

National Care Service (Scotland) Bill

SUBMISSION TO SCOTTISH PARLIAMENT'S HEALTH, SOCIAL CARE AND SPORT COMMITTEE (STAGE 2 SCRUTINY)¹

20 September 2024

INTRODUCTION

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. When a 'National Care Service' (NCS) was first proposed in 2021, we gave it a cautious welcome. Public sector reform is needed, and the development of a NCS represented an opportunity to put Scotland's social work, social care and community health systems on a road out of their current crises. An opportunity for Scotland, ahead of any other part of the United Kingdom, to get to grips with the fiscal, demographic and governance challenges which are already seriously impacting the availability and quality of services across the country. An opportunity to decisively shift power and resources down towards the front-line, creating the conditions for more preventative, person-led, rights-enabling support.

Sadly that opportunity has receded. Circuitous political negotiations and staccato policy development have sapped stakeholders' trust and energy and resulted in proposals for which there is little enthusiasm among stakeholders. Moreover, as the debate over the NCS has progressed Scotland's fiscal situation has deteriorated. But significant and sustained investment in social work, social care and community health is an essential pre-requisite to reform, and the necessary condition for the changes that are needed.² Without increased resources for existing and new, preventative services the current NCS proposals will amount to little more than an expensive and disruptive restructure. A restructuring which will absorb the time of leaders when their focus is needed more than ever on supporting their workforces, safeguarding existing provision and overseeing improvement.

Furthermore, the amendments proposed by Scottish Government do not address the core deficiencies of the original Bill. Rather than pushing power and control down to supported people the current (June 2024) NCS Bill either pulls power up to Scottish Ministers or cements existing power dynamics between local authorities and the NHS. Instead of setting the fiscal foundations for a sustainable social care system over coming decades, the Bill

¹ <https://yourviews.parliament.scot/health/national-care-service-stage-2-call-for-views/>

² Please see Social Work Scotland's supplementary submission, which considers in detail the financial context (for social work and social care) in which the NCS proposals are being progressed.

creates more budget-sapping bureaucracy. On priority issues such as eligibility, the shift to prevention, or personalisation, the revised NCS Bill remains silent.

KEY MESSAGES

- **We cannot endorse this Bill as a vehicle for delivering improvements to vital public services.** The reform priorities of supported people, social workers and others are largely absent from current proposals. Where they are acknowledged in the Bill or accompanying documentation, it is with the promise of action on some distant tomorrow. Even if we take the current Bill as a limited effort to address issues with health and social care integration (and to progress the integration agenda further) **we are not confident that the NCS as proposed will deliver positive change.**
- Social Work, Social Care and Community Health require **sustained investment to arrest an ongoing deterioration in services and support, and to equip them for challenges associated with demography, a changing labour market and technology.** The current NCS Bill promises no such investment in services, and therefore risks seeming little more than the rearrangement of deck chairs on a sinking ship. For Social Work Scotland, originally supportive about the potential of a National Care Service, the fiscal reality is the decisive factor behind our criticism now. Demand for services is increasing while available resources are decreasing. Social work, social care and health leaders' attention is necessarily focused on making budget cuts (typically now in the form of service reductions or closures) as intelligently and sensitively as possible. This is the context in which a National Care Service will be built. And as our supplementary submission details, **there is now no social care and social work investment programme running alongside the creation of the NCS** (apart from the limited funding for unpaid carers' rights to a break, with a slow build-up to 2034-35). Scottish Government's original investment programme of £840M, or a "25% increase" in care funding, has been allocated on Fair Work increases, to raise social care worker pay levels to £12 per hour in care services purchased by local authorities. Increasing pay for social care workers is essential, but the fact that this level of investment is insufficient to resolve the recruitment and retention crisis illustrates the scale of the challenge which Scotland already faces
- Whilst we acknowledge the significant cost reductions achieved between the June 2022 and December 2023 versions of the NCS Bill (detailed in the Finance Memoranda), **we have concluded that it makes little sense to spend available funds on organisational change.** Particularly when there are less controversial reforms which could be made to improve the operation of the Public Bodies (Joint Working) (Scotland) Act 2014, and strong public appetite for immediate change around eligibility criteria and charging. Robust research and modelling work is also needed, without delay, on the demographic, labour market and technological changes which are impacting the social services sector. In delivery of the Promise for children and families, resources will be needed to improve the retention of social workers, among many other things. Absent of the work that the Independent Review of Adult Social Care considered necessary

(recommendation 53), to expand available resources for social work and social care, we believe that the National Care Service should not go ahead.

