitution (2018) most clearly voiced our own views. In particular:

*“The extreme end of the spectrum of legislative uncertainty comes in the form of ‘skeleton bills’, where broad delegated powers are sought to fill in policy details at a later date. We heard a great deal of scepticism about skeleton bills “that lead to lots of regulation because [the policy] has not been worked out yet.”<sup>9</sup>*

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<sup>7</sup> House of Lords, Select Committee on the Constitution (20 November 2018), [The Legislative Process: The Delegation of Powers](#), 16<sup>th</sup> Report of Session 2017-19; House of Lords, Merits of Statutory Instruments Committee (12 November 2009), [What happened next? A study of Post-Implementation Review of secondary legislation](#), 30<sup>th</sup> Report of Session 2008-09

<sup>8</sup> Hansard Society, [Delegated Legislation: The Problems with the Process](#), November 2021; and [Delegated legislation review](#), accessed 12 August 2022

<sup>9</sup> House of Lords, Select Committee on the Constitution (20 November 2018), [The Legislative Process: The Delegation of Powers](#), 16<sup>th</sup> Report of Session 2017-19, p.17

And

*The Bar Council said that skeleton bills “should be assessed on their merits, but with a sceptical approach”, and that they should be subject to “appropriate scrutiny and sunset provisions.” They added that skeleton bills were, “in most cases ... simply shorthand for [the Government saying] ‘we have not thought through what we intend to do’.”<sup>10</sup>*

And

*“The Bingham Centre for the Rule of Law said that Bills which are wholly or partly ‘skeleton’ in nature should not be adopted in the absence of an exceptional justification, and the burden of explanation should fall on the government.”<sup>11</sup>*

And

*“We have previously stressed the importance of good policy development as the foundation of good legislation. If the Government is thorough in its policy development prior to drafting legislation, the need for skeleton bills would be reduced. The Law Society of Scotland made a similar point: “If the Parliamentary Counsel Guidance on making good law is adhered to, that law will be necessary, clear, coherent, effective and accessible. Skeleton Bills by their very nature do not fulfil these criteria”.<sup>12</sup>*

And finally

*“Skeleton bills inhibit parliamentary scrutiny and we find it difficult to envisage any circumstances in which their use is acceptable. The Government must provide an exceptional justification for them, as recommended by the DPRRC’s guidance for departments; it cannot rely on generalised assertions of the need for flexibility or futureproofing.”<sup>13</sup>*

Having reviewed the literature on ‘framework’ / ‘skeleton’ bills we feel that the Scottish Government has no justification, except perhaps political expediency, for taking such an approach with reform of social work and social care. Good legislation will be built on good policy making, not vice versa. Furthermore, as with all Bills which provide Ministers with ill-defined powers, there is no guarantee that such powers will always be used in pursuit of aims with which Social Work Scotland agrees. The present Scottish Government’s objectives for social care align closely to our own, and although we may differ on the best approach to be taken to achieve them, we believe and trust in Ministers’ commitment to

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<sup>10</sup> Ibid, p18

<sup>11</sup> Ibid p.18

<sup>12</sup> Ibid, p.18

<sup>13</sup> Ibid, p.18



delivering improvement and quality, greater equity and accessibility, etc. But individual Ministers will change over time, and at some point the party in charge of the Scottish Government may also. How do we guarantee that future Ministers will not utilise powers to make changes to public services that we do not believe to be in the interests of the public? It seems the only way would be to proscribe the powers of Ministers at all times, to ensure scrutiny, and possibly even a break, on their capacity for action. In defending the presentation of 'framework' bills to UK and Scottish parliaments, Ministers have previously spoke of having to "future proof" legislation for rapidly changing contexts (providing Ministers with powers to make changes as the circumstances change). But that logic works in the opposite direction too; to future proof legislation from being used in ways inconsistent with the original framer's intentions, we should limit the potential by not providing such powers to Ministers in the first place.

The 'framework' bill approach is also problematic because of the context in which Scottish Government seeks to progress this. Social work and social care services are currently in crisis, with waiting times for assessment and support growing, low morale, and long-term structural challenges now manifesting (such as an ageing population, low immigration, number of social workers reaching retirement age, etc.) Organisations are still consolidating changes provoked and cemented by the pandemic (e.g. closure of buildings, increased home working, etc.) and managing high levels of staff absence. Inflationary cost pressures constrict the value of service budgets, at the same time as provoking more demand on those budgets, as people seek more support from public authorities. For social work, additional to all this has been demand placed on teams by the Homes for Ukraine and Super-sponsor schemes, which continues to consume considerable time, energy and emotion. As hosts' initial six month commitments come to an end (starting in September), and many decide to no longer continue providing accommodation to people from Ukraine, social work expects added pressure on their already over-stretched resources.

On a more prosaic level, the National Care Service (Scotland) Bill is just one of a dozen or more current policy and legislative developments that propose profound changes to the way social work is delivered in Scotland. Each of these requires time and attention, not least because the interdependencies between them are rarely surfaced or properly considered by officials. Examples of such developments include the Mental Health Law Review, the Promise, the Community Justice vision, revision of the Self-Directed Support Statutory Guidance, and the Children's Care and Justice Bill, among others.

