

Clare Haughey MSP  
Convener  
Health, Social Care and Sport  
Committee  
Scottish Government

**By email only**

Wednesday 20 December 2023

Dear Convener,

**Subject: National Care Service Bill**

The Equality and Human Rights Commission has closely engaged with the process of developing a National Care Service (NCS) in Scotland. As Britain's equality regulator we are committed to ensuring that the NCS has equality and non-discrimination at its heart.

To this end, we have commissioned multiple research projects to ensure a robust evidence base on matters relating to equality both in current social care processes, and to support the development of suggested new processes. Areas of focus have included the [operation of self-directed support](#), the [operation of social covenants and charters](#) and [experiences of challenging social care decisions](#).

We also responded to both the initial [Scottish Government consultation](#) on a NCS Bill, and the Committee's [call for views on the draft Bill](#). We met with

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Committee members in November 2022 to discuss our recommendations and have also engaged closely with Scottish Government officials to ensure that work programmes to develop the supporting structures of a NCS.

Ahead of the Committee producing its Stage 1 report on the Bill, and mindful of the specific change to the initial proposals already communicated by the Minister for Social Care, Mental Wellbeing and Sport regarding the establishment of a National Care Service Board (the Board), we wanted to draw the Committee's attention to the following key issues.

### **The Bill's purpose**

Despite further detail provided by the Minister, there remains a lack of clarity in terms of how the NCS may end up operating in practice. We consider that the commitment to provide more detail on some aspects of the NCS at Stage 2, but in advance of the amendment considerations, make it difficult to fully consider the equality aspects of some of the Bill's provisions, such as the potential establishment of a National Social Work Agency. Legislation to establish a NCS must set out in more detail how those involved in its design, implementation and service delivery will follow through on the principle of advancing equality and non-discrimination and we look forward to engaging with the legislative process as more detail becomes available.

### **Equality legal framework**

The Scottish Government, Health Boards (including Special Health Boards),

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Integration Joint Boards (IJBs) and Local Authorities already have obligations under the Public Sector Equality Duty (PSED), including the specific duties. While a new National Care Service Board and a National Social Work Agency (NSWA), if it is to be included in the Bill, would automatically be subject to the general equality duty in respect of any public functions they carry out, we consider it essential that the process of adding national agencies such as these to schedule 19 and listing them for the specific duties is prioritised. This is particularly important given the NCS Board's proposed functions as set out in the Minister's letter to the Committee of 6 December 2023, including setting strategic direction and developing standards, guidance and operating frameworks. It is essential that equality is mainstreamed in all of the Board and NSWA's processes, and ensuring they are listed for the Specific duties will assist it in meeting the needs of the general duty.

### **NCS Charter and Independent Advocacy**

We acknowledge that the Scottish Government is considering what amendments are required to the Bill following the shared accountability agreement. We consider that whether the requirements of sections 11, 12 and 13 sit with Scottish Ministers or the proposed Board, the Bill should enshrine the commitment to free independent advocacy and ensure the Charter has an attached enforcement mechanism, as per our response to the Committee's call for views.

### **Scrutiny role of the Board**

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The Minister's letter sets out that the Board is also envisaged to have a role in scrutinising reformed integration authorities' performance reports, with strengthened powers to require evidence and documentation to be introduced. As above, the Board should be subject to the PSED and the Scottish specific duties. The bodies it will oversee are also subject to the PSED. The Board should play a central role in promoting equality, examining progress against agreed equality outcomes, encouraging improvement and sharing evidence about equality in education and training to support services to improve their performance against the needs of the PSED.

### **Membership of the Board**

We acknowledge the Minister's intent to outline the membership of the National Care Service Board within secondary rather than primary legislation. However, we maintain that the Bill should set out the need to include representatives of those protected groups most likely to rely on the service, such as older and disabled people.

As above, we look forward to continuing to engage with the Committee and wider Parliament as the legislative process progresses. We would be happy to discuss this letter and our substantive response to the call for views in more detail with the Committee at any point.

Yours sincerely,

Stephanie Griffin

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