

# Report

Report to: **Executive Committee**  
Date of Meeting: **24 August 2022**  
Report by: **Chief Executive**

Subject: **Response to the National Care Service Bill –  
Parliamentary Call for Evidence**

## 1. Purpose of Report

1.1. The purpose of the report is to:-

- ♦ update members on the publication of the National Care Service Bill on 31 May 2022 by the Scottish Government and the subsequent call for evidence by Scottish Parliamentary Committee on Health, Social Care and Sport. Members will note the work being undertaken collaboratively by COSLA and a wide range of professional associations involving senior staff from South Lanarkshire Council to produce a response to the Parliamentary Committee

## 2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the publication of the National Care Service Bill be noted;
- (2) that officers have contributed to the development of a consolidated response from COSLA and a wide range of professional associations which is due to be presented to the COSLA Leaders' meeting on 26 August 2022 be noted;
- (3) that the key concerns as highlighted in section 5 of this report and the significant implications for the Council arising from the potential transfer of accountability for adult social work/care services and future transfer of children's and justice social work/care services be noted; and
- (4) that a copy of the consolidated response be shared with elected members once agreed through COSLA Leaders be agreed.

## 3. Background

- 3.1. On 1 September 2020 the First Minister announced that there would be an Independent Review of Adult Social Care (IRASC) in Scotland as part of the Programme for Government. The Review was chaired by Derek Feeley, a former Scottish Government Director General for Health and Social Care and Chief Executive of NHS Scotland.
- 3.2. The IRASC published its findings on 3 February 2021. The core remit of the review was to "recommend improvements to adult social care in Scotland" and, following a steer from Ministers to consider it, the review recommended that a National Care

Service (NCS) should be “established in statute along with, on an equal footing, NHS Scotland, with both bodies reporting to Scottish Ministers.”

3.3. Following on from the Scottish Parliamentary election, on 9 August 2021, the Scottish Government launched a consultation on the NCS. Described as the single most significant review of care in a generation, the consultation spanned a wide range of the topics that went beyond the original remit of the IRASC, including:-

- ◆ Improving care for people
- ◆ National Care Service
- ◆ Scope of the National Care Service
- ◆ Community Health and Social Care Boards
- ◆ Commissioning of Services
- ◆ Regulation
- ◆ Valuing people who work in social care

3.4. The response to the consultation agreed unanimously by South Lanarkshire Council was consistent with the detailed responses agreed unanimously by all Council Leaders at COSLA and by the Society of Local Authority Chief Executives (SOLACE) amongst a number of similar submissions by professional associations. At the time, this Council shared concerns with COSLA that the proposals were drafted without any engagement with local government and have serious implications for local authorities, endangering the principles of localism and the ability of local people to be engaged in democratic decisions about how their local services are delivered. The proposals run contrary to the principles of localism and subsidiarity as highlighted by the Local Governance Review co-chaired between COSLA and the Scottish Government during 2019/2020.

3.5. Summary of South Lanarkshire Council’s response to the NCS Consultation.

3.6. By way of a quick reminder, the Council’s response to the consultation highlighted the following points:-

- ◆ The detail of information contained in the consultation was inadequate to support respondents to understand the context and relationship to the development of the current model of care. Specifically, it failed to reference the chronic underfunding of social care in Scotland requiring the application of strict eligibility criteria and assessment processes to ration who receives support and increasingly those who don’t. This rationing of care is the basis of the negative experiences of the care system articulated by those engaged in the IRASC process.
- ◆ The format of the consultation restricted respondents to a series of tick box answers from restricted options and concern was raised that this was designed to elicit support for a single model of NCS as presented in the paper as the only alternative offered was the retention of the current model with its restrictions and negative outcomes. The Council, COSLA and a number of professional associations, therefore, all submitted a much more detailed narrative response, however, the analysis of responses published by the Scottish Government used a simple numeric to demonstrate percentage support for their direction of travel and did not address the issues highlighted in the responses. As such the COSLA response representing the views of leaders from the 32 local authorities in Scotland that hold the statutory duties for social care and have a local democratic mandate in their own right was given the same weighting as a response from an individual service user or provider organisation.