There is a feeling among our members that the situation on the ground, with services in crisis, is met by Scottish Government with more policy activity, rather than a focused attention to problem solving and policy implementation. The solution to a problem is not necessarily reform and change. We do believe social work and social care require both reform and change if they are to function as our members want them to, and which the public need them to. For that reason we gave our cautious support to the development of a National Care Service, as means by which we open the conversation about what changes are needed. But the Scottish Government has jumped to the end and intends to work

backwards, or even top-down, with the structures established and the detail to follow about what those structures will actually do. This has frontloaded disruption and tension into an already unstable system. Colleagues at or close to retirement age (a significant number in respect of social work leadership) are weighing up whether to stay in posts, the future of which is uncertain, or leave now. Investment in some services or programmes (such as IT upgrades) have been frozen, the cost-benefit calculations thrown out by the 'potential' of a National Care Service coming into existence in 2023-24 (at least in some form). It is unfortunate, but the Scottish Government's approach to improving social work and social care may in fact be making the delivery of those services more difficult in the short to medium term.

**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?***

Yes, Social Work Scotland members hold strong views on the question of what services may or may not be included in the National Care Service. Our position was set out clearly in our response to the Scottish Government consultation in 2021<sup>14</sup>, and remains largely unchanged. We are pleased that Scottish Government took on board our recommendation to review the evidence before making a decision in respect of children's and justice services, and we will engage with the processes established constructively. Although it should be noted we remain very concerned that the Scottish Government's timetable for developing the National Care Service runs ahead of these profoundly important decisions (on children's and justice services). It is highly likely, therefore, that proposals will be developed which fail to take proper cognisance of the child and justice contexts, and which then do not create the conditions for the successful realisation of the Promise or Scotland's vision for Community Justice. Moreover, and rather perversely, in adopting an adult-only scope for the initial development phase, adult social work interests are likely to find themselves marginalised. With the majority of the profession located in children and justice structures, civil servants will be under less pressure to attend to the needs and issues of those social workers who are in scope from the beginning.

To avoid repeating arguments we have made at length elsewhere<sup>15</sup>, we will restrict our comment here to those services identified as being included in a National Care Service from the start, and those determined to be firmly out of scope.

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<sup>14</sup> Social Work Scotland (November 2021) [Summary of response to Scottish Government consultation on proposals for a National Care Service](https://socialworkscotland.org/consultations/a-national-care-service-for-scotland/) (<https://socialworkscotland.org/consultations/a-national-care-service-for-scotland/>)

<sup>15</sup> *ibid*

A concern raised by Social Work Scotland members related to the potential break in current arrangements for addressing homelessness. The move of certain services into a National Care Service is likely to complicate efforts to provide coordinated support to people with complex needs. Key drivers of homelessness include trauma and adverse childhood experiences, exclusions from the labour market, problem substance use and involvement with the criminal justice system. The response to this must be integrated, minimising the 'hard edges'<sup>16</sup> which individuals have previously experienced. For nearly all local areas in Scotland, and in particular those who have integrated all relevant health and social care functions, the provisions in the Bill run the risk of fragmenting the services response, undermining prevention activity, transition, and responses to acute, crisis need (the latter of which is of critical importance when considering Scotland's drugs deaths numbers).

In respect of adult social work, we understand the logic that, in seeking to improve adult social care, Scottish Ministers require control of all the relevant levers, including social work. However, nothing in the Bill or the accompanying documents suggests to us that Scottish Government understands the levers they are proposing to control. Adult social work is presented as simply an intermediary between individuals and social care, undertaking bureaucratic assessment, procurement and care management functions. In this highly reductive and transactional framing of social care there is no room for the relationship based practice of social workers, or for their advocacy and protective roles. For our members, this presentation of social work is dispiriting, sapping people's confidence that the potential of a National Care Service will be realised.

In developing this submission many spoke of their concern that the Bill, as currently drafted, would result in adult social work simply becoming a 'delayed discharge service', focused exclusively on addressing the politically inconvenient reality that there are too few suitable options into which people can be safely discharged from hospital. Reflecting on the pressure applied by Ministers on this topic through current governance structures (i.e. Integration Joint Boards), some Social Work Scotland members expressed a worry that alleviating the immediate political problem (high numbers around 'delayed discharge') would supersede the medium to long-term priority (developing the breadth of care placements and packages of support), at the expense of thorough assessments of people's best interests and the suitability of available support. Certain policy decisions taken during the pandemic, for example around infection control measures for care homes, provide salutary examples of how Ministers and civil servants must balance many competing priorities in their decision making, in which individual choice and human rights are not always paramount.