- On a related point, **a decisive shift to prevention cannot be achieved by policy intention alone. It requires structured spend-to-save investment in early help and intervention services.** Examples across Scotland bear this out, including Glasgow’s transformation of its approach to families in need of additional support. Without start-up funding and some double running of services over multiple years it is not possible to develop, test and scale up effective, preventative models while staying on top of acute need. The last two years of debate over the NCS has come at an enormous opportunity cost for public services, not just consuming time and energy, but undermining the relationships and trust which are fundamental to effecting change in national systems. (Particularly in systems where there is already ‘shared accountability’, such as social care.)

- One specific area that we feel particularly needs attention is **improving support to carers.** This is a crucial element in shifting the balance of care towards prevention. The proposed ‘right to a break’ for unpaid carers, set out in the NCS Bill, is a welcome step. However we are concerned that the investment needed is insufficient. The revised Financial Memorandum shows funding building up slowly over ten years, to £225M in 2034-35 (the average of the lower and higher estimates in the revised Finance Memorandum, at estimated outturn prices). But there are several problems with these funding estimates, particularly in what they mean for local authorities in general, and social work specifically. First, the carers’ right to a break introduced by the NCS Bill is a right to have assessed unmet needs met by services provided or arranged by a local authority, including where necessary replacement care. This is highly likely to increase demand for carers’ assessments, but no funding has been provided within the Funding Model and revised Finance Memorandum for such increased demand. Secondly, there is no planned investment in carers infrastructure, such as increasing the capacity or coverage of local carers centres – arguably that is the most immediate need. Thirdly, the revised FM provides less funding for third sector “easy access breaks” not requiring assessment than was in the original FM; this is likely to lead to increased demand on local councils and seems inconsistent with commitments to shifting resources towards prevention. Please see our joint letter³ with COSLA earlier this year, to the Convenor of the Finance and Public Administration Committee, for further analysis of these issues.

The policy around carers is imperfect but generally positive. It does not benefit from being included in the NCS Bill, and as with Annie’s Law and other elements, we believe it can be progressed separately, through alternative, quicker legislative routes. Unpaid carers are under increasing pressure and there is a strong case to invest in the infrastructure of local carers centres as soon as possible.

³ <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-finance-and-public-administration-committee/correspondence/2024/national-care-service-scotland-bill-financial-memorandum-letter-of-12-february-2024>

- **We share the Scottish Government’s commitment to ‘democratise’ decision making** structures, through greater representation / influence for those who make use of and deliver public services. **But nothing in the revised Bill gives us confidence that it will deliver this objective.** Social workers have been involved in efforts, over many years, to amplify and include the voice of those who are marginalised or silenced by virtue of their disability, background, age, etc. While essential work, it is complex and, in some cases, very resource intensive. We do not see this understanding reflected in the Bill or accompanying documents. And despite all the time spent on ‘co-design’ over the past two years, central issues (such as eligibility, charging reform, prevention, unmet need and demographic pressures) remain wholly unresolved, and the potential unintended consequences of certain proposals unexplored (such as the representation of some but not all lived experience).
- **In respect of the inclusion of children’s and justice services in the NCS,** Scottish Government stated its preference at the start of the legislative process, in 2022. But for many in local government’s political leadership the issue has always been a red line. Indeed the question has come to embody a more fundamental debate about whether Scotland (or more specifically Scottish Government) values the principle of local autonomy. Research programmes conceived as ways of breaking the deadlock instead confirmed what social workers and other professionals had long been saying: **in the improvement of public services governance and delivery structures (e.g. Integrated Joint Boards) matter, but not nearly as much as other factors,** such as retention and development of staff, sufficient workforce capacity and wellbeing, and a stable policy environment.

Back in 2022 “consistency of delegation arrangements” was seen by many SWS members as a desirable step, potentially making it easier to address issues around professional leadership and governance, and the delivery of a joined-up social work service (particularly in respect of child and adult services). Others felt it was the ‘integration’ of children’s social work with education services that needed to be preserved. And others were concerned, through their experiences in integrated structures since 2016, about the subjugation of social work and social care by ‘health’ (priorities, attitudes, professional groups, resources). What united all SWS members back then was a feeling that the “in or out” question was a distraction from the real issues of funding, workforce retention, and service redesign (as per the Promise and other transformational agendas). **That feeling, of this being a distraction, is now the settled view of SWS. Any initial positivity about the potential for change has been eroded, as social work managers have digested what the NCS is likely to be:** i.e. an expensive and unwieldy bureaucratic structure for top-down performance management.

- **With the issue of ‘consistency of delegation arrangements’ unresolved, progressing with the current Bill risks compounding the fragmentation of the social work profession,** with some parts in a NCS, and some parts out. This would be to complicate an already problematic set of integrated arrangements. Social Work

Scotland has noted consistently, from our initial consultation response in 2021, that we oppose any development which undermines the integrity of the profession, and which further complicates its management, leadership, governance and improvement. The current version of the NCS Bill appears to represent such a development.

