

<b>Meeting of South Ayrshire Health and Social Care Partnership</b>	<b>Integration Joint Board</b>	
<b>Held on</b>	<b>14<sup>th</sup> September 2022</b>	
<b>Agenda Item:</b>	<b>10</b>	
<b>Title:</b>	<b>South Ayrshire response to Call for Views: National Care Service (Scotland) Bill</b>	
<b>Summary:</b>		
<p>The National Care Service (Scotland) Bill was laid before the Scottish Parliament on 20 June 2022. Following publication the Scottish Parliament Health, Social Care and Sport Committee has issued a Call for Views on the Bill, with submissions to be made by 2 September 2022. The attached paper summarises the response made jointly by South Ayrshire IJB and South Ayrshire Council.</p>		
<b>Author:</b>	<b>Tim Eltringham, Chief Social Work Officer/ Director of SAHSCP</b>	
<b>Recommendations:</b>		
<b>It is recommended that the Integration Joint Board:</b>		
<p>i. <b>Note the response made to the Call for Views on the Bill made by South Ayrshire IJB and South Ayrshire Council;</b></p> <p>ii. <b>retrospectively agree the submission made on behalf of the IJB which was agreed by the Chair and Vice Chair.</b></p>		
<b>Route to meeting:</b>		
<b>The contents of this paper have been discussed with the Chair and Vice Chair of the IJB.</b>		
<b>Directions:</b>		<b>Implications:</b>
1. No Directions Required <input checked="" type="checkbox"/>		Financial <input type="checkbox"/>
2. Directions to NHS Ayrshire & Arran <input type="checkbox"/>		HR <input type="checkbox"/>
3. Directions to South Ayrshire Council <input type="checkbox"/>		Legal <input type="checkbox"/>
4. Directions to both SAC & NHS <input type="checkbox"/>		Equalities <input type="checkbox"/>
		Sustainability <input type="checkbox"/>
		Policy <input type="checkbox"/>
		ICT <input type="checkbox"/>

## SOUTH AYRSHIRE IJB RESPONSE TO THE CALL FOR VIEWS ON THE NATIONAL CARE SERVICE (SCOTLAND) BILL 2022

### 1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to seek full IJB approval for the submission to the call for views made on behalf of the IJB following consultation with the Chair and Vice Chair of the IJB. The response made is attached as Appendix 1.

### 2. RECOMMENDATION

#### **2.1 It is recommended that the Integration Joint Board**

- i. Note the response made to the Call for Views on the Bill made by South Ayrshire IJB and South Ayrshire Council;**
- ii. Retrospectively agree the submission made on behalf of the IJB which was agreed by the Chair and Vice Chair.**

### 3. BACKGROUND INFORMATION

- 3.1 The Scottish Government has introduced the [National Care Service \(Scotland\) Bill](#) with the aim of improving the quality of social work and social care services in Scotland. The Bill, which was laid before Parliament on 20 June 2022, will transfer responsibility for adult social care from local authorities to a new national service and will make Scottish Ministers accountable for adult social care in Scotland.
- 3.2 The [Independent Review of Adult Social Care](#) was commissioned by the Scottish Government in September 2020, to examine how adult social care can be most effectively reformed to deliver a national approach to care and support services, including consideration of a national care service. The remit was to recommend improvements to adult social care support in Scotland, primarily in terms of the outcomes achieved by and with people who use services.
- 3.3 The review was chaired by Derek Feeley, a former Scottish Government Director General for Health and Social Care and Chief Executive of NHS Scotland and took a human-rights based approach. Mr Feeley was supported by an advisory panel of Scottish and International experts.
- 3.4 The [report of the Independent Review of Adult Social Care](#) was published on the 3 February 2021. In his foreword to the report, Mr Feeley recognised:

*“There is much about adult social care support in Scotland that is ground-breaking and worthy of celebration. The introduction of self-directed support, the integration of health and social care, and the promise of the Carers Act form*

*the scaffolding upon which to build. When we add to those foundations the commitment and compassion we saw in the workforce, the immense contribution of unpaid carers and the will to improve that we saw across the sector, many of the ingredients for improvement are in place. And of course adult social care support does not stand alone: it has deep, historical and important links to social work, with children’s services and the wider public sector.”*

- 3.5 He then goes on to say that there is unrealised potential and there is “a gap, sometimes a chasm, between the intent of that ground-breaking legislation and the lived experience of people who need support”.
- 3.6 The Independent Review believes that there are three things that must change in order to secure better outcomes – Shift the Paradigm; Strengthen the Foundations and Redesign the System. The report sets out a vision for a new system, including proposals for a National Care Service. There are a total of 53 recommendations across a number of key areas, including:
- A human rights based approach
  - Unpaid carers
  - The case for a national care service
  - A National Care Service for Scotland – how it should work
  - A new approach to improving outcomes – closing the implementation gap, a new system for managing quality
  - Models of Care
  - Commissioning for Public Good
  - Fair Work
  - Finance
- 3.7 Following the publication of the report, the Scottish Government confirmed that it was committed to implementing the recommendations of the Independent Review and on 9 August 2021 published a [consultation document](#) setting out its proposals for delivering social care in Scotland. Responses to the consultation were invited by 2 November 2021.
- 3.8 The Scottish Government received 1,291 responses and published an [analysis of the responses](#) received on 10 February 2022. The Scottish Government [reported](#) that 72% of those responding agreed that the Scottish Government should be accountable for the delivery of social care through a National Care Service and while it was noted that responses highlighted the risks which could emerge from such significant reform, the need for change was a key theme.
- 3.9 In commenting on the proposals, [COSLA](#) highlighted the significant concerns raised with regards to the consultation process and the way in which responses were characterised. In particular, it was noted that organisations such as COSLA and its member local authorities were weighted as single responses. Concerns were also raised regarding the lack of detail regarding cost of a National Care Service and how it will be funded.

