

WEST DUNBARTONSHIRE COUNCIL**Report by Chief Executive****Special Meeting of West Dunbartonshire Council - 9 November 2021**

Subject: A National Care Service (NCS) For Scotland: Consultation**1. Purpose**

- 1.1** The purpose of this report is to seek approval for a formal response to the consultation on a National Care Service (NCS) for Scotland through the adoption of a response developed by Convention of Scottish Local Authorities (CoSLA) and further enhanced by the professional advice of Council Chief Officers.

2. Recommendations

- 2.1** It is recommended that West Dunbartonshire Council approve the formal response to the consultation on a National Care Service (NCS) for Scotland as outlined in Appendix I of this report and delegate submission of same to Scottish Government.

3. Background

- 3.1** On 1 September 2020 the First Minister announced that there would be an Independent Review of Adult Social Care 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. Mr Feeley was supported by an advisory panel of Scottish and international experts.
- 3.2** The principal aim of the review was to recommend improvements to adult social care in Scotland, primarily in terms of the outcomes achieved by and with people who use services, their carers and families, and the experience of people who work in adult social care. The review took a human-rights based approachⁱ.
- 3.3** The Independent Review concluded at the end of January 2021 the final report, containing 53 recommendations, published on 3 February 2021. The review provided a number of high level areas of focus:
- Ensuring that care is person-centred, human rights based, and is seen as an investment in society.
 - Making Scottish Ministers responsible for the delivery of social care support, with the establishment of a National Care Service to deliver and oversee integration, improvement and best practices across health and

The common theme of these assessments is that funding pressures are the principal barrier to securing meaningful change, not the structures in place to deliver Health and Social Care and continued integration of services. This supports a case for the level of funding implied for Health and Social Care under the National Care Service proposal to be deployed within existing structures. The impact on care services and people's lives would be transformative and could be delivered earlier than is indicated by the creation of a National Care Service.

8. Risk Analysis

8.1 There are no risks identified as a result of the recommendations within this report.

9. Equalities Impact Assessment (EIA)

9.1 An equality impact assessment is not required as the recommendations within this report do not have a differential impact on any of the protected characteristics

10. Environmental Sustainability

10.1 Not required for this report.

11. Consultation

11.1 The Chief Financial Officer and Monitoring Officer within Regulatory Services have been consulted in the preparation of this report.

12. Strategic Assessment

12.1 Not required for this report.

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Appendices:

West Dunbartonshire Councils Response to the
Consultation on a National Care Service (NCS) for Scotland
(Appendix I)

West Dunbartonshire Health and Social Care Partnership
(HSCP) Board Response to the Consultation on a National
Care Service (NCS) for Scotland (Appendix II)

Wards Affected:

All

West Dunbartonshire Council's Response
to the Consultation on a National Care Service (NCS) for Scotland

Context

Section 1: Introductory Remarks and Context: Here we set out a number of key contextual factors we believe are crucial to a proper understanding of the issues raised by the NCS proposals. We contend that these contextual considerations need to be understood – and ultimately addressed – and it concerns us that there is a lack of explicit recognition of these underlying factors.

Section 2: Uncertainties and Ambiguities: We highlight numerous areas of ambiguity or lack of detail within the proposals as set out in the consultation document. In our view these limit the scope for meaningful discussion at this stage. These uncertainties are reiterated as appropriate in the detailed considerations which are elaborated throughout section 4 below.

Section 3: Human Rights and Equalities: Here we set out some supplementary information on human rights and equality in social care and in relation to the proposals.

Section 4: Issues, Risks and Challenges: Here we look in detail at the specific themes within the consultation document, considering the areas listed below in turn. Our aim is to comment constructively on each topic, and we necessarily go into some detail where the consultation proposals allow. In many instances however there is insufficient clarity at this point in time to fully assess the implications and potential consequences/risks etc of the proposals, and we highlight these within each topic.

- 4a – Improving care for people
- 4b – Complaints and putting things right
- 4c – Residential Care Charges
- 4d – National Care Service/Scope
- 4e – Community Health and Social Care Boards
- 4f – Commissioning of services
- 4g – Regulation
- 4h – Valuing people who work in social care
- 4i – Unpaid Carers
- 4j – Data Sharing, Analysis and Policy Development
- 4k – Governance and Democratic Accountability

Section 5: Scoping the NCS: Drawing upon section 4 above, we consider the scope of the proposed National Care Service and its implications across service areas. This is particularly important given the expansion of the proposals beyond the recommendations of the Independent Review of Adult Social Care.

Section 6: Concluding Remarks and Recommendations: We summarise the key points within the consultation response and make recommendations on how to move forward to deliver the improvements in outcomes identified in the IRASC report. West Dunbartonshire Council confirms its commitment to work constructively with the Scottish Government on these areas.