There is an opportunity with a National Care Service to re-set the adult social care system, driving through a programme of investment and reform to a sustainable, compassionate, rights-based, person-led model. That future is only possible, however, if the functions of adult social work are actually understood by policy makers, and the conditions created in

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<sup>16</sup> <https://www.therobertsontrust.org.uk/publications/hard-edges-scotland/>

which social work's full potential can be realised. Empowering social workers to use their skills and resources to work in partnership with individuals and families to identify and secure the support they need, evolving over time. Encouraging social workers to advocate for individuals within wider public service systems. And, where relevant, enabling social worker's potential to act to keep individuals safe from harm. Such actions require structures, processes, governance and leadership to be nurturing and facilitative of the profession. As yet, the Bill and its accompanying documents do not provide our members with the detail needed to judge whether the proposed National Care Service will provide that environment.

With a view to assisting the Committees in their scrutiny of the Bill, Social Work Scotland members provided a number of case studies to illustrate the actual reality of adult social work delivery, and the breadth of responsibilities and actions it involves. It is this complex professional role described by the three case studies below which needs to be accommodated and better enabled by a National Care Service. They also describe the context in which social workers are currently operating, with growing, complex demand on the one hand, and insufficient services or social care support on the other.

### **Case Study 1: Social Worker in a community Learning Disabilities service**

*"The thing is, I would never be able to accurately reflect what it's like to have the constant stream of thoughts that go through your head all day – which are potentially completely unrelated to your day but because you've got so many plates spinning in your head, you just move from one thing to another - so no one thing during the day gets all your attention".*

#### **A day in the life**

**08.30am – arrive at the social work office.** I generally work from home due to arrangements made during the COVID-19 related lockdown and then social distancing measures, which reduced desk availability further (we had already been working within a "hot desk" environment). **Pick up cash for delivery to "Andrew"** (not the individual's real name) for whom I am Benefit Appointee – a decision taken because of Adult Support and Protection intervention. I am also Andrew's Welfare Guardian, as per the Adults with Incapacity (Scotland) Act 2000. I deliver cash to Andrew's place of residence on a weekly basis – however there is much more to this than just delivering money. This consistent, tangible action has facilitated a relationship between us. Andrew has a learning disability, as well as personality disorder, anxiety, problem substance use and physical health problems. All of which combine to make it very difficult for Andrew to trust and feel at ease with others – particularly professionals. I have worked with Andrew since 2019; it was not until 2021 that he presented as more "settled", and we have a good rapport now. **I will deliver the cash later on in the day.**

I log onto emails, and to the social work management system to check for Adult Concern Reports that have come in overnight. This has to be done in the office, as

you cannot access the social work management system on a mobile device – you can access emails, but we only have 1 GB of data and the network is slow.

**09.45am – leave office for first appointment. Arrive at 10am for first meeting.**

“Brenda” (not the individual’s real name) is in hospital. She has never lived outwith a hospital environment. I am meeting with a potential provider to discuss concerns they have about their ability to manage Brenda’s support needs. Brenda has a diagnosis of personality disorder as well as a learning disability and ADHD, Brenda’s behaviour can be challenging, and she has a history of physical violence. It is my assessment that the ward environment exacerbates this, and that having a settled, private accommodation will result in a reduction of risk. I have worked with this provider in the past, in similarly difficult circumstances. These types of meetings are mentally and emotionally taxing, as you constantly negotiate on behalf of your service user. The reality though is that there is a limited number of providers anyway, and even less so when situations are particularly complex or challenging. Social Care and Housing providers need us and we need them.

**12pm – Back to office for lunch whilst checking emails.** An email has come in from “Carol’s” GP. They wish to discuss some concerns they have regarding Carol’s physical health. I am Carol’s welfare guardian. There is an alert on all health IT systems that the welfare guardian must be advised of any concerns/contacts Health colleagues have with Carol; we fought hard to get this alert placed due to recurring situations in which Carol would make contact with Out of Hours health colleagues and receive prescriptions for anxiety related issues, which they would then misuse. I call the GP back and leave a message. (Writing this three weeks later, I have still not heard back from the GP, but have linked in with other colleagues regarding the highlighted physical health issue.)

**1pm – late to next appointment.** Meeting with “David’s” Power of Attorney to advise that, after a year in (non-charged) specialist respite, I have sourced permanent accommodation for David in their hometown. David has particular health needs and access requirements, which has made sourcing appropriate accommodation for him challenging. These health needs have also resulted in several hospital admissions over the past year. I have contacted every specialist care home that can accommodate David’s particular needs across the whole of Scotland with no success for over a year. I am delighted that David will be able to move into permanent accommodation.

**2.30pm – Hospital Visit with Brenda.** Updated Brenda on meeting this morning. I have worked with Brenda for a few years now and we have a very good relationship. I visit on average every two weeks, to spend some time with her and see how she is. I am Brenda’s Welfare Guardian. I also had to speak with the Senior Charge Nurse regarding established information sharing protocols. Despite the fact that there is a formal information sharing agreement in place, which is necessary due to the

Guardianship, the hospital ward is not sharing information in relation to aggressive incidents. I reiterated the statutory nature of this information sharing agreement. It has been agreed, by all professionals working with Brenda, including ward staff and the Mental Health Officer, that a variation of the Guardianship powers is required, to include restraint, to keep Brenda and others safe from harm during episodes of violence. In order to action this; evidence is required to be submitted to Local Authority legal colleagues so that they can support the application. This has all been agreed and recorded previously.