## 4. REPORT

### 4.1 NATIONAL CARE SERVICE (SCOTLAND) BILL

4.1.1 The [National Care Service \(Scotland\) Bill](#) was laid before Parliament on 20 June 2022 and will make Scottish Ministers accountable for adult social care in Scotland.

4.1.2 The Bill allows Scottish Ministers to transfer social care responsibility from local authorities to a new national service. This could include adult and children's services, as well as areas such as justice social work. Scottish Ministers will also be able to transfer healthcare functions from the NHS to the proposed National Care Service.

4.1.3 The [Explanatory Notes to the Bill](#) explain that the Bill is divided into the following parts:

- **Part 1** establishes the National Care Service. It makes the Scottish Ministers responsible for organising the National Care Service, enables them to establish new public institutions called care boards to comprise the National Care Service and gives Ministers power to make regulations transferring health and social care functions to the institutions comprising the National Care Service;
- Part 2 gives the Scottish Ministers' powers to make records about people's health and social care more consistent and better integrated.
- Part 3 contains modifications to existing laws relating to the provision and regulation of care;
- Part 4 contains provisions usually found at the end of a Bill, namely the power to make ancillary regulations, further elaboration in relation to regulation-making powers elsewhere in the Bill and the sections dealing with commencement and short title.

4.1.4 Alongside the Bill and the Explanatory Notes, the Scottish Government has also published:

- [Policy Memorandum](#) – detailing why the Bill is being introduced;
- [Financial Memorandum](#) – detailing how much the Bill is likely to cost;
- [Delegated Powers Memorandum](#) – providing information on the powers the Bill gives the Scottish Ministers and others to make “secondary legislation” (usually regulations) and to the Scottish Ministers (such as to make guidance);
- [Statements on Legislative Competence](#) – providing statements on whether the Parliament has the power to make the changes to the law as proposed by the Bill.

4.1.5 In addition, the Scottish Government has published a [Statement of Benefits](#), along with key sources of information and impact assessments, all of which can be accessed in various formats on the [Scottish Government website](#).

4.1.6 The Scottish Government is committed to establishing the National Care Service by the end of this Parliamentary Term (2025/2026). The Bill is currently at Stage 1 (General Principles) of the legislative process. At this stage, the Bill is given to a Lead Committee, whose remit most closely relates to the subject of the Bill. Other committees can also look at the Bill and will report to the Lead Committee.

4.1.7 The Lead Committee is responsible for examining the Bill. It hears from experts, organisations, and members of the public about what the Bill would do. It then writes a report about what it has heard and giving its own view of the Bill. This Stage 1 report usually makes a recommendation about whether the Parliament should support the main purpose of the Bill. The Parliament then debates the Bill and decides whether it should go on to Stage 2 or be rejected.

## **4.2 HEALTH, SOCIAL CARE AND SPORT COMMITTEE CALL FOR VIEWS**

4.2.1 The Scottish Parliament's Health, Social Care and Sport Committee is the Lead Committee for the National Care Service (Scotland) Bill. It is looking at the details of the proposals and has issued a ['Call for Views'](#) to help them think about ways that could improve the proposed law and whether the draft Bill should be passed into law by the Scottish Parliament.

4.2.2 The 'Call for Views' includes a number of general questions on the Bill, questions about the Financial Memorandum and questions about the specific provisions of the Bill. Respondents are invited to complete the parts of the consultation that are of most.

4.2.3 Members of the Integration Joint Board will find attached at Appendix 1, the response which has been made in respect of the call for views. This response was agreed by the Chair and Vice Chair of the IJB. It is recommended IJB members endorse the response made on their behalf.

## **4.3 FINANCIAL / POLICY / LEGAL / COMMUNITY PLAN / STRATEGIC PLAN / CLIMATE CHANGE / EQUALITIES / RISK IMPLICATIONS**

4.3.1 This is one of the most significant pieces of public service reform that has been seen in Scotland for many years.

4.3.2 While there are no financial, policy, legal, community plan, strategic plan, climate change, equalities or risk implications as a result of the recommendations made within this report, there will be very significant implications for our staff, our communities and the wider public sector as the Bill is progressed and enacted.

4.3.3 At a local level the Council and NHS Ayrshire and Arran have been ambitious in delivery of Integrated Health and Social Care through an Integration Scheme agreed in 2014 to establish our Integration Joint Board that includes delegation of not only the required Adult services but is also comprehensive with health and care services for Children and Justice.

4.3.4 The Integration Joint Board is integral to our Community Planning Partnership and oversight of the Alcohol and Drug Partnership.

4.3.5 Our partnerships in wellbeing go beyond the Health and Care Sectors with Housing, Education, Leisure and our support services of Human Resources, Finance and Legal all integral. This is further underpinned by strong partnerships and relationships within the voluntary, third and independent sectors.

4.3.6 This ambition and collaboration has served us well, and is recognised as being a positive example of Integration providing better health and care outcomes.

## **5. STRATEGIC CONTEXT**

5.1 The contents of the paper respond to Scottish Government legislation. The impact of the legislation on the IJB strategic intentions is unclear given the limited detail available at this stage.

