



# **SASW**

**The professional association for  
social work and social workers**

## **NATIONAL CARE SERVICE BILL**

**Evidence Submitted to Health, Social  
Care and Sport Committee**

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## Introduction

The Scottish Association of Social Work (SASW) is part of the British Association of Social Workers, the largest professional body for social workers in the UK.

BASW UK has 22,000 members employed in frontline, management, academic and research positions in all care settings. There are over 10,000 registered social workers in Scotland around 1,500 of whom are SASW members. This comprises staff working in local government and the independent sector, across health and social care, education, children and families, justice services, as well as a growing number of independent practitioners.

SASW's key aims are:

- Improved professional support, recognition, and rights at work for social workers
- Better social work for the benefit of people who need our services and,
- A fairer society.

In preparing this response we consulted with social workers through nine online engagement sessions in July and August and six surveys each on specific aspects of the Bill.

Our comments reflect the views, sometimes diverse, of our members and those we engaged with more widely. It was clear from our engagement that everyone found the consultation questions difficult to answer due to the current lack of detail.

In the last 30 years, social work has lost significant elements of our work which we consider our professional role. Care management in the 1990s elevated a task-oriented deficit-based assessment methodology. This intensified the focus on fixing the individual rather than involving them in articulating their desires and life experiences, exploring their work and social environments to generate creative options.

The mixed economy of care that was generated around the same time brought opportunities to work with independent partners within communities, innovate and evolve the public sector offering. However, cuts to social work budgets and austerity meant that it became cheaper to buy in services by staff not qualified in social work where the service could be disassociated from "statutory," i.e., uninvited, and often unwelcome, interventions. The cuts to local government spending have meant that local authorities found they could no longer afford some crucial preventative and early intervention supports. These were picked up by health services or the Third Sector providers; often support offerings such as social prescribing and programmes like distress brief intervention.

Eligibility criteria followed and raised thresholds to access social work help and social care services. Decisions about not only whom to support, but even whom to assess, became necessary due to budget reductions. This meant that in effect social

workers became involved later and later in supporting people having problematic times. This later engagement affects our relationship with the people we support which becomes more strained as social workers become involved in lives often only at that point of statutory intervention. Social work and government initiatives to promote good conversations, person-centred and outcome focussed assessment fail in the execution because, to secure resource, social workers must prove that a person suffers significant deficit. Social workers have become not only gatekeepers of resource but may then be perceived as the punishers of people for whom prevention and early intervention were not available or did not work. In addition, social workers are then held to account for this by the media and public.

We are at a stage where the social contract between the profession and those it serves is at best strained. Government now needs to decide whether we continue this trajectory or whether we redirect.

The Setting the Bar report published in June 2022 showed that social workers feel debilitated by fear of getting something wrong, are exhausted and burnt out from spiralling caseloads, where they are not able to learn and develop throughout their careers. This cannot continue.

The very essence of social work, the core values that draw people to become a social worker, is the community-based, relationship building and sometimes directly therapeutic work that is alongside people when they need it.

We must work for a cohesive social work profession that is accessible to all of us when we need support, trusted by the public, our employers and our government and supported throughout the career span. A profession with a new social contract based on relationships and trust.

SASW will fully engage with the development of a National Care Service to ensure those making decisions about our profession have a full and deep understanding of the value of the profession, its contribution and understand who we are. Social work as a profession is committed to supporting the Scottish Government to find solutions as to how we could work so much more effectively and make real change to the wellbeing of people in Scotland.

## General

**The Policy Memorandum accompanying the Bill describes its purpose as being “to improve the quality and consistency of social work and social care services in Scotland”. Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?**

SASW members agree that fundamental change in the way social work and social care services are experienced by people who need support and by those who work in services is necessary.

As it stands, this Bill is unlikely to deliver improved quality and consistency of social work services. It lacks sufficient detail to determine whether it might meet the vision of the Feeley Review or the purpose the Bill as set out in the Policy Memorandum.

The lack of detail around funding, workforce, and how adult social work and social care will operate are significant omissions.

Social work needs substantial and ambitious changes to safeguard its future and advance it as a profession. A National Care Service Bill provides a platform to bring about radical and long overdue reform which we welcome. However, it requires that politicians grasp this opportunity to make real and radical improvements.

The Setting the Bar report published in June 2022 demonstrated the serious and wide-ranging challenges facing the profession. Social workers are leaving the profession because of increasing caseloads and demands on them, leaving a depleted and demoralised workforce that is only resourced to deal with crisis interventions. This is not good for people who need support or for the workforce providing it. This is unsustainable and cannot continue.

The worst outcome is that the Bill launches a period of extreme structural change but in fact tinkers around the edges of what is needed. This risks a new structure that incorporates social work in its current form and where the fundamental issues of resource and capacity is not addressed.