**3.15pm Sat in hospital car park, picking up voicemails/making calls**

**4pm – Home visit to “Ellie”.** Scheduled visit with Police. I had the role of Appropriate Adult. Also present were an interpreter and advocate. Ellie is the subject of multiple Adult Support & Protection concerns. As a result of these concerns and subsequent investigation and Case Conference, there is a Banning Order in place in relation to one individual. Police were interviewing due to a reported breach of the Banning Order by said individual. Mid-statement the Police Officers were called to an emergency – I took the opportunity of having the interpreter and advocate there to discuss other issues with Ellie whilst we waited for the police officers’ return. Police returned 20 minutes later and interview resumed. (During this appointment, I had to step out to call my partner to make alternative arrangements for picking up our child from childcare.)

**6.45pm - Delivered cash to A; 7.15pm – Home**

**Case Study 2: Social worker in a substance use service**

*“What’s the role of the social worker? We find solutions that others can’t”*

The ‘seen’ aspects in a typical week: home visits/office visits/hospital visits to service users; preparation of case notes, assessments, reports, chronologies; joint visits with health colleagues, including investigation of Adult Support and Protection concerns; liaison with Mental Health Officer teams regarding Adults With Incapacity and Guardianships; organising and attending case conferences and risk management meetings with partners; referrals to and engagement with Occupational Therapy, Fire Safety, Meal Service, Resource Allocation for personal care services, Community Alarm, etc; Referrals to Foodbank, Welfare Fund, Starter Pack, Advocacy services, clerical tasks, such as minute taking, data input, meeting organisation, etc. (as no clerical support available to the service); duty worker once a week, dealing with all queries which come into services ‘front-door’; supporting a social work student, co-working cases; ‘Duty To Inquire’ responsibility as a council officer (additional to the social work caseload); undertaking training; facilitating shadowing opportunities for colleagues in health and social care.

The unseen aspects of a typical week: Social workers support individuals that have complex needs, where minor events can escalate into a crisis very quickly and without

warning. It is a very unpredictable job and difficult to articulate in simple terms. It is also a role where the worker, to minimise imminent risk, carries out tasks that would not generally be viewed as a 'social workers' role; the priority though is getting things done for the individual. We have to work with the complexities of their lives; and all lives, when you get close them, are complex. As such, the social work role is so varied, demanding and emotionally challenging. We develop and agree a plan of support with the individual, but factors in their life mean that they sometimes unable to engage with the plan. We must then adapt and adjust to the new context. Add into the mix the use of substances, poor mental health, poverty, disadvantage, stigma and domestic/financial abuse and this is where social work values, skills, knowledge and, critically, resilience, come into play.

We strive to build therapeutic relationships with people so we can support them to identify their motivation for change, and support them to find solutions to their situation, such as accessing support services. (Making support available, although increasingly challenging in the current financial environment, is not enough; social workers often have to put in extensive work to support an individual to access services, such as social care or health care.) Good partnership working is essential. Ongoing risk assessment, including risk to the person, to self and others, is critical. It is a social worker that provides the primary liaison between police, ambulance service, crisis team, hospital discharge, fire service, community justice etc. We are alongside people to minimize their risks such as overdose, self-harm, homelessness, exploitation, etc. And we, as social workers, experience the loss and grief when service users die through self-harm, overdose or long-term use of alcohol. It is fairly typical that social workers in drug and alcohol teams have had to organise the funerals for the individuals they have supported, who have no next of kin. As individual practitioners, colleagues and a service, we must therefore remain mindful of our own self-care, exposed as we all are to extremely traumatic experiences on a daily basis.

### **Case Study 3: Social Work Team Leader in a Complex Care Service**

Today we have been working with an individual in hospital, but who has been assessed as fit for discharge. We have previously been supporting this person at home. They have recurring admissions to hospital for physical health needs. One of our team's social workers has been working on this case for six months, trying to get appropriate support in place. The individual has gone without a care package for a year. In that time, we have tried again and again to secure a provider, working with our contracts team (who are on their knees). To enable the individual to remain at home in the past, I am not ashamed to say that I have gone to the individual's house to make them breakfast or some cheese-on-toast, and a social worker in my team has been going out to deliver personal care to the individual. We could state clearly that such activity is not in our remit; they are social care tasks, not social work. But social care services are on their knees; so much that not even the emergency care that we've got within the local authority have the capacity to provide this support. And there's so

many people requiring support, it just keeps growing. Any of the contingencies that we had in place are all being used up. Care homes don't have the staffing, so you can't even find a crisis placement.