## **6. IMPLICATIONS**

### **6.1 Financial Implications**

6.1.1 There are no financial implications in relation to this report.

### **6.2 Human Resource Implications**

6.2.1 There are no human resources implications in relation to this report.

### **6.3 Legal Implications**

6.3.1 There are no legal implications in relation to this report.

### **6.4 Equalities implications**

6.4.1 Given the content of the report, there is no requirement for an Equalities Outcome Assessment.

### **6.5 Sustainability implications**

6.5.1 There are no sustainability implications in relation to this report.

### **6.6 Clinical/professional assessment**

6.6.1 The report does not impact directly on clinical and professional activity.

## **7. CONSULTATION AND PARTNERSHIP WORKING**

7.1 The subject of the report was subjected to consultation with the Chair and Vice Chair of South Ayrshire IJB.

## **8. RISK ASSESSMENT**

8.1. A submission has been made in respect of the call for views following consultation with the Chair and Vice Chair. A rejection of the recommendations would risk reputational damage for the IJB.

### **REPORT AUTHOR AND PERSON TO CONTACT**

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### **BACKGROUND PAPERS**

5 September 2022

## Appendix 1

### SCOTTISH PARLIAMENT HEALTH, SOCIAL CARE AND SPORT COMMITTEE

#### NATIONAL CARE SERVICE (SCOTLAND) BILL: CALL FOR VIEWS

#### **Joint Response by South Ayrshire Council and South Ayrshire Integration Joint Board**

#### INTRODUCTION

1. South Ayrshire Council and South Ayrshire Integration Joint Board welcome the opportunity to provide a joint written submission to the Health, Social Care and Sport Committee's Call for Views on the National Care Service (Scotland) Bill.
2. In South Ayrshire we have a strong track record of partnership working and of embracing and delivering significant strategic change to ensure better outcomes for those we serve. As a Community Planning Partnership, we have a shared commitment to partnership working and can evidence effective and successful collaborative working in the design, delivery and integration of services.
3. It was on this basis that we embraced the opportunities for Integration of Health and Social Care offered by the Public Bodies (Joint Working) Scotland Act 2014. Our comments within this consultation response demonstrate that we remain committed to supporting better outcomes for our communities through locally integrated person-centred service provision.
4. Services delegated to South Ayrshire Integration Joint Board, by the Council and NHS Ayrshire and Arran, go beyond legislative requirements and include: children and young people's social work and health services; justice social work and health services; and Alcohol and Drug Partnership.
5. South Ayrshire Health and Social Care Partnership has in the region of 2,000 employees. Every day our teams are delivering person centred care to our most vulnerable residents and they do so with kindness, dedication and compassion. There is a commitment to continuous improvement and we can point to many excellent examples of innovative and ambitious service design and delivery.
6. Our Care at Home service is a central element of social care and in the wider care system, which supports people to live independently and safely in their own homes.



7. Our Care at Home service played a critical role in our overall local response to the pandemic in protecting the wellbeing of over 1,800 residents, while being required to work differently during very challenging operational circumstances.

## GENERAL QUESTIONS

**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?**

8. We welcome the ambition to improve the delivery of social care services across Scotland and support many of the recommendations of the Feeley report. However, it is the our strongly held view that the proposals put forward within the Bill could have fundamental and unintended consequences for our communities and our workforce and could cause considerable disruption to the excellent work we are already leading.
9. The scope of the National Care Service goes far beyond the consideration and recommendations of the Feeley Review and proposes that all duties and responsibilities for social work and adult and children and families’ social care services should be included.
10. We believe that local decision making and accountability, through existing and emerging local relationships and partnerships, ensures pace and flexibility, aligned to our local priorities and we are concerned that the proposals made would lead to an erosion of local accountability and democracy.
11. We believe that the proposed structural changes and centralisation of accountability, present significant risks to the services we currently deliver and have the potential to result in negative impacts on our communities and those we serve.
12. No consideration has been given to the cumulative impact, on local government and NHS, of proposals for reform being advanced by the Scottish Government.
13. The proposals outlined would see Integration Joint Boards cease to be and the introduction of Community Health and Social Care Boards. However, it is still not clear what these Boards would look like, how they would function, and indeed how membership of the Boards will be populated.
14. We believe that there are still too many questions and unknown factors for the

consultation to be one which is fully informed. There is no assessment of potential whole public service impact and it is not clear how the changes proposed would address the issues highlighted. There is also a significant possibility that any transitional arrangements would risk a reduction in the quality of services currently being delivered, in areas such as South Ayrshire, as well as a disintegration of mature, strong partnership working and delivery models.

15. The policy memorandum readily dismisses options for improvement within current governance arrangements. This ignores evidence of improvement over many years with the shift from institutional care to the provision of care to people living at home or homely environments. This is not to dismiss the ambition for continual improvement, it is to evidence that this has and can be achieved without dismantling the arrangements that have delivered change.
16. We have come a long way under current arrangements. It is repeatedly stated in the policy memorandum that transferring accountability for social care, social work and community health to Scottish Ministers and centralising powers will deliver consistency and improve user experience. However, it is not clear how this will be delivered nor is it evidenced in other centrally directed organisations where significant variation, for instance across acute health systems continues.
17. It is clear that there is political will both at local and national level to improve the experience of users of social work and social care services. The considerations are how this is to be achieved both effectively and sustainably.

