

Corporate Policy and Strategy Committee

10.00 Tuesday, 6 August 2013

City of Edinburgh Council – Proposed Response to Public Bodies (Joint Working) (Scotland) Bill

Item number	7.8(b)
Report number	
Wards	All

Links

Coalition pledges	P12 and P43
Council outcomes	CO10, CO11, CO12, CO13, CO14, CO15
Single Outcome Agreement	SO2

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City of Edinburgh Council – Proposed Response to the Public Bodies (Joint Working) (Scotland) Bill

Summary

This report presents the proposed response by the City of Edinburgh Council to the Scottish Parliament call for written evidence on the Public Bodies (Joint Working) (Scotland) Bill, which was laid before the Scottish Parliament on 28 May 2013.

Recommendations

It is recommended that Corporate Strategy and Policy Committee:

- notes the main provisions, issues and risks associated with the Bill in an associated report elsewhere on the agenda
- notes the support for the policy ambitions of the Bill and the areas of concern
- approves the response for submission to the Scottish Parliament, Health and Sports Committee; and
- notes it will be submitted alongside the NHS Lothian response with a cover note indicating to the Health and Sports Committee that the organisations are in agreement on the substantive points.

Measures of success

The Scottish Government will be issuing revised National Outcomes for the delivery of integrated Health and Social Care during 2013/14. In addition, work has begun to develop a joint local outcome framework for measuring the success of the new Health and Social Care Partnership. A baseline is now being developed.

Financial impact

The proposed number and scale of services within the scope of integration from April 1 2013 will encompass significant revenue budget from both the Council and NHS Lothian. The details of this are currently being worked on and may change as discussions continue during 2013/14 and legislation develops. The aim of the integration proposals, in the longer term, is to support the development of integrated budgets to deliver jointly agreed outcomes for the people of Edinburgh.

Equalities impact

The proposals for integration will impact, in particular, on older people and on adults with multiple and / or complex needs. The aims of the proposal are to improve outcomes for patients and service users and are therefore expected to have a positive impact on such equalities groups.

The Scottish Government undertook a partial Equalities Impact Assessment of the proposals included in the consultation. It will be necessary to undertake joint equalities impact assessments of any proposed service changes as a result of integration.

Sustainability impact

The proposals in the Bill are intended to have a positive impact on social sustainability in particular, because the major aims of the Scottish Government intentions are to:

- keep people independent in their own home with appropriate support for as long as is possible and safe
- support carers to help people in this; and
- build capacity in the community for improving care, reducing health inequalities and to help people to remain independent for as long as possible.

Consultation and engagement

The Bill creates a duty upon Integration Authorities to involve a range of stakeholders in the integration of health and social care services, and specific requirements in relation to the integration plan and strategic plan.

A range of consultation and engagement events and mechanisms is being built into the integration programme and the new Health and Social Care Partnership arrangements.

Background reading / external references

Corporate Policy and Strategy Committee – 6 August 2013 – Executive Summary of Public Bodies (Joint Working) (Scotland) Bill.

Shadow Health and Social Care Partnership – 14 June 2013 – Executive Summary of Public Bodies (Joint Working) (Scotland) Bill.

Finance and Budget Policy Development and Review Sub-Committee – 22 May 2013
Health and Social Care Integration: Update.

Corporate Policy and Strategy Committee – 16 April 2013 – Integration of Adult Health and Social Care Consultation: Scottish Government Response.

Policy and Strategy Committee – 2 October 2012 - City of Edinburgh Council Item 13 – Integration of Health and Social Care: Proposals for Interim Governance Arrangements.

Policy and Strategy Committee – 4 September 2012 – Scottish Government Consultation on the Integration of Health and Social Care Services – Joint Response.

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1. Background

- 1.1 The Scottish Government indicated its intention to legislate for the integration of health and social care services some time ago and held a public consultation on its proposals during summer 2012. The responses to the consultation were analysed and the Government released its response to these views in February 2013, with an indication that a Bill would follow.
- 1.2 On 28 May 2013, the Scottish Government introduced to the Scottish Parliament the Public Bodies (Joint Working) (Scotland) Bill, along with associated documentation, such as Policy and Finance Memoranda. Full details can be obtained from <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/63845.aspx>
- 1.3 An executive summary of the Bill was presented to the Health and Social Care Partnership on 14 June 2013 and is presented to Corporate Policy and Strategy Committee elsewhere on the agenda.

