

Policy and Sustainability

10 am, Tuesday, 1 November 2022

National Care Service Bill – Request for Evidence

Executive
Wards - all
Council Commitment

1. Recommendations

- 1.1 To note the response to the Scottish Parliament's request for evidence on the National Care Service Bill, approved by the Chief Executive in consultation with the Leader under urgency provisions set out in A4.1 of the Committee Terms of Reference and Delegated Functions so as to meet the consultation deadline.

Andrew Kerr

Chief Executive

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National Care Service Bill – Request for Evidence

2. Executive Summary

- 2.1 This report summarises the Council's response to Scottish Parliament's request for evidence on the National Care Service Bill.
- 2.2 The Council's response describes a range of concerns about the proposals including the implications of the reform on current service provision, council workforce and service resilience; implications for the future role and functions of local government, the erosion of local democratic accountability, concerns about major, costly restructuring at a time of significant existing pressure on services and staffing, and on the affordability and funding of a National Care Service.

3. Background

- 3.1 Following the [Independent Review into Adult Social Care \(IRASC\)](#) and the Scottish Government's [National Care Service consultation](#) in autumn 2021, the [National Care Service \(Scotland\) Bill](#) was introduced in the Scottish Parliament on 20 June 2022.
- 3.2 The Health, Social Care and Sport Committee sought views on the Bill by 2 September.
- 3.3 The Council's response has built on the Council response to the National Care service consultation and been further informed by a round table of key officer groups, and two workshop sessions held for Elected Members on 24 and 30 August 2022. Council officers and Councillors have also engaged with union colleagues and in various professional group sessions and COSLA workshops on the proposals.

4. Main report

- 4.1 The proposed National Care Service represents major structural change and will require significant resourcing locally and nationally to achieve. Alternative solutions within existing structures, with the additional funding proposed, have been ruled out by the Scottish Government, following the consultation process.
- 4.2 The Council's response, shown in the appendix, highlights significant concerns about the proposals including:
 1. The lack of fundamental details, without which, comment on its competence by key stakeholders and the parliament is significantly hampered. The ambiguity

presents an immediate risk to the services, workforces and organisations it affects

2. The proposals as they stand and the uncertainty they bring to children and adults service delivery, planning and funding decisions present an immediate and growing risk to the resilience and delivery of services to our most vulnerable citizens. They could significantly slow down the implementation of the Promise and frustrate local partnerships and connections between wider local services needed by children and families such as homelessness and education.
3. The Bill will lead to the reform of local government by default rather than by design, reforming the role, function, powers, accountability and financial framework for local government in Scotland.
4. the proposals would make service delivery accountable to one Minister rather than local people and communities, with implications for how effectively Elected Members can represent workers and citizens.
5. These proposals for wholesale restructuring have been made at a time of great service stress, as a result of the pandemic and the cost of living crisis, and for a workforce and a wider system that continues to operate under great strain with limited resilience
6. The financial framework presents significant concern in terms of the affordability of commitments, the significant cost of the new arrangements and the long term under resourcing of social care under current arrangements.

5. Next Steps

- 5.1 The Council will continue to liaise with COSLA to shape and inform local government engagement in the Bill process.

Council officers will begin to scope the work required to inform future development of the Bill and local arrangements to inform the transition of key services to a National Care Service.

6. Financial impact

- 6.1 These proposals have potentially significant ongoing financial implications for the whole of Scotland and for local government.
- 6.2 The full financial impact can only be understood when more details are provided by the Scottish Government, but Appendix 1 details the fact that this could see the centralisation of over £380m of the Council's budget with consequent impact on the Council's debt, borrowing and capital programmes.

7. Stakeholder/Community Impact

- 7.1 The response has been informed by:

1. Round table of key officer groups

2. COSLA events
3. Elected Member engagement sessions
4. Hosted meeting with Union colleagues

8. Background reading/external references

[Independent Review of Adult Social Care](#)

9. Appendices

1. [The City of Edinburgh Council response to the Scottish Parliament's call for evidence on the National Care Service Bill.](#)
2. [City of Edinburgh Council Response to the Scottish Government Consultation on the NCS](#)

APPENDIX 1

The City of Edinburgh Council

National Care Service (Scotland) Bill

Response to Call for Views

September 2022

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| Key concerns for the City of Edinburgh Council |
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1. Improving social work and social care services is a shared ambition and of critical importance but no evidence or logic has been offered as to how the proposed Bill will deliver a positive impact and no evidence that it is the best and best value approach to take.
2. A desire to coproduce elements of the Bill and the new body is welcome but that principle should precede the laying of legislation so that there is absolute transparency about what is being considered by the Scottish Parliament.
3. The Bill lacks fundamental details, without which, comment on its competence by key stakeholders and the parliament is significantly hampered. An iterative approach to legislation of this significance is inappropriate and the ambiguity it involves presents an immediate risk to the services, workforces and organisations it affects.
4. As well as fundamentally reforming social care and social work, the Bill will also result in the reform of local government. Local Government and its role representing and serving local communities deserves more than to be an afterthought in this process or to be fundamentally changed as an unintended consequence of this Bill. Any actions by Scottish Government to reform the nature and purpose of local government should be thoroughly considered and thought through as well as being transparently consulted upon and scrutinised.
5. There are well recognised challenges in the delivery of health and social care in Edinburgh. These stem in part from high levels of demand through population growth, shortfalls in supply through a buoyant employment and Edinburgh's mixed market, as well the high cost of accommodation in the city. These factors impact directly on outcomes for individuals but need responses tailored to local factors, supported by

adequate resourcing, rather than a national level approach embedded in the principles of consistency.

