



The Scottish Parliament
Pàrlamaid na h-Alba

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By email only

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Dear Gillian,

Scrutiny of the National Care Service Bill

As you know, the Local Government, Housing and Planning Committee has been designated as a secondary committee for Stage 1 scrutiny of the National Care Service Bill. I am writing to you setting out the Committee's views on the evidence it has heard during the course of its scrutiny of the Bill, to aid the Health, Social Care and Sport Committee's consideration of the Bill. In addition to the evidence the Committee took itself, members also considered the oral evidence which Derek Feeley provided to your Committee on 8th November.

In its approach to scrutinising the Bill the Committee agreed to focus on the impact of the proposed National Care Service ('NCS') on local authorities and the implications for housing issues, in line with the Committee's remit.

Its examination of the Bill comprised evidence sessions with seven panels of witnesses, as follows:

- i. Local authority structural and governance issues: Audit Scotland, the Accounts Commission, COSLA, CIPFA, SOLACE
- ii. Local authorities: Edinburgh, Glasgow, Argyll and Bute, Dumfries and Galloway, East Ayrshire

- iii. Housing and homelessness: Chartered Institute for Housing, Scottish Federation of Housing Associations, Everyone Home Collective, All In For Change, Coalition of Care Providers Scotland
- iv. Local authority workforce issues: COSLA, SOLACE, UNISON, Society for Personnel and Development in Scotland
- v. Scottish Government's Minister for Wellbeing and Social Care
- vi. Lived experience of social care: Cerebral Palsy Scotland, Glasgow Disability Alliance, the Granite Care Coalition, Scottish Commission for people living with learning disabilities
- vii. Lived experience of social care: Age Scotland, Alzheimer Scotland, the Health and Social Care Alliance

Outlined below are the views expressed by witnesses on a number of key themes which emerged during the course of the evidence heard and may be of interest to your committee in its consideration of the Bill. The Committee has highlighted particular areas where it believes that further information from the Scottish Government would help inform Parliament's scrutiny of the Bill.

1. The need for change

1.1 Witnesses from across sectors were in agreement that the current system of social care is in need of reform or improvement. Organisations representing people using social care, such as the Glasgow Disability Alliance, in particular highlighted that many people struggle to access the care that they need to maintain their personal independence and at times their health and dignity. They believe the NCS provides an opportunity for the radical change that is needed. Age Scotland described the care system as being in crisis. The Committee heard that the health and social care system is too disjointed, that there is poor coordination across agencies, that there are long waiting periods for assessments and then for support, there is significant unmet need, and inconsistency between and within local authorities leading to some people moving local authority areas in hope of receiving better care. As a result there is a lack of trust in the system as it stands.

1.2 Local authorities also acknowledged that social care is imperfect and at times falls short of the high standards people should receive. It is under increased pressure due to demographic changes and increased demand, as well as higher costs. The Auditor General has described social care as being in a 'precarious' position, with limited progress being made.

1.3 SOLACE agreed there is an implementation gap between the policy intent of self-directed support and what is happening on the ground. There was broad support for the findings of the Independent Review of Adult Social Care (sometimes known

as the Feeley review), with COSLA and the Scottish Government having made a joint statement of intent to take action to deliver improvements.

1.4 The Committee heard how the existing shortcomings in social care have been exacerbated by current financial pressures and the covid-19 pandemic, when social care packages were sometimes withdrawn altogether and access to care homes for visitors was restricted. Many people's experience is that support levels have still not returned to pre-pandemic levels. There are particular challenges too with sustaining the social care workforce, with difficulties both recruiting and retaining staff.

2. Support for key aspects of Bill

2.1 There was broad agreement amongst witnesses too for some of the components of the Bill, such as national standards for care, a single digital record, Anne's law, the right to breaks for carers, independent advocacy, ethical procurement, and a human-rights based approach.

2.2 Witnesses representing local authorities highlighted how the Scottish Government's focus on consistency in the social care system should focus on consistency of outcomes, rather than of service delivery which should be designed to meet local circumstances and need.

2.3 Some witnesses representing people receiving social care were clear that the NCS presents an opportunity to transform care, and that a shift away from local authorities to national accountability by Scottish Ministers is welcome.

2.4 The Everyone Home Collective highlighted that whilst they were supportive of the principles of the Bill, without sufficient detail on how the NCS will be implemented it's difficult to see how the principles would be translated into practice. The suggestion was also raised that there is existing legislation, national standards and guidance which are not properly implemented. The Scottish Commission for People with Learning Disabilities noted that the NCS also needs to be aligned with the Human Rights Bill, the Learning Disability, Autism and Neurodiversity Bill, and the Scottish Government's review of mental health legislation.