2. Main report

- 2.1 The Bill is intended to provide a framework to support the improvement of the quality and consistency of health and social care services in Scotland. The framework:
 - a. permits the integration of local authority services with health services
 - b. provides for the Common Services Agency (commonly known as NHS National Services Scotland) to provide goods and services to public bodies, including local authorities
 - c. provides for Scottish Ministers to form wider joint venture structures than at present in order to make the most effective use of resources; and
 - d. extends the Clinical Negligence and other Risks Scheme (CNORIS) indemnity scheme run by Scottish Ministers.

Parliamentary Process

- 2.2 The Scottish Parliament's Health and Sports Committee has been designated as the lead committee to debate and gather evidence on the Bill. The Committee recently issued a call for written evidence, with a deadline of 2 August. More recently the deadline was extended to 16 August. Stage 1 for oral evidence will commence in September.

City of Edinburgh Council Proposed Response

2.3 A proposed response to the Bill is attached as Appendix 1. The response focuses on point a. in paragraph 2.1 above, given that points b. to d. have fewer immediate implications for local authority services.

2.4 The response is written within the context of the strong track record of, and commitment to, joint working between the City of Edinburgh Council and NHS Lothian. The key points are that the Council:

- strongly supports the policy ambition and policy intentions behind the Bill
- agrees that the Bill has the potential to build on many positive areas of joint working and to address some of the current disconnects across the health care and social care systems
- strongly supports the integration planning principles
- strongly supports the intention of Scottish Ministers to prescribe national outcomes in consultation with local authorities and health boards
- welcomes the emphasis on meaningful two-way engagement with a range of non-statutory partners for the long-term planning and provision of services; and
- welcomes the intention to provide some funding to support to local authorities and health boards to support the challenges of change management and organisational development during the transition.

2.5 While fully supportive of the policy intentions of the Bill, the response raises a number of concerns about the detail in the Bill itself, and makes proposals on how the Bill could be strengthened to minimise these concerns. Specifically these are:

- the Bill is insufficiently clear about the nature of the body corporate model (joint board) and about the governance and accountability roles of the parent bodies, with respect to the joint board, its creation and operation
- an apparent mismatch between the focus of the Policy Memorandum (and initial consultation) and the detail of the Bill itself in relation to the potential scope of services; the scope of the powers included in the Bill could be interpreted as extending well beyond the policy focus on adult health and social care services; this could create opportunities for integration of other local government services within a body corporate model, without the need for specific legislative consultation and debate, and at the potential expense of local democratic accountability

- the extent of power and control being granted by the Bill to Scottish Ministers appears to be in conflict with the policy intention of local partnership working and with existing local democratic accountability
- the remedial measures reserved to Scottish Ministers, when a partnership approach fails, are unlikely to deliver the expected policy intentions, and a more supportive, conciliatory approach should be created to build relationships and deliver integrated working between health boards and local authorities who fail to secure an agreed integration plan.

2.6 It was the intention to submit a joint response with NHS Lothian to the Health and Sports Committee, however, this has not been possible in the timescale. It is proposed that the City of Edinburgh Council's response and NHS Lothian's response are submitted together with a short covering note indicating to the Health and Sports Committee that the organisations have reviewed the two submissions and are in agreement with the substantive points of each.

Key Risks

2.7 There are many risks associated with a programme of change of this scale and the Policy Memorandum specifically mentions the following financial risks:

- a. health board and local authority flexibility to allocate their resources across the full range of their budgets may be constrained by 'ring-fencing' of their previous allocations to the integration authority; the risk will be proportional to the extent of the minimum scope of services to be included
- b. health boards may be left to manage any overspends in hospital based budgets, whilst being unable to direct under-spends in community health budgets to offset these; and
- c. parent bodies may be limited in their options for compensating in-year under-spends.

2.8 The Policy Memorandum envisages that these risks will be mitigated through the joint nature of the governance of the integration authority and the provisions of the Integration Plan and Strategic Plan, and through the direct accountabilities and responsibilities of the chief officer.

2.9 The concerns raised within the proposed response relate directly to the lack of clarity on the joint nature of governance and accountability within the Bill itself and as such impact directly on these mitigating factors.