- **The introduction of a ‘Support and Improvement Framework’ for social work and social care now appears to be the core of the NCS project.** As the Bill’s Policy Memorandum, or the recent Programme for Government, promises no additional investment in services, or to support adjustments to eligibility criteria, or the reform of the care market, or to workforce terms and conditions, this one section must do all the heavy lifting for the NCS, in terms of delivering change. And such a central feature requires much more explanation / detail than is currently provided. **Top-down scrutiny and quantitative performance management are not an effective way of improving local services:** as annual Scottish Government efforts on delayed discharge and the state of many NHS Boards’ demonstrates. There may well be a case for a framework of central government intervention in local government, to ensure persistent performance issues are addressed. Such a model exists, albeit not without controversy, in England. But such an idea should be progressed in the context of a wider debate about local government reform. In fact, twenty-five years on from the establishment of the Scottish Parliament and Scottish Government, is it not time for a more comprehensive and fundamental reappraisal of our governance landscape? Does the current construction of Scottish Government, thirty-two local authorities and fourteen territorial health boards really provide the best platform for ‘integrated’ public services?
- Finally, **in reference to the National Social Work Agency proposals, we continue to support the principle of (and much of the published detail related to) developing firmer national structures for social work in Scotland.** We also accept the need for social work leadership within Scottish Government to change, and we support the evolution of the currently informally constituted Office of the Chief Social Work Adviser (OCSWA) into an Executive Agency (a public body within SG). But **we do not accept that OCSWA, constituted as an Executive Agency, should be called the National Social Work Agency.** Such a development risks creating confusion within the profession and among partners, as it suggests a single organisation / team will hold the responsibilities and functions identified. However that does not reflect the agreement reached to date among relevant partners, including Social Work Scotland. That agreement is for a formal partnership of equal but distinct organisations, representing the leadership and governance of social work at national and local levels. That partnership, while less easily defined than a single agency, has the advantage of reflecting the operational reality that under current NCS plans social work professional leadership (within the public sector) will continue to sit with local authority Chief Social Work Officers. Indeed to make clear the distinction clear between the original (2022) and current (2024) plans it may be advisable to replace the term ‘Agency’ with something like ‘alliance’ or ‘partnership’ or ‘board’.

Parliamentary Committee questions and outline of SWS' proposed response

1. What is your view of the proposed National Care Service strategy (see proposed new sections 1A to 1E)?

- Partly support and partly oppose.
- We support the idea that Scotland develops a strategy which articulates the challenges faced by social work, social care and community health services, and which details the actions which key players (e.g. Ministers, NHS, local government) need to take. But we oppose the idea of the proposed NCS strategy, as it looks to be a means for central government control over local services, rather than a genuine commitment to resolve the fundamental issues identified by the Independent Review of Adult Social Care. An NCS strategy must primarily attend to increasing the total resources available to social work, social care and community health, acknowledging – as the Feeley Review did - that such spending is an investment in society, communities and people. Also, as social care and community health are effectively preventative services for the NHS, a strategy of investment and growth in social care would be a strategy for relieving pressure on, and enabling necessary reform of, the NHS. Any strategy must be underpinned by robust analysis of whole population needs and projections of demand. Scotland does not yet have such analysis, and SG recently stepped back from commissioning the necessary research.
- Moreover, if we are to have a NCS founded on “shared accountability”, it is unclear why Ministers should hold sole responsibility for the NCS strategy. If it was a function of the NCS Board to produce it, there may be a chance that the strategy allocates actions (and accountability) appropriately and constructively. For instance, while it is local government’s responsibility (and therefore accountability) to ensure that they have enough social work and social care staff to meet their population’s needs, it is the Scottish Government’s responsibility to ensure that local government has the resources with which to do so, either by direct funding or by providing the means through which they can raise the funds themselves. An NCS strategy which surfaced such relationships and interdependencies may have value.

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- Such a “shared accountability” strategy would also represent change from the status quo, which the Scottish Government proposals do not. In our currently, existing arrangements there is nothing to stop Scottish Ministers preparing and publishing a social work, social care and community health strategy. Indeed Ministers already dictate what local priorities should be, through legislation, guidance and funding. In the NCS context the only difference would be the extent of Minister’s leverage to

review and direct what local action is being taken. The NCS strategy is then, like the NCS overall, a mechanism for enhancing central government's monitoring and control of local services. Our concern with such an approach is that it is not an effective way for driving improvement in social and community services. The evidence, including SWS members varied and extensive experience, strongly suggests that measurable and sustained improvement comes from the bottom up. The job of leaders - including Ministers, Councillors, CEOs and Chief Social Work Officers - is not to performance manage from on high, but rather to create an enabling environment for the people who deliver services. Those people who can, in turn, create enabling relationships with those who require support.