3. Concerns about structural change

3.1 Where the views of witnesses diverged it was on whether the significant structural change proposed by the NCS Bill is required to deliver improvement, and if such a massive reform process is even viable in the current economic climate. The Accounts Commission is concerned that years of bureaucratic reorganisation could be a distraction from the urgent requirement for social care reform. It highlighted the challenges experienced during the creation of other national organisations such as Police Scotland, and the need to be mindful of the lessons learned. It also stated that

reform in and of itself does not necessarily deliver the expected benefits in the short term.

3.2 Local authorities argued that; delivery of the NCS will have significant consequences for local authority structures, services and finances; will be disruptive to care during the delivery to transition; and the resources required to create the NCS would best be deployed instead in existing front-line services. They suggested that key proposals, such as the provision of national standards, could be delivered without legislative change. The Accounts Commission argued that the solution to reform lies in sustainable funding, meeting unmet need and developing the workforce.

4. Views on the framework Bill and the use of secondary legislation

4.1 A common thread in the evidence the Committee heard was the difficulty of drawing conclusions about the benefits of the Bill when there is a lack of detail about many aspects of delivery of the NCS. The Alliance and its membership for example have concerns about the framework Bill approach. The Minister however argued that a framework Bill was necessary given the Scottish Government's commitment to ensuring the NCS is co-designed, and that the Bill should not pre-suppose how it will be delivered until that co-design process is complete. The Accounts Commission acknowledged that the use of secondary legislation does present an opportunity, allowing for the proper co-design and co-creation of the new service, and that the work undertaken by the Scottish Government to co-design Social Security Scotland was 'exemplary', providing a model for success.

4.2 SOLACE highlighted how local government feels threatened when it comes to the NCS, and suggested there is a lack of trust because it is being delivered by a framework Bill. Concerns were also expressed about the potential lack of scrutiny of the details of the NCS given they will be delivered through secondary legislation at a future date.

4.3 The Committee would welcome assurances from the Scottish Government that sufficient time will be timetabled when laying subordinate legislation to enable the Scottish Parliament to undertake consultation and detailed scrutiny. The Committee suggests that drafts of the Regulations should be made available before the Bill completes its passage through Parliament to enable informed decisions to be made.

5. Limitations of the Financial Memorandum

5.1 A number of witnesses expressed concerns that the Financial Memorandum accompanying the Bill does not take account of the full implications of creating the

NCS, and given the current economic challenges is in need of revision – for example to take account of increased inflation. These included the Accounts Commission which said that the projections in table 2 of the Financial Memorandum in particular need to be updated and will undoubtedly show increased costs given the changes to the economy in recent months. The Scottish Commission for People with Learning Disabilities also noted that the memorandum excludes a number of factors including the costs of meeting unmet care needs, and minimum terms and conditions for workers. Local authority representatives in particular expressed a number of concerns about the limitations of the Financial Memorandum.

5.2 The Accounts Commission suggested that a full business case for the NCS should have been made available before the Bill, as was done with Police and Fire Reform. Setting out their analysis of the requirements for successful public sector reform, the Accounts Commission highlighted the importance of the Scottish Government clearly setting out the benefits of reforms, providing realistic costings and robust data, including an assessment of the impact on local government, together with a route map to delivery. It also highlighted questions about the cost implications of the Bill, such as double running and transitional costs. Glasgow City Council similarly noted that for a structural change of this size, it would be looking for feasibility and risk studies.

5.3 The Minister told the Committee that the Scottish Government does not yet have the full details that are necessary to evaluate all of the impacts of the NCS, but that Parliament will have the opportunity to scrutinise those impacts once they are known.

5.4 The Committee welcomes the Scottish Government’s commitment to publishing a full business case, and would recommend this is done as soon as possible, ideally before the completion of Stage 1 scrutiny of the Bill. This should set out how the national care service will improve services and outcomes for people receiving social care, and also how it will improve terms and conditions for the workforce.

6. Co-design

6.1 Many witnesses welcomed the commitment by the Scottish Government to a co-design process in building the NCS. The Everyone Home Collective highlighted that co-design is the foundation of much of the work that the third sector does. It noted though that the methodology which the Scottish Government will be using with the NCS (ie in co-designing the detail of the NCS) is not one that it would use, suggesting that co-design should instead have informed the Bill itself.

