

Appendix A

Scottish Borders Council Response to a National Care Service for Scotland Consultation

Introduction

The following comprises the response of Scottish Borders Council to the Consultation on a National Care Service for Scotland, agreed at full Council on 28 October 2021.

In summary, it is the Council's view that many of the improvements detailed within the consultation could be achieved without the creation of an all-embracing National Care Service (NCS). We believe that improvements could be delivered more effectively, and at lower cost, through the proper resourcing and effective utilisation of existing structures.

There are some areas where a national service would add value. But, we consider that the lack of contextual analysis in the Consultation undermines its core premise that current challenges can only be overcome by establishing a comprehensive National Care Service with constituent Community Health and Social Care Boards (CHSCBs).

At the same time, the Council recognises that the Scottish Government is strongly committed to a National Care Service for (at least) Adult Social Care Services, and that legislation to that effect is highly likely to be enacted. We accept also that the Independent Review of Adult Social Care (IRASC) arguably provides an evidential justification for the Adult Social Care element of a NCS.

However there is no evidence provided to justify the extension of the scope of a National Care Service to include children services, community justice, alcohol and drug services, social work and professional practice and mental health services. The Council would urge the Scottish Government to revisit these proposals.

The structure of this response is as follows:

- a) Format, timescales and communication
- b) Context
- c) Specific issues
- d) The proposal for and scope of a National Care Service
- e) Place, democracy, governance and accountability

a) Format, timescales and communication

The format of the consultation and the time permitted for the consultation appear unsuited to the scale and complexity of what are fundamental and far-reaching proposals.

The Consultation Document is frequently simplistic in its framing of issues, clunky in format and shaped by assumptions. Explained perhaps by the need to establish principles and set the scene, the more contentious parts of the consultation do not appear in earnest until page 49. Particularly unhelpful is the formulation of questions premised on the assumption that the only way to improve current issues is through a NCS. Acknowledging these points, we have structured this response as noted above.

The consultation was launched on 9 August 2021 with an initial deadline of 18 October 2021, which was thereafter extended to 2 November 2021. While the Council welcomes the extension, it

considers the scale and complexity of the Scottish Government's proposals are such that they merit more than a standard consultation timescale, albeit now extended to 14 weeks (from 12 weeks), especially given that the proposals in the consultation significantly exceed the terms of what was proposed by the Independent Review of Adult Social Care (IRASC). We might add that the Consultation is being carried out at a time of unprecedented pressure on Council services generally and on social work, social care and health related services in particular, when our attention should be on rebuilding the capacity of council services in the continuing response to the pandemic and to recovery from its impact.

Concerns about timescale are exacerbated by the timescales for legislation. The Programme for Government 2021/2022 highlights ministers' ambition to bring forward legislation for the establishment of a National Care Service by June 2022, while the service is intended to be fully functioning by the end of the parliamentary term in 2026. These are extremely onerous timescales, which heighten the risk of missteps, particularly given the extended scope of proposals already noted.

The foregoing points are important issues of context rather than substance. However, the Council is concerned that, taken together, these issues work to the detriment of Ministers' core objective of a 'social care system to consistently deliver high quality services to every single person who needs them, across Scotland.'

b) Context

In his foreword to the IRASC Report published in February 2021, the Chair, Derek Feeley observed:

"I want to be absolutely clear from the outset that there is much about adult social care support in Scotland that is ground-breaking and worthy of celebration. The introduction of self-directed support, the integration of health and social care, and the promise of the Carers Act form the scaffolding upon which to build."

We feel this is a rightful acknowledgement of the significant efforts of staff and the organisations for which they work, as well as of the developing relationships on which the integrated health and social care model is built.

At the same time, the Council recognises that, reinforced by experience of the COVID-pandemic, there is much that could be improved in current arrangements, and there is much to applaud in the person-centred human rights based approach proposed in the Consultation, acknowledging that this is already a current social care objective. The Council welcomes the focus on unpaid carers and is sympathetic to increased funding for carers.

The IRASC highlighted a number of issues with the current provision of adult social care. Too often, it notes, adults and their families can be excluded from assessment and support processes by complex bureaucracy. It labels eligibility criteria a 'barrier to accessing care'. Supported people responding to the IRASC called assessments "intrusive, not focused on rights or equality, not focused on assets or potential but on deficits, reduced to identifying care tasks, and always overly focused on eligibility, which was frequently set at 'critical needs', and costs".