- We do not agree with SG's proposal of naming health board and local authorities as "NCS institutions". The NCS Bill may in time spawn organisations which can be legitimately call NCS institutions, but Health Boards and Local Authorities are well established, legally defined, and reasonably well understood parts of our public service landscape. Confusing that picture, through the introduction of new terms to describe existing things, does not improve public comprehension or accessibility.

2. What is your view of the proposal to create a National Care Service Board, and the provisions about the role and functions of the Board (see in particular new Chapter 1B of Part 1, and new schedule 2C)?

- Tend to oppose.
- The proposed role and functions of the NCS Board seem simultaneously too narrow and too expansive. It is the embodiment of the compromises reached throughout 2023, offered up by SG officials as a means by which to keep a wider agenda alive (i.e. enhancing SG control over local government services). It is therefore not surprising that the proposed NCS Board is tasked (by Scottish Ministers) with a lot of activity which will make little measurable difference to the availability or quality of services (e.g. reviewing plans, representation on Boards and the improvement framework) and given too little responsibility in areas which might make difference (e.g. modelling of resource requirements, development of the strategy, informing budget setting).
- To deliver on the shared accountability and codesign aspiration set by Scottish Government, development and ownership of the NCS Strategy should be a function of the NCS Board. And the NCS Board should hold among its functions the responsibility for determining what resources and timeframes will be needed to deliver the Strategy or specific priorities. The Bill's policy memorandum notes that the NCS Board will be the main vehicle for driving improvement; as currently drafted it appears a very underpowered vehicle for the scale of the challenge.

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- On the specifics of some of the proposed role and functions:
 - We already have a surfeit of **standards and guidance**. Consolidation would be welcome. A new public body generating even more would not.
 - Despite extensive co-design engagement it remains unclear how the NCS Board will improve **complaints** processes. Current proposals offer only (in line with whole NCS agenda) a layering of process and people into already complicated structures and processes.
 - We have previously been open minded about **national commissioning**, acknowledging the potential of "once for Scotland" in some specific areas. Our concern is that Scottish Ministers may (operating through the NCS Board) be unwilling to take on some services (e.g. secure care for young people) which are strong candidates due to their cost and political risk.
 - It is good to see **public protection** explicitly stated; acknowledgement that this is an important part of local government and health board responsibilities. However it is not clear how the NCS Board will fulfil its role in this space.

- The Expert Legislative Advisory Group (ELAG), set up to inform the development of these proposals, illustrated the challenges inherent in facilitating the **involvement for stakeholders in decision making**, when political realities dictate what is on or off the table. We fear that the ELAG is representative of how 'lived experience' will be involved in the NCS, with people given a visible place and voice in decision making, but all substantive decisions continuing to be taken elsewhere. Indeed the policy memorandum itself acknowledges (para 86) that there will be a level of authority above the NCS Board.
 - Enhanced **provision of implementation and improvement support to local delivery partners** is something SWS has consistently called for. But there is still no detail of what kind of support is envisaged. There is no clear budget for this activity, and it is unclear who / what will provide it.
- The Policy Memorandum states (para 78) that the NCS Board “*would prioritise the actions that will make most difference to outcomes for people: clear and consistent national standards, performance against those and accountability for delivery*”. But these are not actions which will make the most difference. They are instead just what Scottish Ministers are comfortable allowing the NCS Board to do. From the proposals it seems Ministers are not minded to create a public body with the power to make a real difference. Possibly because such a body would likely expose the deficiencies (particularly around resource planning and policy making) that sit with Scottish Government.
 - In respect of the NCS Board’s purpose of giving effect to “shared accountability”, the proposal feels confused. The new Non-Departmental Public Body would itself be accountable to Ministers, but the Board of the NCS Board (an apparently intended tautology) will be accountable to local government, the NHS and Scottish Ministers. How this will all work in practice remains unclear and, critically, untested. To validate the proposal it would be helpful if some practical scenarios are worked through, e.g. accelerating implementation of self-directed support, or considering intervention in a local area, as part of the Support and Improvement Framework.
 - Another confusing aspect of the “shared accountability” arrangements relates to NHS Boards. In a democratic society, wherein democratic institutions should predominate, should the technocratic NHS Boards (appointed by Scottish Ministers) hold equal status in the NCS with local authorities elected by voters? Moreover, is it coherent governance to have NHS Boards and Local Authorities sitting above the NCS Board, when services they provide will in turn be governed by the NCS Board? And it should be noted that NHS Boards are already governed by Scottish Ministers, with the CEO of the NHS (Caroline Lamb) a civil servant within Scottish Government. To present the NCS’ accountability ‘triumvirate’ of Ministers, Councils and the NHS as different but equivalent parts is misleading. And taken together the governance

arrangements feel convoluted and unlikely to yield the kind of determined and difficult decisions which are needed.