- ◆ The submission indicated that, whilst the council shares many of the ambitions of the IRASC and the frustrations with the current system as highlighted by the lived experience testimony of service users and carers, the response of structural change and transferring the accountabilities for social care away from local government is disproportionate and unnecessary. There was no evidence in the consultation document of a detailed risk assessment of the consequences of these actions on the delivery of care services, on service users/ carers or on councils themselves. Consequently, there was no evidence of how the negative consequences of the structural change could be mitigated or otherwise.
- ◆ Simply relocating these accountabilities alone will not drive improvement and the case for a structure first approach is not established. The consultation response highlighted that intensive work is required to develop an entitlements based model (sometimes referred to a human rights based model), what these entitlements actually would offer at different levels of need, what each tier of entitlement would cost per service user, how many people would be expected to access each tier and consequently how much more the new model would cost than current services. The same criticism was made of the lack of detail on the offer to meet the rights of unpaid carers to breaks and various other potential provisions in the proposals.
- ◆ The Council response highlighted a series of other uncertainties and ambiguities in the consultation document. These included clarity on implications for council social care and social work employees (TUPE, pension liabilities, harmonisation proposals for terms and conditions, equal pay/ value implications, impact on contractual matters, etc); clarity on the scope of NCS; implications on support services provided by the Council; implications for Council assets; implications for public protection etc.
- ◆ Nonetheless there is unquestionably a role for a national approach in some aspects of social work/ care and the consultation response summarised these areas under the following headings:-
  - Standards/ Assurance/ Performance Reporting and Scrutiny
  - Workforce Planning/ Fair Work/ Terms and Conditions/ Training and Development
  - Ethical Commissioning and Procurement
  - Complex and Specialist Care Commissioning
  - Improvement and Innovation
  - Development of the Single Health and Social Care Record and System Integrators
  - Use of Aggregate Data for System Level Planning and Policy Development
- ◆ The Council response set out views on a range of related themes raised by the consultation document and indicated key considerations that need to be addressed within the proposed legislation.

3.7. For newly elected members who were not in post when a number of awareness sessions were delivered on this topic or when the full response was debated and agreed by council, it is recommended that the full consultation response is read as many of the same concerns, uncertainties and ambiguities remain unaddressed in the published NCS Bill and associated memoranda. The full response can be accessed here ([Consultation Report](#); [Consultation Response](#) ).

#### **4. Publication of the NCS Bill and Associated Parliamentary Process Timeline**

4.1. The Bill presented to the Scottish Parliament is a framework piece of legislation that proposes to grant sweeping powers to Ministers, however, it is light on precise detail indicating that much of the detail will be developed in secondary legislation or through regulations prior to a full implementation by 2026. There are concerns at the extent of these powers and the fact that these would be granted prior to the full detail or implications being known. COSLA and SOLACE have also indicated that it is hugely disappointing that local authorities were not involved in the drafting of the Bill and were only sighted on the actual provisions the day before its publication.

4.2 In summary, the Bill provides for:-

- ◆ Powers for Ministers to establish (and dissolve) local and special care boards; decide on membership and of care boards and their remits.
- ◆ The establishment of a scheme and standards for sharing information to facilitate a national health and social care record.
- ◆ A charter of rights and responsibilities for social care, with a robust complaints and redress process.
- ◆ A power to transfer accountability for a range of services, including adult social care and social work services, to the Scottish Ministers, subject to Parliamentary approval.
- ◆ The introduction of an entitlements based (sometimes called human rights based) model for care support but no detail on what those entitlements would be; how many people will benefit; how much it costs and how it will be funded). There are some assumptions in a financial memorandum but no detail on how the costs are arrived at or real clarity on how they are to be funded.
- ◆ The right to breaks for unpaid carers and visiting rights for residents living in adult care homes.
- ◆ The potential future transfer of children's social work/ care and justice social work services to the NCS. These areas are noted as not previously having been covered by the IRASC and that a decision will be taken following the gathering of further evidence by a research group established by the Scottish Government. Any such proposals will need to be laid before Parliament alongside any related Regulations.

4.3 The Bill is accompanied by the publication of a related Policy Memorandum, a Financial Memorandum, a Delegated Powers Memorandum, Explanatory Notes and Impact Assessment documents covering Equalities; Business and Regulatory; Child Rights and Wellbeing; Data Protection; Fairer Scotland Duty; and Island Communities. A full copy of the Bill and its associated Memoranda can be accessed at (<https://www.parliament.scot/bills-and-laws/bills/national-care-service-scotland-bill/introduced>)

4.4 The Bill will go through the normal Parliamentary Scrutiny process and the current call for evidence by the Parliamentary Committees is part of that process. The key target milestones for the NCS Bill are understood to be provisionally:-

- ◆ June 2022 - Stage one committee scrutiny/ call for evidence
- ◆ January 2023 – Stage one completed
- ◆ March 2023 – Stage two completed
- ◆ May 2023 – Stage 3 completed
- ◆ July 2023 – Bill receives Royal Assent
- ◆ September 2023 – Earliest Commencement of the NCS Act
- ◆ September 2023 – Publication of Charter of Rights