2.10 The scale and impact of these risks on both health boards and local authorities increases if their governance role is unclear. This would be a backward step and unhelpful when the policy ambition is well founded, well thought out and otherwise possible to achieve.

Financial implications

- 2.11 The Financial Memorandum details the financial implications of integration across a number of elements, which are summarised in the report on the executive Summary of the Public Bodies (Joint Working) (Scotland) Bill elsewhere on the agenda.
- 2.12 Section 7 of Appendix 1 outlines a number of concerns, together with suggestions to mitigate these concerns in relation to cost assumptions.
- 2.13 The financial risks are outlined in paragraph 2.7 above.

Impact on inequalities, including health inequalities

- 2.14 The proposals for integration will impact, in particular, on older people and on adults with multiple and / or complex needs. The aims of the proposal are to improve outcomes for patients and service users and are therefore expected to have a positive impact on such equalities groups.
- 2.15 The Scottish Government undertook a partial Equalities Impact Assessment of the proposals included in the consultation. It will be necessary to undertake joint equalities impact assessments of any proposed service changes as a result of integration.

3. Recommendations

- 3.1 It is recommended that Corporate Policy and Strategy Committee:
- references the main provisions, issues and risks associated with the Bill in an associated report elsewhere on the agenda
 - notes areas of concern with regard to Bill
 - approves the response on behalf of the City of Edinburgh Council for submission to the Scottish Parliament, Health and Sports Committee; and
 - notes it will be submitted alongside the NHS Lothian response with a cover note indicating to the Health and Sports Committee that the organisations are in agreement on the substantive points.

Sue Bruce

Chief Executive

Links

Coalition pledges	Ensuring Edinburgh, and its residents, are well cared for.
Council outcomes	Health and Wellbeing are improved in Edinburgh and there is a high quality of care and protection for those who need it.
Single Outcome Agreement	Edinburgh's citizens experience improved health and wellbeing, with reduced inequalities in health

Appendices

Appendix 1 – Proposed City of Edinburgh Council Response to the Public Bodies (Joint Working) (Scotland) Bill

Appendix 1 City of Edinburgh Response to the Public Bodies (Joint Working) (Scotland) Bill

Scottish Parliament Health and Sports Committee
Call for evidence on the Public Bodies (Joint Working) (Scotland) Bill
Response from the City of Edinburgh Council

1 Do you agree with the general principles of the Bill and its provisions?

- a) The City of Edinburgh Council and NHS Lothian have a long history of positive partnership working and the intentions of the Bill create a useful and forward thinking framework to allow continued improvement across governance, strategy, planning, resource management and, most importantly, frontline service provision to deliver positive outcomes for the people of Edinburgh who need health and social care services. Indeed, Edinburgh has had a Joint Director for health and Social care services for eight years.
- b) In summary, the City of Edinburgh Council:
- strongly endorses the policy ambition for integrating health and social care as outlined in the Policy Memorandum
 - strongly supports the policy intentions of Scottish Ministers behind the Public Bodies (Joint Working) (Scotland) Bill
 - agrees that the intentions of the Bill create a positive framework for the delivery of integrated health and social care services
 - welcomes the fact that the Bill does not focus on structurally-led models of reform and focuses on building on many years of positive joint working
 - agrees that it offers an opportunity to improve the transition points between current primary and secondary health care and social care, subject to clarification of the scope of services
 - strongly supports the integration planning principles
 - strongly supports the intention to prescribe national outcomes for which both the NHS Board and Council are jointly accountable, and the intention to consult with health boards and local authorities on these; however, this must be balanced against local responsiveness to population needs
 - strongly supports partnership working with NHS and also with a range of non-statutory partners for the long-term planning and provision of health and social care services
 - very much welcomes the emphasis on meaningful and two way engagement with all relevant stakeholders, and whilst this will be a significant challenge on the scale required in Edinburgh, it is strongly supported
 - welcomes the intention to provide some funding to NHS boards and local authorities to support the challenges of change management and organisational development during the transition
 - is of the view that the provisions alone will not deliver the whole answer to the scale of rising demand expected now and in the future.
- c) However, the Council also ***has some specific concerns:***
- the Bill is insufficiently clear about the nature of the body corporate model and about the governance and accountability roles of the parent bodies with respect to the joint board, its creation and operation