- In terms of embedding lived experience in the NCS, the policy memorandum suggests the NCS Board may establish representative forums. Not only would such ancillary structures likely be cumbersome, a further layering on of groups and process, but more importantly they would be insufficient to the scale of the 'representation' challenge. For example, how to ensure that the breadth and complexity of lived experience is profiled and 'heard' at all levels of any NCS? How to balance the equally legitimate but competing (in respect of calls on finite public resources) needs of children and adults with support needs? Indeed it remains unclear how the NCS will balance the representative needs of different groups of adults, such as people with physical disabilities, learning disabilities, dementia, alcohol or drug addictions, carers, etc.

3. What is your view of the proposal to establish National Care Service local boards and to remove other integration models (see in particular Chapter 1A of Part 1, and new schedules 2A and 2B)?

- Partly support and partly oppose.
- In the progress of health and social care integration, and what it means for the successful delivery of social work and social care functions and services, Social Work Scotland has consistently sought to profile the successes and challenges. Structural and governance arrangements do not, in themselves, transform the quality of public services. But they can make a difference to the job of delivering public services, and certain statutory functions and policy aims. We therefore want to acknowledge the importance of attending to these structures, even if we do not believe they justify the priority which Ministers are giving them.
- Since implementation of the Public Bodies (Joint Working) (Scotland) Act 2014, SWS members have shared their experience of working in all types of 'integrated' arrangements. Not just differences associated with Integration Joint Board or Lead Agency models, but also the varied blend of services 'delegated' into integration arrangements, and the variety of structures adopted to manage services and professions. For social work the consistent issues to emerge have been around professional governance and leadership, the tension between medical and social models of care, resource allocation and dominance of NHS priorities (e.g. relieving pressure on acute health care settings). There is also disappointment, although not surprise, that integration has not facilitated the shift to more preventative, community-based activity.
- Considering the challenges identified with health and social care integration to date, the proposal to establish National Care Service Local Boards feels quite muted. The roles of local authority and NHS Board remain largely unchanged, albeit complicated by the addition of the NCS Board. Voting rights are opened to those with lived experience, but how the IJB / Local Board constructs its budget remains the same. Nor do the proposals resolve any of the professional issues which a decade of implementing integration has revealed, such as the role of the Chief Social Work Officer, or discrepancies in terms, conditions and benefits within teams.
- We are concerned about the continued lack of detail about how the disintegration (and reformation) of Highland's lead agency arrangements will be managed. These arrangements pre-date the Public Bodies (Joint Working) (Scotland) Act 2014, and reform, irrespective of how desirable that might be, will be a complex and difficult task. As a practical example, adults services social workers in Highland are employed by the NHS on Agenda for Change conditions. The move to an IJB model would, as we understand it, require Highland Council to re-employ these social

workers without a deterioration of their pay and conditions. However equivalent local authority social worker pay levels are currently lower than those provided under Agenda for Change.

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- We are also aware of conversations taking place between Scottish Ministers and local partnerships about 'single authority models', in which the NHS Board and local authority are effectively merged into a single organisation. These would represent alternative models of integration to the NCS Local Board, however the revised Bill makes no provision for them. Nor do any of the accompanying documents refer to such developments.
- In principle the renaming of IJBs is unproblematic, as many would agree the term is inherently bureaucratic. But the proposal misses the point that IJB is a technical construct (like 'Lead Agency') and that most areas of Scotland operate a Health and Social Care Partnership. It is the presentation of this 'partnership' which is being replaced with 'NCS Local Board'. The proposed name ('Local Board') possibly risks misrepresenting the reality of what it describes (i.e. a partnership). And that relates also to the extension of 'care' to cover so many discreet services. Social work is not 'care'. Indeed arguably many community health services in scope are not 'care'.

4. What is your view of the proposed new provisions on monitoring and improvement (see new sections 12K and 12L) and on commissioning (see new section 12M)?