6.2 In contrast the Minister told the Committee that it would be difficult to design something without the framework of primary legislation being in place. He stressed that the Bill has been shaped through engaging with lived experience. Derek Feeley, in his evidence to the Health, Social Care and Sport Committee, noted that there was a considerable amount of co-design during his independent review of adult social care, and that there will need to be a switch to co-production once the NCS is established.

6.3 The Glasgow Disability Alliance believes that the trust required for people to engage with co-design at a local level does not exist because of lack of faith in the system. A new national system based on co-design is instead needed, as the Scottish Government intends.

7. Local vs national accountability

7.1 The Committee notes that one of the Scottish Government's key drivers for the NCS is the need to shift accountability for social care to Ministers. The Minister highlighted the Feeley review's findings that people receiving social care believe that there should be such national accountability, with Ministers being ultimately responsible for services. Currently service users can find themselves 'pushed from pillar to post' and struggling to find redress when their care falls short, with multiple agencies failing to take responsibility. He confirmed that social care services will however continue to be designed and delivered locally.

7.2 Most organisations representing lived experience of social care were supportive of the principle of ministerial accountability for the NCS. The Glasgow Disability Alliance explained that its members strongly agree there is a need for national accountability, consistency and better standards, albeit with greater commitment to a human rights approach. The Everyone Home Collective was not convinced that centralised accountability would lead to improvement. The Alliance agreed that ministerial accountability is a good concept, but noted that there also needs to be a system that ensures that party-political change does not affect people's access to accountability structures. Cerebral Palsy Scotland called for there to be clear lines of local and national accountability. Alzheimer Scotland believe that the public assumes that ministers are already accountable for social care.

7.3 Derek Feeley, in his evidence to the Health, Social Care and Sport Committee noted the risk of separating a national structure and system from individual needs and rights. He also highlighted his review's recommendation that the NCS should be held to account by an arm's-length body rather than being part of government. He envisaged a continued and important role for local authorities as providers of care services, partners in IJBS or care boards, and as places of innovation. It will be the responsibility of care boards to provide understanding of local needs. He highlighted

that at this stage a detailed analysis of what could be done nationally 'once for Scotland' or at local level would be useful.

7.4 Local authority representatives agreed that the Scottish Government has a role to play in regulation, standards and enabling improvement. They were however concerned that a shift away from local accountability would be to the detriment of local services which should ideally be built flexibly around local solutions to meet local circumstances. The example was provided of the effective response to the covid-19 pandemic being delivered at a local level by organisations working in partnership to meet local need.

7.5 Witnesses also expressed fears about the impact on local democracy, and whether the proposed changes would run counter to the Scottish Government's commitment to localism. In his response, the Minister described these concerns as arising from the need to protect 'vested interests' on the part of local authorities. He also confirmed that in his view the Bill is compatible with the European Charter on Local Self-Government.

7.6 Some witnesses, such as CIPFA, noted there are both advantages and disadvantages to a national system of social care. SOLACE agreed that there is a role for the Scottish Ministers in a national care service through setting the overall framework and standards, whilst highlighting the complexities of the situation where localism remains important. Similarly, the Accounts Commission said there needs to be both national and local accountability.

7.7 The Minister explained that there will continue to be local accountability, local flexibility and local design of services, with overarching national standards.

7.8 From the evidence the Committee heard, it is clear that there are differing views on the implications of the NCS, in part due to the lack of detail provided by a framework Bill. The Committee recommends that the Scottish Government provides as soon as possible its analysis of what will be delivered nationally or locally, and engages openly with all stakeholders from across sectors to ensure that there is a common understanding of the Bill's implications.

8. Impact on local authorities

8.1 Local authorities highlighted the interconnectedness of social care support with a wide range of local authority services, in particular housing and homelessness support. The 'back office' functions of local authorities – such as finance, legal services, and human resources – are usually also combined to support the entirety of local authority services. Representatives of local authorities expressed concerns

about the implications of having to disaggregate these following the removal from local authorities of their responsibility for social care.

8.2 Social care comprises a significant proportion of local authority budgets and workforce. Edinburgh City Council noted that 40% of the council's budget is spent on social care services, and 22% of its workforce are employed in social care. Consequently, it believes that the creation of the NCS amounts to a reform of local government itself, by removing social care from its functions. Glasgow City Council agreed, noting that all areas of the council would be impacted. Dumfries and Galloway Council considered there is a risk that disruption caused by establishing the NCS would lead to a reduction in performance and to poorer outcomes for the most vulnerable people.