A more radical approach perhaps might incorporate Common Weal's proposed legal duties (or purposes of a National Care Service) at the start of the Bill to provide clearer direction for the aims of the legislation.

1. To promote a caring society;
2. To support those who provide care informally through caring relationships;
3. To provide care directly where this is needed.

Our members recommend further consideration and engagement with stakeholders before this Bill proceeds further. Parliament needs a more detailed proposal to scrutinise before agreeing to the substantial powers the Bill intends. There is no clarity in the Bill around how the NCS will protect human rights, how it will promote dignity and equality, how the co-design process will work and how it will be funded. Until this information is available, it is difficult to endorse the Bill in its entirety at this point. It is crucial that Scotland takes the time to get this legislation right. This means the application of due diligence, the development and use of an evidence base and meaningful co-design and engagement.

### **Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?**

The Bill is currently too light on detail for SASW to give a view as to whether it will improve the quality and consistency of social work and social care services.

The challenges facing social work and social care services are significant:

- Lack of resource
- Recruitment and retention challenges
- Heavy caseloads
- Lack of time to develop meaningful and effective relationships
- Being seen only in terms of gatekeeping of resource and care management responsibilities
- Crisis interventions rather than early support
- Burnout from pressures of work, associated resource challenges and lack of professional autonomy
- Systems and processes that do not support professional decisions made by social workers.

Resolving any of these requires extensive, open and specific engagement with the workforce, those who use services and other stakeholders to get right. We also need to view the Bill alongside other human rights legislation, including the Economic, Social and Cultural Rights and The Proposed Human Rights Bill introduced on 16 March 2022, the Scottish Mental Health Law Review, The Barron Review and the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill.

Better quality and consistency of services is not just about changing structures. Setting the Bar report concluded that social work has reached a point where “the values to which social workers are deeply committed to are compromised, with wellbeing impacts, making the job no longer tenable.”

It goes on to add that “Social work has deviated from the professional’s position on what it is and how it supports people. This is at odds with Scotland’s vision for social work with a focus on prevention, early intervention and enablement.”

This should be a serious red flag for politicians. If things don’t change, social workers will continue leaving a depleted and demoralised profession. The subsequent impact on everyone who need services and those who remain in the profession will be catastrophic. A national care service offers a chance to reform social work and to make it a universal service, accessible to people when they need support or advice. Social work could become a profession trusted by the public, our employers and our politicians to do the job we trained for and a NCS could ensure a workforce that is supported with good training, management and career pathways to encourage people to become social workers who remain social workers for a good career-span. The Bill in its current form does not provide the detail required to affirm that it can deliver these necessary elements.

Social work has been subjected to years of under-funding at local government level which has compounded the problems experienced by people who need support and the workforce. The Bill must be backed up by funding and resources to support its implementation.

Improving quality and consistency of services is not just about changing the structure.

### **Are there any specific aspects of the Bill which you disagree with or that you would like to see amended?**

Social workers, particularly those in rural areas, have expressed concern about losing responsiveness to local needs through a national and potentially centralised approach. The care boards will need input from local stakeholders but there is no indication in the Bill this will be a requirement when appointing to the boards.

It is reasonable for Scottish citizens to expect a consistent standard of service. The aim of delivering more consistent services to address what Ministers call the 'postcode lottery' must not override local nuance and responsiveness. Any blunt aim for consistency risks reducing services to the lowest basic standard and could undermine the principles of personalisation.

Many of our members view the Bill as a top-down approach to managing services that risks removing professional autonomy from those doing the work. Social workers in rural local authority areas have highlighted serious recruitment and retention challenges with not enough staff to do even those assessments required by law, which is only one aspect of social work. Our members fear that centralising control will not address these issues and could, inadvertently, exacerbate them.

SASW members have reservations about the extent of powers the Bill gives Scottish Ministers due to the lack of detail including checks and balances which should be provided by an arm's length mechanism. The framework approach to the Bill is too broad and is open to interpretation. It seems to expect the Scottish public to assume good intentions from our politicians. Overtime, Ministers, governments and administrations change, and even if they did not, the level of trust being asked of us in this Bill is inconsistent with democratic principles. Overall, the strength of powers being afforded to Scottish Ministers risks a move away from partnership working and collaboration which we believe must be a key component in a National Care Service as well as the current commitment to co-design and stakeholder involvement.

The Bill's sections on the transfer of staff from local authorities give Ministers powers to transfer worker from local authorities to care boards. The potential use and outcome of this power is, of course, not yet clear. If social workers were to remain employed by local authorities, this might mean that care boards would have to commission social work from the local authorities. We do not support the commissioning of social work from local authorities to care boards as the commissioning process would be likely to result in service level agreements that would be task based and undermine the core function of relationship-based practice of the profession. The organisations that hold the legal duties and powers for social work must also be their public sector employers.