- Tend to Oppose
- The introduction of a 'Support and Improvement Framework' appears to now be the core of the NCS project. As the Bill and associated papers promise no additional investment in services, or adjustment to eligibility criteria, or reform of the care market, or to workforce terms and conditions, etc., this one proposal / innovation must do all the heavy lifting for the NCS, in terms of delivering change. It is therefore incumbent on Scottish Government to provide much more detail about how it would operate in practice.
- Scrutiny and quantitative performance management are not an effective way of improving social services. There may be a case for a framework of intervention in local government services, to ensure persistent performance issues are addressed. Such a framework exists – and is used – by the Westminster government with English local authorities. But this idea, and the drivers behind it, should be progressed transparently. And we believe it should be part of a wider debate about local government reform in Scotland.
- The policy memo (para 95) says that: *amendments would provide the Board with the ability to intervene more directly by transferring an NCS local board's functions to another NCS local board. This would relate to delegation arrangements only and would not affect the local authority's or Health Board's statutory responsibility for the function. We perceive two problems with this. First, would any IJB / NCS Local Board want to take responsibility for another Board's functions? Most are struggling to address their own challenges. Second, it cannot follow that transferring an LA's responsibility for a delegated service does not impact on their statutory responsibilities for that function. If we have understood correctly, that would mean local authority X remains legally responsible for a service which is now being run by local authority Y. This does not seem tenable.*
- SWS members have also raised questions about whether nationally commissioned services fall within the framework. The Bill and accompanying documents are unclear on this.

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5. What is your view of the proposed new provisions to designate a National Chief Social Work Adviser and for the creation of a National Social Work Agency (see new section 26A)?

- Partly support and partly oppose.
- We continue to strongly support the principle of (and proposed focus of) national structures for social work in Scotland. The analysis which underpinned our November 2021 and September 2022 submissions (SG's original consultation and Stage 1 evidence, respectively) remains unchanged. Many of the challenges local authority social work currently faces, particularly in respect of workforce development and practice change, are national in scale and nature. We need appropriate national structures through which to deal with them. Structures will never be a panacea, but in helping to overcome the fragmentation of the profession (a result of having thirty-two different employers and integration arrangements) they could foster an enabling context, providing levers with which to respond to developments and drive change.
- However, it has also been our consistent position that a National Social Work Agency cannot be located within Scottish Government. The reasons for this are various, but primarily we are concerned that such a move would render national structures ineffective, as local authorities would feel apart from and done to rather than central to the initiative.
- Over the past eighteen months SWS has worked closely with SG, COSLA and other social work partners on what form a National Social Work Agency should take. After SG's original proposal of a team within government (set out in initial Policy Memorandum) met opposition, alternative models had to be explored. These discussions took place in the context of the wider negotiations between SG and local government over the NCS, and the "shared accountability" agreement. After the option of an "independent" NSWA (e.g. NDPB) was ruled out by SG for reasons of cost and efficacy, the solution identified was a partnership. Building on existing components of the social work professional infrastructure and centred on SG's Office of the Chief Social Work Adviser (OCSWA) and Social Work Scotland (on behalf of local authority Chief Social Work Officers), the NSWA would start as a formal partnership of distinct organisations. Each signing up to shared objectives, and the collective delivery of certain functions.
- To achieve this partnership, and the specific aims of a NSWA, we are very supportive of moves to establish OCSWA on a firmer footing within SG. Reconstituting it as an Executive Agency was identified as the most cost-effective way to do this. But unfortunately, SG's proposals in the Bill take that development further than had been agreed by partners, suggesting that OCSWA be rebranded (in the form the new Executive Agency) as the National Social Work Agency. Such a move undermines the idea of a NSWA as partnership of distinct but interdependent

equals, respecting and reflecting the reality that central and local government must be central if change (to status quo) is to be realised.

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6. What is your view of the proposed amendments to the Public Bodies (Joint Working) (Scotland) Act 2014, as set out in the marked up version of the Act?

- No opinion

7. What is your view of the Scottish Government's proposed approach to addressing the areas of further work outlined in the Minister's covering letter?

Direct funding

- We are broadly supportive of the idea of nationally commissioned services. On the question of direct funding of local care boards, we agree with the approach set out in the Minister's letter to work through the details with representatives from across local government, health boards and provider organisations.