**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?**

18. The ambition to improve quality and consistency in standards of care is welcomed and is an ambition that we share. Further, we recognise that national standards and approaches can have an important role to play in driving improvement, and a National Care Service can provide a leadership role in delivering this. However, we are concerned that a national 'one size fits all' approach would fail to adequately reflect and meet the needs of different areas and populations and further, that precious resources would be focused on quality improvement structures, at the expense of service delivery.
19. We believe that local decision making and accountability, through existing and emerging local relationships and partnerships, ensures pace and flexibility, aligned to our local priorities and we are concerned that the proposals made would lead to an erosion of local accountability and democracy.
20. We recognise that a National Care Service can provide a leadership role and believe that national standards and approaches can have an important role to

play in driving improvement.

- 21.** In addition, we support the principles of a person-centred, human rights approach, ethical commissioning and procurement, fair work, education, training and professional standards for the health and social care workforce.
- 22.** We are particularly concerned that the case for a National Care Service has been made on the basis that in some areas, integration has been less successful and that collaborative leadership, financial planning and commissioning have not been well developed, and that centralising accountability will remedy this situation. This is not our experience in South Ayrshire. We have continued strong performance across the full remit of services included in the scope of the South Ayrshire Integration Joint Board. Through our innovative use of financial reserves and Transformation Programme we have invested in an early intervention and prevention approach across sectors to prevent admissions to hospital and to support people in communities.
- 23.** It is acknowledged that South Ayrshire has experienced higher levels of delayed transfers of care than other HSCPs over recent years. It is important to note, however, that this is not a consequence of any failure by all stakeholders to work collaboratively together. The impact of demography and the “dependency ratio” is a significant factor in balancing demand and service provision in South Ayrshire. We are concerned that the National Care Service is unlikely to provide the answer to issues in relation to delayed transfers of care. We would wish to continue to have the flexibility to identify and invest in areas of improvement and have the established relationships and partnerships to make this happen.
- 24.** In many areas South Ayrshire HSCP has demonstrated high levels of performance resulting from integrated working. Learning Disability, Mental Health and Alcohol and Drugs Services are performing well in South Ayrshire with very high levels of local community engagement facilitated by the current HSCP/IJB structures. For Mental Health Services in particular, the development of locally managed community services has seen a very significant fall in the utilisation of beds by adult services.
- 25.** The decision by South Ayrshire to delegate all of the social work service within the IJB recognises the whole family approach to providing support and care. South Ayrshire has continued strong performance with the full remit of services included in IJB scope, including children’s and justice services. Children’s services are performing well with high levels of engagement with local communities and Education Services. This was considered carefully at the point of integration and reflected our local structures, based on local decision making, close to families and effective relationships.
- 26.** In our local circumstances we would wish to see continued inclusion of our

children's and justice services within integration arrangements BUT this is on the premise of local accountability within wider integrated and mutually supportive partnerships.

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

27. We are disappointed that there is no reflection on areas where integration has worked well or where current arrangements, legislation and structures could be used to support and drive further improvement.
28. The Independent Review of Adult Social Care recognised that there are many strengths within the system of social care and that "...recent changes across health and social care have produced improvements, especially in some parts of the country, but there is much more to be done." In South Ayrshire, we can point to positive outcomes for people across all age groups and care sectors, through using a truly human rights approach and we are well placed to further build on this, within our local arrangements.
29. We are particularly concerned at the centralisation of decision-making in relation to local service provision. We already have a range of performance standards and inspection and regulation arrangements are intended to ensure as uniform an offer by public services to the citizens of Scotland as is possible given local circumstances. The centralisation of decision-making seems unlikely in our view to tackle local labour supply shortages which are a consequence of local demography. Giving local partners the necessary funding resources within the current structural arrangements, rooted in localism, is far more likely in our view to achieve a step change for citizens.
30. We are concerned that there is too great a focus in the proposals on structural change. There seems to be little evidence that this costly and bureaucratic approach will improve the experience of citizens. To date there is no clarity within the proposals on geography, structure, process of appointment, or membership of the the new Care Boards. We are are concerned that the proposals will overshadow and delay important work to deliver high quality services and better outcomes. There should be a focus on improvement and in ensuring that resources are directed to where need is identified within the context of local Community Planning arrangements which in South Ayrshire are currently have real momentum

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

31. There is no reflection on areas where integration has worked well or where current arrangements, legislation and structures could be used to support and drive further improvement. In South Ayrshire, we can point to positive outcomes for people across all age groups and care sectors, through using a truly human rights approach and we are well placed to further build on this,

within our local arrangements.

- 32.** There are serious omissions in the Bill, not least recognition of the local government workforce, the role of the Chief Social Work Officer, the importance of arrangements within Community Planning Partnerships, critical links to other service areas, including health, education and housing, pension fund arrangements, TUPE implications, collective bargaining implications, the costs associated with moving to a National Care Service on the scale proposed or the impact on existing legislation, for example the Social Work Scotland Act 1968.
- 33.** There is no clarity on how the reform agenda that is proposed will support the achievement of the ambition and aspiration as set out in The Promise for our children and those who have experienced care. There is a risk that without careful consideration, the new national care service may lead to unintended consequences around achieving the 10 year change agenda as set out in The Promise.
- 34.** We are also concerned that the role of the Chief Social Work Officer has not been considered. This role is crucial to ensuring professional oversight of social work practice and service delivery. This includes professional governance, leadership and accountability for the delivery of social work and social care services, whether provided by the local authority or purchased through the third sector or independent sector. This is a role that is set out in statute.
- 35.** The ambition to drive improvement and more personalised care within the care sector will require additional resources and this may be a disincentive to the independent sector. There is no indication of how a National Care Service would drive quality improvement in care homes, ensuring that quality and standards come before profit.
- 36.** Social work services hold extensive statutory responsibilities in respect of public protection in Scotland. These duties and powers are not exercised solely within a social care setting, but rather across multiple local organisational boundaries and settings.
- 37.** It is our experience that the local authority has taken a lead role in all of the public protection arrangements and by delegation, the largest part is supported by social work through SAHSCP. Our public protection processes reflect highly complex, mature, integrated multi-agency arrangements with nuanced local adaptations and variations commensurate with need and fluctuating demand.
- 38.** Any structural changes to our social work and social care services on this scale risks undoing local arrangements and this has to be mitigated and