These insights have genuine value, but, despite chapter 11 of the IRASC focusing on 'Finance', the circumstances which give rise to this focus on eligibility is never fully spelt out either in the IRASC or the Consultation document. The fact of the matter is that our approach to social care is largely a function of resource rationing within a system intended to eke out limited resources to those in greatest need. Local authority social work managers and staff have worked within a sector that has

experienced chronic underfunding for decades, with financial/demand challenges particularly acute since the 2008 financial crisis and subsequent period of austerity. Rationed against a prioritisation of need framework, inadequate and shrinking resources have been focused increasingly only on critical and substantial need with limited capacity to support preventative approaches.

In its Programme for Government for 2021/2022, Scottish Government states “as a minimum we will increase public investment in social care by 25% over this Parliament – providing over £800 million more by 2026-27”. Exactly what this means is yet to be clarified, but it is at least implicit acknowledgement of underfunding.

As Emma Congreve of the Fraser of Allander Institute put it in a recent article: ‘An underfunded National Care Service is unlikely to do any better than the system that it seeks to replace.’ Therein lies the rub. The current system is chronically underfunded. The answer to that challenge is adequacy of funding to improve the current system of social care without the disruption and upheaval of significant changes to structures, governance and accountability proposed in the Consultation.

For local government, moreover, there is the worry of a sting in the tail. The funding will need to come from somewhere. Unless the resources available to Scottish Government through to 2026/27 and beyond are significantly augmented, then the risk is that, in the allocation of finite resources, local government sees a reduction at the expense of an explicit governmental prioritisation of social care through a newly established NCS. This is not to suggest that social care is not a priority. It is. But we should acknowledge also that the effect of prioritisation of government of resources in one area (e.g. Education) is to apply increased pressure, often very significant pressure, on other areas of spend.

More immediately, by failing to explicitly recognise the context in which social care operates and the overriding reason for its present challenges, the Consultation Document casts doubt on both the government’s solution for the deficiencies of the present social care system, and the analysis on which its judgement is based.

c) Specific issues

There are a number of areas where the Consultation Document omits information, is insufficiently detailed or is unclear about proposals or the consequences of its proposals. This includes:

- Information about the role of public health, health education and personal health management as a key element of health and social care.
- The absence of any detailed modelling of demand volumes for the various service options indicated in the consultation document
- An absence of detail on the thresholds or eligibility criteria for the different scenarios between low bureaucracy universal support offers (entitlement) and more complex care planning.
- Further work is required on models of care. The Consultation appears to aspire to a universal entitlement. However, this would still need to be tiered to reflect different circumstances.
- The absence of any detail on how Scottish Government intends to fund the significant additional investment needed to deliver a step change in an entitlement based model.

Given the vital role of these locally determined charges in supplementing grant based funding, addressing this question is indispensable to any proper consideration of the issue of charging.

- A failure to properly address the issue of professional standards and accountability, with no reference to the role of the Chief Social Work Officer (CSWO). If responsibility and accountability for Adult Social Care (and, for that matter, children services and social work and professional practice) is to be transferred to Scottish Government ministers, how will the professional standards and the statutory function fulfilled by the CSWO be managed under this new structure?
- A lack of clarity regarding the intended employment status of local government social work and social care employees. In consequence, there is no detail or clarity in relation to the application of TUPE; pension liabilities; proposed process for harmonisation of terms and conditions; equal pay/ value impacts on pay and grading models; or any other contractual matters.
- A lack of clarity on proposals for commissioned social care staff and how parity with NCS staff will be maintained.
- No detail, no reference even, to how the range of support services currently provided by local authorities (including facilities services, fleet, ICT, HR and payroll etc.) would be addressed. Nor for that matter is there any reference to how the gap in local authority funding will be met if these services are not provided by councils in future.
- No reference is made to local authority assets currently employed in the delivery of social care, whether buildings, fleet vehicles, ICT or other equipment. Furthermore, recognising the Scottish Borders' specific demographic challenges, the Council is investing in new care homes in a massive period of uncertainty. How is it intended to address the financial implications of these issues? For example, who is going to meet service loan repayments associated with capital investments made by councils to support delivery of social care?

The Council strongly suggests that such issues need to be addressed explicitly before legislation is drawn up and proposals for a NCS enacted.

The Consultation gives a strong sense the creation of a NCS will deliver a step-change in social care, supplemented by the development of new mechanisms, protocols, guidance and systems, which operate on a more integrated basis. Accepting there is plenty of scope to develop more effective systems, and the Consultation's outline of digital opportunities and data sharing are helpful, the level of expectation freighted on a new unitary organisation and new systems still seems optimistic at best. On top of this, there really is no convincing reason for believing that with the level of investment being spoken of, developments could not be built on current structures without the diversion of effort and capacity needed to build a completely new structure.