Section 1: Introductory Remarks and Context

- 1.1 West Dunbartonshire Council welcomes the opportunity to respond to the Scottish Government's consultation on proposals for the creation of a National Care Service (NCS). The scope of the consultation covers a range of service areas that are essential to communities across the length and breadth of Scotland. This is undoubtedly a critical moment, in which the many challenges that face these valued public services – whether financial, demographic or because of underlying inequalities that have been exacerbated by COVID-19 – could not be more acute. It is vital that we work together in a collaborative manner if we are to enact meaningful change.
- 1.2 That is why West Dunbartonshire Council expresses disappointment at the outset of this response that Local Government was not involved in the development of the proposals prior to the publication of the consultation, given the current statutory duties held by Local Authorities and the significance of the emerging proposals. Indeed, neither CoSLA, or our partners across Local Government, were given any sight of the expanded scale of the proposals beyond the recommendations contained in the Independent Review of Adult Social Care (IRASC) to include a range of areas – including children's services, community justice, alcohol and drug services, social work.
- 1.3 This is disappointing given the partnership approach that is so central to the relationship between the Scottish Government and Local Government, as can be seen in the collaborative efforts taken in response to the COVID-19 pandemic, and indeed since, including agreement to work collectively as we seek to recover from the pandemic. It continues to be our view that a collaborative approach to addressing the challenges facing these essential public services is the best means of supporting meaningful change in the communities that we serve. If this top-down and directive approach to policy making, which does not appear to be supported by a robust evidence base, is replicated in the functions of a NCS, it will not only create undue challenges across the system but will serve to undermine the core concepts of localism and collaboration that are so central to our work.
- 1.4 Given the scale of the proposals being put forward, and the lack of detail or evidence contained in the consultation in certain areas, this document is being provided alongside the formal Scottish Government respondent form as a means of highlighting all the information that we believe should be taken into account when the proposals are considered in further depth. To assist with this process, we have structured our response thematically to reflect the sections within the consultation document where possible.

- 1.5 It is also important to highlight that the timescale given for the consideration of these proposals is simply too short, given the scale of the changes that are being proposed. This would be true in normal times but is especially pertinent given the current challenges faced across health and social care services as we continue to deal with the challenges COVID-19 presents and the pressures facing the sector as we prepare for what will be the most challenging winter period Scotland has faced in a long time. Whilst the consultation events that have accompanied this process are welcome, the tight time period allotted for this process does not provide the sufficient time to consider in full the implications for social work/ care service users, carers, staff in the sector, provider organisations and for Local Government as a whole. We are also concerned about the likely timelines for the progression of these proposals being in such close proximity to the Local Government elections in 2022 and the impact this could potentially have on local democratic engagement and scrutiny of legislative proposals that may have significant implications for current local democratic arrangements.
- 1.6 Whilst we raise several concerns about the current proposals throughout this document, this should not be seen as a push for retention of the status quo. This is categorically not the case. We agreed with many of the findings of the IRASC and share many of the frustrations that have been so clearly expressed through lived experience. We similarly recognise the scale of the challenges that currently exist in the system, which have been exacerbated by years of underfunding and by the challenges brought about by the COVID-19 pandemic.
- 1.7 That is why CoSLA took forward a Statement of Intent with the Scottish Government with the intention of implementing key recommendations contained in the IRASC report as soon as possible. This was based on an agreed programme of intentional and progressive action to improve social care services for those who use and deliver them to drive high quality consistent services with human rights at the heart of them. With the necessary funding and support, we are of the view that meaningful change can be enacted now and not at the end of an extended period of structural change. West Dunbartonshire Council, CoSLA, and our partners throughout Local Government, will continue to engage with the Scottish Government in a constructive manner throughout this process and will continue to carry forward actions aimed at supporting improvement across the system, despite the considerable resource pressures that are being experienced by Local Authorities and our partners delivering essential services daily.

Section 2: Uncertainties and Ambiguities

- 2.1 There are several uncertainties and ambiguities contained in the consultation. Many of these are drawn out in the information provided in section 3 of this document and in the many responses provided by Local Authorities and Local Government professional associations. However, there are key issues surrounding the financial underpinning of the proposals, their implications for the Local Government workforce, human rights and other key areas where

there is a need for further information and clarification, and of which further information is provided in this section of our response. It is imperative that further detail relating to these areas is provided immediately as there is a risk that information relating to these issues will not be given due consideration as a result of not being emphasised in the formal consultation respondent form.