- there is an apparent mismatch between the focus of the Policy Memorandum and the detail of the Bill itself in relation to the potential scope of services; the powers included in the Bill could be interpreted as extending well beyond the policy focus of adult health and social care services; and this could create opportunities for integration of other local government services, without specific legislative consultation and debate and at the potential expense of local democratic accountability
 - the extent of power and control being granted by the Bill to Scottish Government Ministers, which appears to be in conflict with the policy intention of local partnership working and with local democratic accountability and engagement; and
 - the remedial measures reserved to Scottish Ministers when a partnership approach fails are unlikely to deliver the expected policy intentions, and a more supportive, conciliatory approach should be adopted to build relationships; given the history of partnership working in Edinburgh and progress so far, both the City of Edinburgh Council and NHS Lothian are confident that such measures will not be needed.
- d) The comments below are written from the point of view of preferring the 'body corporate' model of integration over the 'delegated models' and are caveated by the need to address the issues listed later in this paper, which if not addressed will impinge on the nature of the partnership approach and hence on the reality of achieving policy objectives, benefits and outcomes for people, as well as on local democracy into the future.

2 To what extent do you believe that the approach being proposed in the Bill will achieve its stated policy objectives?

- a) The creation of an equal partnership approach to delivering services as outlined in the Policy Memorandum, which at the same time, maintains accountability through both parent bodies is a positive step in joining up services, resources and budgets for the benefit of people who use them. It has the potential to maintain an equal measure of both local democratic and ministerial accountability.
- b) The City of Edinburgh Council considers that only by supporting the best of both NHS and council approaches can true service improvement be delivered on the ground in terms of shifting the balance of care to the community for the benefit of the local population.
- c) The scope of the functions to be 'delegated' is critical in achieving the policy objectives. There is a need to ensure that the scope includes the provision of acute care to enable the delivery of the policy ambitions and outcomes.
- d) Neither the City of Edinburgh Council nor NHS Lothian are in favour of the 'delegated' model as it will create significant upheaval for organisations, employees and possibly services users, and could be a major distraction for some years. A partnership approach would help to avoid this.
- e) For the City of Edinburgh Council, the partnership approach would build on eight years of partnership working with NHS Lothian, through the Joint Board of Governance and a Jointly Accountable Officer.

- f) Any model of integration will rely on continuing to build trust and confidence between the City of Edinburgh Council and NHS Lothian, and with other interested stakeholders across the city. Both are critical to developing a real joint vision for health and social care for Edinburgh. The policy intentions of the Bill provide a framework to do this.

3 Please indicate which, if any, aspects of the Bill's policy objectives you would consider as key strengths

Integration plan - Section 1

- a) The approach to making services, resources and budgets transparent between partner organisations via joint governance and an Integration Plan is positive and productive, and should allow a smoother, steadier response to the demand and budget pressures than could be achieved by large scale reorganisation.

Integration planning principles – Section 4

- b) The major strength of the Bill is the policy intention to address disconnects in the current system, to remove barriers to current joint working and to shift the balance of care without the distraction and territorialism, which can be created by wholesale restructuring. The need to move beyond an organisation's administrative convenience to a better focus on the needs of recipients, and the contribution of local professionals and the community is vital if society is to deal with the demand pressures forecast. A move towards person centred services through integration is a real opportunity to be grasped.

Engagement of non-statutory partners – Section 6, Section 26, Section 30

- c) A further strength is the focus on involvement and engagement of a wide range of stakeholders in the co-production of service design, development and delivery. To enshrine this in legislation is a helpful step forward. The flexibility for the Integration Authority to determine additional consultees beyond a minimum is welcomed. The Shadow Edinburgh Health and Social Care Partnership has adopted an inclusive approach to and made good progress with, the involvement of non statutory partners from the third sector, services users, local professionals and carers who have a critical contribution to make to improving outcomes for people.

Section 1 (5)

- d) It is also a strength that some functions may not to be delegated. This is to be welcomed in instances where specific accountabilities prevent a conflict of interest and protect individuals' wellbeing, rights and liberties, e.g. the role of mental health officers.

Guidance and Regulations

- e) The Council welcomes the intention of the Scottish Government to prepare specific guidance/ regulations, which will enable a responsive approach to changes in circumstances over time. However, the Council would wish for flexibility to local circumstances to be built into the guidance, where the approach taken by the parent bodies and Integration Authority meets with the policy ambition and spirit of the Bill.