8.3 SOLACE raised issues with the impact on local authorities' capital debt; by shrinking a council's revenue, the ratio of revenue to capital debt dramatically changes, and the proportion of budget which is ring-fenced (for example for education) doubles. COSLA said it is aware of some local authorities already reconsidering their investment plans as a result of the NCS Bill, and it has concerns about the viability of some councils to operate with the removal of potentially a third of their budget.

8.4 COSLA also highlighted uncertainty about whether local authorities will be commissioners of services, or providing commissioned services, and the risk that they may choose not to be providers if core assets are removed from local government.

8.5 Concerns were raised too about the impact on capital investment by local authorities, given the powers in the Bill for assets to be transferred to the Scottish Government. This may cause a reluctance on local authorities' part to spend on assets – for example property improvements and repairs - if there is doubt about their future ownership.

8.6 The Minister told the Committee that 'the Bill as it stands has no direct impact on local authorities' and that the Scottish Government's aim is to create a cost-neutral position for local government. He explained that transferring assets away from local authorities will not be necessary except as a last resort, that the Bill will remove unwanted duplication and functions, and will allow for the best use of public funds.

8.7 The Committee asks the Scottish Government to provide greater clarity as soon as possible about the Scottish Government's analysis that the NCS will be cost-neutral for local authorities, and its intentions regarding the Bill's powers to transfer assets from local authorities, to enable council decisions to be made about investment in the future.

8.8 The Scottish Government may wish to consider providing greater clarity on the face of the Bill on these issues, for example that asset transfer will only happen in a ‘provider of last resort’ scenario as described by the Minister.

9. Workforce issues

9.1 The Committee explored the implications of the NCS on local authorities’ workforces with a panel of witnesses comprising representatives from Unison, COSLA, the Society of Local Authority Chief Executives (SOLACE) and the Society of Personnel and Development Scotland (SPDS).

9.2 The panel supported the aspirations of the Feeley review and welcomed the principle of Fair Work underpinning the NCS. Workforce challenges highlighted by witnesses included the difficulties recruiting into social care posts, an ageing workforce, and the impact of the Covid-19 pandemic. The SPDS welcomed the potential for national standards, national workforce planning, and more consistent care. Unison’s position however is that the Bill should be withdrawn and a design process begun again. SOLACE noted that a NCS could deliver some real benefits, but questioned the need for structural change, as did COSLA.

9.3 Witnesses highlighted the existing variation in work conditions between local authority care workforce and private and third sector, with local authorities’ pay being higher. They were concerned that the potential shift of 75,000 social care staff away from local government as set out in the Financial Memorandum would have implications for the future viability of the local government pension scheme. Concerns were raised too about the uncertainty which the workforce is currently experiencing and TUPE (Transfer of Undertakings (Protection of Employment)) implications. SPDS suggested that this winter will be particularly challenging for social care staff and that the NCS Bill is causing anxiety which could be reduced if there is a pause over the winter months.

9.4 Unison and SOLACE representatives had significant concerns about local authorities having to potentially bid for social care contracts and the movement of staff from one contract to another. Unison explained there will then potentially be 32 contractors bidding for services, which will lead to more variance in service delivery as well as uncertainty. SPDS noted that compulsory tendering may lead to people moving from employer to employer and to multiple TUPE transfers.

9.5 The Committee heard that typically around one third of the local authority workforce are delivering social work, and as described above many staff in other services or back-room functions are connected to social work delivery. Many teams are also integrated between social care, social work, and health, making it potentially

challenging if they are to be split with some are moved into the NCS and others to Health Boards.

9.6 The Financial Memorandum accompanying the Bill calculates that there could potentially be a transfer of 75,000 social care staff away from local authorities. Witnesses suggested that uncertainty among the social care workforce was having a negative impact, with workers concerned about their future terms and conditions, and their pension arrangements. The Committee also heard evidence about the impact this could have on authorities in a number of ways, and questioned the Minister on this issue, who gave assurances that the Scottish Government does not intend to see the transfer of staff to the NCS on this scale. The Alliance noted that there is also confusion among the third sector on this point.

9.7 The Minister told the Committee that the NCS will enhance pay and conditions for workers and be an exemplar of Fair Work. He explained there is no intention to have a wholesale transfer of staff from local authorities to local care boards or to the national care service. Rather than the risk of loss of economies of scale for local government there are instead opportunities for shared services. In respect of the uncertainty that the social care workforce is currently experiencing, he clarified that if transfers were to happen the local care board would be the employer.

9.8 The Committee asks the Scottish Government to clarify as soon as possible how it intends to utilise the powers in the NCS impacting the social care workforce, which the Financial Memorandum describes as the potential transfer of around 75,000 social care staff from local authorities to the NCS. It is important to take action to allay the fears of the workforce, in order to avoid exacerbating existing challenges.