Finance

- 2.2 Fundamentally, many of the issues within the current social care system are the product of under-resourcing. Investment in the system now would not address all of the challenges experienced in the system but would support meaningful change across a range of recommendations set out by the IRASC. Local Government revenue budgets have been cut by 2.1% since 2013/14, while the Scottish Government budget has increased by 2.3% over the same period. Local Government has protected social care budgets as much as possible in this period, with adult social care seeing a 13% real terms increase. Children's services and criminal justice services have also seen real terms increases in this period. Despite this, these increases have not been enough to keep pace with the increase in demand due to demographic pressures, the increasing complexity of care and additional investment required to keep people in their own homes for longer.
- 2.3 The IRASC was only able to cost some of its recommendations, totalling £660m at 2018-19 prices, with annual demography uplifts estimated at 3.5%. Two of the most important un-costed recommendations related to the need to strengthen the foundations of social care: Fair Work pay increases for social care workers above the £9.50 per hour living wage with improved terms and conditions, and increased rights and support for Scotland's unpaid carers, whose numbers have increased to over one million during the Covid pandemic. These alone would increase the need for additional adult social care funding on top of the £660m running into at least hundreds of millions of pounds.
- 2.4 The recent Programme for Government committed the Scottish Government to significant investment in social care. While the exact costs of the reforms will be dependent on this consultation, and in turn legislation, as a minimum Scottish Government have stated it will increase public investment in social care by 25% over this Parliament – providing over £800 million more by 2026-27.
- 2.5 West Dunbartonshire Council, CoSLA and the professional associations are very concerned that the gap between Feeley's part costing of £660m additional funding (at 2018-19 prices), and the Scottish Government's commitment at a minimum of "over £800 million more by 2026-27", is far too small to cover all of the un-costed recommendations. Unless significantly extended beyond this "minimum", it would not provide sufficient funding for paying fair wages to social care workers, yet alone increased rights and support for unpaid carers, reform or abolition of eligibility criteria, the increased demand from the removal of care charges, implementing "ethical"

and “collaborative” commissioning and procurement, improved data and information technologies, potential VAT and other costs.

- 2.6 Investment is needed to address the increasingly serious challenge of social care staff recruitment and retention. The IRASC estimated that “in broad terms, every pound beyond the Real Living Wage will increase the national social care support wage bill by about £100m per annum” (page 92). However, the IRASC estimates are too low. The costings in the report included £19.5m to increase the Real Living Wage for social care workers to £9.50 an hour in 2021-22, but the Local Government Finance settlement for 2021-22 required £64.5m for social care to contribute to the delivery of the Real Living Wage at £9.50 an hour, and the recently announced increase to £10.02 per hour for commissioned services is estimated at £144m per year. This does not include any increase in pay for services provided directly by Integration Authorities or Councils.
- 2.7 Currently only 3% of all carers have a short break or respite, and this is still only 9% for full-time carers providing 35 hours a week or more of care (Scottish Health Survey data). During the pandemic, the number of carers in Scotland increased to over one million; a much-needed statutory right to a break from care, including necessary replacement care for the person cared for, will be expensive. In addition, investment is needed to expand the range and quality of respite care available, as the IRASC recommended, and also to expand local access to carers’ centres and other prevention support infrastructure.
- 2.8 These, and the other un-costed IRASC recommendations mentioned above, will increase the full implementation cost significantly – best estimates to over £1.5bn. The proposed expansion in the scope of a NCS to include children and families social work and justice social work also brings the underfunding of these services into sharper focus. This was recognised by the IRASC, where a crude estimate that the current unmet demand from 2009/10 to 2018/19 would cost around £436m to address – this is at 2018/19 prices and does not take in account any further increase in unmet need from 2019 onwards nor the impact of the COVID-19 pandemic. These budget cuts to Local Government also have a direct impact on the wider determinants of health, which in turn influence need and demand within communities.
- 2.9 There has also been a systematic failure to move resources within the wider health and social care system away from acute settings to support community based preventative interventions and this has ultimately compounded the pressures within the social care system. No Local Authority or Integration Authority has tightened the Scottish Government’s eligibility criteria thresholds to reduce access to support through choice, but because of the insurmountable budget pressures.
- 2.10 It is clear that the current system has substantial challenges due to the significant underfunding outlined. This does not provide a justification for changing structures, rather provides evidence that the current structures

should be properly resourced to enable support and services that meet the needs of individuals, and our communities can be developed. This is particularly true given Integrated Joint Boards (IJBs) are very new structures themselves, only established in 2016, it is not surprising that it is taking a number of years for the new structures to bed in and show the improvements. There is continuous learning and improvement that can be done, and this should be the focus rather than diverting resources and capacity in unnecessarily changing structures.

- 2.11 These problems have been compounded by short term funding settlements which inhibit strategic whole system planning and service design. Alongside this, there has been increased ring-fencing of budgets or direct spending to specific policies or interventions, this means that services can be short term and not joined up, nor achieving the best outcomes for service users and our communities.
- 2.12 Additionally, there has been the introduction of a wide range of, at times, disconnected health and social care initiatives and duties. These are frequently underfunded, creating pressures in other parts of the system. For example, the Carers Act included no funding for the replacement care required to enable unpaid carers to take the breaks they need to sustain caring. This makes it extremely challenging for carers to realise their rights to support.
- 2.13 The proposals within the consultation are lacking a significant amount of detail, which makes it very challenging to consider the implications of the proposals. As there are no costings at all in the consultation paper, it is impossible to consider whether a NCS would provide a Best Value approach, or what the opportunity cost of some of the proposals are in other areas. It is difficult to respond to consultation on such significant changes without a candid conversation about the resourcing implications for the whole public sector.
- 2.14 There is frequent reference to 'consistency' with the implication that adult care services should be exactly the same across Scotland. This runs counter to a person centred, rights-based approach to service design and the Scottish Service Design principles. It also is not possible to achieve given different population and needs across the system. Consistency in the sense, ignoring warranted local variation, would additionally have significant resourcing implications and could result in services being funded which do not meet the needs of the service users.
- 2.15 Enabling social workers and other professionals to focus on the rights of individuals "without being hampered" by the consideration of eligibility and cost is a commendable aspiration but there are finite resources available to support service users and carers. A rights-based system will still require reformed eligibility criteria and would not mean that service users get everything that want, rather than need to fulfil their rights. Furthermore, to suggest that community health does not have eligibility criteria is a