4 What are the efficiencies and benefits that you anticipate will arise for your organisation from the delivery of integration plans?

- a) The main areas of expected benefits include:
- releasing untapped creativity around service design and delivery
 - the acceleration of creating new, responsive, joint models of service delivery to allow the balance of care to be shifted from the acute to community setting, but with enhanced clinical/rehabilitation support
 - supporting a shift in focus away from narrowly defined targets around processes towards improving outcomes for people and allowing a more holistic view of health and social care as a single system, particularly in service related to prevention, social justice and health inequality
 - streamlined pathways of care, with fewer disconnects and a smoother more effective response for people
 - real potential to reduce re-admission to hospital for individuals and to support ongoing independence in a homely environment; and
 - joint performance in assessment and shared objectives should demonstrate real progress against joint national outcomes.
- b) There may be efficiencies associated with all of the above, however, demand pressures are such that there are unlikely to be cashable savings, rather a reinvestment of staff and other resources to respond to rising and complex demand, supported by a shift of NHS resource to develop more community based health care out with the acute hospital setting.
- c) There may also be small efficiencies with the joint approaches to budgets, planning and commissioning, however, these are likely to be offset by the costs of developing improved approaches to engagement with and involvement of non-statutory partners.

5 What effect do you anticipate integration plans will have on outcomes for those receiving services?

- a) Having joint local outcomes governed through our joint Shadow Partnership arrangements is already having a positive impact on the operational management of Edinburgh's health and social care services.
- b) Looking forward, the impact of a transparent view of a large proportion of all health and social care resources for a local area, plus an agreed common aim (national outcomes), against which both organisations are measured equally cannot be underestimated.
- c) Such a context creates a real opportunity for moving forward with the best interests of recipients at the forefront of everything we do, rather than being led by separate organisational drivers.
- d) It creates an opportunity to develop real understanding of each service and each professional practitioner's important role in the *whole system* of health and social care.
- e) It also creates the potential for financial and human resources, ICT and structural barriers to be removed or managed more effectively for staff at the frontline who often already work well together in spite of these barriers.

- f) These factors can only impact positively on the quality of frontline services and the potential for positive cultural and service change for the benefit of people who need our services, allowing staff to focus on the person and not the barriers that hamper their work.

6 Concerns and Areas where the Bill could be Strengthened

- a) The Council has some concerns about the detail of the Bill. Most comments relate to an apparent mismatch between the intentions of the Policy Memorandum, which the Council fully supports, compared with the details within the Bill and the extent to which Scottish Ministerial power needs to be balanced against local democratic accountability.
- b) *Consultation on Integration of Health and Social Care – Scope*
- 1) The Scottish Government consulted on the specifics of integrating adult health care and social care services with local flexibility to extend this to other health and council services, e.g. some housing services and children’s services. Furthermore, the Policy Memorandum is clearly focused on adult health and social care services.
 - 2) However, the detail of the Bill appears to have moved far beyond this focus, and can be interpreted as providing for much wider ranging local authority services to be included within the scope of a body corporate model.
 - 3) None of the key elements of the proposals, i.e. the preamble in the Bill, the Integration Plan, Integration Planning principles, Strategic Plan, etc., specifically mention the scope of the services for either the local authority or health board. Therefore, it seems possible for Ministers to make provision, by regulation, for other local authority services to be delegated to a body corporate or for the remit of a joint board to grow.
 - 4) This does two things:
 - it creates the potential for other local government services to be delegated to a body corporate, whilst avoiding the need for Government consultation and legislative debate on the matter; and
 - it misses an opportunity to address specifically the two disconnects, which Scottish Government identified in the consultation in 2012, i.e. between social care and primary care, and primary care and secondary care.
 - 5) This concern could be overcome if the Bill were to reference the minimum scope of local government and health board functions / services to be included, with appropriate definition of the term ‘functions’. It is important that the scope fully reflects the policy ambition to address the ‘disconnects’ between acute and primary care and primary care and social care.
 - 6) One area of scope where further consideration is needed is in relation to children’s health and social care services. Children cannot be seen in isolation from their families, and where local authorities have integrated their children’s social care services with their education services, there is a need to consider the best approach to linking with children’s health services to ensure whole families can be well supported. Edinburgh would like to establish a separate partnership for children’s health and social care services and it would be helpful if the Bill could provide a steer on the practicalities of this.