carefully worked through. Specific designated statutory roles like CSWO, Child Protection lead professional, Council Officer, Supervising Social Worker and MHO need careful consideration within this proposal, as well as prescribed employer status which is currently the local authority. Additionally, the role of Child and Adult Protection Committees (each with independent Chairs), MAPPA Strategic Oversight Groups and Violence Against Women Partnerships also needs to be considered within the NCS proposals as current arrangements are well established and work well.

39. By definition, with the transfer of accountability for Social Work Services, the NCS would absorb most of the operational side of existing public protection arrangements. However, there are numerous roles and arrangements essential for public protection which sit elsewhere – for example in local Councils, HSCPs, Committee structures, Chief Officer Groups, Women’s organisations, prisons, Police Scotland and the third sector.
40. NCS proposals need to be clearer about public protection governance in order to safeguard and support the existing local arrangements, in order not to increase the risks to vulnerable people. Within this, the employing organisation for social workers and other professionals with prescribed statutory roles in relation to public protection will need careful scrutiny and legislative change.

**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?**

41. The framework nature of the Bill is such that it is not possible to assess if it will meet the aims of the policy objectives, the stated vision for the National Care Service (NCS) or the recommendations of the Independent review of adult social care (IRASC).
42. Within the proposals there is limited analysis of why the current system does not meet people’s aspirations, and therefore there is a risk that structural change, whilst introducing risk over both at present and in future years, will do little to address this.

**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?**

43. No consideration has been given to the cumulative impact, on local government and NHS, of proposals for reform being advanced by the Scottish

Government. The proposals outlined would see Integration Joint Boards cease to be and the introduction of Community Health and Social Care Boards. However, it is still not clear what these Boards would look like, how they would function, and indeed how membership of the Boards will be populated.

44. There is no assessment of potential whole public service impact and it is not clear how the changes proposed would address the issues highlighted. There is also a significant possibility that any transitional arrangements would risk a reduction in the quality of services currently being delivered, in areas such as South Ayrshire, as well as a disintegration of mature, strong partnership working and delivery models.
45. We are concerned that the proposals as they stand fundamentally undermine long-standing shared principles that seek to strike a balance between national policy direction, responsiveness to local need and democratic accountability to the local population for delivery.
46. Local authorities have a solid reputation nationally for improvement activity that is strongly linked to lived experience within more rural communities. This is evidenced through Accounts Commission Best Value Assurance Reports. The centralisation of services presents a real risk that local need, local context and local initiatives could be lost.

**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?**

47. To deliver on the Statement of Benefits and particularly the investment referred to in the principles will require significantly more resource than Health and Social Care Partnerships have had to date. We therefore welcome the intended investment in social work / social care by the Scottish Government.
48. However, we strongly believe that additional resources should be directed towards delivering personalised care and support, joint early intervention and prevention approaches, in local communities, not towards structural change.
49. The establishment of the proposals for a National Care Service in respect of workforce requires further definition. The implications of national pay and terms and conditions will require significant investment to bring all social care workers to an equal position in respect of not only pay but also terms and conditions including pension rights.

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

- **Equality Impact Assessment**
- **Business and Regulatory Impact Assessment**
- **Child Rights and Wellbeing Impact Assessment**
- **Data Protection Impact Assessment**
- **Fairer Scotland Duty Assessment**
- **Island Communities Impact Assessment**

**50.** The range of impact assessments accompanying the Bill will assist in identifying, predicting, and evaluating the environmental, health, social and economic impacts of the proposals and where further amendment is required.

**51.** It is important that in being asked to approve the Bill, that the Scottish Parliament has a full understanding of the impact of the Bill on any stakeholder whose functions are impacted either directly or indirectly. At a minimum, this should include the impact to health boards, local authorities and health and social care partnerships who are likely to be the most impacted by the Bill. There is also no analysis of the impact on the workforce and the market.

**52.** Key considerations should also include the views of people who use health and social care services and their carers and opportunities for wider public engagement on proposals.

### **Financial Memorandum Questions**

**53.** In our response to the Scottish Government National Care Service Consultation of 9 August – 2 November 2021, we highlighted our concerns regarding the lack of information in respect of costs associated with moving to a National Care Service for Scotland.

**54.** The Independent Review of Adult Social Care estimated a total additional expenditure of £0.66bn per annum, based on the recommendations made. It is worth noting that this relates only to adult social care. The proposed scope of the National Care Service is wider and the funding required will be substantially higher. We strongly believe that additional resources should be directed towards delivering personalised, early intervention and prevention approaches, in local communities, not towards structural change.