misrepresentation of how resources are managed within the NHS through equivalent but less transparent mechanisms – to access services individuals will usually require a referral through a GP, this requires getting an appointment and then any referral onwards. There are usually then waiting lists for access to these services which are also a form of eligibility criteria.

- 2.16 There are potentially similar themes in the right to breaks for unpaid carers. This section presents a number of potential options for a 'right' to a break without any clear costing to inform decisions or clarity on the offer available.
- 2.17 With regards to the removal of charging, taking a human rights-based approach to budgeting, there is an obligation to raise revenue for use in the progressive realisation of rights. While the proposals on charging are important for establishing equity with the NHS, they will not increase the volume of social care available. It is therefore questionable whether reducing income which can be used for investment in services which improve people's rights and outcomes is in fact the best approach.
- 2.18 A blanket removal of charges must also take into account the likely increase in demand for services which compound the resource implications. Furthermore, the removal of future income streams must be considered. As new technology or services develop, being unable to charge for them may ultimately mean they are too costly to implement which may mean that the best services are denied to all.
- 2.19 There is no detail on the proposed intention on the long-term financial resourcing of any new service to ensure they are sustainable. There is also no information on the relationship of the NCS funding to either the Local Government grant settlement, or the health settlement.
- 2.20 There is no detail on the proposed financial arrangement for the NCS relating to borrowing, ability to hold reserves, audit, financial regulation, VAT etc. This includes liability for civil and other suits. Local Government has built practice and insurance policies to manage legal challenges, any transfer of services to the NCS will also need to see a consequent transfer in liabilities. A live example of this is with regards to Redress Scotland which is established to address cases of historical child abuse. Local Government has agreed to contribute to the funding for the victims; this will be met through the Local Government Settlement. As Local Government liability is due to being successor organisations, were services to be transferred to a NCS we would expect the liability and financial contribution to the redress scheme to also transfer.
- 2.21 The consultation paper also does not discuss how an NCS would purchase or lease local authority assets used for the delivery of social work or care services. This needs significant discussion with both legal and practicalities being explored. Councils and Integration Authorities have designed digital infrastructure that is integrated into Corporate Services and is designed for critical service delivery. Previous examples of moving to a single IT

infrastructure across multiple authorities have been highly costly and taken prolonged time periods to ensure they are safe and adequate for their use; for instance, the harmonisation of Police and Fire IT systems. Councils have transformed digital services and infrastructure to be agile and adaptable for service delivery. Transformation projects continue to improve efficiency, safety, and security across Council Social Care services.

Financial

There are no direct financial and procurement implications arising from the recommendations within this report. However, it is very difficult / impossible to provide meaningful financial consideration in terms of costs, etc due to the general lack of detail contained in the document on how the proposed National Care Service would function financially and on the service volumes and costs which it is likely to encounter.

The consultation document points to a number of options for improving care, on accessing care and support, rights for carers to breaks from caring and personalisation of support packages. These are outlined as high-level concepts. Absence of detail and any financial assessment of the options for improvement make it difficult to provide a response from a financial or budgetary perspective.

The foundation of the options in the consultation document is to remove eligibility criteria in their current form and instead focus on enabling people to access the care and support that they need has the potential to significantly increase cost of provision. The current eligibility criteria operates as a “pyramid” of need – with universal at the bottom and specific care at the top for fewer people based on need and accessed through eligibility. The breadth of the services that are able to be provided at each level of the pyramid is very much dependent on the funding available within the overall Health and Social Care system, with demands continuing to outstrip available resources at each level. The impact on this, already strained approach, of removal of eligibility criteria needs to be understood and costed, in particular in relation to potential current unmet need which is often seen when access to services becomes more universal. Fundamentally, in the absence of a proper options appraisal and associated financial memorandum, there is a lack of clarity or transparency as to the expected costs of the enhanced care provision. Consequently, there is nothing of substance in relation to costing of service offerings that we are able to comment on, and since it is difficult to determine the extent of the changes from the current approach we are unable to provide a view on likely sufficiency of budget.