- ◆ October 2023 – Earliest date for the publication of Scottish Statutory Instrument (SSI)
- ◆ February 2024 – Launch of Shadow NCS
- ◆ June 2024 – IJB Transition Plan Published
- ◆ November 2024 – Appointment of new Care Board Members
- ◆ 2026 – Full go live date for NCS Local Structures

## **5. Response to the Call for Evidence**

5.1. Council officers have worked closely with colleagues in COSLA and with a range of professional bodies such as SOLACE, Social Work Scotland (SWS), SOLAR, CiPFA Directors of Finance, Health and Social Care Scotland, SPDS, and NHS Chief Executives in considering the provisions and implications of the Bill. Drawn from this work a response to the Parliamentary Committee Call for Evidence is being drawn up for submission by the deadline of 2 September 2022. Many of the concerns are consistent with those outlined in the response to the NCS consultation document summarised earlier in this paper and that appear to remain unaddressed or are as yet unclear.

5.2. The following key points will be highlighted in the response and are highlighted here:-

- ◆ There is no clear case set out to demonstrate that the structural and governance changes will improve the quality of care or support for carers. This specifically relates to the proposals to transfer accountability, budget, assets and staffing out of local authority control to Scottish Government Ministers to be discharged through local care boards.
- ◆ There are, however, undoubtedly a range of areas that will benefit from national coordination – these are as set out in the original consultation responses from South Lanarkshire Council and the parallel responses from SOLACE and COSLA.
- ◆ The Bill lacks detail yet proposes to establish sweeping powers to Ministers who may later add detail through Regulation or secondary legislation. It is unacceptable that such significant change should be made to the scope and remit of local government without the detail being set out in full and a proper consideration be given to the risks and implications of the proposals. As a simple example, there is no clarity on how many care boards will be established, what area they will cover (e.g. co-terminus with current local authority boundaries; with existing health board territories or other) or number of elected members that will be nominated to sit on the board although it is suggested that their influence will be diminished as all board members will have the right to vote.
- ◆ Given the lack of detail it is difficult to assess whether the provisions meet the outcomes highlighted by the IRASC report. There is even less clarity on the case for the transfer of accountability for children and family social work services or justice social work services. The draft Bill suggests that research is being commissioned on both topics to assess the case for these inclusions, however, the Bill provides Ministers powers to make such change at any point.
- ◆ It is also not possible at this stage to properly assess the impact of the Bill's proposals on other national priorities including public protection, community justice, alcohol and drugs, The Promise, GIRFEC, etc.
- ◆ The Bill also contains provisions to allow Ministers to transfer accountabilities away from Care Boards if they believe they are failing in their duties and place these with an unspecified other party. It is unclear what criteria would apply in such circumstances or to whom such an assignment of responsibility would be made.

- ◆ There is provision for the new care boards to compulsorily acquire land for the execution of its duties – these are rights currently held by Council's and exercised through the Compulsory Purchase Order arrangements.
- ◆ The transfer of functions equally applies to those currently delegated to Health Boards and for both Council and health board functions there is a high degree of flexibility to be granted to Ministers to make future changes to what is delegated to eth care boards.
- ◆ There are provisions to enable the transfer of staff by regulation from local government to the new care boards although it is unclear whether this would be by a TUPE transfer or be done at all. Of key note, however, the Bill expressly notes that Minister may not transfer NHS staff which creates an immediate discrepancy and inequality.
- ◆ Similarly, the Bill has provisions for the transfer of property and liabilities, however, there is no clarity in relation to compensation (the assets belong to local government) for the value of the asset or how any residual debt is to be dealt with.
- ◆ The Bill makes provisions for amendments to the rights of carers but again it is unclear from the detail available what the offers will be, what the eligibility criteria will be, who and how many will benefit at what levels of provision and how much these changes will cost. It is intimated that much of this detail will be made by later Regulation, however, it is unacceptable that such significant legislative change would be made without this detail being available.
- ◆ The significant improvements that are needed in relation to adult social work/ care services cannot await legislative and structural change. Scottish local government have been working on the key areas identified in the jointly agreed COSLA/ Scottish Government Statement of Intent. This includes a focus on securing a Real Living Wage for all care workers; developing Minimum Standards Terms and Conditions; improving the Workforce Voice; working to remove charging for non-residential care services; applying Ethical Commissioning Principles; designing new criteria for and entitlements based model of care; improving the Voice of Lived Experience in care services; and improving the Support to Unpaid Carers. These areas of improvement will progress faster and with more impact if properly resourced and without the distraction of an unnecessary structural change.
- ◆ Although high level impact assessments (equalities; child rights and wellbeing; data protection; Fairer Scotland Duty; Islands Duty; and Business and Regulatory) have been published along with the Bill, remarkably the impact of these changes are almost unrecognised. The latter impact assessment notes that the Bill will impact on local authorities but that the impact will depend on details of the transfers of functions agreed by Ministers after the Act is passed.

