

ITEM No ...6.....

REPORT TO: CITY GOVERNANCE COMMITTEE – 24 JUNE 2024

REPORT ON: NATIONAL CARE SERVICE UPDATE

REPORT BY: CHIEF EXECUTIVE

REPORT NO: 141-2024

1. PURPOSE OF REPORT

1.1 This report updates members about the latest developments in relation to proposals for a National Care Service.

2. RECOMMENDATIONS

2.1 It is recommended that members:

- a note that the National Care Service (Scotland) Bill has passed Stage 1 of the Scottish Parliament’s legislative process and will now move to detailed consideration by the lead Parliamentary Committee at Stage 2;
- b note that the Scottish Government has indicated some significant changes that they propose to make to the Bill, but much of the detail of how the National Care Service will operate, and the implications of this for local authorities, still remains to be decided. There remains some distance between the positions of Ministers and COSLA Leaders on aspects of the proposed legislation;
- c note the updates on discussions which are taking place between the Scottish Government, local government, and the NHS about both the governance aspects of the proposed National Care Service and the wider social care issues which the National Care Service (Scotland) Bill aims to address; and
- d note that update reports will continue to be submitted to Committee as further details emerge and as any decisions are required.

3. FINANCIAL IMPLICATIONS

3.1 There are no immediate financial consequences for the City Council arising from this report. However, there are likely to be implications arising from establishment of the National Care Service, depending on the detailed decisions which have still to be made about its scope and implementation.

4. DEVELOPMENTS WITH THE NATIONAL CARE SERVICE (SCOTLAND) BILL

4.1 Reference is made to the report to the Policy and Resources Committee on 25 October 2021 (Article III of the minute refers) which summarised the Scottish Government’s consultation on proposed changes to health and social care, including the creation of a National Care Service, and recommended a response by the City Council; and to the report to the Policy and Resources Committee on 22 August 2022 (Article VIII of the minute refers), which advised members about the publication of the National Care Service (Scotland) Bill, including information on the extent to which the Bill clarified areas highlighted by the Council in its response to the earlier consultation, and set out a draft response to a call for views which had been issued by the Scottish Parliament.

4.2 The National Care Service (Scotland) Bill has now passed Stage 1 of the Scottish Parliament’s legislative process, following a debate on the general principles of the Bill on 29 February 2024. <https://www.parliament.scot/bills-and-laws/bills/national-care-service-scotland-bill> The Bill now moves on to Stage 2 of the process, although the timescale for Stage 2 activities has still to be

announced. Seven Parliamentary committees took evidence and reported on the Bill during Stage 1, and further detail and amendments will be now discussed by the lead Health, Social Care and Sport Committee during Stage 2 of the Bill's consideration, before the full Scottish Parliament will vote on whether or not to pass the Bill at stage 3.

4.3 The timeline below was originally published by the Scottish Government prior to a 1-month delay to the Stage 1 debate and an ask from Parliament's HSCS Committee for additional time for Stage 2 scrutiny, so could be subject to change.

- Spring 2025: Shadow NCS National Board launch, shadow National Social Work Agency launch.
- Spring 2026: NCS National Board launch, National Social Work Agency launch.
- 2028/29: NCS local reform of Integration Authorities.
- 2028/29 – 2030/31: Continued iteration and delivery of local reform.

4.4 Key points made by Committees before the Stage 1 debate included:

- The Health, Social Care and Sport Committee's Stage 1 scrutiny report made a majority recommendation that the general principles of the Bill be supported. However, they highlighted a number of concerns in their 183-page report and said their support remains conditional on the Scottish Government addressing these concerns and agreeing to facilitate significant further scrutiny of the Bill at Stage 2, ahead of formal Stage 2 proceedings. The Committee said they understand that this is a 'framework Bill' but describe the lack of detail at this stage on what that framework will look like as concerning, arguing that this has limited their ability to scrutinise the proposals effectively, and they called on the Scottish Government to explore the possibility of establishing an expert legislative advisory group for the Bill to help guide the proposed co-design process. Assurances are also sought that a full list of Stage 2 amendments will be made available to the Committee as soon as possible, and well in advance of formal Stage 2 proceedings, to allow for significant further scrutiny.
- The Finance and Public Administration Committee's assessment of the revised financial memorandum for the Bill acknowledged that a significant amount of work had been undertaken to improve the cost estimates associated with the Bill since the Committee reported on the original financial memorandum in December 2022. This included narrowing the variances between the lower and upper cost ranges and enhancing the level of detail regarding the costs associated with the rights to breaks for unpaid carers. However, the Committee's assessment said that 'Given the ongoing co-design and continued uncertainty regarding the final policy detail relating to the Bill, although the variance in costs has reduced considerably, we are not confident that the figures presented in the updated financial memorandum and the accompanying shared accountability paper are an accurate reflection of the final costs of the Bill' and that 'understanding the economic benefits and improved delivery of care to be provided by the proposed National Care Service is crucial in assessing the overall cost-benefit of the proposals. However, insufficient information is currently available to fully allow for such analysis.' The Committee felt that the Scottish Government's approach of introducing a 'framework' Bill and using 'co-design' to develop the detail of the policy to be included in secondary legislation after the Bill is passed, presents considerable challenges in scrutinising the financial implications of the policy.