Inclusion of children's and justice services

- SWS members articulated a range of views on this question back in 2022. Consistency of delegation arrangements was seen, by some, as a desirable step for social work, making it easier to address issues around professional leadership and governance, and the delivery of a joined-up social work service (particularly in respect of child and adult services). Others felt the 'integration' of children and family social work with education services needed to be preserved. Many members were concerned about the dominance of health professionals, priorities and models, and the subjugation of social work in integrated structures. What united all SWS members was a feeling that the whole question ("in or out") was a distraction from the real issues of underfunding, workforce retention, and service redesign (as demanded by the Promise and other transformational agendas).
- Social work, among many other professions and services, faces challenges which can only be met through concerted, joint action from central and local government. The current political impasse is making such joint action increasingly difficult, and the Scottish Government's determination to persist with the debate over children's and justice services now represents an impediment to other, urgent reform discussions. Rather than embracing what their own commissioned research said about structures Scottish Government has kept this question at the forefront, provoking an entirely predictable defensive posture from local government leaders.
- The Minister's proposed approach to resolving this impasse is to take powers (through an amendment to the Bill) to mandate the inclusion of children's and justice social work, but not to use that power until negotiations with local government have concluded. Considering that Ministers have made clear their preference for inclusion of these services within the NCS, the reference to ongoing negotiation feels disingenuous. And extending negotiation is likely to just prolong the impasse. We have been close to the negotiations to date, and in our opinion there is no viable 'compromise'. Local Authorities are either free to determine whether children's and justice services are delegated to their IJB / Local Care Board, or they are not. It is a binary choice.

- One final observation on this issue. Ministers have indicated that, if this Bill as amended is passed, where local areas have already delegated children's and justice social work into an IJB they will not be able to withdraw children's or justice services from that arrangement (when IJBs are reconstituted as NCS Local Boards). Those services will be part of the NCS, subject to all its associated structures and processes. And they will remain so permanently, with the local area unable to alter their delegation scheme (as they are currently). However, if children's and justice social work are not included as 'must delegate' services for all local areas, is it really viable that some local authorities will retain a legal right to decide on what services to delegate while other local authorities will not? That would create two tiers of local government autonomy.

Anne's Law

- Support the Government's approach to progressing this agenda, particularly the option of finding an alternative route for the policy (separate to the NCS Bill).
- We are keen to see whether social work could be more explicitly referenced in the legislation for Anne's Law, as a means of upholding individual rights, and as a professional counterbalance to macro population health considerations.

While there are no consultation questions about carers' right to a break, we observe that this issue could also be taken forward separately from the NCS Bill, via other legislation amending the Carers (Scotland) Act 2016, should the NCS Bill not proceed.

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8. What is your view of the initial draft of the National Care Service Charter?

- Tend to Oppose
- In our Stage 1 submission to the Scottish Parliament we questioned the value added of a National Care Service Charter. While acknowledging the need for better public communication about people's rights, Scottish Government's positioning of the Charter as some powerful driver for improvement has always been confusing. Particularly as they have acknowledged that neither the Charter nor the NCS create any new rights. Rather than using the Charter to legitimate the broader NCS agenda, we would encourage Scottish Ministers to progress work on a charter or 'guide to your rights' at haste, within their existing and extensive legal competence.
- In respect of the draft Charter itself, the document fails to make sufficient distinction between legal 'rights' (possessed by an individual) and legal 'duties' (to which individuals or organisations are subject). This is a distinction between "I must get" and "you must provide", and while that may feel a semantic or academic difference, in the context of social work and social care it is important. For example, the Charter (and other SG communications) describe individuals as having a "right to an assessment" for social care support. In fact the relevant law places a duty on local authorities to assess any adult (person over 18) who they believe may need community care services (section 12A of the Social Work (Scotland) Act 1968). (Currently only unpaid carers have the right to an assessment on request, as set out in the Carers (Scotland) Act 2016.) Even if all individuals seeking support are assessed, we believe it is important to acknowledge that the duty is not clean cut (which "you have a right" implies). Moreover, it should be made clear that this duty extends to situations in which an individual does not want an assessment. The natural corollary to "you have a right to an assessment" is that you have a right not be assessed, however social work is under a duty to assess any individual who they believe may need support. In improving the public's understanding of the social work and social care system, dissolving such detail and distinctions is not helpful.

[Bullet points above approx. 2010 characters.]

9. Do you have any other comments on the Scottish Government's proposed draft Stage 2 amendments to the National Care Service Bill?