c) Definition and Governance of Body Corporate – Section 1 (4):

- 1) The Bill is insufficiently clear on the nature and make-up of the 'body corporate' (joint board) model. It does not state what type of legal entity the body corporate will be; nor does it state its composition. There are no general principles proposed for the primary legislation, which would ensure that the local authority and health board will have representatives on the joint board. It is also not clear from the Bill to whom the joint board will be accountable and how it will be held to account.
- 2) The term 'body corporate' appears to have a very particular definition in law, which is not referenced in the Bill; and definitions seem to preclude the development of a formal partnership with accountability arrangements, as required by the Policy Memorandum.
- 3) The Bill is strong on the powers and role of Scottish Ministers in relation to the different models of integration. To balance this, it should articulate more clearly the legal/governance accountability arrangements of the local authority and health board in relation to the joint board and the role, which each parent body will have in its creation, ongoing governance, accountability and operation in line with the Policy Memorandum.
- 4) Specifically, the Bill needs to demonstrate the clear role of the parent bodies in such matters as: formally agreeing the nature of the joint board; establishing the Integration Authority and the functions to be delegated; approval of the Integration Plan prior to submission to Scottish Ministers; approval of Strategic Plans, etc.; and the monitoring role through the Performance Report.

d) Delegation- Section 21 and 22

- 1) The Bill does not clearly articulate the capability of the joint board to carry out the delegated functions itself initially (as it has no staff), but rather has to direct the local authority and health board to carry out the functions. This brings into question whether the joint board can therefore have the same duties, rights and powers as the entity which delegated the functions?
- 2) It seems unusual to the Council that the effect of the delegation, as per section 21 of the Bill, is to make the person to whom the function is delegated subject to the same duties, and have the same rights and powers, as the person who delegated that function. It becomes difficult to see who is accountable to whom. It may be helpful to reflect on the current process within a local authority: where the Full Council may delegate a function to a Director, yet it is ultimately the Full Council that has the duty and is liable for any failure to discharge it. In turn, the Full Council can hold the Director to account by establishing performance measures, and ultimately through disciplinary action. We would assume that the Bill will be clarified with respect to the provisions and expectations for changes to local authority standing orders and financial regulations.

- 3) It is rare that all powers associated with a function would be delegated in a local authority – usually there is some form of limitation to the delegation, for example a Director cannot discharge functions that carry a material risk or are politically controversial.
- 4) These points lead the Council to seek clarification on the term “delegation” of the function, as described in the Bill. It could be interpreted as being either a “duplication” of the function (if the local authority retains the duty to discharge the function) or a “transfer” of the function (if the local authority does not retain the duty to discharge the function as per the proposal in paragraph 97 of the Policy Memorandum).

e) *Local Government (Scotland) Act 1973 s 57*

- 1) Local authorities cannot delegate any functions to another body /committee unless it has a two thirds voting majority of councillors. It would be helpful if the definition of the body corporate model approach could be clarified around whether it can be a committee of the local authority and of the health board, and whether the 1973 legislation is now superseded or is repealed.
- 2) This Council’s preference would be that the joint board is a joint and equal committee of both the local authority and the health board, and if this is not possible, that the local authority be granted powers to establish the joint board. If this is not to be the case, it is hard to see how the local authority can delegate, and it then becomes ‘duplication’ or a ‘transfer’ of functions as described above.

f) *Chief Officer of an Integration Authority – Section 10:*

- 1) The joint board will appoint the Chief Officer and must only consult the local authority and health board. If the Chief Officer is not appointed by the local authority and health board, it is unclear how the local authority and health board can seek to hold the Chief Officer to account if he/she does not deliver the required outcomes.
- 2) More clarity on the points below would be welcome:
 - as a minimum, high level principles regarding the role of local authority and health board in the appointment of the Chief Officer
 - guidance on the appointment of a Chief Officer, specifically in cases where a Jointly Accountable Officer exists, and is already managing joint health and social care services across existing partnerships; and
 - the accountability relationships of the Chief Officer to the respective health board and local authority Chief Executives.

g) *Rights and liabilities – Section 21*

- 1) Additional information on the question of legal liabilities of the body corporate arrangements would also be welcome, in particular where and with whom ultimate responsibility lies. The mismatch between the policy intention and the details in the Bill on the body corporate currently make this difficult to determine. This is linked to the points about accountability and delegation above.