10. Impact on integration of services

10.1 The Accounts Commission highlighted the potential impact of the national care service on the integration of council services, and how joint initiatives and services such as housing services, employability, youth work and education will need to be disaggregated. Similarly, Dumfries and Galloway Council's CEO described how the council has successfully developed more community-based models, with the increased integration of services such as homelessness, housing, leisure, and financial wellbeing together with broader services that support people to be independent and healthy. East Ayrshire Council's CEO highlighted how integration should be approached from the perspective of the people using services. SOLACE's view was that the Bill will impact on integrated council services, in particular preventative services.

10.2 In contrast, organisations representing lived experience of social care told the Committee that health and social care is disjointed and the coordination of agencies is poor. The Granite Care Consortium's representative argued that the legislative route is the only one left. Age Scotland described the commissioning work by IJBs as being a 'race to the bottom' in procuring care at the cheapest price.

11. Issues for island and rural authorities

11.1 Argyll and Bute Council described the particular challenges faced by the authority in delivering services, with over 40% of the population living in very remote or rural areas. The Scottish Government has carried out an Island Communities Impact Assessment to accompany the Bill, but Argyll and Bute Council noted that it may not adequately address the position of local authorities and has shortcomings.

12. Housing and Homeless services

12.1 The Committee heard from a panel of expert witnesses on housing and homeless services. They were in agreement that reform of social care is required and explained how housing and homeless support and services are interconnected with social care. The Chartered Institute of Housing Scotland described how housing services are key to prevention, to supporting people to live independently and to improving health and wellbeing outcomes in the community. The Everyone Home Collective explained that 50% of people presenting as homeless to local councils require support and are in need of seamless care.

12.2 Concerns were raised by the Coalition of Care Providers Scotland (CCPS) about the focus of the Bill on structural change, and the lack of detail available. Everyone Home Collective described examples where culture change has been successfully delivered in Scotland without structural change, such as The Promise and the Ending Homelessness Together action plan. Both organisations highlighted the importance of co-design informing the Bill, rather than being used to shape only secondary legislation.

12.3 The Chartered Institute of Housing Associations recognised that the NCS provides an opportunity to change how partnership works, but it highlighted how their members have spent six years building relationships with Integration Joint Boards and have expressed concerns about the risks to those. They called for the importance of housing to be better reflected by being embedded in the structure of the Bill.

12.4 All In for Change's representative described the concerns of the homeless population that a divergence between care and housing and homelessness services

may reduce the support they currently receive, because services are so intrinsically linked.

12.5 In his evidence to the Committee the Minister confirmed the Scottish Government recognises the importance of the interfaces between housing and homeless services.

12.6 The Committee recommends that the Scottish Government considers how best to ensure the Bill reflects the interconnectedness of housing and homeless services with social care.

13. Conclusion

13.1 Whilst there is broad support for the principles of the NCS and recognition of the need for improvement, there is clearly uncertainty amongst stakeholders about the full implications of the powers that the NCS gives the Scottish Government and that it removes from local authorities. The use of a framework Bill has led to assumptions being made by a wide range of stakeholders which the Scottish Government describes as inaccurate.

13.2 The Committee recommends that as the Bill progresses the Scottish Government should address this through ensuring there is full transparency and improved communication of its intentions, particularly with local authorities, to build a shared understanding of the NCS. Collaboration will clearly be key to the delivery of the NCS, and there is currently the risk of damage to relations which will inhibit this. The social care workforce is particularly fragile after the past couple of years, and needs reassurance about the likely implications of the NCS.

13.3 In summary of the key points made above, the Committee would in addition highlight the following which will aid Parliament's scrutiny of the Bill:

- The need for sufficient time for scrutiny by the Scottish Parliament of secondary legislation which will provide detail of the NCS; this could include providing indicative drafts whilst the Bill progresses.
- The need for a full business case for the NCS as soon as possible.
- The need for analysis about what elements of the NCS will be delivered nationally, and which locally.
- The need for clarity about the Scottish Government's analysis that the NCS will be cost-neutral for local authorities, and its intentions regarding powers to transfer assets from authorities.

- The need for clarity about the powers in the NCS to transfer the social care workforce out of local authorities, which the Financial Memorandum describes as being around 75,000 staff.
- The importance of the Bill reflecting the close connections between social care and housing and homeless services.

Yours sincerely,

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Local Government, Housing and Planning Committee

Cc Kevin Stewart MSP, Minister for Mental Wellbeing and Social Care