The document does not recognise that the sums currently spent by Councils reflect local spending decisions and priorities, it is therefore difficult to understand how the process of disaggregating the budget attributable to care services from the local government grant settlement will be done and how this process will not be problematic. There may also be issues as to how a NCS would enable such localised prioritisation of service provision and financial support – particularly in relation to the additional demands and costs placed on councils experiencing significant levels of deprivation.

There is no information provided on the planned NCS financial arrangements around borrowing powers, ability to hold reserves, governance arrangements and appropriate financial regulations and it is therefore impossible to comment on how the NCS will operate financially and whether there are any clear financial issues or concerns. It is not clear as to whether the NCS will utilise assets currently owned by Councils – and capital investment incurred historically by Councils in establishing these assets, particularly if there is a consideration of transferring assets to the NCS. There is no detail on how the new body will account for VAT and the VAT status of the NCS, with potential significant financial implications.

There is no detail as to what plans are for central support services to the NCS, which are currently provided to social care services by Councils. If such staff are to be transferred there is the potential to be a number of issues such as differing pay and grading, possible equal pay issues, potential for redundancy event.

Funding

Over a significant period of time local government has suffered real financial pressure through its funding settlements, both in real terms and in comparison to other parts of the Scottish public sector. Audit Scotland's Overview report (Local Government in Scotland Financial Overview 2019/20 (published in Jan 2021 - Local Government in Scotland Financial overview 2019/20) quotes figures between 2013/14 and 2019/20 (extract below):

“funding from the Scottish Government to local government between 2013/14 and 2019/20 decreased by 4.7 per cent, in real terms (Exhibit 3, page 12). The increased funding in 2019/20 improved the position that existed last year (2018/19), when the total reduction was 7.6 per cent.

Scottish Government funding to other areas of the total Scottish budget decreased by 0.8 per cent between 2013/14 and 2019/20, demonstrating that local government funding has still undergone a larger reduction than the rest of the Scottish Government budget over this period”

This ongoing reduction has resulted in a prioritisation of need within limited budgets for care and in the breadth and depth of service provision that can afford to be funded. This essential prioritisation has resulted in a lack of emphasis on preventative early intervention style provision which in itself has been hampered by the lack of a shifting of resources away from acute and primary health care settings, to support community based preventative interventions. Again, Audit Scotland's “Local Government Overview Report” in 2020 noted on this that “there is still limited evidence to suggest any significant shift in spending from health to social care”.

Audit Scotland in its Health and Social Care Update Report in 2018 also noted, “Financial pressures across health and care services make it difficult for Integration Authorities to achieve meaningful change”. The report recognises a level of achievement including reducing unplanned hospital activity and reductions in delays in discharging people from hospital, noting that while the improvements are welcome

“Integration Authorities are operating in an extremely challenging environment.....financial planning is not integrated, long term or focused on providing the best outcomes for people who need support”.

The Audit Scotland Local Government Financial Overview 2019/20 reinforces this point: “In IJBs, the bodies set-up to deliver local health and social care services, the financial pressures are significant, with many needing additional funding from councils and health board partners to break-even in 2019/20.”

The common theme of these assessments is that funding pressures are the principal barrier to securing meaningful change, not the structures in place to deliver Health and Social Care and continued integration of services. This supports a case for the level of funding implied for Health and Social Care under the National Care Service proposal to be deployed the within existing structures. The impact on care services and people’s lives would be transformative and could be delivered earlier than is indicated by the creation of a National Care Service.

Local Government Workforce

- 2.22 The consultation document does not provide information on the current Local Government workforce who are employed by Local Authorities in social work and social care. If it is intended that these staff are transferred to a new employer under the auspices of the NCS, then there are significant financial and employment law considerations that need to be considered.
- 2.23 The integration of health and social care has resulted in staff on different contractual arrangements. Moving to a system with potentially three sets of terms and conditions would cause even greater issues. If it is intended that staff transfer over to a new employer, then TUPE arrangements would need to be in place to protect existing staff. The sheer scale of TUPE arrangements that would need to be undertaken requires independent discussion. Local Government have considerable experience with the challenges of these arrangements and the risk of equal pay settlements.
- 2.24 The document does not mention any change in employment status for NHS employed staff who work in health and social care, even though the remit of the reformed boards is Health and Social Care. If NHS employed staff are not under consideration to move to a new employer then it would appear that this is a backwards step to the work that has been progressed to integrate health and social care. The consultation document also doesn't mention any change in employment status for people working in the third or independent sector. It is unclear why it would only be Local Government employees in scope to move.
- 2.25 Throughout this consultation response the issue of current shared support services has been raised, this is a significant issue and clarity is required on whether the intention is for duplicate services to be set up under the auspice of the NCS or whether these services would be purchased or commissioned via other means. Shared services would include services such as finance and

creditors, legal, IT, HR and payroll, procurement, Health and Safety, Corporate training and Internal Audit and many others. There would be a significant financial investment required if support services are to be established for the reformed boards and this could have significant impact on the sustainability, particularly within smaller Local Authorities. The loss of critical mass of work within local authorities will lead to diseconomies of scale and risks the sustainability of some key roles and services which may currently operate across social care and other local authority services. This may lead to further challenges for employees within support services.