We also have an outreach worker in the team. This was supposed to be a specialist post that provides crisis intervention to people with complex and co-existing needs; it was meant to be crisis support delivered on a temporary basis. This outreach worker has, instead, sustained one individual for over a year and a half, because there is no other resource available. The knock-on effect being that 311 people are waiting for the social worker's support, and they cannot get to them because they are filling this social care gap.

Another member of the team is trying to facilitate a young person's move into supported accommodation. They have specific health needs, which the provider is happy to meet, but staff need training from the health specialist before the person can move into the accommodation. The social worker in my team has been emailing the relevant health colleague every day for six weeks to try and get training arranged, and we still don't have a date. It's these knock-on effects that really impact.

Other members of the team will be involved in completing complex care funding memos. We agree with the importance of evidence-based decision making; however, the gathering of evidence is tasked to the social worker, which means they spend a huge amount of time running around trying to get input from our health colleagues. Those colleagues are massively overstretched, and don't get back to us. That then adds to the strain in the social work service, in terms of capacity, as demand and cases back-up, but also delayed discharge for the individuals concerned.

In this typical day for my team, there are actually a lot of statutory tasks that are not being done – or certainly not within the legislative timescales – because we are constantly fire-fighting. Adult Support and Protection activity in my team has increased fourfold in the past year. A time in motion study recently conducted with my team confirmed that no one works less than 50 hours a week; a full time contract is 37 hrs per week. Caseload average was 50; an optimum number, within which it is possible to undertake relationship base practice, would be 25.

**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?**

The Financial Memorandum is in many ways a disappointing document. Like the NCS Bill itself, it has a much narrower scope than either the Feeley Report itself or the Scottish Government's autumn 2021 consultation on a *National Care Service for Scotland*.



Almost all the cost estimates provided are for the organisational expenses in setting up the National Care Service, totalling £225 to £500 million by 2026-27. The information given in the FM on the calculation of these figures is not sufficient to fully support Parliamentary scrutiny.

None of this expenditure would expand the volume of services and support available to people, or deal with the current crises in social care, except insofar as it might influence some staff retention in three- or four-years' time. However, these organisational changes appear likely to consume much of the total funding available for the National Care Service, which is stated to be over £840 million by 2026-27 in the Scottish Government's May 2022 *Resource Funding Review*. In turn, this is about half of the total investment in adult social care alone that COSLA, Social Work Scotland, and others consider is needed.

The only *service volume improvement* included in the FM is for a very slow build-up of more support for respite breaks for carers, totalling only £16 to £27 million by 2026-27 and not reaching an estimate steady state of £116 to £170 million until 2034-35. These figures are at current prices, so need a commitment to uprate them for inflation.

The "effect on the NCS" of some very important "Scottish Government commitments" have been explicitly excluded from the FM (in paragraph 13) and so are not costed: 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.

It is not clear from the *Resource Funding Review* that the Scottish Government has the revenue to implement a fully-funded National Care Service, even while reducing Local Government funding by over £1 billion in real terms by 2026-27, on now out-dated estimates of inflation. Overall, Scottish Local Government has protected children's social work services and then adult social care above all other services, but is unlikely to be able to continue do so on the flatline cash increases set in the *Resource Funding Review*.

It is also widely reported that social care services have not returned fully to pre-Covid levels and cannot recruit sufficient staff to maintain services at current levels. Meanwhile the lack of sufficient social care continues to impact on Scotland's hospitals through delayed discharges and admissions to hospitals that adequate social care, including support to unpaid carers, could have prevented. The priority problem is not the variation of service between local areas, but the fact that service volumes and available are too low in relation to need more or less everywhere.

The immediate task, surely, is to fix the problems as they are today, including care staff recruitment and retention, alongside developing the increased investment in early intervention and prevention work that is necessary for the future sustainability of a National Care Service, however delivered. That will mean an honest appraisal by all partners of why the preventative strategies in the Christie report from 2011 have proved so difficult to implement, without double running costs to fund the acute services while preventative services are built up and begin to impact over time to reduce future acute service costs. If a new National Care Service cannot be fully funded, then the Scottish Government should agree to the last recommendation in the Feeley Report to consider and consult on options for raising new revenues to increase investment in social care.

**Part B: Commentary on specific provisions of the Bill**

***In providing comments on specific sections of the Bill, please consider:***

- ***Whether you agree with provisions being proposed?***
- ***Whether there is anything important missing from these sections of the Bill?***
- ***Whether there is anything you would disagree with or there are amendments you would wish to propose to these sections of the Bill?***
- ***Whether an alternative approach would be preferable?***

Please see our answer to question 3

## **Part C: Impact Assessments accompanying the Bill**

*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?*

Social Work Scotland's members were consistently critical of the impact assessments accompanying the Bill, finding them limited in scope and reliant on questionable assumptions. Engagement with professional groups such as ours has been limited; and where discussion has taken place, our members have felt it to be performative, rather than genuinely investigatory. It is felt that conclusions have been reached in the assessment, for which there is a lack of evidence. Or where evidence is presented, it is out of date (e.g. from years preceding the pandemic).