## Is there anything additional you would like to see included in the Bill and is anything missing?

The role of the social work profession is currently omitted from the Bill. We would like to see explicit mention in this Bill of a social work profession that is based in communities. Social workers must be able to work with individuals and families using all their skills to provide early support, direct therapeutic work, to strengthen communities and work alongside other disciplines to streamline and improve the experience of care and support.

The role and nature of social work has altered over the last thirty years from a profession that holistically tries to help people to one which acts as the gatekeeper for resource or intervenes on behalf of the state when there are crises or issues of protection. Use of the care management model, the introduction of eligibility criteria and the impact of austerity over the last twelve years and longer have contributed to the reduction of the scope of social work. The NCS Bill must drastically reform social work into a service that proactively supports people, giving social workers autonomy to do the job they trained in and entered the profession to do. In its present form, there is no indication in this legislation that a National Care Service will bring about these essential changes.

Significant omissions from this Bill include the duty of welfare for citizens (Social Work Scotland Act 1968 s12) and the duties and powers around the protection of both adults and children.

There is broad support amongst social workers for the establishment of a National Social Work Agency that has responsibility for the areas set out in the policy memorandum. Currently, there is no consistent approach to social work across local authority areas and our member anticipate this could be improved with a NSW. This is not on the face of the Bill, and we believe it should be added.

Whilst the role of the National Social Work Agency forms part of the policy memorandum, it is not on the face of the Bill. 'Setting the Bar' pointed out that social workers want to see the profession more visible and respected. We accept that the National Social Work Agency will be tasked with raising the profile of the profession. However, without embedding the role of the social worker and a NSW to promote quality, consistency, and deliver for the needs of the workforce, then social work risks having its role diluted even further. Including the NSW in the Bill might help to clearly define the roles, relationships and responsibilities between the NSW, SSSC and the Care Inspectorate which lack detail in the current proposals.

SASW supports a National Social Work Agency within the NCS. We understand that this has been omitted from the Bill since the NSW would be established within government as part of the NCS structure. However, it means that the social work profession is not being directly consulted on the structure or function of the agency that will have such significant authority over it. It also gives social workers no certainty that a NSW will be delivered and its relationship within government raises questions about its credibility. This appears to be a missed opportunity.



Staff welfare and wellbeing is missing from the Bill. Given the serious pressures social workers are facing and the impact this is having on their mental health and wellbeing, as highlighted by the Setting the Bar report, this is a significant omission. Support for the workforce should be embedded directly into this legislation. From a social work only perspective, stating that the National Social Work Agency (NSWA) will have responsibility for workforce planning and supporting the profession is only implied since the NSWA is not included in the Bill.

## **Future Secondary Legislation**

**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?**

The list of existing legislation that this Bill will impact is extensive and is the legislation that underpins the powers and duties of local authorities in relation to social work including the duty of welfare and duties and powers in relation to adult and child protection. The profession cannot be expected to agree to the effective dissolution of the profession without knowing what will be in its place.

The reliance on secondary legislation leaves a vacuum around the direction of the Bill which gives social workers no real sense of what their role in a National Care Service will look like. This has been a common theme throughout our engagement sessions and is already causing uncertainty across the profession. Given the scale of problems already being experienced by social workers in their day-to-day work, this lack of detail is unlikely to help recruit people in the profession without significant effort.

A report by the Hansard Society into the use of delegated legislation in 2021 concluded that "Broadly-drawn delegated powers cannot be effectively scrutinised, and the Statutory Instruments that emanate from these powers are subsequently also subject to little or no parliamentary scrutiny. Ministerial action is thus not accompanied by any meaningful parliamentary oversight." Given the importance of this legislation in determining the future of social work and social care, it is critically important that the legislation is properly scrutinised. We therefore have reservations about this approach.

On that basis, we ask government to advise on the options of slowing or pausing the Bill process. This could allow the inclusion of more detail onto the face of the Bill or

publishing the secondary legislation alongside the Bill. Stakeholders must be satisfied that sufficient time has been allocated to correctly assess the impact of this legislation so MSPs can apply the relevant checks and balances necessary in a progressive democracy.

If the Bill is not paused, then we ask Government to publish the strategy and more detail for the co-design process. Currently, we do not know how the Scottish Government intends to engage with professionals and people who use services on the development of this Bill. The engagement process must be clear, accessible, and inclusive to ensure representation from a diverse range of people. That means not solely depending on digital means and using a variety of mechanisms to maximise engagement. It must include the use of BSL interpreters to meet the needs of marginalised individuals where BSL is the first language. The co-design process is vital in creating and evidencing the rationale of any secondary legislation and this process should be clearly mapped out.

## **Transfer of Services**

**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?**

The Bill refers to adult services without clear definition of what that includes and with transition between children's and adult's services unclear.