In progressing with such a national approach for only some occupational groups within Local Government, there are a range of potential equality and equal pay risks that emerge. If this transpired, it would also have significant financial consequences.

Any linkage with the relevant professional bodies that govern practice would need to be maintained and nurtured to avoid any detrimental impact on the professional groups covered by the Agency.

There are anticipated TUPE implications for the senior officers currently aligned to the functions intended for the national agency. There may be other consequences for finance, HR, ICT etc and the potential for redundancy costs requires clarification.

The employment status, i.e. who is the employer and what is their role, requires clarification in respect of the various occupational groups.

Localism and Place

- 2.26 Issues surrounding local democratic accountability are outlined as part of section 3j of this response, however it is important to emphasise the potential implications of these proposals to core concepts of localism and place that are well established in Scottish life.
- 2.27 It is a core CoSLA principle that decisions impacting communities and individuals should be taken at the closest level possible to those affected, and that communities should be empowered to this effect. The importance of this approach was clearly articulated in the recommendations emanating from the Christie Commission some ten years ago. Services should be designed and delivered as close as possible to the people that use them for the purpose of ensuring that resources are targeted in the most flexible and effective way to meet the needs of local people. The delivery of place responses was central to the response to the pandemic and is indicative of the continued key role of Local Authorities as the anchor in our communities. This is a prevalent theme throughout, the Audit Scotland Local Government Overview Report 2021, where it is stated that “Councils have worked effectively with community partners to respond to the impacts of Covid-19. Partnerships between councils and community partners have developed and strengthened in some areas.

- 2.28 The consultation is often critical of different areas of Scotland adopting different approaches and putting in place differing arrangements, often based on the argument that this can lead to fragmentation and uneven standards. However, little recognition is given to the importance of local arrangements being put in place which take into account the differing needs and circumstances of local areas. This is a particularly important consideration given the geographic context in Scotland, where the needs of people in rural or island communities differ substantively from more urban locations. To put it simply, what works for someone living in Edinburgh differs from someone who lives on the Isle of Eigg.
- 2.29 The approach set out in the consultation document presents a risk to the core principle of localism and represents an unnecessary and unevidenced removal of local responsibility and decision making for the services covered by the proposed NCS. The proposals are progressed under the auspices of greater democratic accountability – a point we contest given that Local Government is a legitimate sphere of democratic government in Scotland in its own right.
- 2.30 It is also notable that there is no reference to the Local Governance Review or consideration of how these proposals fit with the themes around localism and subsidiarity expressed as part of the extensive public consultation on the Review. This is an area we expect further detail discussion and consultation on given its important impact on the very fabric of Scottish life and the vast amount of relevant evidence that was collated during the engagement surrounding the Local Governance Review.
- 2.31 It is also worth noting that social care services are primarily locally operated throughout Europe, especially community-based care for young and for older people (Sijmen A. Reijneveld, The return of community-based health and social care to local government: governance as a public health challenge, *European Journal of Public Health*, Volume 27, Issue 1, 1 February 2017, Page 1, <https://doi.org/10.1093/eurpub/ckw129>). Indeed, it is also the case that in two thirds of OECD countries, decentralisation processes have resulted in an increase of economic importance of subnational government, measured both as a spending share of GDP and share of total public spending between 1995 and 2016.
- 2.32 They are also contradictory to a wider trend in OECD countries that of the increasing role localities in decision making. Today, regions and cities account for 40.4% of public spending and 56.9% of public investment in OECD countries. Regions and cities play an increasing role in key policy areas, such as transport, energy, broadband, education, health, housing, water and sanitation. They are responsible, for example, for 64% of environment and climate-related public investment (OECD 2019, *Making Decentralisation Work: A Handbook for Policy Makers*, OECD Multi-level Governance Studies, OECD Publishing, Paris, <https://doi.org/10.1787/g2g9faa7-en>). No study that we came across has investigated the link between centralising social care and

other relevant services and the effect on outcomes. However, the impact of decentralisation on the delivery of public services and user satisfaction has been thoroughly studied in the literature, as has been briefly noted above. Therefore, it can be contended there is a lack of evidence to underpin the assumption that the creation of a National Care Service would effectively target the issues raised in the IRASC.

Impact Assessments

- 2.33 There is no inclusion of a statutory Islands Impact Assessment; Equalities Impact Assessment; Environmental Impact Assessment; or Social Impact Assessment, only a commitment to produce impact assessment at an unconfirmed future point. For example, the provisions in the Islands (Scotland) Act 2018 outline the need for a relevant authority to prepare an islands impact assessment in respect of a policy, strategy or service where it is likely to have a significantly different impact on island communities than other communities. Given the maturity of integration arrangements in a number of island settings, as well the importance of established local democratic arrangements in islands more generally, it is our contention that an islands impact assessment is required prior to any proposals being progressed, and certainly before they are finalised. More generally, there is a lack of clarity on how impact assessments were considered in the drafting of the proposals within the consultation document. As such there is little reference to the delivery of services to communities with specific cultural needs. We expect these statutory requirements, alongside a detailed Financial Memorandum, to be produced without delay to allow detailed scrutiny of these issues alongside any supporting Primary or Secondary legislation.