4.5 In June 2023, COSLA Leaders and Scottish Ministers reached an initial agreement around a national framework for 'shared legal accountability' in relation to the National Care Service. This framework included the default position that local authorities retain legal responsibility for the delivery of social care and social work functions, as well as retaining staff and assets. In addition, a new National Care Service National Board would be created, accountable to both Local Government and Ministers, with responsibility for national improvement, standards, and oversight, and with an agreed escalation framework in place for when standards are not met. Furthermore, COSLA Leaders agreed that local commissioning ensures that services best meet the needs of communities and helps offer security to the Local Government workforce. As such, Leaders said that local government retaining a key role in local commissioning should be central

to the development of a future local framework, in addition to reaffirming the belief that responsibility for children's services and community justice should remain with local government.

- 4.6 During the Stage 1 debate, the Minister for Social Care, Mental Wellbeing and Sport set out three significant changes that the Scottish Government intends to make to the Bill at Stage 2, in response to evidence taken at Stage 1 ongoing feedback from stakeholders and, in particular, the shared accountability agreement with COSLA outlined above. These three changes are that:
- a National Care Service Board will be established to oversee delivery across Scotland;
 - the Scottish Government will not now create new local Care Boards as originally planned, but will instead reform existing Integration Authorities; and
 - local authorities will retain responsibility for current functions and the delivery of social work and social care services, with no transfer of staff or assets.

The Minister said this change of approach reflects the challenges of a new fiscal environment. These changes would substantively reduce the cost of the Bill by removing the need to set up care boards and to transfer staff and assets. The Minister said this will mean the costs of setting up the National Care Service will be up to £345 million over 10 years, whereas the proposals set out in the Bill as originally introduced would have cost £1.6 billion over the same period.

- 4.7 The Minister also set out the difference she believes the National Care Service Board will make. It will include, as a minimum, an independent chair and representatives of the Scottish Government, local government, the NHS, and people with lived experience of receiving and delivering community health and social care. The Board will have an overview of the planning and delivery of community health and social care provision across all of Scotland. It will look at what is spent, what care is provided, who receives it, and the outcomes for those people. The Board will also have a support and improvement framework, to drive innovation and improvement, to help local areas where monitoring indicates that standards and needs are not being met, and to intervene if necessary. The Minister says the National Board will give a level of transparency that is not possible in the current system and will improve understanding of where people's experiences are inconsistent across Scotland, build on good practice and tackle challenges. Local Government, Scottish Government and NHS officials have engaged in extensive discussions on the role of the Board and how such a body should interact with different partners across the system, including responsibilities and accountabilities.
- 4.8 The most contentious part of the proposals remains the possibility that children's services and community justice services may be included within the scope of the National Care Service, in addition to adult social care services. This is contentious because many areas (including Dundee) have taken a decision not to include children's services and community justice services in the functions delegated to their local Health and Social Care Partnerships and have instead decided locally to keep these as Council services. Dundee City Council, among other local authorities, has taken the view that collaborative leadership and partnership is more likely to deliver improvement than structural change which would disrupt existing relationships between services. There is a concern that, to achieve their policy intention of greater consistency, Ministers may seek powers to mandate the delegation of children's and justice services if they feel that other arrangements will not ensure consistent applicability of National Care Service features and principles. This issue continues to be discussed at the COSLA Leaders Meetings, most recently on 31 May 2024, where Leaders expressed disappointment at the decision of the Scottish Government to continue to seek the power in legislation to enable Scottish Ministers to mandate the local delegation of children's services and justice social work services and include all children's and justice services under the auspices of the NCS National Board. It remains unclear the effect this will have on Scotland's ability to keep the Promise or improve outcomes for children more generally in the context of limited resources.
- 4.9 Other outstanding issues of concern to COSLA include chairing arrangements for IJBs, direct funding, accountability of the National Care Service National Board and the role of the National Social Work Agency. Leaders have agreed that COSLA officers and the Health and Social Care Spokesperson should continue to engage with the Scottish Government and Ministers on these

issues during the extended parliamentary process. Progress being made in the range of areas under discussion is summarised in section 5.