6. The timing of the proposals following the pressures of a pandemic, as we deal with pent up demand and an increase in the complexity of need, at the same time as a major cost of living crisis and an impending economic downturn will negatively impact the resilience and response of these key services.
7. The Bill in its current form unpicks the principles of Christie, could undo and significantly slow down the implementation of the Promise, frustrate local partnerships and connections between wider local services needed by children and families such as homelessness and education.
8. The proposals as they stand and the uncertainty they bring to children and adults service delivery, planning and funding decisions present an immediate and growing risk to the resilience and delivery of services to our most vulnerable citizens.
9. There are a number of significant improvements which could be undertaken right now to improve the outcomes for vulnerable citizens with sufficient national leadership for example around information sharing, consistent pay and conditions frameworks, national recruitment campaigns and a shared effort to address the funding pressures identified. None of these need a structural response to deliver a national approach.
10. Structural reform is a major distraction that will slow down efforts to improve delivery and divert resources away from the front line with immediate consequences. Engagement in the development of these proposals and then the significant programme of activity needed to implement the changes will divert energy that could be focused on real improvement actions and delivering services now to people and communities. This will impact social care and social work directly but also the whole of local government when it is already under capacity and resourcing pressures.
11. The financial framework presents significant concern in terms of the affordability of commitments, the significant cost of the new arrangements and the long term under resourcing of social care under current arrangements.
12. Removal of 22% of staff and up to 40% of Council service budgets will be a destabilising move for many councils and could undermine our financial viability, negatively impact on borrowing and undermine investment in other priorities such as the development of the city, school building programmes, the council's role in supporting economic recovery and the transition to net zero.
13. The Audit Scotland report on police integration reflected the challenges of a proposal for change built on the assumption of efficiencies. Nationalising a service does not necessarily result in efficiency especially when a service has experienced a historic

budget gap. The Scottish Government should provide detail on any assumptions it is making about cost savings and efficiency in its options appraisal.

Q1. Will the Bill improve the quality and consistency of social work and social care services?

14. The Council shares the Bill's commitment to ensuring that social care and social work services are highly valued; are built on a rights based and personalised approach; achieve improved outcomes for service users; are adequately resourced and result in a meaningful shift in the balance of care.
15. It is supportive of the vision described in the Bill which includes:
 - A timely, consistent, equitable and fair, high-quality health and social care support across Scotland
 - A supported and valued workforce
 - Increased support for unpaid carers
 - A nationally-consistent, integrated and accessible electronic social care and health record.
16. These commitments and vision are unarguable.
17. However, in the short to medium term, the Bill risks making service delivery significantly worse with no evidence that over the longer term the impact would be worth this period of disruption.
18. It is of great concern that these proposals for wholesale restructuring have been made at a time of great service stress, as a result of the pandemic and the cost of living crisis, and for a workforce and a wider system that continues to operate under great strain with limited resilience.
19. Further, the Bill lacks fundamental details, without which, comment on its competence is significantly hampered. The detail should have been developed before the Bill was published. An iterative approach to legislation of this significance is inappropriate and harmful for the services, workforces and organisations it affects by creating uncertainty.
20. Maintaining critical service delivery and public safeguarding during this extended period of uncertainty and change, brings risk and challenge:
 - a) Frontline services are struggling in the face of rising demand, vacant posts and the long term impact on staff of responding to the Covid pandemic – day to day delivery is already challenging;
 - b) The prospect of organisational review with considerable uncertainty and a potential change in employer, pay and terms and conditions risks exacerbating the current challenges in recruiting staff, while the significant proportion of staff who are approaching retirement age are likely to take the opportunity to leave the service;

- c) The costs and resource implications – both locally and nationally - of the changes which would be needed to introduce the National Care Service: structural reform absorbs significant amounts of organisational energy, capacity and resource which is often to the detriment of service delivery and work on major policy areas including addressing poverty;
- d) It will undermine the work underway since Christie to take a community-focused, relationship based, preventative approach, developing relationships and trust with the third sector and with communities e.g. [Locality Operational Groups](#) and the 3 Conversations approach in Edinburgh.

21. The proposals risk fragmenting supports for vulnerable individuals, for example housing and homelessness service will sit with local authorities, risking a disconnect for individuals who are homeless, some of whom need support for addictions and mental health; less obvious are some of the links with broader functions including the planning function in local authorities which is valuable for informing capital investment, for example in GP surgeries.
22. Similarly, the future transfer of children's and justice social work and social care (still to be decided) risks creating disconnects within public protection functions, with early years provision, education and housing and homelessness services, which will continue to be delivered by local authorities. Further details are provided above at question 6.
23. The two-phase approach to implementation proposed, with adult social care in scope for the first, and further consideration needed for children's and justice services which would form phase two, brings further complexity for those IJBs who already include either of both of these functions: these would need to be disaggregated before eventual re-integration. This is surely highly undesirable.
24. More generally, the risks and challenges of the major changes proposed include:
- a) the ability to engage and collaborate locally would stall for a number of years while the national body establishes itself;
 - b) the ability thereafter of the national body to work flexibly with local partners can be hindered by a national desire for consistency of approach as has been our experience during the reform of police and fire;
 - c) sometimes the national approach adopted is at odds with local practices and approach with limited recourse to influence;
 - d) national direction and national priorities for budget use can be to the detriment of local solutions and priorities that reflect the needs of citizens within a given community;
 - e) local place-based decision making is made more difficult in respect of capital and asset ownership and management; and
 - f) expected operational efficiencies are often optimistic and unrealised.
25. Finally, the uncertainty over the future role, responsibilities and funding for local authorities risks stalling investment in infrastructure and capital spend including client record systems and care homes.
26. On a more local level, Edinburgh's unique challenges in delivering social care are well recognised, and require local rather than national responses:

- a) On the demand side, these include a population projected to increase faster than any other city in Scotland over the next 20 years. With life expectancy generally increasing, this places increased demand on unpaid carers as well as formal support.
- b) On the supply side, a high proportion (45%) of the social care workforce are in their 50s, and, through a buoyant local economy, there is a constant struggle to recruit and retain health and social care professionals in the city.
- c) Edinburgh's unique and significant housing challenges, with high housing costs and supply outstripping demand, adds to the pressures.
- d) The combination of this increase in demand coupled with a short fall of care staff has significantly limited progress in shifting the balance of care and in improving outcomes for people.