**55.** In addition, we set out in detail our views on the potential financial implications and provide a copy of those comments, as follows:



- a) One of the main barriers recognised by Audit Scotland in their 2018 report on progress with integration, has been the overly complicated and time consuming approach to IJB budgeting, as laid out in the Public Bodies (Joint Working) (Scotland) Act 2014. In addition, the complexity around ‘set aside’ budgets has to be negotiated. There is no evidence to support this process has assisted in facilitating integration.
- b) The financial implications of the proposals are likely to be significant and are not addressed within the document. With the establishment of the IJB it has become necessary to develop and augment the support services provided through integration partners including additional management and delivery functions. It is anticipated that dismantling and separating IJBs and HSCPs and the subsequent creation of a National Care Service and CHSCBs would result in additional costs both in administration and support services.
- c) The creation of a separate national body comprised of local social services, previously located within councils, will cause dramatic and substantial structural change within local government and have the potential to cause financial shocks as budgets and contributions are disaggregated.
- d) In 2021/22 the Council’s contribution to social care was £80.197m, which was the Council’s second largest service budget consuming 28% of the Councils overall budget. It has been previously calculated that 48% of NHS Ayrshire and Arran’s budget is delegated to the three Ayrshire IJB’s. These allocations do not currently take into account the full costs, as property costs are not included in the health and social care budget. More importantly, the cost from the host of subsidiary support services, for example, Legal, Procurement and Finance & ICT and other services which are utilised by the IJB, to support and advance the aims and objectives of the partnership, are also not included and would require to be passed to the new body when the disaggregation of budgets takes place.
- e) The importance of strong financial leadership cannot be understated if we are to deliver integrated services which meet the needs of the people of Scotland. The Section 95 officer must be a dedicated role to support the Board. Currently there are various models of role, varying from those in a dedicated role with a well-resourced finance team to individuals with dual roles and a lack of support. Any change must enhance the role and learn from the varied approach taken to date. To ensure consistency and that the most effective approach is implemented it is essential legislation is clear. This reflects the recommendation of the Ministerial Strategic Group for Health and Community Care in their 2019 final report which stated Section 95 officers must have adequate staff and resources to ensure delivery of their role in providing high quality financial support to the IJB.
- f) This movement of budgets and funding will be significant, and will reduce both the Council and NHS Board’s budget, meaning that the remaining lower budget will need to bear the full brunt of any future reductions in grant funding. There is an increased likelihood that the changes around budgets and funding could lead to financial sustainability risks for local government, NHS Boards and the new CHSCBs. There is also no indication of what responsibility the new Boards would have in terms of capital budgets.
- g) During the transition period there is a risk that capital investment required

in HSCP services, may be paused or stopped awaiting the outcome of transfer to NCS. It is essential that steps are taken now to maintain financial stability for IJB's including explicit directions of financial allocations to be passed on to IJB's, clear guidance during the transition period on continuation of capital investment. Also savings requirements should be in a proportion to partner organization savings and not disproportionate to health and social care budgets.

- h) It is evident from the report that the CHSCBs will require additional funding in order to deliver the recommendations that have been agreed in full by the Scottish Government. These include, but are not limited to, costs around the delivery of fair work, the removal of community care charges and the increase funding for free personal care. It is unclear at this time how this additional funding will be provided and whether this will also impact on the level of funding provided to other elements of the public sector.
- i) Currently IJBs receive funding through delegated budgets from Health Boards and Local Authorities with the consultation proposal to provide direct funding from NCS. There are a number of implications which are not fully explored including; removal from the Local Authority in relation to their statutory responsibility and the new mechanism for direct funding allocations.
- j) The VAT status would also need to be addressed and this is a crucially important area requiring the legal status of the new CHSCB's to be clearly defined in statute to ensure that the new body can have the VAT status currently afforded to local government. In order to ensure direct funding works, the current set aside arrangements would need to be resolved, particularly where an acute hospital serves in multiple CHSCB areas.

**56.** We would also want to add to this that Local authorities cannot absorb any additional costs that arise because of the introduction of the Bill. If Scottish Ministers wish to progress this policy, they need to resource it adequately, if they are to succeed in their intentions.

## QUESTIONS ON SPECIFIC PROVISIONS

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

- **Whether you agree with the 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?**

### **Part 1 – The National Care Service**

#### **Part 1, Chapter 1 – The Principles and Institutions of the National Care Service**

## **Section 1 – National Care Service Principles**

- 57.** The principles set out in section 1 of the Bill in respect of Community Health and Social Care are welcome. However, as set out elsewhere in this response, with appropriate investment we believe these principles could be achieved with more proportionate legislative measures.
- 58.** The proposals in the Bill must build on the foundations of successful Health and Social Care Partnership Integration, particularly recognising the importance of local leadership and operational management in making integration successful.
- 59.** The ambition to improve quality and consistency in standards of care is welcomed and is an ambition that we share. Further, we recognise that national standards and approaches can have an important role to play in driving improvement, and a National Care Service can provide a leadership role in delivering this. However, we are concerned that a national ‘one size fits all’ approach would fail to adequately reflect and meet the needs of different areas and populations and further, that precious resources would be focused on quality improvement structures, at the expense of service delivery.

## **Sections 2 and 3 – Responsibility for the National Care Service and for Improvements**

- 60.** The proposals within the Bill effectively centralise accountability with ministers and in so doing remove local accountability to communities through local Councils and NHS Boards. This top down one size fits all approach does not take into account the knowledge and expertise of local communities.
- 61.** The centralisation of control and accountability of social care and separation from local partnerships within housing, leisure and education, risks the very outcomes that the Bill aspires to. Furthermore, the impact of centralisation of accountability of public protection functions of Adult protection, Child Protection, MAPPA, Alcohol and Drugs, Violence Against Women, effectively diminishes the role of Councils on Public protection Chief Officer Groups and directs this accountability to Ministers.
- 62.** The proposals fail to acknowledge the powers IJBs have in relation to utilising Directions to commission and contract services through existing arrangements. It is unclear how the proposed changes in relation to contracts would achieve improved outcomes.