- 2) Specifically, do the Chief Officer, the parent body, the Chief Executives, or the joint board have ultimate responsibility? If the latter, how does referring to an individual person fit with a joint board of equal voting members?

h) Strategic Plan – Section 23

- 1) There is no requirement for a joint board to seek agreement from the local authority or health board to the Strategic Plan. This means that the local authority will not have the final say on the delivery of ‘delegated’ services for which they are allocated resources and for which they have ultimate responsibility (paragraph 97 of the Policy Memorandum).

i) Consultation Group – Section 26 and 27

- 1) In preparing the Strategic Plan, Integration Authorities are to establish consultation groups. Where the Integration Authority is a joint board, this group is to constitute one person nominated by each of the local authority and health board who prepared the integration plan. This suggests that the intention of the Bill is for the joint board to be a distinct body, rather than a “partnership” between the local authority and health board.
- 2) It is unclear why there is a requirement for the joint board to form a consultation group with a representative from the local authority and health board if the joint board itself is made up of representatives from the local authority and health board.

j) Performance Reporting – Section 33

- 1) The reporting arrangements for the Performance Report to the council and health board should be strengthened to create formal accountability and meet with the requirements in sections 91-97 of the Policy Memorandum.

k) Scottish Ministerial Powers - Sections 11, 12 and 39

- 1) The Bill creates some very specific powers for Ministers to instruct health boards and local authorities in a very particular course of action. The main ones of concern are listed below:

Scottish Ministers may appoint staff other than the Chief Officer to an integration joint board and to specify the terms and condition of such staff (Section 11).

- 2) The rationale for this power is unclear when the Policy Memorandum specifies that a partnership approach is required and that local flexibility is important. It seems unnecessary when the requirements to prepare an integration plan are clearly stated, and when section 39 provides for action in the case of a failure. It also seems to contradict the Policy Memorandum, which is clear on the negative impact of creating a new organisation.
- 3) This apparent contradiction should be clarified, and this Council is of the view that this power is unnecessary to deliver the policy intentions outlined in the Policy Memorandum. As a minimum, the Council would wish to have assurance that this could only be done with the express permission of the parent bodies.

- 4) When this power is combined with the lack of clarity about scope, it is possible to interpret that Scottish Ministers could instruct local government to create a separate body corporate to deliver any local government service via a joint board. This would be an unwelcome consequence of the intended spirit of the legislation and would seriously impact on local democratic accountability.

Scottish Ministers may make provision about membership of joint boards; proceedings of joint board; giving general powers to contract, acquire/dispose of property, borrow money or incur other liabilities; the supply of services or facilities etc (Section 12).

- 5) The use of such powers with respect to services delegated to the joint board does not reflect the need for local flexibility and partnership working. It is in conflict with the policy intention and could also have a negative impact on local democratic accountability.
- 6) It could be interpreted as a centralisation of local government responsibilities and accountabilities, which are currently in the hands of local elected members. The absence of clarity about the role of the parent bodies in these matters compounds this impression.
- 7) As a minimum, it would be helpful if the Bill would indicate the circumstances that would need to arise for these powers to be invoked, and how this would be balanced against the need for local democratic accountability. The power should be removed altogether and replaced with a power to prepare guidance and for local arrangements to take cognisance of this guidance.

Scottish Ministers may establish an Integration Authority of the body corporate model, and to specify the make-up and workings of this body (Section 39).