Some Social Work Scotland members have noted the low profile National Care Service proposals continue to have among independent children's social care providers; the debate perceived as something happening to adult social care. Relatedly, the children's rights impact assessment is seen as insufficiently thorough and complex around the possible impacts of children's social work and social care moving into National Care Service structures. Unlike in adult social care, the majority of children's social care is provided directly by local authorities, and independent provision is dominated by voluntary sector organisations, with a large percentage of placements managed through nationally agreed framework agreements. Disruption to these arrangements is likely a necessary step in the realisation of the Promise; but that must be planned and managed disruption, rather than the unintentional outcome of National Care Service developments.

Consistent with the limitations of the Financial Memorandum, a defence of the impact assessments may be that they speak only to the limited proposals sketched out by the Bill. Without the necessary detail about how the National Care Service will be structured or operate, it is not possible to properly assess impact. But really this is no defence; instead it is admission that this approach to developing a National Care Service is back to front, frontloading legislative scrutiny of impact and costs at a point where we cannot properly assess them.

## Part D: Financial Memorandum accompanying the Bill

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

Yes, Social Work Scotland provided extensive responses to the 2021 Scottish Government consultation on the National Care Service, which included separate papers on the overall finances (13 pages) (<https://socialworkscotland.org/wp-content/uploads/2022/01/SWS-NCS-Supplementary-Response-FINANCE.pdf>) and also on residential care charging (12 pages) (<https://socialworkscotland.org/wp-content/uploads/2022/01/SWS-NCS-Supplementary-Response-RESI-CARE-CHARGES-1.pdf>).

The SWS NCS Finance submission noted that the Feeley report included several important financial recommendations, but none (except those on charging for care) were addressed in National Care Service consultation paper. In our opening summary, we said that:

*“[...] we are concerned that the additional funding being proposed, at “over £800m” will not allow all the investment recommendations of the Feeley report to be fully implemented, even when these figures are revalued to 2026-27 prices. Many of these recommendations are yet to be costed, including those which Feeley said were needed to “strengthen the foundations” of social care, such as Fair Work contracts and pay increases for social care workers and other low paid staff, and increased support for Scotland’s now one million unpaid carers. Other un-costed Feeley recommendations and NCS proposals include the reform or abolition of eligibility criteria, acknowledged as a key barrier to accessing social care; the adoption of an ethical and collaborative commissioning culture; better uses of technology; the collection and analysis of better data to improve decision making; new agency organisational costs; among others.*

*The figure of over “£800 million more by 2026-27” is far too small. Those recommendations that the Feeley Review were able to cost in their short timescale already totalled £660M in 2019-20 prices. This did not include paying social care workers more than the £9.50 per hour agreed in May 2021, and the Feeley report estimated that every £1 above this level would cost £100M – a significant underestimate, discussed later in this submission. Nor did Feeley’s £660M total include the new right for unpaid carers to take a break from care, or any of the many other important un-costed recommendations briefly mentioned above, and also discussed later.*

*These, and the other un-costed Feeley recommendations mentioned above, will increase the full implementation cost significantly -- certainly to over £1.5bn for adults only. The NCS consultation proposal to widen the scope of the new National Care Service to include children and families social work and care services, and community justice and prison social work, will also require investment to meet unmet needs and*

*unfunded pressures in these services, in addition to the investment needed for adult social care. In addition, the Feeley Review cost estimates mainly used 2018-19 data, repriced to 2019-20, and therefore did not include the costs of restoring services to their pre-Covid levels.*

*These high costs are necessary to fix a social care system that has been broken by years of under investment. Feeley found that 3.5% growth, over and above inflation, was needed year on year to meet the needs of increasing numbers of older people and of people of all ages living with disabilities, on the best research evidence available. Such investment was made at lower rates before the decade of austerity, and during that period not at all.”*

We argued that the earliest possible investment should take place to increase Fair Work minimum hourly pay rates for social care workers to help ameliorate the current recruitment and retention crisis, and also that care services and support to unpaid carers should be restored to pre-Covid levels. Investment in prevention is essential to the sustainability of an NCS:

*“Social Work Scotland considers that a wider engagement on prevention is now needed, jointly with COSLA and other partners, including investment in community development, welfare rights, mainstream services, and community organisations. This will also need to consider the continuing relevance of the Christie Report (2011) recommendations, including the question of why these have been so difficult for the public sector to implement during the decade of austerity. Shifting funding from acute provision upstream to prevention, for example, has proved impossible without double running costs during the period of change.”*

We also recommended that “a working group should be set up as soon as possible to consider the reform or abolition of eligibility criteria, with work then done to cost the recommendations or proposed options” and that a programme of work be established to address unmet need. Feeley’s recommendations on annual budgetary recognition of demography was also supported. The submission also included sections on charging for care; better support for unpaid carers as “the largest social care workforce”; funding pressures in Children & Families social work services, and in Justice Social Work services; commissioning culture changes, and the risks of “value leakage”; and monitoring data, evaluation, outcomes.