27. These local factors impact directly on outcomes for individuals but need responses tailored to local factors, supported by adequate resourcing, rather than a national level approach embedded in the principles of consistency.

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| <p>Q2. Is the Bill the best way of achieving this?</p> |
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28. Without a robust options appraisal, it is not possible to make an informed response to this question of whether the Bill represents the best way to achieve its ambitions. In fact, the Bill fails to provide a clear answer to "what difference will this make to me as someone who gets support?".

29. The Bill fails to provide evidence that the fundamental structural change proposed is the best means of resolving the challenges facing social care or delivering on improvement opportunities, or that it would represent best value in the long term or indeed that it would lead to communities and citizens being more empowered with greater recourse to action in the face of a complaint about local service delivery within a nationalised service model.

30. Further, the Bill makes no reference to lessons learned from the establishment and effectiveness of national bodies such as Fire, Police, Criminal Justice, Integration and Public Health.

31. Alternative solutions within existing structures, with the additional funding proposed, have been ruled out by the Scottish Government, following the consultation process but with insufficient evidence and no clear justification that goes beyond the desire to control social care and social work centrally.

32. However, there are many improvements that could be made within existing structures through effective national leadership and funding, including nationally agreed pay structures, terms and conditions for social care staff.

33. Key to the challenges faced by the current social care system, well recognised before the Independent Review of Adult Social Care (the Feeley Review), is the long term reducing/underfunded local authority budget – despite local authority efforts to protect front line service spend. While there has been local progress on integration, a large part of the local challenge relates to pressures arising from the mismatch between the

level of demand and the resources available to meet needs of the capital city and an inability to substantively deliver a shift in the balance of care.

34. Audit Scotland have expressed concerns about the cost and timing of a disruptive restructuring of social care and recognises that improvements and investment in social care cannot wait for the creation of a National Care Service.

35. An alternative proposal would be:

- a) For the additional funding that is envisaged for the new national body to be deployed now through local authorities to greater impact on citizens lives. Concerted effort to address that underfunding would have more immediate and positive impact than structural change without the significant disruption, distraction and the resources needed to establish a new body.
- b) For national level specialist services and supports to be introduced, providing high quality support with efficiencies of scale to support workstreams including workforce planning including harmonisation of pay and fair work principles, improved training and career pathways; National standards for service quality and consistency of eligibility, minimum standards for response; evidence-based practice and the development of a single shared electronic record.

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| Q3. Are there any specific aspects of the Bill which you disagree with or that you would like to see amended? |
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36. The Bill will lead to the reform of local government by default by reforming the role, function, powers, accountability and financial framework for local government in Scotland. This will be a consequence of the Bill and is not being done proactively by design and in full cognisance of the wider importance of local government. We strongly disagree with this approach.

37. Improvement and investment are urgently needed in the short term, rather than at the end of a period of major restructuring which misuses capacity and resource on structures not services.

38. The focus on centralising accountability with Ministers is contrary to the principles of the Christie Commission and the European Charter of Local Self Government and raises concerns about the loss to local democracy and accountability. It is not clear how taking a centralised approach will improve the delivery of services for those whom we serve.

39. The implications for accountability are of significant concern:

- a) the proposals would make service delivery accountable to one Minister rather than local people and communities, further reducing local democratic accountability – Integration Joint Boards are already more remote from citizens than local authorities through arrangements for Board membership, with implications for how effectively Elected Members can represent workers and citizens.
- b) As noted earlier, divorcing services targeting some of our most vulnerable residents from local democratic accountability is not desirable and there is no evidence to suggest that communities and citizens themselves are empowered

more and have greater recourse to action in the face of a complaint about local service delivery within a nationalised service model. The transfer of services and accountability to unelected boards presents a real risk that local need, local context and local initiatives could be lost. Instead, services should continue to be designed, delivered and accountable to local communities.

40. Local government as a provider of care services:

- a) The suggestion that local government will retain a role as a social care service provider within the social care market and under a national service model of commissioning is untested. In order to take a view on this, Councils would need to be clear on whether the government is proposing removing the service; duties relating to the service; governance and accountability for service delivery; associated service budgets and the relevant workforce or whether some hybrid of the above is intended.
- b) For greater operational and public clarity, legal obligations to provide a service should sit alongside the budgets to deliver on that obligation and the accountability for service delivery. Splitting these by leaving duties with the Council would be undesirable and councils should not be expected to continue as a service provider within a mixed economy of provision in these circumstances – although some may choose to do so.

41. The Bill would empower Ministers to transfer local authority staff, but not NHS staff. There is no rationale given for this difference in treatment and it is not consistent with or supportive of an integrated approach.

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| Q4. Is there anything additional you would like to see included in the Bill and is anything missing? |
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42. As noted above, the Bill has not laid out a convincing and evidence-based proposal showing that structural change is the best means of resolving the challenges facing social care or delivering on improvement opportunities.

43. The Bill, developed as an enabling framework, lacks detail on significant areas of scope, structure, roles, responsibilities, financing and the operations of the National Care Service, which have yet to be determined. Given the significance of the implications for local government, including its workforce and for local democracy, these additional details need to be provided as a matter of urgency.

44. A desire to coproduce elements of the Bill and the new body itself with local government and service users is welcome but that principle should precede the laying of legislation so that there is absolute transparency about what is being considered by the Scottish Parliament and the stakeholders this affects.