Lastly, under this section, we welcome Scottish Government's intention to establish a public inquiry to investigate the handling of the COVID-19 pandemic in Scotland. It is clear <https://www.gov.scot/publications/covid-19-inquiry/> that work is underway to set up the inquiry. Acknowledging this and given the importance of the inquiry as a potential evidence stream, it appears counter-intuitive to embark on a significant restructure of social care before vital learnings on care homes are available, particularly given that, as the Minister notes in his foreword to the Consultation Document, *"the Scottish Government commissioned the Independent Review of Adult Social Care, during the pandemic, because it was clear we needed to do things better in future."*

d) The proposal for and scope of a National Care Service

i. The proposal in general

The opening paragraph of the Introduction to the Consultation Document states:

“The proposed reforms around social care represent one of the most significant pieces of public service reform to be proposed by the Scottish Government, and have the potential to be the biggest public sector reform in Scotland for decades.”

We agree. The challenges in social care, brought to heightened and frequently tragic prominence by the COVID-19 pandemic, are huge and the current proposals are their equal in scale at least. If enacted in totality, they would constitute the greatest change to governance in Scotland since devolution, would change the face of local government, and would change the way that we practice social work in Scotland. The question, of course, is whether these are the right proposals both in general and in detail?

The Council shares Scottish Government’s commitment to developing a system of care ‘delivered in a way that enables people to live a happy and fulfilled life.’ It is absolutely about outcomes. It is not possible not to be affected by the personal experiences of service users set out in the IRASC.

However, the case for a National Care Service set out in the Consultation Document is not compelling.

We agree that ‘current structures have not fully delivered the improvements intended to be achieved by integration of health and social care’. Integration remains a work in progress, but, importantly, it is work that is progressing. <https://spice-spotlight.scot/2021/09/02/health-and-social-care-integration-part-1-are-integration-authorities-successfully-integrating/> With proper investment, support and ongoing and focused improvement, there is no overwhelming reason nor evidence to suggest that the same outcomes for social care cannot be pursued through existing structures.

Transferring accountability to Ministers and implementing structural change to transfer services to new CHSCBs will not address the broad context within which social work and social care services operate. The Interim Controller of Audit reporting to the Accounts Commission on 3 June 2021 commented on the commitment to implement the IRASC recommendations, observing “....but it’s not clear what that would look like. And the solutions to the challenges facing social care go far beyond new structures”.

The Council is fully committed to developing those solutions with Scottish Government, and other partners. But, as outlined at the beginning of this submission, it is the Council’s views that, upon Scottish Government making the level of investments it has committed to, we can more rapidly and effectively deliver genuine qualitative difference in the experience and outcomes of care by building on what already exists, rather than being distracted by the upheaval which would flow from a fundamental restructure. Such an approach would retain the connection with local responsiveness and local decision-making, which is addressed in our next section; and it might be done within a broader framework of national standards, being an area where real advantage might be delivered

through a national approach with a focus on deficiencies in the current system such as rationing, eligibility levels, and postcode lottery effects.

ii. Scope of the National Care Service

While the IRASC provides an evidence base from which to promote a National Care Service for Adult Social Care, there is no evidence base from which to justify the very significant expansion of what the Consultation proposes to include within a National Care Service (i.e. including children and young people; community justice; alcohol and drug services; and social work). This is a major deficiency within the present consultation proposals.

It may explain why the rationale for extending the scope of a National Care Service to oversee all age groups and a wider range of needs appears limited to the perceived opportunities for standardisation and consistency. This is not a compelling reason and it would seem irrational, having commissioned the IRASC to examine the future delivery of Adult Social Care, to include service areas for which there is no equivalent evidence base. The consultation document states that not including children's services: "...risks fragmenting the current system of care and assessment and further adding to complexity for services users". But the evidence base and the implications of this have simply not been explored. There is a lack of proper consideration of any anticipated benefits or disbenefits from the expansion or how the proposals would impact on other public services such as housing and homelessness; education and early years; advice services; and many others.

With specific reference to children's services, there is very little reference to the impact on the delivery of the Promise by 2030 arising from the proposed incorporation into an NCS. The omission is surprising, given that this is very much a work in progress, which is showing signs of momentum. It is the Council's view based upon the guidance of its own Children's Services that incorporation of the service in a NCS, far from improving collaboration, would create barriers to the GIRFEC approach.

In similar vein, there is no detailed consideration of the impact of the proposals on the integrated public protection agenda and governance.

It is notable that Acute Health Services and public health services, despite also having faced very significant challenge on account of the COVID pandemic, appear to form no significant part of Ministers' consideration. They are barely mentioned in the Consultation Document.