A short section on ‘fair funding’ distribution issues urged the Scottish Government to set up a working group as soon as possible to review the distribution methodologies for a National Care Service. Other National Care Service costs were more briefly considered including: organisational costs, the proposed electronic social care and health record, the current LA role of provider of last resort, transfers of assets and liabilities, and the unclear VAT position of a new National Care Service.

In respect of the specifics of the Bill, and its Financial Memorandum, Social Work Scotland was not invited to any consultation exercise (other than general briefing events), nor were we consulted privately for input on the assumptions and calculations which would be used. Throughout the process leading to this Bill we have communicated our willingness to support such work.

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

No. This is only partly because the “effect on the NCS” of some very important “Scottish Government commitments” have been explicitly excluded from the FM (in paragraph 13) , and so are not costed: 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. (Indeed, some Feeley recommendations are missing from this list, such as meeting existing unmet need, the reform of eligibility criteria, commissioning culture changes, improving performance and management information). All such investment is necessary for the success of the National Care Service, and their estimated costs deserve Parliamentary scrutiny during Stage 1 of the Bill, as well as wider public discussion.

Social Work Scotland believes that the Scottish Parliament needs to see more than a “framework Bill” and a Financial Memorandum that excludes the social care reform programme that is integral to the National Care Service and necessary to its success.

That said, even within these narrowed confines, there are key financial issues that Social Work Scotland and other have raised during the NCS consultation that should be in the FM but are missing. The first is the affordability of the NCS and care reform programme within the total funding envelope of “more than £840 million”. The fact that the FM estimates for the additional NCS organisational costs at national and local levels total between £225m and £500m creates concern that even less will be available for the as yet un-costed and extensive social care reform programme than we thought in November 2021, when these costs alone looked more likely to be £1.5 billion. No-one was expecting that up to 60% of the NCS funding available (£840M) *could* go on additional organisational costs.

The social care reform programme, and the pressing needs to restore pre-Covid care services and address the social care staffing crisis, are greater and more immediate priorities than investing in new organisational expenses. Without that investment the NCS will fail, and the NHS be left in greater jeopardy – for it depends on an effectively functioning social care system, not one in crisis. And if it is the case that there is insufficient funding available to create the National Care Service as envisaged in the Feeley Report, then the Scottish Parliament needs to have the information soon to discuss alternative

options and priorities for the funding available, including measures to deal with the current crisis in social care staff recruitment and retention, and restoring service capacity to pre-Covid levels. Regard would also be needed to Feeley's final recommendation, to give "careful consideration to options for raising new revenues to increase investment in adult care support".

The second issue is financial sustainability. The FM focussed on the NCS organisational costs, and the two other issues in the Bill than require legal changes – carer's right to a break, and Anne's law<sup>17</sup>, about the rights of adults in care homes to see people important to them even during outbreaks of infectious diseases. But the actual Bill, limited as it is, is wider than that, for its first page contains laudable principles on which the NCS is to be based. The first of the National Care Service principles state that NCS services "are to be regarded as an investment in society that is essential to the realisation of human rights, enables people to thrive and fulfil their potential, and enables communities to flourish and prosper". We fully agree that social work and social care services *are* such an investment<sup>18</sup>, and that this should be a founding principle of a National Care Service for Scotland.

Then the second and third principles state that "for them to be such an investment, the services provided by the National Care Service must be financially stable in order to give people long-term security", and "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". The final principle is that "the National Care Service is to be an exemplar in its approach to fair work for the people who work for it".

So, the principles of the NCS in the Bill include financial stability, early intervention and prevention, and fair work. None of these principles have zero cost over the period of the current Scottish Parliament, and yet they have either been ignored, or explicitly excluded, from the National Care Service Bill Financial Memorandum.

Financial stability and sustainability covers three of the topics we raised in our 2021 NCS Finance response – demography, inflation, and prevention. 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 in real terms at 3.5% per year, plus 0.5% for higher-than-average inflation, less 1% assumed savings – but this has never been implemented in the local government finance settlements.

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<sup>17</sup> This is costed at one-off costs of £276,000 for the Care Inspectorate over the next two years: "thereafter, improvements to visiting will become embedded in the sector and we estimate that costs will fall away from year 2024/25 onwards" [page 22].

<sup>18</sup> The wording in the Bill that the NCS services "are to be regarded as an investment in society" reads oddly as a prescription upon belief. Who is under a duty to so regard them?