Section 3: Human Rights and Equalities Human Rights

- 3.1 From the outset, we want to be clear that human rights, equity and equality must be placed at the heart of social care. We see this as an opportunity to support change within social care to ensure it is based in human rights and that rights inform the design and use of services. In embedding rights, it is critical that we involve service users.
- 3.2 It is crucial that, whatever the outcome of the proposals outlined in this consultation, that they are future proofed to pick up the recommendations from the National Taskforce on Human Rights Leadership including: the right to highest attainable standard of physical and mental health; the right to adequate standard of living; and the right to healthy environment. It is recognised that these rights are ones which must be progressively realised, though there should be consideration of a minimum core below which no one should fall. These are also subject to the principle of non-regression.
- 3.3 There is significant inconsistency in the use and understanding of some key terms of 'rights', 'entitlements' and 'needs'. We believe there needs to be further thought given to the difference between 'rights', 'needs' and 'entitlements' and how these are communicated and understood by those

developing, providing and accessing services. The hope would be that 'rights' and 'needs' will align in most instances but there may be gaps for example: (i) rights (particularly if we see the legislative change we expect to in the coming years) may go further (or more accurately be perceived to go further) than 'need'; or (ii) someone may wish to assert their rights in a way that is inconsistent with what it is assessed that they require (to meet 'need').

- 3.4 We must recognise that the proposed NCS will be asked to operate within some limit of resources – a human rights-based system does not mean that people will have an entitlement to everything they might ask for or need for their wellbeing. We completely support a greater emphasis on prevention and early intervention and people having access to support at the point they need it. However, if we wanted to abolish or substantially reform eligibility criteria for example, this is dependent on significant additional resources as well as the changed understanding outlined above. A rights-based system may still have some form of eligibility criteria, but a way of doing this must be set out which works from a human rights focus.
- 3.5 Additionally, proposing to shift towards rights-based models will involve further work on how to balance competing rights, and on the complex relationships between rights, harm and risks. For social work services for children and families, for example, there is ongoing work to inform discussion of these issues within the "The Promise". "Scotland must broaden its understanding of risk. This is not about tolerating more risk or becoming more risk enabling. It means ensuring Scotland has a more holistic understanding of risk that includes the risk to the child of removing them from the family. There must be a shift in focus from the risk of possible harm to the risk of not having stable, long term loving relationships." (The Promise Children's Social Care Briefing Autumn 2020.pdf)
- 3.6 There is also a need for a better understanding about the approach taken to balancing rights in social care and in a wider context. People should be supported to help understand what their rights are to social care and support and duty bearers should be focussed on realising these rights. This requires better information for both rights holders and duty bearers; this could be in the form of training, guidance, sharing of best practice. There is opportunity here to ensure that there are strong linkages with existing work planned following the recommendations of the National Taskforce on Human Rights Leadership. Of critical relevance are the right to an adequate standard of living and a right to the highest attainable standard of physical and mental health. These human rights are the foundations of the "rights to practical assistance and support to participate in society and live a full life" that the IRASC said should be the basis of the social care system in Scotland.
- 3.7 Human rights are not only engaged in assessments of needs for care, support planning, and service provision. Relational social work with people of all ages, families and communities is more complex, and simplified "transactional" accounts will not do justice to the issues involved in balancing rights. Social workers also operate in an environment where their statutory duties may

require involvement with measures of compulsion, in child and adult protection, in safeguarding adults with incapacity, as Mental Health Officers, or in work with offenders subject to community sentences or in prison. Conflicts are likely between the rights of individuals, other family members, communities, and the State.

- 3.8 The proposals in the consultation frequently refer to the need for greater consistency of service – indeed this is one of the main drivers behind the proposal for a NCS.. This fundamentally ignores a rights-based approach to service design and use – consistency of rights-based approaches does not necessarily lead to consistent services responses. When people are actively involved in the decision-making process about their own care, they will choose different kinds of solutions and support, depending on what works for them in their personal, family, social and community contexts. There is much existing good work being done locally around this but there is more which could be done to further embed current good practice around having supportive processes which involve people in conversations around their care including full exploration of all SDS options.
- 3.9 It is clear we need to further embed the PANEL principles in service design and delivery to help deliver a rights-based system. This does not mean that there will or should be necessarily a consistent service which is the same in every part of Scotland. The services must reflect the needs and strengths of local areas and individuals.
- 3.10 Additionally, there needs to be a greater recognition and explanation on how any NCS contributes to and does not negatively impact the wider determinants of health including social, environmental and economic. To realise the right to the highest attainable standard of physical and mental health investment cannot just be made in acute health service or social care. There must be investment in education, housing, employability, financial inclusion, planning, transport and more. These are services that Local Government deliver, many of which have been impacted by the reducing funding settlement, which has undermined the community development and prevention envisaged by the Christie Commission. Creating a NCS which detaches care services from the wider service design and delivery of the fundamental drivers of health will not lead to improved health outcomes and in fact risks increasing them. The NCS proposals must be considered against the principle of non-regression as they may be negatively impacting the realisation of people's rights.