45. Areas where further detail is needed are:

- a) The costs and funding of the NCS, including set up (see response to question 7)
- b) Governance, structure and accountability of National Care Service and care boards

- i) Where legislative duties will sit whilst ensuring responsibility, accountability and service delivery sit together;
 - ii) The number, membership and nature/remit of local care boards;
 - iii) The level of local democratic accountability which is anticipated in the new systems;
 - iv) What will be delivered / managed locally vs nationally;
 - v) How national consistency and oversight will be managed whilst still ensuring local decisions and solutions;
 - vi) The structures which will be put in place to improve service delivery;
 - vii) Plans for key roles including the Chief Social Work Officer;
 - viii) How will support functions currently delivered within Councils (such as ICT, procurement, information governance, HR) be impacted?
- c) Care boards – number and scale:
- i) This has a bearing on the complexity of the implementation process including the transfer of staff (e.g. if staff from a number of current bodies were to transfer to a larger board);
 - ii) It will determine the size of the population to be served, with the possibility that these may be larger than current arrangements, again making decision making more distant from citizens and communities;
 - iii) Finally, the number and area covered by care boards may differ from local government boundaries with implications for collaboration with schools and children's services as well as local community planning.
- d) How the service will integrate on housing, education and policing and the relationship between the NCS and Criminal Justice Scotland and other relevant national bodies
- e) The implications envisaged of this move on the form and function of local government and how these reforms contribute positively to localism
- f) The future of key strategies and policy intentions including The Promise, the 21st Century review of Social Work and the Christie principles

Q5. The Scottish Government proposes that the details of many aspects of the proposed National Care Service will be outlined in future secondary legislation rather than being included in the Bill itself. Do you have any comments on this approach? Are there any aspects of the Bill where you would like to have seen more detail in the Bill itself?

46. The reliance in the Bill on secondary legislation which would give Ministers greater powers to make significant changes, without full parliamentary scrutiny is of major concern.

47. Firstly, MSPs are being asked to scrutinise a Bill where many significant areas of social care delivery, local democratic accountability, localism and funding have yet to be developed.

48. Further, as noted already, publishing the Bill as an enabling framework, without detailed proposals, makes an assessment of its likely impact and effectiveness, as well as implications for transition, impossible.
49. The transfer of functions and staff from local authorities and functions from NHS requires much further consideration and clarity, not least in the ability to resource and deliver on local needs, services, priorities and programmes, in a coherent and effective manner. In addition, much more detail is needed in relation to the structure of the National Care Service and Care Boards and the impact on local government.
50. There are a large number of other areas where further clarity is needed and these are set out in the response to question 4.

Q6. The Bill proposes to give Scottish Ministers powers to transfer a broad range of social care, social work and community health functions to the National Care Service using future secondary legislation. Do you have any views about the services that may or may not be included in the National Care Service, either now or in the future?

51. The scope of the National Care Service goes far beyond the consideration and recommendations of the Independent Review of Adult Social Care.
52. Further, the wholesale transfer to unelected boards of control and accountability of social care and separation from local partnerships within housing, homelessness services, leisure and education, risks the very outcomes that the Bill aspires to.

Children's Services

53. As in the Scottish Government's consultation, the Bill does not give full consideration of the vital interplay between children's social work and community mental health and early years and schools. These are critically important to child protection, general wellbeing and the improvement of educational attainment.
54. Under current structures, children, young people and families benefit from holistic support which is enabled by the integration of schools with youth work, counselling, mental health, advice and employability services. These support services are also backed by wider local housing, education, environment, employment, and social support teams which all make an impact on improving health and wellbeing within communities.
55. Further, audits conducted into child protection incidents or incidents involving vulnerable adults nearly always point to a break down in local relationships, trust and information sharing as a major contributing factor to increased risk and harmful incidents.
56. Despite assurances in the Bill to the contrary, there is a risk that The Promise will be undermined.
57. Detailed consideration and scrutiny must be given to the potential implications of detaching children's social work and community mental health services from school and early years learning. Instead of making support more accessible, removing

children's services and social work from Local Government threatens to erect barriers between critical services, and fragmenting this important support.

Justice services

58. The justice community has already, and relatively recently, undergone a period of reform - from the establishment of Community Justice Authorities to the establishment of Criminal Justice Scotland. The case for reform and uncertainty when the service is facing particular challenges in COVID-19 recovery and expect high volumes of work from the courts over the next three years has not been made within the Bill.
59. Again, structural change without additional resources will see no change in the level and quality of services offered to our citizens. There needs to be a shift in the amount invested in community disposals rather than prisons. If the additional resources implied in this proposal were to be made available to Local Government, it could be transformative for the criminal justice service and outcomes for offenders.
60. In addition, the evidence is clear that better access to welfare, housing, and employability assistance, as well as health care, have an important role in reducing or even prevent offending. Similarly, the shift away from short prison sentences needs effective, evidence-based community interventions. All of which call for local approaches.

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| <p>Q7. Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?</p> |
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61. The lack of detail in the Bill is reflected in the Financial Memorandum which has only been able to make very broad estimates for some of the costs and savings and includes a wide range of possible financial outcomes. As with the other aspects of the Bill, we have significant concerns with this approach. The Scottish Parliament are being asked to scrutinise a Bill with a Financial Memorandum which is incomplete and where the financial aspects of the "business case" are still "under development".
62. The estimated costs of the proposals vary: from "more than £840 million" stated by the Scottish Government in the Resource Spending Review as the value of its commitment to increase investment in social care by 25% during this Parliament, and COSLA, who estimate the total costs of the IRASC recommendations as being over £1.5 billion.
63. The Financial Memorandum shows that the establishment of the National Care Service national body alone will cost up to £250 million with subsequent overall NCS running costs of up to £500 million per year – equivalent to a significant proportion of the above increase in investment, but which would be spent solely on structural reform rather than directly on the improvements in service delivery or meeting of unmet need recommended by the IRASC, for which there is a high risk of insufficient funding being available as a result.
64. If Edinburgh were to receive its share of the additional funding – around £80m – to extend eligibility, accessibility, support, pay and employment standards then significant

transformative action could be achieved immediately within the city, without the general upheaval and disruption associated with structural change.