- 4.10 On 28th March 2024, the Scottish Government convened the first meeting of a National Care Service 'Expert Legislative Advisory Group'(ELAG). The establishment of this group emerged from a recommendation by the Scottish Parliament's Health, Social Care and Sport Committee, as a means to help guide the co-design of the NCS. The group is constituted of nearly 60 organisations and individuals, including third sector, disabled people's organisations, academics, and people with lived experience. ELAG is now meeting regularly. COSLA officers and NHS partners have been clear with Scottish Government officials that policy papers shared with this group must be respectful and explicit about the ongoing discussions taking place between COSLA and Scottish Government and should not contain positions of outstanding agreement. Despite this, COSLA say that papers were developed for discussion with the Expert Legislative Advisory Group which contain proposals which have not been agreed with COSLA Leaders, nor in some instances discussed between officials. At the Scottish Government – COSLA – NHS tripartite meeting which took place on 17 April, COSLA officers were clear about the need to ensure that information and policy proposals which are shared with wider partners and the public should be jointly developed and agreed, to reflect the partnership approach to shared accountability of the NCS. Officers were also clear about the risk of putting information into the public domain which has not yet been agreed, in particular the risk to ongoing relationships and the ability to come to consensus on issues of significant value and concern to Local Government.

5. DISCUSSIONS INVOLVING SCOTTISH GOVERNMENT, LOCAL GOVERNMENT AND NHS

5.1 Tri-Partite Meetings

- 5.1.1 Regular tri-partite meetings between representatives of the Scottish Government, Local Government and the NHS are continuing to take place in respect of the plans for a National Care Service. In addition, due to the breadth and pace of reform proposals and the complexity of the issues, a Local Government Advisory Group has been established, jointly chaired by COSLA and SOLACE, with inclusion of SOLAR, Society of Personnel Directors Scotland, Social Work Scotland, and Directors of Finance.

- 5.1.2 A summary of the issues being discussed at these meetings - both about the governance arrangements for the National Care Service and about the wider aspects of legislative and policy change which the Bill seeks to achieve - is set out below.

5.2 Governance Arrangements

5.2.1 National Social Work Agency

Along with local government, engagement is taking place with third sector providers of social work services, including children's social work, currently focused on the form which the proposed National Social Work Agency should take to achieve its responsibilities. Further work is being focused on three options: an Executive Agency, a Non-Departmental Public Body, or a private company (potentially co-owned by Scottish and Local Government, in an organisational format similar to The Promise). COSLA's position is that the National Social Work Agency should be based on joint accountability to both Scottish and local government.

5.2.2 Social Care in Prisons

The Scottish Government's current policy intention regarding social care in prisons includes the ambition that this service be nationally commissioned in future. COSLA has expressed an openness to consider national commissioning for prison social care, suggesting further discussions should take place which facilitate input from local authority advisers, including Chief Social Work Officers, to allow for a greater appraisal of the policy detail. A working group is being formed to further consider this proposal.

5.2.3 Direct Funding

COSLA Leaders have agreed to consider case studies of how direct funding of Integration Authorities may work in the context of the National Care Service, in order to inform a decision on whether or not this is something they choose to support. They have previously suggested that direct funding would only be agreed if additional and under strict conditions. NHS colleagues have indicated a willingness to test out different scenarios. A working group is to be set up to further explore direct funding case studies.

5.2.4 Local Chairing Arrangements

COSLA did not support plans for IJBs to be independently chaired by people appointed by Ministers, believing this would undermine local democratic accountability. The Minister for Social Care, Mental Wellbeing and Sport and COSLA's Health and Social Care Spokesperson have now agreed that a working group be formed to consider improvements in relation to IJB chairing arrangements, including strengthening the role of chairs and vice-chairs.

5.2.5 Enhancing the Voice of Lived Experience and Reforming Localities

The tri-partite group has agreed to set up two workstreams. The first group will explore enhancing the voice of lived experience within local and national decision-making. This group may consider the membership of reformed IJBs, the support available to public partners who sit on boards, and the role and effectiveness of existing committees and mechanisms. The second group will explore the strengthening of localities. The 2014 Public Bodies Act requires Integration Authorities to divide their area into two or more localities, intended to provide an organisational mechanism for local leadership of service planning to feed into strategic plans. The Scottish Government wish the group to explore the form of localities, including the number within areas, the role of participatory budgeting in empowering local communities, how localities should be reflected in strategic planning, and the potential for geographic alignment with other health and social care boundaries including GP clusters.