## **6. Next Steps and Governance**

- 6.1. COSLA Leaders have highlighted concerns over the lack of involvement of local authorities in the governance of the overall NCS programme and in particular that local authorities are being treated as simply a stakeholder to be provided information on completed proposals despite having a local elected democratic mandate and statutory responsibility for social work and social care services. Despite statements regarding co-production and commitments to the involvement of local government, the key work on the Bill has been unilaterally produced by civil servants and management consultants without the benefit of the detailed input of staff and managers from the sector.
- 6.2. At its meeting of 26 August 2022, it is understood that COSLA Leaders will debate the joint response to the Call for Evidence, and it is expected that a parity of esteem and equal influence in the governance of the NCS programme will be sought. At the

time of writing this report, the outcome of the COSLA Leaders debate is not known, however, a verbal update may be available to Council when considering this item.

- 6.3. The Scottish Government has established a Strategic Programme Board (SPB) and has recently agreed to invite the Chief Executive of COSLA and the Vice Chair of SOLACE (currently the Chief Executive of South Lanarkshire Council) to attend. The SPB have developed a draft delivery roadmap for the National Care Service running from the current year through to the full implementation in 2026. The detail of this draft timeline has not been published and is currently embargoed, however, running in parallel with the parliamentary process for the NCS Bill, a number of organisational arrangements are being put in place including the establishment of shadow NCS teams and senior staff appointments. These arrangements also provide for the establishment of a “Social Covenant Group” which will be used to inform the process through a series of national conversations.

## **7. Employee Implications**

- 7.1. There are significant potential implications for Council staff working in social work or social care services arising from the proposals as set out in the consultation document. This may include TUPE transfer to another employer, changes to terms and conditions and management arrangements.
- 7.2. The employee implications are not restricted to staff working in Social Work Resources, however, and the implications of the Bill will have an impact across every Resource in the Council. Some of these impacts may be direct such as for those working in support services directly linked to Social Work (e.g. Personnel Services, Payroll, Fleet Services, Finance Services, etc.), however, the potential loss of council functions and budget would have a consequence for the corporate overhead and administration of the Council and may indirectly lead to a loss of income or budget in every service area of the Council. The potential consequences of this legislation cannot be overstated, however, it is difficult to be precise regarding these impacts due to the lack of detail in publicised Bill.
- 7.3. The Council has continued to engage with our joint trade unions and professional associations and to share what information and detail we have received. We have an ongoing commitment to our employees to ensure that we provide detail as it is received and to support them despite the uncertainties in this process.

## **8. Financial Implications**

- 8.1. There are significant potential financial implications for the council arising from the proposals set out in the consultation document. As noted above, the financial consequences for the Council go far beyond the potential transfer of budget relating to the direct provision of social work/care services and have a potential significant consequence for a wide range of other services and for the corporate council as a whole.

## **9. Climate Change, Sustainability and Environmental Implications**

- 9.1. There are no direct climate change, sustainability and natural environment implications arising from this report.

## **10. Other Implications**

- 10.1. Considering the detail of the report and identifying actions as appropriate contribute towards effective risk management. There are very significant risks to local government arising from the proposals set out in the NCS Bill.

## **11. Equality Impact Assessment and Consultation Arrangements**

11.1. This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy and, therefore, no Council impact assessment is required at this stage. As noted in the report, there are very high levels impact assessments which have been published alongside the NCS Bill, however, these are lacking detail due to the uncertainties within the Bill document.

**Cleland Sneddon**  
**Chief Executive**

12 August 2022

### **Link(s) to Council Values/Priorities/Outcomes**

- ◆ Caring, connected, sustainable communities
- ◆ People live the healthiest lives possible
- ◆ Our children and young people thrive
- ◆ Good quality, suitable and sustainable places to live

### **Previous References**

- ◆ Executive Committee meeting 3 November 2021

### **List of Background Papers**

- ◆ Note the previous consultation response contained in the above paper dated 3 November 2021

### **Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:-

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