65. The Bill lacks detail on how the amount of funding which may be removed or withdrawn from local authorities will be calculated and how existing policy commitments - which have significant cost implications – will be treated. Neither is the Bill clear on how capital and capital assets will be dealt with if social care and social work services are centralised along with their revenue budgets. The purchase, rental or sale of capital assets will need careful operational, financial and legal consideration before progressing.
66. In Edinburgh, the budget for the services potentially in scope is £380m per annum with demand for current provision and entitlements expected to grow by £8m per annum before any additional commitments are accounted for, or current wage pressures taken in to account.
67. The potential loss of up to 40% of the Council budget (22% of its workforce) could destabilise the financial integrity of the Council with consequences for LA revenue and capital budgets and significant implications for investment, borrowing and the financial stability and sustainability of the Council.
68. The financial implications could extend beyond the services referenced to impact the wider debt profile of the Council and its ability to leverage capital and borrowing for investment in critical infrastructure and other policy priorities such as addressing the climate emergency. The Council is at the heart of investing in the regeneration, development and improvement of Edinburgh as a city and removing this budget would radically limit its potential to invest in the wider roles, responsibilities and duties the Council holds and which are a shared priority for the government.
69. It would be difficult for the council to make best value investment decisions around expected infrastructure investment when the liability and accountability for those decisions may shift to a national body
70. The mixed market of social care is also linked to the overall cost of social care. The Bill does not deal with the difficult issue of profit within the sector and the different local pressures on markets with a strong private sector component.
71. Audit Scotland report on police integration reflected the challenges of a proposal for change built on the assumption of efficiencies. Nationalising a service does not necessarily result in efficiency especially when a service has experienced a historic budget gap. The Scottish Government should provide detail on any assumptions it is making about cost savings and efficiency in its options appraisal.
72. Scottish Government should provide absolute clarity on these points given the potentially significant ongoing financial implications of these proposals for the whole of Scotland and for the financial stability of local government. This includes detail as to whether the intention is to fund these proposals through taxation.

APPENDIX 2

CEC Response to the Scottish Government National Care Service (NCS) Consultation

Summary

1. The City of Edinburgh Council welcomes this opportunity to respond to the Scottish Government Consultation on the establishment of a new National Care Service for Scotland.
2. This response is being submitted in addition to a submission responding to the consultation questions. This is being done to ensure the Council's views on the proposals are adequately articulated as the questions asked are not sufficiently open so as to allow all the required points to be made.
3. In Summary, the Council:
 - i. Supports the principles for improving social care and social work articulated by the Feeley Review
 - ii. Recognises the challenges in delivering a shift in the balance of care; meeting the needs of service users within reducing budgets; the challenges of mixed local markets and current procurement methods; the undervaluing of care and carers and; the limited investment in preventative models of care that exist in the social care and social work system and welcomes the Government's commitment to working towards a better and better resourced system of care in Scotland.
 - iii. Believes that there are some key opportunities for service and outcome improvements through greater national collaboration; particularly around workforce, careers, pay, service standards, specialist and complex care, data and information sharing
 - iv. Asks that these reforms are taken forward in partnership with councils and informed by officers working locally to deliver services alongside those with a strategic expertise.

However, the council:
 - v. Believes that the Scottish Government has not yet laid out a convincing and evidence-based proposal showing that structural change is the best means of resolving these issues or delivering on improvement opportunities.
 - vi. Is concerned by the ambiguity in the proposals being put forward for consultation which seem to go well beyond any mandate established during the election and asks that the Scottish Government further consult once it is able to lay out sufficiently detailed material and an options appraisal for consideration by service users, stakeholders, providers and statutory partners.
 - vii. Is concerned that proposals for change of this magnitude are being brought forward at a time of great service stress, as a result of the pandemic, and for a workforce and a wider system that continues to operate under great strain with limited resilience.
 - viii. Believes that Children's services, Criminal Justice Social Work and Homelessness should remain out of scope.

- ix. Notes that many of the issues with the current system identified by the Feeley Review are a result of a reducing/underfunded local authority budget – despite local authority efforts to protect front line service spend.
 - x. Believes that a concerted effort to address that underfunding would, at this point in time, have more impact than structural change without the service level upheaval and distraction involved in establishing a new body.
 - xi. Notes that the financial implications for local government could extend beyond the services referenced to impact the debt profile of the Council and its ability to leverage capital and borrowing for investment in critical infrastructure and other policy priorities such as addressing the climate emergency.
 - xii. Is concerned that the reforms are being proposed without reference to the wider system of interdependent services; in particular, the potential for these reforms to reshape the nature and role of local government as a consequence of the establishment of the new care service rather than by design to better serve Scotland's residents
 - xiii. Would like to see greater clarity on how these reforms will positively contribute to tackling poverty; improving wellbeing and shifting the balance of care
 - xiv. Expects the Scottish Government to lead by example in terms of producing detailed equality impact assessments and consulting direct with service users including children and young people.
 - xv. Notes the experience of establishing Public Health Scotland shows how long establishing a new national body could take with a relatively simple landscape of services and professions and is concerned that the timeframe set out for a National Care Service feels overly ambitious and unrealistic in this context.
4. The response below further explains the Council position summarised above and includes some more technical detail around key areas such as key service areas, workforce, funding, governance, information sharing and procurement.