Our members, and social workers more widely, support the transfer of children's and justice social work services into the NCS. People live in families and in communities and move between age-based services so the idea of separating social work services is not supported. Parents who are struggling need support from adults' services to be able to parent well. People in the justice system who experience high levels of social need, should get help from adults' services. The Policy Memorandum suggests support for including both services in the NCS. It outlines the problems with alternative approaches, and we hope Ministers will take this into consideration when they present their eventual decision to parliament.

Overall, we're pleased that the government has not rushed this decision and are taking a measured approach by consulting further. SASW looks forward to engaging with the consultation on children's and justice social work services once details are available on how and when it will be carried out. Meantime, we reiterate our strong support for keeping all social work specialisms together in the NCS and fragmentation of social work functions must be avoided.

The risk of pressing ahead with co-designing this Bill before deciding whether to include children's and justice services is that both services get tagged onto the NCS as opposed to being fully and properly embedded within it. That would be a serious oversight. If both services are to be integrated into the NCS then the Bill should not progress before this important decision is taken.

## Financial Implications

### 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?

Social Work Scotland and The Fraser of Allander Institute have undertaken specialist financial analysis. We concur with their findings that the information in the Financial Memorandum of the Bill is not sufficient to support effective Parliamentary scrutiny.

The cost estimates provided in the financial memorandum are for the organisational expenses in setting up the National Care Service, totaling £225 to £500 million by 2026-27. This expenditure will not expand the volume of services and support available to people, or deal with the current crises in social care. Structural changes appear likely to consume much of the total funding available for the National Care Service, over £840 million by 2026-27.

The only *service volume improvement* included in the Financial Memorandum is for a very slow build-up of more support for respite breaks for carers, totaling only £16 to £27 million by 2026-27 and not reaching an estimate steady state of £116 to £170 million until 2034-35.

Some very important "Scottish Government commitments" has been explicitly excluded from the FM (in paragraph 13) and are not costed. These include:

- increased investment in early intervention and prevention
- social work services
- fair work pay increases and improvements in terms and conditions for adult social care staff in commissioned services
- increases in free personal and nursing care rates to cover more of the care costs in care homes
- removal of charging for residential care, and
- investment in data and digital solutions to improve social care support.

There are some additional items we believe should be costed that are not:

- meeting existing unmet need
- the reform of eligibility criteria to promote early support
- changes in commissioning culture, and
- improving performance and management information.

Feeley recommended robust annual demography funding uplifts for adult social care. In 2018, the Scottish Government's Health and Social Care Medium Term Financial Framework estimated these at 3.5% per year. This has never been implemented.

It is not clear from the *Resource Funding Review* whether the Scottish Government has the revenue to implement a fully funded National Care Service, even while reducing Local Government funding by over £1 billion in real terms by 2026-27, on now outdated estimates of inflation.

It is widely reported that health and social care services have not returned fully to pre-Covid levels and cannot recruit sufficient staff to maintain services at current levels. The difficulty is not the variation of service between local areas, but the fact that demand continues to grow, and available resources are too low in relation to levels of need.

The immediate task should be to fix the key problems we are experiencing now. This includes care staff recruitment and retention and developing increased investment in the early intervention and prevention work that is necessary for the future sustainability of a National Care Service. If a new National Care Service cannot be fully funded through existing revenue, then the Scottish Government should seriously consider the last recommendation in the Feeley Report on options for raising new investment in social care.

## Impact Assessments

The Bill is accompanied by the following impact assessments:

- [Equality impact assessment](#)
- [Business and regulatory impact assessment](#)
- [Child rights and wellbeing impact assessment](#)
- [Data protection impact assessment](#)
- [Fairer Scotland duty assessment](#)

- [Island communities impact assessment](#)

## Do you have any comments on the contents and conclusions of these impact assessments or about the potential impact of the Bill on specific groups or sectors?

The data used for the Equality Impact Assessment is not entirely up to date, with some pre-dating the Covid pandemic. It is not sensible to base decisions relating to this Bill, particularly financial decisions, on old data. We suggest this is reviewed.

The Child Rights and Wellbeing Impact Assessment cannot be properly commented on until such time as a decision is taken around the inclusion of Children's Services in the NCS. We would expect another impact assessment to be carried out once this decision has been taken. Furthermore, the timing of the UNCRC Incorporation (Scotland) Bill is important. Providing the revised UNCRC Bill comes into law before the National Care Service Bill is voted on at stage three, the National Care Service Bill will need to be compatible with UNCRC and evidenced in the impact assessment.

## National Care Service Principles

### Section 1 defines the National Care Service principles.

The principles as they stand provide a good starting point. However, when read as standalone they risk being interpreted as a list of instructions to how the NCS should run as opposed to principles that define and drive what the NCS should achieve.

One social worker commented that the principles should mention 'meeting' rather than 'reducing' care needs. We would like to see this amended wherever mentioned in the Bill.

We support the inclusion of the broader principles proposed by Common Weal in their "Caring for All" paper.