## **Sections 4 and 5 – Establishment and abolition of Care Boards and Financial Assistance for Care Boards**

63. In respect of Care Boards the Bill does not indicate the number of Care Boards, the geographic area served or the scope. There is no requirement for Scottish Ministers to consult with local communities on such matters.
64. Proposals should align with local government boundaries to ensure a genuinely local focus. Any aggregated geography above this level is not meaningful to local people or communities and will weaken local community planning.
65. If Care Boards were to be aligned with NHS Boards, this would have serious implications for local authorities in progressing links between schools and Children’s Services in terms of supporting vulnerable children in early years and schools and also housing, homelessness services in relation to older people, mental health and addiction services.

### **Part 1, Chapter 2 – Strategic Planning**

#### **Section 6 – Strategic Planning by the Scottish Ministers and Sections 7, 8 and 9 – Care Boards Strategic Planning, Planning Process and Frequency**

66. The continuity of the local Strategic Planning function from the Public Bodies Act is welcome. It is noted that previously the accountability of the IJB for Strategic Planning was to local communities through a statutory Strategic Planning Group, Local councils and NHS Board. In the new arrangements the Care Boards, although required to consult with CPPs, will have sole accountability to Scottish ministers.
67. It is our view that all strategic planning and ethical commissioning should be required to align with Local Outcome Improvement Plans and where possible, strategic planning should be streamlined to avoid duplication.

#### **Section 10 – Meaning of Ethical Commissioning Strategy**

68. Health and Social Care Partnerships already have commissioning approaches which are person-centred, rights-based and which deliver on the aims within Strategic Plans.
69. The narrative in respect ethical commissioning through the National Care Service is positive and further clarity of a National Structure of Standards and Processes will, we presume, provide clarity on the actual ability of local care boards to develop ethical commissioning strategies as a balance between once for Scotland direction for the Scottish Ministers.

## **Part 1, Chapter 3 – Information and Support**

### **Sections 11 and 12 – National Care Service Charter**

70. We welcome the commitment to produce a Charter of Rights and Responsibilities which must be reviewed every 5 years and make publicly available. However, we feel that a Charter could be established within existing legislative and operational arrangements.

### **Section 13 – Independent Advocacy**

71. The intentions toward independent advocacy services within the Bill are very welcome. Locally, the South Ayrshire Advocacy Service provides a free, independent advocacy service, which helps people to make informed choices about their own care and support and to have as much control as possible over their own lives. The provision of independent advocacy services in connection with the services that the National Care Service provides will be important.

### **Sections 14 and 15 – Dealing with complaints**

72. Complaints processes should focus on improvements and conflict resolution, to ensure that issues are addressed timeously at a local level.

73. We agree that when things do not go well, people should know how they can complain and should be assured that there are effective systems to make sure that things are put right.

74. We would also highlight that an unintended consequence of the disaggregation of Health and Social Care Partnerships may be that it is harder to get a response to a complaint when care is provided across agencies, with elements of national and local delivery and direction.

75. In terms of social care, local elected members who know communities and often individuals, are often approached to progress complaints and enquiries. As set out, it is understood this local connection would be lost and replaced by a centralised model.

## **Part 1, Chapter 4 – Scottish Ministers’ Powers to Intervene**

## **Sections 16, 17, 18, 19 – Powers in Relation to Care Boards and Sections 20,21 and 22 - Powers to Intervene with Contractors**

76. We are concerned that the creation of Community Health and Social Care Boards would separate the reformed Boards from their integration partners, NHS Board and Council, dismantling the Health and Social Care Partnership and the broader commissioned workforce who deliver alongside the Health and Social Care Partnership.
77. In respect of Care Boards there is no clarity on the number of Care Boards, the geographic area served or the scope. There is no requirement for Scottish Ministers to consult with local communities on such matters.
78. In relation to membership, we would welcome a broad representation to reflect the range of interest in and contribution to health and social care, including people with lived experience and their families/carers.
79. It is further noted that, in principle, it would be possible for Scottish Ministers to remove an elected member on a Care Board. Although it is acknowledged that this would not adversely impact the person's membership of their respective Council, it does call into question the principle of subsidiarity if a democratically elected member, appointed by their Council, is removed from that body by a Scottish Minister.

## **Part 1, Chapter 5 – Functions Connected to the Provision of Care**

### **Sections 23, 24, 25 and 26 – Research, Training, Support for Other Activities and Compulsory Purchase**

80. The functions connected to the provision of care, defined as Research, Training, Support for Other Activities and Compulsory Purchase are significant and far-reaching and confirm direct role of Scottish Ministers in the provision of care.
81. The establishment of a National Social Work Agency that has a focus on education, improvement, national workforce planning, training and development is welcome.
82. It is noted that the proposals are intended to deliver consistency in pay and gradings and in terms and conditions for social work. If there is to be no detriment to current employees, this will require significant investment, not only in pay but also in capacity of the profession to bring uniformity to the sector. Numbers of social workers / 100k population ranges at present from approx. 60 to 150+.

83. This reflects that social work exists in localities as part of local systems; to make changes in one part can influence the equilibrium of the system.

### **Part 1, Chapter 6 – Allocation of Care Functions**

#### **Sections 27, 28 and 29 – Powers to transfer functions from local authorities, aspects of health care and to re-organise the National Care Service**

84. The model of framework legislation results in significant uncertainty in the Health and Social Care system. The powers conferred through the legislation Chapter 6 (including section 31 and 32) are by negative procedure.
85. Thought needs to be given to where council owned/registered regulated services will sit, including fostering, adoption and local authority children's homes. It is not clear whether these services would also move to the National Care Service or be commissioned from the local authority.
86. From a local authority perspective this effectively means Ministers can transfer staff and property etc. from Local Government to a new centralised NCS. This presents a risk that there will be a reluctance to invest in these areas over the next 4+ years until there is a transfer.