Response to the Consultation

General comments and questions

5. The City of Edinburgh Council welcomes this opportunity to respond to the Scottish Government consultation on the establishment of a new National Care Service for Scotland.
6. The Council shares the Scottish Government's commitment to ensuring that social care and social work services are highly valued; are built on a rights based and personalised approach; achieve improved outcomes for service users; are adequately resourced and result in a meaningful shift in the balance of care.
7. The Council is keen to work with COSLA and the Scottish Government on any forthcoming material with the aim of improving the delivery of health and social care in Scotland and believes that any proposal for a National Care Service would only be strengthened by the operational and practical knowledge of service delivery and local markets held by Councils
8. However, the consultation does not describe the form and function of the new care service in sufficient detail to allow meaningful responses to be made or for this

process to be considered as having fulfilled requirements to consult on reform of this nature and scale.

9. While the Council provides as full a response as possible on key issues below, the following questions would need to be addressed in order to give due consideration to the Government's ambition for a National Care Service :
- i. What issues, challenges or opportunities is the NCS being established to address?
 - ii. What evidence is there that nationalisation of a service is the best answer and were other options considered?
 - iii. What services would be in scope of the reform and what is the rationale for their inclusion?
 - iv. Is the Government considering progressing that in a single step or as part of a staged approach?
 - v. How are staff going to be integrated into the new body and how will they be organised?
 - vi. Will the duties relating to all services being nationalised be removed from Local Government?
 - vii. How will support functions currently delivered within Councils (such as ICT, procurement, information governance, HR) be impacted?
 - viii. How will governance actually work and how is it envisaged that the systems of governance interact?
 - ix. There are significant strategies, objectives, ambitions and plans across the proposed scope of the new body and into the wider public service landscape. How will the wider policy landscape be joined up under this new body and as part of the reform approach?
 - x. What level of local democratic accountability is anticipated in the new systems?
 - xi. What are the envisaged implications of this move on the form and function of local government and how do these reforms contribute positively to localism?
 - xii. What is the proposed means of paying for the substantive costs involved in increasing and extending entitlements as well as the costs associated with structural reform of this scale?
 - xiii. How will capital investments and assets be accounted?
 - xiv. Given the lack of detail in the current consultation, will there be further consultation before legislation is proposed?

Service based concerns

10. The City of Edinburgh Council has made every effort, within the context of reducing public budgets to protect front line services, particularly those aimed at vulnerable residents and to prioritise poverty and prevention within its work and budgets. However, reduced local budgets have ultimately reduced the Council's capacity to invest or expand local provision in line with the consultation proposals. Despite this, and particularly during COVID, the council would highlight and celebrate the efforts and work of key front line staff groups and the effective collaboration between community planning partners.
11. As mentioned, the consultation makes several commitments to deliver free and increased provision for services in scope. Estimates from the Scottish Government are for additional investment in excess of £800m to achieve this outcome. If Edinburgh based social work and social care were to receive an uplift of £80m to extend eligibility, accessibility, support, pay and employment standards then significant transformative

action could be achieved immediately within the city. This could be delivered without a loss in capacity and the general upheaval and disruption associated with structural change.

12. Scottish Government commitment to the additional resource investment required to improve outcomes identified in the consultation regardless of whether or not services are centralised would also ensure that professional and citizen engagement in the reforms will be focused on its relative merits rather than seeing it as a means to secure ongoing financial security.
13. These general remarks aside, the following issues relating to specific services are highlighted for consideration by the Scottish Government.

Children's services and Education

14. The Council notes that children, young people and their families have not been consulted directly on the proposals for service redesign and that wider impact assessment including those relating to communities with protected characteristics have not been undertaken. Reform of these services needs to be based on evidence of how it will improve services and outcomes for young people.
15. The published proposals do not consider or describe the interplay between children's services and education. Councils have previously taken the view that the benefit of having children's services and social work closely aligned with local education provision is critically important to child protection, general wellbeing and the improvement of educational attainment. There is a significant risk that reforms which separate children's services and social work from local education would create new silos and barriers to collaboration which would adversely impact Edinburgh's children and their families.
16. In addition, audits conducted into child protection incidents or incidents involving vulnerable adults nearly always point to a break down in local relationships, trust and information sharing as a major contributing factor to increased risk and harmful incidents. Further disruption to service provision and capacity resulting from structural reform, following on from the impact of responding to a global pandemic could, not only undermine the local ability to positively contribute to children's outcomes but also present an increased local risk to child protection.
17. Given that the Scottish Government has not described how inclusion into a national body would meaningfully improve outcomes for children and noting the absence of evidence to support this move and the potential increase in risk to services should reform go ahead, the City of Edinburgh Council believes that children services should be out of scope of the new body.

Local Government as a social care provider

18. The suggestion that local government will retain a role as a social care service provider within the social care market and under a national service model of commissioning is untested. In order to take a view on this, Council's would need to be clear on whether the government is proposing removing the service; duties relating to the service; governance and accountability for service delivery; associated service budgets and; the relevant workforce or, whether some hybrid of the above is intended. For greater operational and public clarity, legal obligations to provide a service should sit alongside the budgets to deliver on that obligation and the accountability for service delivery. Splitting these by leaving duties with the Council would be undesirable and Council's

should not be expected to continue as a service provider within a mixed economy of provision in these circumstances – although some may choose to do so.

Criminal Justice Social Work

19. The CJ community has already, and relatively recently, undergone a period of reform - from the establishment of Community Justice Authorities to the establishment of Criminal Justice Scotland. The case for reform and uncertainty when the service is facing particular challenges in COVID-19 recovery and expect high volumes of work from the courts over the next three years has not been made within the consultation.
20. Again, structural change without additional resources will see no change in the level and quality of services offered to our citizens. There needs to be a shift in the amount invested in community disposals rather than prisons. If the additional resources implied in this proposal were to be made available to Local Government, it could be transformative for the criminal justice service and outcomes for offenders.
21. In addition, the evidence is clear that better access to welfare, housing, and employability assistance, as well as health care, have an important role in reducing or even prevent offending. Similarly, the shift away from short prison sentences needs effective, evidence-based community interventions. All of which call for local approaches.