**1 Universality of Care and Promotion of Welfare:** care should be on offer to people throughout the whole course of their lives. At times when our own resources are insufficient to give us the support we might need, public care should be available. This includes necessary support to those who care formally and informally within families and kinship groups – whether parents, kinship carers, or other carers. The promotion of welfare is a fundamental public duty.

**2 Accessibility and Prevention:** care services, however provided and including publicly provided social work services, should be easily accessible

within local communities and available at the earliest opportunity to those who require them.

**3 Services Built on Relationships, with Minimum Intervention and Minimum Bureaucracy:** care is most effectively delivered when it is provided by those whom we trust and know, or who are trusted and known within our communities. This might involve the maintenance of long-term relationships based on an open-door policy between workers and users of services. There should be no accusations of over-dependency – relationships between citizens and professionals should always be based on minimum interventions, not determined by pre-determined protocols or eligibility criteria. Elaborate bureaucracy should only be in place where of proven necessity e.g., in complex care situations.

**4 Service Provision Based on Individual and Collective Agreement on Need and Outcomes for Services Provided:** workers tasked with offering care services within communities should agree need and desired outcomes with those they are supporting, whether collectively or individually. The Four Rs.

**5 Independent Living:** people with disabilities should be supported so that they can fulfil their potential and live their lives like all other citizens. This involves choice and the right to determine services required through agreement over assessed need.

**6 Public Provision Free at the Point of Need:** all care, from briefly given advice on a particular issue to full time residential or nursing home care, should be free and publicly provided. This recognises the place of Third Sector (not-for-profit) provision to meet very specialised need.

**7 A Valued Workforce:** the days of care being the role of unpaid or low paid women belong in history not in a modern care service. Care and care work are fundamental to a progressive society that values all its citizens, and the recognition of its importance should be reflected in the training and pay given to a workforce who are the subject of sectoral collective bargaining. Social care is a highly skilled job and should be remunerated accordingly and all should have access to levels of qualification and training appropriate to their role; career pathways should be clear and open to all. Health and Safety should be accorded priority.

**8 Recognition of Diversity and Difference:** services must recognise that our communities are based on very different kinds of identity and culture, and their delivery must be sensitive to, and address issues that create barriers and potentially further discrimination and inequality.

We would like to see the principles in the Bill sit alongside these broader principles underpinning what a National Care Service should deliver.

The importance and need for clear lines of accountability was a recurring and important concern for social workers engaging with us on this Bill. Notably, the principles do not specify who the NCS is accountable to or what its responsibilities are.

## **Accountability to Scottish Ministers**

**Sections 2 and 3 establish Scottish Ministers' overarching responsibilities for the National Care Service, namely to "promote in Scotland a care service designed to secure improvement in the wellbeing of the people of Scotland" and to monitor and improve the quality of services provided by the National Care Service. These provisions have the effect that the National Care Service will be directly accountable to Scottish Ministers.**

We don't disagree with the intention of the Bill to give powers to Scottish Ministers. However, as expressed throughout this response, many social workers are deeply concerned about the extent of powers and the lack of checks and balances in this Bill. We would prefer to see more flexibility for Scottish Ministers to devolve powers to care boards that are based on democratic principles and are locally and nationally accountable. There should also be space for an arm's length authority to hold Ministers to account for their decisions.

## **Establishment and Abolition of Care Boards**

**Sections 4 and 5 make provision for the establishment and abolition of care boards and for financial assistance for boards. As set out in the Policy Memorandum, the Bill "makes provision for the Scottish Ministers to establish and fund these boards, called "care boards" in the Bill, to plan and deliver NCS service locally, replacing current Integration Authorities". The Policy Memorandum continues: "There is also provision for "special care boards" to deliver national functions if needed".**

**Connected to Section 4 and annexed to the Bill, Schedule 1 sets out detailed provisions related to the constitution and operation of care boards while Schedule 2 makes consequential amendments to public authorities legislation.**

It is difficult to establish a definitive view on the proposals set out in this section due to insufficient detail in the Bill's current form.

SASW Members who supported having care boards did so because believe they will provide necessary oversight of services and address some of the organisational complexities of the IJBs. However, to achieve this, care boards must be strongly connected to communities at a local level.

Based on what detail is available to us, some members have expressed concern that Ministers will have overarching responsibility for appointing board members making this a national political appointment process. Others are concerned about the lack of criteria as to the basis on which Ministers will make these decisions. The public appointment process needs to ensure diversity and the representation of marginalised and underrepresented communities in those who are appointed. We suggest there should be a requirement for a certain number or percentage of board members to have lived experience before it can be considered functional would be a welcome step. A distinct social work role on care boards is essential and we support the inclusion of this as a requirement. The statutory role of the Chief Social Work Officer in each local authority currently must be carefully considered and the duties and powers aligned in the new legislation.

SASW members also highlighted that, geographically, the care boards must align with existing boundaries to avoid creating an even more complex governance environment. Again, the lack of detail is problematic, and members therefore struggled to give considered thoughts on the proposals without knowing how many care boards will exist and in what form.