As for inflation, a 25% social care funding increase over the five years from 2021-22 to 2026-27 represents an average compound increase of 4.6% per year – easily eroded by the current rates of inflation. Yet inflation is not dealt with properly in the Financial Memorandum. The only place where inflation receives attention is in the section around Table 2 on the “illustrative” costs for local authorities in “providing services that could be transferred to care boards”. Here local authority gross expenditure on social work and social care in 2019-20 is updated for each year to 2026-27 using forward inflation projections provided by the UK Office for National Statistics, plus 3% for demographic change and pressures above inflation, less unspecified savings. But local authorities have not received full inflation or received demography funding in the local government finance settlements; and the May 2022 *Resource Spending Review* flat-lines local government funding going forward in *cash* terms, meaning an annual reduction over £1 billion in real terms by 2026-27 compared to 2021-22. So, the figures in Table 2 are an illusion, and do not appear to do any real work within the NCS estimates. In any event, future transfers from council need to be based on Scottish *funding* not local authority *spending*, which is also funded from council tax and non-domestic rates. Carers rights to a break have been costed at 2022-23 prices according to a helpful footnote, and we understand from communications between COSLA and the Scottish Government that 2% per year has been assumed for the care board costings, with 2-3% for the national NCS costs - this information is not given on the FM

The third element implied by the sound principles on the face of the Bill is the increased investment in early intervention and prevention work that is necessary for the future sustainability of a National Care Service, however delivered. That will mean an honest appraisal by all partners of why the preventative strategies in the Christie report from 2011 have proved so difficult to implement, without double running costs to fund the acute services while preventative services are built up and begin to impact over time to reduce future acute service costs.

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

In relation to the Scottish Government’s consultation in 2021, no. The range and complexity of issues, and the need to consult with our members on our overall stance of the proposed National Care Service, meant we had to ask for an extension to Social Work Scotland’s response.

### **4. If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.**

No. The Bill has financial implications for our members, the majority of whom are social workers in local government management and/or leadership roles. The section, on page

15, of the Financial Memorandum which considers the transfer of staff from councils is fairly opaque, and does not set out the assumptions of costings for rationalising the “different pay rates and terms and conditions” between councils “which will need to be rationalised within a single service”. While such rationalisation may be desirable, it still wants justification given the great variation in housing, transport and other living expenses between different areas of Scotland. In addition, the FM states that the figures in Table 8 for “Additional costs for Care Boards” have been “have been baselined against current assumptions on Fair Work”, without explaining these assumptions or any of the costing estimates. There is simply not enough information upon which to found a belief that the financial implications for our members have been “accurately reflected”.

With regard to Social Work Scotland as an organisation, we may be affected by the establishment of a National Social Work Agency, which we called for in our submissions to the Feeley Review, and subsequently supported in our responses to the Scottish Government’s NCS Consultation. However, we were expecting a more detailed separate consultation paper on the National Social Work Agency, including whether this is best set up as part of the civil service – which is the implication of the brief information on page 12 of the FM, and what is said also on pages 14-16 of the Policy Memorandum – rather than as something more arms-length to protect the independence of “national leadership to the social work profession”. These issues need more discussion.

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

No. In our consideration of the Bill we have undertaken extensive analysis of the Financial Memorandum, and have provided the output of this (in the form of short reports) to the Clerks of the Health, Social Care and Sport Committee.

**6. If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?**

[Not applicable to Social Work Scotland.]

**7. Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?**

Possibly. There are wide ranges in the estimated *organisational* costs given for the new National Care service, at both national and local levels, but the relevant calculations are only described, if at all, very generally, and not at a level of detail that permits appropriate

Parliamentary scrutiny. On this basis we cannot know if the cost estimation range *accurately* reflects what we might consider reasonable margins of uncertainty. Too much is left in the dark. The timescales for organisational change also seem too tight, notwithstanding political commitments, because there is considerable work still to do.

The position for the Financial Memorandum estimates given for support for unpaid carers, via the new right to a break from caring, is much the same, except that it is underpinned by a well-structured Funding Model to which Social Work Scotland has access as a member of a working group which advised on the development of the model (but was not responsible for the values given to the various variables in the model).

There are problems with the timescales for carers' support. The NCS funding for personalised carers breaks and replacement care is phased over 10 years from notional commencement in 2025-26 to a fully implemented steady state in 2034-35. This uses 2020-21 data from the Carers Census to estimate the numbers of carers assessed per year. For adult carers that is estimated to be 27,000 which is then divided into the steady state figures of assessed carers (34% of all adult carers = 285,260) to get the estimated 10-year phasing. The first problem is that the Carer Census data is *unreliable due to missing records*, as the FM later acknowledges<sup>19</sup>, which is why it badged by the Government Statistical Service as "data under development" and not as "official statistics" or even "experimental statistics". Secondly, there is other data, from the Health and Care Experience Survey collected every two years, which provides higher assessment figures for 2019 (58,000) and 2021 (49,800), which may be lower due to Covid and/or changes to the format of the question (this is explained in an Annex to more detailed critique on the carers' support costing which Social Work Scotland will make available to the Committee clerk). These figures suggest a phasing of 5 years. Thirdly, policy considerations also favour a faster phasing – improving support to carers is a key element in prevention strategies, as the FM acknowledges in its analysis of "savings due to breaks" on pages 21-22.

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<sup>19</sup> "The Carers Census already aims to collect information about breaks provided under the existing Carers Act. However, this information has proven challenging for organisations to return and so the data available is largely incomplete. The Carers Census is currently being reviewed and work is ongoing to support local areas to improve the collection". [FM page 21]

For further information, please do not hesitate to contact:

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