Homelessness

22. Homelessness services are also noted as potentially in scope for the new services although no information as to the scale or rationale for its inclusion has been given.
23. Councils have made considerable progress in addressing homelessness through their Rapid Rehousing Transition Plans, and Edinburgh has introduced effective models of prevention and early intervention in collaboration with a range of local partners.
24. The local context is crucial in shaping the demand and the type of response needed to support those who find themselves homeless or at risk of being homeless. Edinburgh's housing market is shaped by its uniquely high cost of renting or buying homes, with a large private rented sector and the lowest proportion of social rented homes in the country. This means that often, significant numbers of people presenting as homeless are struggling with affordability and debt alongside those who have significant and complex social care and support service needs. In the majority of cases a close working relationship between homelessness services, housing development and support services, advice, debt and benefit support are needed to meet homelessness duties. As such, inclusion of homelessness in the scope of the new body would not be supported.
25. However, for those with significant health and social care support needs, there may be some benefit in establishing a strengthened approach which offers additional eligibility, entitlements and access to services. The Council would be keen to engage on this type of additionality within the reform proposals.

Personalisation and Direct Payments

26. More progress is needed to ensure that people are given the support that they need to take up the option of a personal budget to meet their needs in a way that best suits them. This has been challenging for a range of reasons, including the availability of options to support choice where commissioning and market support play a key role. However, there is a tension between the proposals to introduce standards of care and

consistency and the flexibility needed to deliver personalisation and the benefits of direct payments. The Scottish Government has not laid out how it, and the newly formed NCS would be better placed to address the current tensions and barriers to fully realising the objectives of self directed support.

Reform of the IJB

27. The Council recognises that despite local progress on integration, there remains a need to improve the framework of services in place to meet people's social care needs. A large part of the local challenge relates to pressures arising from the mismatch between the level of demand and the resources available to meet needs and an inability to substantively deliver a shift in the balance of care.
28. The consultation does not articulate how or why the proposals for change would be able to improve on and overcome the challenges currently faced by the IJB. Integration is also relatively new as a structure and we should invest in improving the effectiveness of IJBs rather than introducing more change and restructuring. The Council believes that improvement is possible within the existing framework with local leadership, expertise and the right financial framework.

Local Partnership working during national restructuring

29. When considering the benefit, opportunities and risks of the Scottish Government proposals, consideration should be given from the learning and experience of recent centralisation of services and the establishment of national bodies such as Fire, Police, Criminal Justice, Integration and Public Health for example, local experience has been that:
- i. Structural reform absorbs significant amounts of organisational energy, capacity and resource which is often to the detriment of service delivery;
 - ii. the ability to engage and collaborate locally can stall for a number of years while the national body establishes itself;
 - iii. the ability thereafter of the national body to work flexibly with local partners can be hindered by a national desire for consistency of approach;
 - iv. sometimes the national approach adopted is at odds with local practices and approach;
 - v. National direction and national priorities for budget use can be to the detriment of local solutions and priorities that reflect the needs of citizens within a given community;
 - vi. local place-based decision making is made more difficult in respect of capital and asset ownership and management; and
 - vii. expected operational efficiencies are often optimistic and unrealised.

Workforce

30. It is unclear what workforce(s) are in scope and what being in scope would mean. There are workforce implications in the long term should a National Care Service be established but the proposals themselves, and the prospect of this level of upheaval in an already pressured system, while still managing and coping with the consequences of a pandemic also creates immediate workforce implications and risks to the service.

31. The risk that substantive numbers within the social care and social work profession will take the prospect of change at this magnitude and at this point in time as impetus to leave or retire is significant. In Edinburgh, more people aged over 80 work in adult social care than those aged under 20. There will be an immediate escalation in the recruitment risk and associated cost to the service and the employer during this period of uncertainty and change.
32. However, workforce is one area where a more national framework would potentially benefit the service and its long term sustainability and attraction as a positive career choice. Harmonisation of pay and fair work principles, improved training and career pathways, and improved workforce planning could benefit from national collaboration and consistency. The national framework for teachers offers a potential model for improvements which could be implemented relatively quickly and without the need for structural reform.

Governance

33. The governance within the consultation is loosely described, with a lack of clarity on the form, duties and responsibilities and how the system would work as a whole and integrate with partners. It is not clear how duties relating to the services that are in scope would be disaggregated from current legislation and allocated to the new body. What is suggested does not immediately look simpler or less bureaucratic and it is unclear as to whether the proposals are seeking to lay out a governance system as part of the wider system of public service delivery or a means of achieving national control of social care. The lack of detail means it is difficult to comment on any specifics and it is recommended that the governance proposal should address the following matters:
- I. The structures which will be put in place to improve service delivery – structural reform does not just result in improved service and there needs to be more detail on what will be put in place;
 - II. Where legislative duties will sit whilst ensuring responsibility, accountability and service delivery sit together;
 - III. How CHSCBs will be effective with accountability to ministers rather than the National Care Service
 - IV. The loss of local democracy and accountability with service delivery being accountable to one minister rather than local people and communities;
 - V. How national consistency and oversight will be managed whilst still ensuring local decisions and solutions; and
 - VI. Further detail on how the service will integrate on housing, education and policing recognising that being a statutory consultee is not integration.
 - VII. The relationship between the NCS and Criminal Justice Scotland and other relevant national bodies
34. Local democratic accountability is not achieved through the membership of a small number of Councillors on a Board or Partnership. Divorcing services targeting some of our most vulnerable resident from local democratic accountability is not desirable and there is no evidence to suggest that communities and citizens themselves are empowered more and have greater recourse to action in the face of a complaint about local service delivery within a nationalised service model.