There was particular concern amongst rurally based social workers that the care boards might become too big to retain a local focus and that local expertise risks being eroded. New governance arrangement must address the relationship the care boards will have with health boards and local authorities and how the Scottish Government envisages them working together.

An important omission from the Bill is that Scottish Ministers or care boards are not required to collect data on all unmet care needs to inform budget decisions. The care boards should be able to advise Scottish Ministers on resource allocation for their area. If budget decisions take a 'top down' approach, then it is difficult to see how funding challenges faced now will be any different in the NCS. We understand that the local care boards, unlike local authorities, will not have tax raising powers, meaning that Scottish Ministers will be fully responsible for funding. This will simplify accountability for funding shortfalls but still requires Scottish Ministers to commit to providing adequate funding.

We would like to see clearer responsibility for care boards and Ministers to provide training and professional support for staff. The wording in the Bill is that Ministers



'may' provide training, rather than 'must.' All staff should be provided training to carry out their job and this should be a mandatory responsibility on the NCS.

The Bill gives Scottish Ministers the power to abolish care boards if they are deemed to be failing. Process around this will need to be developed to ensure decision are based on transparent and robust evidence and that care boards received notice and support to address concerns about quality. Abolishing a care board will have significant ramifications for people living in the area affected and for whichever care board is given responsibility while new members are appointed to the abolished care board. Abolishment cannot be a decision that Scottish Ministers can take without scrutiny.

## **Strategic Planning and Ethical Commissioning**

**This Chapter of the Bill requires care boards to have a strategic plan setting out their vision, objectives and budgets for their care board area and incorporating an ethical commissioning strategy. Scottish Ministers must also have a strategic plan and an ethical commissioning strategy for any services provided at the national level.**

**The Policy Memorandum states that ethical commissioning strategies should set out “arrangements for providing services and how those arrangements have been designed to ensure they best reflect the NCS principles”.**

Without a requirement on Scottish Ministers to set budgets for care boards for more than a one-year period, it will be challenging for care boards to set out three-year strategic plans for services. This in turn will maintain the existing problems with year-on-year commissioning creating a fragile provider environment. We suggest this is re-examined.

Ethical commissioning must be based on fair work principles and should be robustly inspected. It must also be seen to work in practice and have a real effect on the quality of work for the workforce as well as the quality of support experienced by people using the system. To avoid this, care boards should be required and supported by Scottish Ministers to engage and collaborate with the workforce and service providers. This would be a positive addition to the Bill.

Our members would like a formal commitment to purchasing care and support from not-for-profit providers.

## **National Care Service Charter**

**Sections 11 and 12 of the Bill make provision for the Scottish Ministers to prepare and publish a National Care Service charter, to be co-designed with those with lived or living experience and reviewed on a five-yearly basis.**

**According to the Policy Memorandum, the Charter “will set out what people can expect from the NCS and provide a clear pathway to recourse should the rights in the Charter not be met”.**

**The first and subsequent versions of the charter must be subject to public consultation and a copy must be laid before the Scottish Parliament**

The purpose of the charter seems unclear in its current form. One member told us: “I am not clear what the charter would contain unless it ‘brings together’ current rights given that the Bill states it will not give rise to any new rights, impose any new responsibilities, or alter in any way an existing right or responsibility”.

We agree with the Common Weal’s analysis that the charter presents an opportunity to “set out clearly the rights of people needing care, informal carers and the workforce, the concomitant responsibilities of the NCS and the creation of new procedures that would allow rapid and simple means of redress to people whose rights are ignored.”

Rather than rule out giving rise to new rights, the National Care Service charter should explicitly mention the rights people already have when seeking social care or support. This would be a positive inclusion in the Bill that supports the commitment of an NCS to adopting a human rights and person-centred approach.

Once again, our members highlighted the lack of accountability. Accountability should be built into the charter so decisions can be properly held to account and people are clear about seeking redress.

## **Independent Advocacy**

**Section 13 of the Bill gives Scottish Ministers powers to make provision via secondary legislation for independent advocacy services in connection with services provided by the National Care Service.**

**The Policy Memorandum highlights the emphasis placed by the Independent Review of Adult Social Care on the importance of access to independent**

**advocacy and brokerage services, including peer services, “in empowering people accessing support and unpaid carers” and ensuring “that their voices are heard”.**

**It goes on to state the Scottish Government’s intention to “develop and implement a coherent, consolidated and consistent approach to independent advocacy services across the range of NCS services” and to do this through co-design with people with lived or living experience of accessing services.**

SASW supports the commitment to ensure people can access independent advocacy and brokerage. Of course, advocacy is part of what professional social workers offer, but there may be times when wholly independent advocacy is required. Social workers are well able to manage the conflicts between their social work role and values and the demand of their employer. However, the ethical dilemmas this brings social workers can be extensive, deeply uncomfortable and can contribute to poor wellbeing within the profession. Independent advocacy should always be available to counterbalance the powers of decision-making organisations and to hold social workers to account for their good practice.