5.3 Wider Policy Issues included in the Bill

5.3.1 Right to Breaks for Carers

The National Care Service Bill as introduced included a modification to the Carers (Scotland) Act 2016 to introduce a right to "sufficient breaks" for unpaid carers, with local authorities responsible for identifying the need for support to enable sufficient breaks from care. COSLA Leaders have taken the view that this new right needs to be fully considered in terms of definition and regulations, as well as adequately funded in order to ensure successful implementation. A Right to Breaks Regulations and Guidance Group has been convened to focus on identifying potential regulations and guidance that would be required to accompany the right to breaks for carers provision in the Bill. One of the key issues is around the meaning of 'sufficient.' Alongside this, COSLA officers have worked closely with Social Work Scotland to scrutinise and challenge the financial assumptions within costings for the Right to Breaks and have written to highlight key areas of concern.

5.3.2 Complaints

The Bill as introduced included a provision for Ministers to provide a complaints service for services that the National Care Service provides, passing complaints on to the appropriate person. The consensus reached between COSLA Leaders and Ministers in June 2023 included that the National Care Service National Board would "provide effective oversight of local delivery of services, ensuring consistent, fair, human rights-based social care support and community health services, underpinned by effective complaints and advocacy for people." COSLA officers have engaged in discussion with the Scottish Government's policy team and are now involved in an External Programme Board. They have posed fundamental questions around what a complaints 'service' would look like for the National Care Service, given the agreement on shared accountability outlined in para 4.3 above, and in particular what the role of the National Board would be. There are also implications of the agreement that local

government will retain their staff and functions as to the reach and remit that would be appropriate for a new complaints service. There is a need to ensure this does not add an additional layer of complexity to a system that people with lived experience have already said is difficult to navigate.

5.3.3 Charter of Rights

The Bill as introduced included a provision for Ministers to prepare a National Care Service Charter, containing a summary of rights and responsibilities in relation to the NCS. Nothing in the Charter is to give rise to any new rights, impose any new responsibilities or alter an existing right or responsibility. The Charter is expected to be presented in secondary legislation. The Scottish Government intends to share a new draft of the Charter with the Parliament's Health, Social Care and Sport Committee early in 2024, that will form the basis for the next round of co-design and engagement. COSLA has raised the need for a Charter of Rights to clearly separate out existing legal rights or broader expectations people may have in accessing care and support and highlighted the need to align expectations and communications around the Charter with the shared accountability arrangement.

5.3.4 Workforce Charter

A Workforce Charter was not included within the National Care Service Bill as introduced, nor included in the Policy Memorandum, but emerged in autumn 2023 following public co-design activities. COSLA officers have requested more detailed understanding of what is intended.

5.3.5 Integrated Health and Social Care Record

The Bill as introduced included a provision for Ministers to provide by regulations for a scheme that allows information to be shared so that services can be provided effectively by the National Care Service and NHS. The Bill also provided for Ministers to create an information standard document. The intention is to create the foundation for an integrated health and social care record. However, no funding was included within either the original or revised financial memorandum for this. COSLA has been broadly supportive of the introduction of an integrated record, recognising the benefits this could bring in delivering services and improving the experiences of those seeking support. Scottish Government officials are currently developing an internal business case on the integrated record, with COSLA support.

5.3.6 Anne's Law

The Bill as introduced included a provision that Ministers may require providers of care homes to comply with any direction issued in relation to visits to, or by, residents of care accommodation. This is intended to strengthen the rights of people in care homes to see and spend time with people who are important to them, even in the event of an outbreak of infectious disease, and is a result of campaigning by families who were separated from loved ones for long periods during the pandemic. There is a working group that meets several times a year, and the drafting of Ministerial Directions on this will form part of the group's remit, and therefore require local government input at the appropriate time.

5.3.7 Reform of Advocacy Services

The Bill as introduced included a provision that Ministers may make regulations about the provision of independent advocacy services in connection with services provided by the National Care Service. Exploratory work by the Scottish Government is underway to clarify the wider landscape in relation to 'advocacy' services, as well as how these are funded and/or commissioned.

6. POLICY IMPLICATIONS

6.1 This report has been subject to the Pre-IIA Screening Tool and does not make any recommendations for change to strategy, policy, procedures, services, or funding, so has not been subject to an Integrated Impact Assessment. An appropriate senior manager has reviewed and agreed with this assessment.

7. CONSULTATIONS

7.1 The Council Leadership Team was consulted in the preparation of this report.

8. BACKGROUND PAPERS

8.1 None

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DATE: 6 JUNE 2024

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