Funding

35. The proposals provide no detail as to how the identified additional entitlements and rights and the costs associated with the development and ongoing running costs of the new body would be funded. In Edinburgh, the budget for the services potentially in scope is £380m per annum with demand for current provision and entitlements expected to grow by £8m per annum before any additional commitments are accounted for.
36. Depending on the scope of the reform, these proposals could therefore remove about 40% of the Council's budget. The financial implications for local government could extend beyond the services referenced to impact the wider debt profile of the Council and its ability to leverage capital and borrowing for investment in critical infrastructure and other policy priorities such as addressing the climate emergency. The Council is at the heart of investing in the regeneration, development and improvement of Edinburgh as a city and removing this budget would radically limit its potential to invest in the wider roles, responsibilities and duties the Council holds and which are a shared priority for the government.
37. The consultation is not clear on how capital and capital assets will be dealt with if social care and social work services are centralised along with their revenue budgets. The purchase, rental or sale of capital assets will need careful operational, financial and legal consideration before progressing.
38. The mixed market of social care is also linked to the overall cost of social care. The consultation document does not deal with the difficult issue of profit within the sector and the different local pressures on markets with a strong private sector component.
39. Audit Scotland report on police integration reflected the challenges of a proposal for change built on the assumption of efficiencies. Nationalising a service does not necessarily result in efficiency especially when a service has experienced a historic budget gap. The Scottish Government should provide detail on any assumptions it is making about cost savings and efficiency in its options appraisal.
40. Scottish Government should provide absolute clarity on these points given the potentially significant ongoing financial implications of these proposals for the whole of Scotland and for the financial stability of local government. This includes detail as to whether the intention is to fund these proposals through taxation.

Other considerations

Procurement

41. It is acknowledged that for certain service needs there might be some benefits to a more collective approach to procurement in terms of efficiencies and scale that it would be helpful to explore. However, there are existing mechanisms, frameworks and organisations such as Scotland Excel which could be utilised before establishing a new body with a similar remit or function.
42. In addition, the Council's experience is that the market is fragmented and locally based, with the majority of social care provision being delivered by SMEs and the third sector. Further, and more importantly in terms of service delivery, there is a real risk that such a

national approach would detract from the collaborative locality networks which local authorities, including the Council, have been developing with key partners over years.

43. In particular, the Council is currently undertaking work in Community Based Networks and Hubs, through current work in the Edinburgh PACT and 20 minute neighbourhoods, which is seeking to build a community “circle of support” with statutory services, third sector and independent organisations working collaboratively and collectively to meet individual outcomes. Such an approach could be placed at risk by the proposals. In addition, a national approach would be less able to respond to localised procurement objectives, for instance ensuring roles for local community organisations, SMEs and the third sector, and more generally developing local markets.
44. Market shaping is certainly required to meet the demands the Council is experiencing in particular sectors, with increases in numbers of older people, especially those with disabilities, complex and multiple needs and increases in the number of children with disabilities. A national strategic approach to this could be of assistance, perhaps with a regional focus based on capacity and gap analysis.
45. However, the Council’s experience, through listening to social care providers, is that traditional forms of procurement do not necessarily deliver the outcomes that are needed for these services. Instead, better outcomes are more likely to be secured through those contracts that are developed from significant co-production with service providers and service users. Again, it is difficult to see how such an approach could be facilitated on a national scale without losing that collaborative, local approach.

Information Governance

46. While it is recognised that a National Care Service will require data in achieve its functions, the existing legislative landscape already enables proportionate and relevant data sharing. Data protection law already provides legal gateways which ensure that personal data can be shared when appropriate, and without reliance on consent.
47. It is accepted that there can be some concerns over the legality of sharing personal data in certain contexts; however, in order to ensure public trust, it is recommended that this be tackled through better communication and guidance to improve confidence and the development of a shared culture in this space rather than the use of legislation
48. Investment in better communications, guidance and/or codes of practice would consolidate a consistent approach to data collection and information flows without eroding individual rights and public trust.
49. On a practical level, prescriptive data collection would be complex to achieve given the number and variety of organisations involved. It may also cause organisation to collect data that they do not need, and a national record may then retain information longer than would otherwise be required creating tension and potential non-compliance with data protection legislation. There is also the potential for numerous data controllers to jointly control an individual record creating a confusing picture in terms of responsibilities over ‘the record’ and individual entries within it. Numerous and varying access rights would require central administration.
50. The creation of an over-arching record will also require consideration in terms of statutory responsibility and control. Should responsibilities for record-keeping be centralised to a single body, that same body will need to also become responsible for

current and historic records held by organisations losing that responsibility, ensuring that these are then managed and made accessible according to the Public Records (Scotland) Act 2011, Data Protection Act 2018 and other legislation.

51. Such a national recording system is likely to require extensive resource to ensure effective central administration, system support, and regulatory compliance. If a devolved record-keeping model is chosen instead, where different organisations retain responsibilities for their own records, it is hard to see how the National Care Service will be able to reduce the duplication of systems and create the integrated social and health care record that seems to be a key aim of the proposal.
52. A more practical and less burdensome approach to support consistent and effective information flow and service user experience would be create a series of thematic but detailed good practice codes addressing record-keeping, data sharing, and rights to access information.
53. Scottish Public Services Ombudsman (SPSO) already provides the priorities identified in the consultation and a model complaints handling system (including for social care services) and it is unclear what is likely to be achieved by introducing a new system specific to the national Care Service. Similarly, legislation already exists to facilitate relevant and proportionate information sharing with regulators. Further legislation in this area is not needed.