There are areas where a national approach, potentially framed within a NCS, would bring significant benefit. This might include the following functions:

- Standards/ Assurance/ Performance Reporting and Scrutiny, though it remains the Council's view that the CSWO role should remain within Council oversight
- Workforce Planning/ Fair Work/ Terms and Conditions/ Training and Development
- Ethical Commissioning and Procurement
- Complex and Specialist Care Commissioning
- Improvement and Innovation

- Development of the Single Health and Social Care Record and System Integrators
- Use of Aggregate Data for System Level Planning and Policy Development

It is the view of the Council, however, that Adult Social Care should continue to be delivered and remain operationally accountable at a local level and that, at a minimum, the following services should remain the statutory responsibility of local authorities. Decisions on whether these services are delegated to IJBs/CHSCBs should continue to be locally determined to reflect the local context (geographical coverage/ existing structures and arrangements/ partnerships/ scale of services):

- Children and Families social work
- Mental Health services
- Community Justice services
- Housing and homelessness services
- Leisure and Culture services
- Alcohol and drug partnerships (integrated teams and commissioning)
- Child and adult protection – we note, however, that if adult protection was moved from Council control, this would have significant implications for Scottish Borders Council as the provision is embedded as a Public Protection service with one shared governance structure.
- Other public protection (including partnership working in relation to gender based violence; MAPPA; MARAC; etc.)

The Council and its partners are best placed to make these judgements in the Scottish Borders.

e) Place, democracy, governance and accountability

The proposals outlined in the consultation have significant implications for Local Government and local democratic accountability. As COSLA put it in an early media response to publication of the consultation, *“the consultation cuts through the heart of governance in Scotland – not only does it have serious implications for Local Government – it is an attack on localism and on the rights of local people to make decisions democratically for their Place. It once again brings a centralising approach to how decisions which should be taken locally are made.”*

The proposals for a NCS seem to have been made unconscious of Scottish Government’s own policy commitments and aspirations around local empowerment, local choice and local government.

Ten years on from the Christie Commission, Ministers have only recently reiterated the importance of the ‘4 Ps’ – people, partnership, prevention and performance, with citizen and community empowerment, and integrated service provision particularly relevant in this context.

If the present proposals appear to jar with Christie, then they appear to run counter to the Scottish Parliament’s legislative intentions in relation to the European Charter of Local Self-Government (Incorporation) (Scotland) Bill and are in conflict with the objectives of the Scottish Government’s Local Governance Review, as well as the COSLA Blueprint for Local Government.

At the same time, the NCS proposal cuts across the work done in relation to the Promise and rejects the trajectory established by the Public Bodies (Joint Working) (Scotland) Act 2014 – (we would argue) under a wrong premise. The false premise is that, as per the IRASC report, current failings are

attributable to a lack of national accountability and local leadership for social care support, rather than the impact of historic underfunding, which any analysis of the strategic and operating context would confirm.

Perhaps most importantly of all, the proposals appear to overlook what this Council and others regard as one of the most uplifting outcomes from the experience of the pandemic. This was the galvanising of communities into comity and action. Together with the Council's own Place-making agenda, this has augmented progress more generally in empowering communities and giving effect to local priorities through locality plans with specific place-based approaches being developed in each of our region's five partnership areas. More generally, the enormous energy and local mobilisation of efforts, channelled through and enabled by local agencies led by local authorities, is highlighted in the latest Audit Scotland Local Government Overview report 2021: *"Throughout 2020 and beyond, the ways in which councils and communities have worked together to deliver services and support the most vulnerable has been incredible. Many communities and individuals continue to step in to provide crucial local services, empowered to do so by councils. Those local areas where partnership working was already strong and embedded were able to respond and react more quickly to the developing needs caused by Covid-19. This brought into focus the value and importance of partnership working and empowering communities to deliver services that meet very local needs."*

The need for local integration, local knowledge, local reach and local relationships all point to the retention of these services within local authority control. On the other hand, the creation of a NCS (with the scope and powers proposed in the consultation document) would undermine this progress adding distance and complexity to local relationships.

If a NCS is to proceed, then (as noted) sound policy-making insists that this is limited to that element for which some evidential justification exists. However, whatever the final shape of any proposed NCS, it is essential that there is clarity over the relationship between the national and local dimensions of the service, and specifically, ministerial oversight and control and the levels of autonomy constituent within CHSBs. We cannot think it desirable nor prudent that ministers are drawn into decisions which should be determined locally.

For Scottish Borders Council, in particular, there is an issue of scale-versus-place – a concern that a National Care Service will mean a centralised approach to social care where the issues of smaller, rural areas are marginalised by the needs of larger, urban areas, with localised approaches to service delivery being secondary to national delivery initiatives unsuited to more sparsely populated, rural environments.

In conclusion, we wish to be clear – this response reflects the Council's view that residents' interests are best met locally. We recommend to Ministers the key principle that local systems, services and workforces are best placed to identify the specific needs of people and communities they serve.