- 8) It is understood that Section 39 would be implemented only in cases where there was a failure to deliver on any model of Integration Authority. However, forcing a specific model of integration when partnership working has failed cannot be expected to deliver a positive outcome for service users.
- 9) It will also overrule local democratic accountability, where a local authority considers integration with the local health board may not be in the best interests of their service users or wider population at that time.
- 10) It may be more helpful to consider making provision for formal support arrangements, which could be put in place to develop and improve the potential for a partnership relationship and an agreed way forward to rise to the challenge of meeting national and local outcomes for people.
- 11) This section also requires the local authority to delegate specific functions and to make payments to the joint board. Such instruction could impact negatively on local democratic accountability. The power effectively allows Scottish Ministers to direct local authority spend, around 25% of which has been raised through local council tax. This can be interpreted as local money to be spent by democratically elected members and not directed by Scottish Ministers. This may be a particular issue when the political make-up of a local council differs from national government, and could be interpreted as a reduction of local government autonomy.

l) Information Sharing - Section 37

- 1) The supplementary section on the disclosure of information between partners in relation to the purpose of preparing the Integration Plan is welcomed. It may be helpful if subsection (5) could be expanded to include:
 - the functions that are delegated **and their operation; and**
 - the preparation **and delivery** of the strategic plan.
- 2) Or some other such wording, which would ensure the sharing of information not just for the preparation of the relevant plans, but for ongoing operation and delivery of services to meet the requirements of the plans. It would be helpful to have guidance from the Information Commissioner on what would need to be undertaken to ensure compliance with Data Protection and Freedom of Information, with respect to a the integration models.

m) Community Planning

- 1) More information and clarity would be useful on the expected relationship with Community Planning legislation, partnerships and structures, particularly the relationships between the body corporate and formal community planning structures, the national outcomes and the Single Outcome Agreement, locality planning arrangements and local community planning approaches.

7 Finance

a) The City of Edinburgh Council:

- welcomes the provision of financial support for the transition
- notes that the majority of cost and efficiency savings are to be achieved in the acute health sector; and
- welcomes the acknowledgement of costs for third sector support, however, notes that there are likely to be recurring costs for such support.

b) General Concerns

- 1) This Council considers the assumption that all additional local authority costs can be met from within existing resources to be flawed and that the local authority costs should be examined in more detail.
- 2) If the majority of efficiency savings are to accrue in the acute health sector, it is critical that the scope of the services for integration are clearly articulated in the Bill, to ensure that there is the opportunity to shift resources appropriately from acute to community-based primary and social care settings.

c) Non- Recurring Costs

- 1) Provision is to be made for funding Community Health Partnership leadership post holders who are displaced as a result of the development of partnerships. Similar resources need to be

available to local authorities.

- 2) It would be very helpful if there were to be increased funding for ICT development and recurring costs, given that this is a key strategic enabler to joint working.

d) Recurring Costs

- 1) It would be helpful if greater value could be given to the role of external audit. This will be particularly important, given the issues regarding governance and accountabilities in the sections above.
- 2) The additional costs for encouraging clinicians in locality planning should be extended to include other stakeholders who will have a legitimate involvement.
- 3) There are likely to be additional costs for stakeholder engagement in both strategic planning and locality planning.
- 4) Given the nature of the joint board model, it is likely that recurring costs cannot be simply absorbed through the savings from existing administrative costs, specifically remuneration for board members and stakeholder engagement on the board.
- 5) VAT differences between health boards and councils continue to be a financial risk, unless and until clarification is received from HMRC.
- 6) It is likely that additional staff cost pressures will emerge over time as a result of integration, e.g. harmonisation of staff terms and conditions. It would be helpful to make an allowance for this in future.

8 Closing Remarks

- a) The City of Edinburgh Council would like to reiterate its full support for the policy intentions of the Bill. The concerns raised relate to: the mismatch between the policy intentions and the exact proposals; the lack of clarity in the proposed law; and the very significant powers, which are to be granted to Scottish Ministers. These matters will impact on a large portion of local authority autonomy and spend, currently governed through locally elected councils.
- b) There are many risks associated with a programme of change of this scale. The Policy Memorandum specifically refers to a number of financial and other risks and envisages that these risks will be mitigated through: the joint nature of the governance of the Integration Authority; the provisions of the Integration Plan and Strategic Plan; and through the direct accountabilities and responsibilities of the Chief Officer.

- c) These mitigating factors could be jeopardised due to the mismatches identified between the Policy Memorandum and the Bill, and specifically the lack of clarity about the governance role of parent bodies.
- d) The scale and impact of these risks on both health boards and local authorities increase significantly if their governance role is unclear and could impede progress with the agenda. This would be a retrograde step, and extremely unhelpful when both the City of Edinburgh Council and NHS Lothian consider that the policy ambition is well founded, well thought out and otherwise possible to achieve.

24 July 2013

DRAFT