- The purpose of the NCS Bill remains improving the quality and consistency of social services (including Community Health Services) in Scotland. However the overwhelming focus of the Bill is with governance, structures and process. None of which are the key levers to improving quality. They may assist in creating an enabling context, but Social Work Scotland members have lost confidence that the NCS (as currently proposed) will do so.
- We remain committed, however, to the kind of whole-system reform which has been recommended by Campbell Christie (2011), the Independent Care Review (2020), and Independent Review of Adult Social Care (2021). Social work's core objectives include the amelioration of poverty, disadvantage and discrimination, enabling everyone to have more agency and choices. Our focus should be on early actions which can prevent further hardship, harm and trauma. But the current construction of our politics and public sector does not always facilitate that. The NCS Bill provokes profoundly important questions about the balance of power in our system of government, not just between the levels of administration (i.e. national vs. local) but also between those who provide support and those who receive it. Since 1995 we have chosen to layer in more and more administration; health and social care integration, children's services planning partnerships, Community Justice Authorities, Regional Education Collaborative, etc. The Scottish Government's original NCS Bill did present a solution to the cluttered administrative landscape in social care: centralisation and SG control. But it did so in a back-to-front way, introducing legislation before initiating the complex, sensitive and politicised discussion about reform of Scottish local government (which is what the original NCS Bill was). The response of local government leaders was entirely predictable. And now, two years on, the revised NCS Bill promises only more layering-on of bureaucracy. This has been a significant missed opportunity to have a mature and transparent debate about how public services – and administrative power - should be organised in Scotland.
- In response to the question "if not this then what?" our response is twofold. On the one hand we need a programme of immediate action to arrest the deterioration of social work and social care services. In the current financial climate it is unrealistic to expect transformative levels of investment, and therefore we must temper our rhetoric about the transformation that will be delivered. But monies set aside for the NCS could be reallocated into services now, and/or a funded strategic spend-to-save prevention programme, reducing the service reductions which managers will have to implement over future years. Looking longer term, work to revise and update the Public Bodies (Joint Working) (Scotland) Act 2014 would be welcome. Social Work has identified many issues with the operation of health and social care integration, but as we are only part way through implementing the original legislation, our

preference would be a focus on addressing its problems and building on its strengths. Within that, it is necessary to review adult social work's needs in integrated structures; the Feeley Review was a review of adult social care, not social work, and so key issues and positive levers for change were overlooked.

- The revised Bill's continued focus on 'consistency' is problematic. Particularly as SG has still not adequately explained what they mean by it. Our involvement in discussions about this suggests that the objective is a mix of genuine concern over variable eligibility criteria and service availability, misunderstanding (about the distribution of resources and services across Scotland), and perhaps also some opportunism, providing as it does a legitimising narrative for greater centralisation and SG control. However, we have been concerned from the start of NCS discussions that commitments around 'consistency' risk misleading people about the potential of a NCS to ensure equitable access to the same portfolio of services across the country. Such consistency does not exist in the NHS, and the prospect of achieving it in the market-based social care sector is very unlikely (particularly in the absence of a significant investment programme).
- We are concerned about the incorporation of 'health' into the ever-expanding definition of 'care'. It feels like another move in the slow capture of 'care services' by 'health services'. Relatedly, we note the continued absence of a definition of 'community health services' in the Bill's accompanying document. We understand a group has been convened by SG to develop a definition. But this example nicely illustrates the back-to-front nature of SG's approach to NCS development, wherein structures are being created to integrate services which are not yet clearly defined. It is difficult to get the 'integration vehicle' right if we do not yet know what precisely is being integrated.
- The Committee has not asked any questions about the NCS principles, but we note several significant changes to those originally proposed by SG, some of which raise concerns. For example, there is a tension in the construction of the NCS as a vehicle for "*addressing individual needs, recognising the diverse characteristics and circumstances of the individuals to whom services are provided*" (see proposed NCS principle 1(c)) and an NCS focused on 'strategic' challenges, which by virtue of being strategic necessarily sublimate individual needs in favour of the group or population. If this proposed set of NCS principles is implemented, is a Health Board or LA to prioritise provision of a service to everyone who needs support now (known and unmet need) or strategic investment in services which may prevent needs developing (early intervention)? A strategic approach would surely favour the latter as the route to more sustainable and effective public services, but day-to-day reality demands a focus on the former. Given these pressures, LAs and NHS Boards are simply not able to protect resources for prevention, unless SG can provide save-to-spend funding for evidenced prevention initiatives, and for some double-running costs for the period before such measures reduce demand for acute services. This

dilemma already characterises the decisions which social services leaders must make, and it is unclear how the proposed NCS principles will make that choice any easier.

- In relation to representation on NCS Board and NCS Local Boards we are concerned that proposals do not sufficiently take account of the complexity of what will be involved, or the risks of unintended consequences. Current proposals will precipitate difficult discussions about who is legitimate to represent certain interests, and what the accountability of those people are (to those with lived experience, and to the NCS itself). Moreover, what is the mechanism for determining which populations or support needs are represented in the NCS structures, given the diversity of groups of people supported? And how will the voices of children be represented, or those supported by justice services?
- Although the Scottish Government is proposing extensive changes to the National Care Service Bill (including mandating a single model of integration), none of its impact assessments appear to have been updated (from the original 2022 versions). Considering the significance of the reforms, and the framework nature of the Bill, it seems appropriate that these are updated as a matter of priority, to help inform MSPs scrutiny. Of relevance are the Equalities Impact Assessment, Child Rights and Wellbeing Impact Assessment, and Island Communities Impact Assessment.

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