## **Complaints**

**Sections 14 and 15 of the Bill make provision for a complaints service and for the handling of complaints.**

**The Policy Memorandum sets out the Scottish Government’s intention to “co-design to develop and strengthen the complaints system with those with lived experience”. The Scottish Government’s own consultation sought views on potential measures to underpin these complaints and redress processes, including the possible development of a model for the role of National Care Service Commissioner.**

We agree with the aim of making the complaints process simpler for people to use. Having a single point to make complaints will make the process simpler and seems to be a sensible approach but there is little detail in the Bill. Accessibility and a duty to make reasonable adjustments should be considered and included in the design of the complaints service. There should be no barriers that prevent or make it harder for people to make complaints.

People need to have confidence and trust in the complaints system for it to operate effectively. This means having an open and transparent process where the person making the complaint knows that they will be heard, and their complaint acted upon. An independent process would help to achieve this, but the Bill is unclear on the level of independence the complaints process will have given that Scottish Ministers

have responsibility for the process. It also gives rise to questions around where the SSSC and Care Inspectorate sit in relation to the complaints process.

If no independent complaints process exists, these risks giving rise to Ministers effectively 'marking their own homework.' That would undermine confidence in the system.

## **Ministers' Powers to Intervene**

**Sections 16 to 22 of the Bill establish powers for Ministers to intervene with respect to care boards and contractors, for instance in case of an emergency or of service failure.**

The Bill lacks clarity around how this will work in practice.

Members are concerned to ensure that the powers enjoyed by Ministers are subject to proper check and balances. The conditions for intervention are very broad and there must be safeguards in place.

One member told us that; "I think Ministers should have to be accountable to service users and health and social care workers in the decisions that they make."

## **Connected Functions**

**Chapter 5 of the Bill establishes certain functions connected to the provision of care, including enabling Scottish Ministers and care boards to:**

- **conduct, assist in conducting or give financial assistance in relation to research;**
- **to provide training or to provide financial support to undertake training;**
- **to provide financial assistance to undertake other activities connected to the services provided to individuals by the National Care Service;**
- **and to compulsorily purchase land required to exercise a relevant function.**

SASW agrees that Ministers and Care Boards must be able to commission research, support training and so on. We would prefer any centre(s) for excellence to operate

independently of Ministers including the NSWA which seems likely to have this function for social work.

## **Transfer of Functions**

**Chapter 6 confers powers on Scottish Ministers to transfer functions between institutions as part of the National Care Service, These powers include the power to transfer functions from local authorities, to bring aspects of healthcare into the National Care Service, to re-organise the National Care Service and to transfer staff, property and liabilities.**

**Items of legislation conferring specific functions on a local authority which may be transferred into the National Care Service are listed in Schedule 3, annexed to the Bill.**

This section of the Bill has provoked much uncertainty and concern from the social workers we have engaged with since its publication. There is a lack of information in supporting documentation recognising the transition from the current system to any new arrangement will cause serious disruption for people working in the system and those being supported. The workforce needs much greater clarity quickly as to which staff will be impacted by the proposed transfer of functions. For example, will administrative staff be affected?

Social workers are concerned that a TUPE transfer could result in poorer terms and conditions for local authority workers. Changes in terms and conditions must level up the range of local arrangements whilst enabling areas that find it difficult to recruit to offer a package that is attractive. NHS Highland uses a lead agency approach and so employs social workers directly. The Bill explicitly disallows transfers from NHS employers so the position of social work and social care staff currently employed by NHS Highland should be clarified.

## **Inclusion of Children's and Justice Services**

**Chapter 6 also makes provision for the inclusion of children's services and justice services within the scope of the National Care Service at some point in the future, subject to a public consultation on the proposed inclusion of these services. It is proposed that any such inclusion of these services within the scope of the National Care Service would be achieved via secondary legislation.**

There is strong support amongst social workers for including children's and justice services in the NCS. Many members expressed deep concerns about the possible splitting up of social work specialisms leading to fractured service environment.

One member explained to us that all social services must be included since “current problems exist because of segregation and preciousness”. The Bill offers an opportunity to break down barriers between services and offer more joined-up working to the benefit of individuals, families and communities.

There is clear apprehension amongst children’s and justice social workers that the Bill will take shape before a decision is made around their inclusion. It is critical that these areas of social work are not added on at a later point during the Bill’s co-design phase or they will not be properly embedded in the legislation and emerging NCS culture.

It would be particularly problematic for a National Social Work Agency to be established within a NCS while some parts of social work and functions remained outside the NCS risking disabling the Agency in respect of social work delivered out with the NCS.