Gender Issues

- 3.11 The issue of gender is a crucial consideration for the development of the NCS. The consultation document makes little in the way of acknowledgement of the potential disproportionate impact on women. Only a robust gendered approach will ensure improved outcomes are proportionately considered in terms of women's needs. This needs to be underpinned by the evidence that

explains how women face inequalities and, in some cases, disadvantages because they are women.

- 3.12 There are additional gendered issues which have not been taken into account in the proposals in relation to the fact that the majority of the social care workforce are female and the majority of unpaid carers are female.
- 3.13 The biggest risks to women and children experiencing Violence Against Women and Girls (VAWG) lie in the fragmentation of services that are core to early intervention, supporting through crisis, recovery and rebuild of lives. Early intervention, support, justice and behaviour for perpetrators/offenders with respect to VAWG will be similarly disrupted. Fragmentation of services and the joined up and coherent pathways of support we strive to offer in line with our 32 VAWG strategies reflecting local needs will further undermine an already vulnerable and struggling sector and approach. A range of elements that are critical to a whole system approach, including but not limited to, close relationships with Drugs and Alcohol Partnerships, Community Justice, Social Work and many others services sitting between or across current H&SC partnership, may be dislocated from local needs and relationships undermining the provision of coordinated pathways of support in tandem with Community Planning Partners. There is a key risk that this will leave women with less coordinated protection and support and our joint ownership of the aims of Equally Safe – to prevent and eradicate VAWG across all its forms in Scotland - will be unreachable.

Protected Characteristics

- 3.14 The significant structural changes proposed in the consultation must not result in a widening of inequality, this means of either access or outcomes. It is not clear how the proposals will address inequality in health or society and in fact there is a risk that they will negatively impact the wider determinants of health, leading to worse outcomes and increased inequality.
- 3.15 It is critical that the needs of minority groups such as Gypsy/Travellers, asylum seekers and refugees are accounted for. This again highlights that the driver of consistency is not appropriate to deliver services which meet the cultural needs of those in our communities.
- 3.16 The impact on disabled people of the proposals is of critical importance. This is not a homogeneous group and it cannot be assumed that all will be equally affected positively or negatively by the changes. This also confirms the need for a rights based approach as described earlier, not consistency of service across Scotland as that will neither meet the needs nor realise the rights of service users.

Section 4: Issues, Risks and Challenges

- 4.1 This section provides relevant information in relation to the key themes that are considered in the consultation document. As has been previously

indicated, this information is considered in addition to the questions set out in the consultation respondent form, which we do not believe were sufficient to provide relevant responses to the issues being discussed. Throughout much of the feedback provided, we emphasise the need to provide a robust evidence base, beyond what is currently set out, for respondents to be able to accurately assess the implications of the proposals.

4a – Improving Care for People

- 4.2 There is widespread agreement that improvement is central to the reform of adult social care to, as the consultation states, ensure consistent high levels of performance and to share learning across Scotland. However, the consultation also notes that ‘it is crucial that we continue to make improvement as soon as possible and that we do not see stagnation, a lack of innovation or significant disruption during the development of the NCS.’
- 4.3 There is no clear reason why improvement cannot be progressed in the short-term through collaborative engagement between the organisations who are currently involved in this important space, without embarking on a period of structural re-organisation. Indeed, we have already seen the development of the ‘National Organisations Integration Huddle’ which meets monthly and is a vehicle by which organisations share details of work they are delivering in the integration space and identify opportunities to collaborate. Additional resource to support this work may represent an immediate means by which to progress work in this area. Any improvement work also needs to be integrated on a whole system basis and this means across public health, acute, primary care, community health and social work/care.
- 4.4 The proposals, as outlined in the consultation document, are limited to one paragraph of description. Further detail of the proposals is required at the earliest possible opportunity to enable respondents to conduct an accurate appraisal of the potential benefits and risks associated with the proposals. Without it there is limited evidence to demonstrate that the centralisation of decision-making for services will lead to better outcomes with respect to improvement. Depending on how a NCS is configured, it could impact significantly on local decision-making, flexibility, choice and ultimately outcomes.

4b – Complaints and Putting Things Right

- 4.5 The core principle that should feature in any complaints handling procedure is that first stage resolution should be available as close to the operational as possible to ensure most complaints can be resolved in an appropriate manner. This should be supported by a second stage complaints level to ensure appropriate local oversight is given in the case of appeal or where the complaint is at a system level. There is limited information provided in the consultation document, or indeed available, that highlights a significant issue of dissatisfaction with either the visibility or access to the model complaints handling process. If a process in line with the above works in an effective