#### **Section 30 – Consultation before bringing children's and justice services into the National Care Service**

87. The decision by South Ayrshire to delegate all of the social work service within the IJB recognises the whole family approach to providing support and care. South Ayrshire has continued strong performance with the full remit of services included in IJB scope, including children's and justice services.
88. This was considered carefully at the point of integration and reflected our local structures, based on local decision making, close to families and effective relationships.
89. In our local circumstances we would wish to see continued inclusion of our children's and justice services within integration arrangements BUT this is on the premise of local accountability within wider integrated and mutually supportive partnerships.
90. Within South Ayrshire community planning arrangements we have a commitment to delivering together, which is expressed in our Children and Young Peoples Services Plan, with a highly effective Children and Young People's Strategic Partnership in place since 2015. We believe that local decision making and accountability, through existing and emerging local

relationships and partnerships, ensures pace and flexibility, aligned to our local priorities.

### **Sections 31, 32 and 33 – Transfers of staff, property and liabilities and interpretation of expressions about functional transfers**

91. The powers conferred through the legislation Chapter 6 (including section 31 and 32) are by negative procedure. From a local authority perspective we understand that this effectively means Ministers can transfer staff and property, etc. from Local Government to the new centralised National Care Service. This presents
- a risk that there will be a reluctance to invest in these areas over the next 4+ years until there is a transfer, particularly where there is a legacy cost to the Council.

### **Part 1, Chapter 7 – Final Provisions for Part 1**

#### **Sections 34 and 35 – Consequential Modifications and Interpretation of Part 1**

92. Schedule 4 refers specifically to modifications to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947, Local Government (Scotland) Act 1973 and the Public Services Reform (Scotland) Act 2010, which illustrates the significant and far-reaching implications of this legislation.

### **Part 2 – Health and Social Care Information**

#### **Sections 36 and 37 – Care Records and Information Standard**

93. People requiring care should not have to tell their story numerous times. A nationally consistent, integrated and accessible electronic record would facilitate improved information sharing and usage between partners, which could contribute to various positive outcomes, both for the individual and organisations, including more seamless and improved patient pathway experiences, more effective service delivery and improved resources efficiency.
94. Integrated social care and health records has been a key ambition for many years, however, the transition process required from one system to another is significant and can be extremely challenging and resource intensive. Often, during such transition programmes data/information voids may emerge which may increase the risk to an individual of their needs not being attended in a timely manner, or at all.



### **Part 3 – Reforms Connected to Delivery and Regulation of Care**

#### **Sections 38 and 39 – Rights to Breaks for Carers**

95. It is critical to provide greater recognition and support for unpaid carers. We agree that carers need to be supported and to have their differing needs recognised, as individuals. A standard ‘one size fits all’ approach however, cannot be truly person-centred and breaks from caring should recognise personal needs and preferences.
96. It is important that carers have the right to choose the type of break they need, to ensure that they have sufficient rest and support to enable them to continue their vital caring role. It is also right that there should be different access points, through public services and the third and independent sectors.
97. The proposed model will need the capacity and ability to provide bespoke breaks or a cash sum, based on an assessment of personal needs.

#### **Section 40 – Visits to or by care home residents**

98. It is important to recognise that care homes are individual’s homes and there is a need to guard against reducing them to clinical settings. The introduction of Anne’s Law reflects that this overly clinical focus in care settings can have a negative impact as an unintended consequence of reducing risk and safeguarding.
99. Decisions regarding visits, with full cognisance of human rights, should be made locally, based on local circumstances and advice from professionals.

#### **Section 41 – Reserving right to participate in procurement by type of organisation**

100. The proposals fail to acknowledge the powers IJBs have in relation to utilising Directions to commission and contract services through existing arrangements. It is unclear how the proposed changes in relation to contracts would achieve improved outcomes.
101. Further clarity is required on the balance between local and national commissioning and what ‘overseeing’ local commissioning would mean in practice.
102. There is a concern on the prominence of national commissioning and the adverse impact upon local flexibility in procuring services, local employability

and third sector local provision.

## **Sections 42 and 43 – Cancellation of care service registration and assistance in inspections by Healthcare Improvement Scotland**

- 103.** We welcome and agree with the focus on regulation and scrutiny and recognise that this can help to secure consistent and high standards. We also agree that regulation should be undertaken independently. However, we believe that national standards can be set and scrutinised, without the need for structural change.
- 104.** Any implementation of powers to cancel the registration of a care service should involve the relevant Care Board. Currently, the Local Authority would act as provider of last resort. In the proposed arrangements, Councils would, where engaged, be redesignated as ‘provider’ status and we would then understand this duty will move to the Care Boards.
- 105.** There are concerns around the ability of the Care Inspectorate to move directly to proposing to cancel a care service’s registration without first issuing an improvement notice. Further clarity on the circumstances that would lead to such action and the intended support available is required.

## **Part 4 – Final Provisions**

- 106.** The Final Provision set out in Part 4 defined as Interpretation, Ancillary Provision, Regulation-Making Powers, Commencement, Title - illustrate the significant and far-reaching implications of this legislation.

## **Schedules**

- 107.** The schedules following part 4 cover: Care Board - Constitution and Operation, Application of Public Authorities Legislation; Transfer of Local Authority Functions; Modification to existing legislation. These illustrate the significant and far-reaching implications of this legislation.

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