For this reason, we reiterate that the decision about the inclusion of children’s and justice social work should be made before the Bill progresses.

## **Health and Social Care Information**

**Part 2 of the Bill gives the Scottish Ministers powers to establish a scheme for care records to be shared between the proposed National Care Service and the National Health Service. It also makes provision for Scottish Ministers to produce an information standard which will set out how certain information is to be processed.**

We support moves to make sharing of information easier and more efficient.

A recent study into social work caseloads, Setting the Bar report, found that 78% of social workers in Scotland have high administrative workloads and that, on average, social workers spend 40% of their time administrative tasks. Increasingly high workloads, coupled with administrative staff support decreasing by almost a third, is compounding the challenges for social workers. This adds to the difficult job of social work, reducing the time spent with people which, in turn, makes accessing support more difficult for those who need it. There needs to be clear understanding of the administrative tasks associated with the social work role in relation to the people they support and require to be done by social workers and those tasks which should be placed with administrative staff.

Any integrated data sharing scheme must be simple and intuitive, make administrative duties less time consuming for social workers and improve the experience of using care and support.

The proposal to create sanctions for those who fail to meet the requirements to share data appears simplistic and potentially very unsupportive of the workforces

who are likely to feel “damned if they do and damned if they don’t”. Existing legislation already enables the sharing of information and the whole sector needs further training and support to overcome a culture of not sharing information. Careful thought about who will be sanctioned is required before pursuing this section.

The Scottish Government has just consulted on a new Health and Social Care Data Strategy. It would be counter-productive to develop this strategy separately to the NCS and then try to fit into this new structure once it is operational. It is concerning that there is no reference to the proposed strategy in the Policy Memorandum. Clarification on how both important areas will intersect is needed

## **Rights to Breaks for Carers**

**Sections 36 and 37 of the Bill propose amendments to the Carers (Scotland) Act 2016 and consequent changes to the Social Care (Self-directed Support) (Scotland) Act 2013, principally with a view to establishing a right to breaks for carers.**

We support the establishment of a right to breaks for carers. Everyone who receives or provides care should have the right to regular, meaningful breaks. Caring responsibilities can place enormous emotional strain on those providing care which can impact on all aspects of their life, including mental and physical wellbeing.

Challenges to implementing this policy effectively which must be addressed in this legislation include:

- Short break providers struggling with rising costs, funding uncertainties and staffing shortages
- Lack of information and support available to carers about break options
- Excessive bureaucracy and lengthy decision-making discouraging carers from seeking breaks
- Lack of investment in short breaks capacity

Carers must shape and inform this provision in the Bill.

Having a right to breaks is welcome but it must be backed by appropriate resources and investment. We would like to see more clarity from Ministers around how they see this provision working in practice and what funding will be used to implement it long-term.

## **Implementation of Anne’s Law**

**Section 40 of the Bill proposes amendments to the Public Services Reform (Scotland) Act 2010 with a view to supporting implementation of “Anne’s Law” related to visits to or by care home residents.**

We support and welcome the implementation of Anne’s Law through this Bill. The rights of care home residents to maintain contact with family and friends and vice versa must be respected and upheld. Loved ones have an essential role supporting and caring for their loved ones through regular contact and this should be embedded in resident’s care plans.

### **Reserved Right to Participate in Certain Contracts**

**Section 41 of the Bill proposes amendments to the Public Contracts (Scotland) Regulations 2015 to allow the right to bid for contracts for certain services to be reserved to certain types of organisation.**

SASW supports the proposal that would enable contracts to be focussed on not-for-profit providers.

### **Regulation of Social Services**

**Sections 42 and 43 of the Bill propose amendments to the Public Services Reform (Scotland) 2010 Act to stipulate additional circumstances in which registration of a care service may be cancelled and to authorise Healthcare Improvement Scotland to assist the Care Inspectorate in carrying out investigations of care services.**

SASW has no objections to the proposals in these sections.

### **Final Provisions**

**As well as defining what is meant by “health board” and “special health board” for the purposes of interpreting the contents of the Bill, setting out ancillary provisions, defining the date of commencement of the legislation and setting out its short title, Part 4 of the Bill sets out regulation-making powers to be conferred on Scottish Ministers via secondary legislation.**

SASW understands that secondary legislation is a useful and necessary part of the legislative process. However, we consider that there are some areas of significance that should be on the face of the Bill rather than created in parallel or subsequent to the Bill. The key areas for us are:



- The role of social work including its role in public protection
- The National Social Work Agency
- Principles for the Bill that more directly reflect the human need for care and connection and the human capacity to provide that.

## **Conclusion**

The National Care Service Bill stands to have major implications for the future of social work in Scotland.

SASW is grateful for the opportunity to provide feedback on this proposed legislation to members of the Health, Social Care and Sport Committee and would welcome the chance to be involved in future engagement work carried out by the lead and secondary committees on this Bill.

### **For more information contact:**

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