

COSLA National Care Service

Call for Views Response September 2024

COSLA is a Councillor-led, cross-party organisation, representing all 32 Councils in Scotland, which champions Councils' vital work to secure the resources and powers they need. COSLA works on Councils' behalf to focus on the challenges and opportunities they face, and to engage positively with Governments and others on policy, funding and legislation. We're here to help Councils build better and more equal local communities. To do that we want to empower local decision making and enable Councils to do what works locally.

1. COSLA welcomes the opportunity to provide views on the Scottish Government's draft Stage 2 package for the National Care Service (Scotland) Bill. In the interests of transparency, though COSLA – alongside broader stakeholders – had the opportunity to consider and provide feedback on the policy intent behind the draft legislative amendments prior to publication, COSLA only received very limited and restricted sight of amendments immediately prior to their publication with Committee. Local Government was not provided with the necessary opportunity to work in partnership on the development of legislative amendments. The amendments and revised NCS Bill, therefore, should not be considered indicative of an agreed legislative position between the NCS shared accountability partners. COSLA's view of the legislative amendments is set out within this response.

Context: Social Services in Scotland

2. There is a pressing need for change and improvement of social care, social work and community health in Scotland. While the National Care Service (NCS) (Scotland) Bill draws attention towards structural governance, change cannot and should not wait for longer-term structural reform.
3. The National Care Service Bill has increased discussion across Scotland on the role, importance and value of social care, social work and community health to the wellbeing of people, communities and society. This discussion has involved people with experience of accessing support, carers, the workforce, providers and spheres of Government offering perspectives on improvement, following the landmark Independent Review of Adult Social Care. Though perspectives may differ on the shape of the vehicle for delivering this improvement, COSLA believes there is a broad consensus among partners on the outcomes and improvements we collectively seek to realise, most of which was outlined in the IRASC. Notably, Professor Derek Feeley outlined the need for new thinking, that social care support should be seen as an investment in society:

“[Social care] need not be unsustainable, or in crisis, or confined to the margins of society. Strong and effective social care support is foundational to the flourishing of everyone in Scotland. It is a good investment in our economy and in our citizens. In order to maximise the potential of social care support we have to change our perspective of what is social care support. We need to shift the paradigm of social care support to one underpinned by a human rights based approach.”

4. It is critical that we seek to continue to build consensus on the value of social care, social work and community health and its part in improving wellbeing across Scotland. Care plays a pivotal role in the lives of Scotland’s people and economy. As the IRASC set out, investment in care support is a good investment of public funds. Care is at the heart of local communities, supporting people to flourish and live well. Care creates jobs, promotes economic growth and enables people who access support, and their carers, to seek and continue in employment and live healthy, fulfilling lives.
5. As we navigate the changing demographics of Scotland, social care support will become even more central and valuable to the character of our society. Our systems must be built upon a strong foundation of human rights, support for carers and for ensuring everyone can fulfil their potential.
6. Current evidence shows that our population is ageing. Care needs are becoming more complex, and more of us are living with long-term conditions. This shift has increased the need for social care services with an estimated 1 in 25 people of all ages receiving social care support in 2022/23.¹ Around three-quarters of people receiving social care support are aged 65 or over and this requirement for support will increase as the number of people aged over 75 is predicted to rise from 469,000 in 2021 to 774,000 in 2045.
7. With our society evolving, so must our prioritisation and investment in the provision of care support, to build the strongest possible foundations for Scotland to thrive.
8. Despite enhanced public discussion of social care brought on by the IRASC and, in turn, the NCS Bill, services on the ground have continued to face long-standing difficulties in receiving the recognition and resource required. Vital supports for people and communities have been eroded as a result of constrained resource budgets. In July 2024, the Accounts Commission reported that funding for health and social care integration authorities has decreased by £65m (1% in real terms when excluding COVID-19 funding), with the funding gap set to triple in 2023/24. Real-terms cuts to core Local Government funding over the last decade, compounded by increasing pressure in relation to pay, inflation, and directed funding by Scottish Government have all impacted on the ability of Councils to invest in social care and social work and in provision provided to Integration Authorities. The

¹ <https://audit.scot/publications/integration-joint-boards-finance-and-performance-2024#main-report>

2024/25 Scottish Government Budget represented another flat cash settlement for Local Government, yet costs have continued to rise. The knock-on effect of these decisions will result in greater challenges in sustaining and retaining the workforce, in planning and delivering the crucial care support which enables people to flourish. There needs to be recognition of the impact these cuts have had on the current system.

9. Long-term trends show that councils have worked with partners to increase provision in response to demand and have made progress in shifting the balance of care towards greater home-based and community-based support despite significant financial challenges. Despite this, Local Government benchmarking data in 2022/23 provides clear evidence of current system pressures, with significant capacity issues contributing to the delivery of fewer hours of care at home (-2.5%), fewer people receiving personal care at home (-0.4%) and increasing delayed discharges (up 23% in 2022/23).² These trends add to growing concern about levels of unmet need, particularly within the community, and the capacity within the current system to be able to adequately respond.
10. Thus, despite the increased elevation in the profile of social care, social work and community health brought on by the IRASC and introduction of the National Care Service Bill, this has not translated into additional resource to enhance the availability of services for people to live well, enact improvements for which there is consensus among partners or strengthen the offering to attract and retain the valuable social care, social work and community health workforce.
11. The critical challenge for Scotland's social services remains one of underinvestment and unfulfilled potential. Though many of us share a vision for improvement, this has stalled in face of constrained, and reducing, financial provision. COSLA supports the need for reform, in part through reforming and strengthening governance, including several provisions within the revised National Care Service Bill. Though structural reform, enhanced monitoring and improved national oversight may bring some desired improvements, they are unlikely to meaningfully improve outcomes for people if occurring alongside depleting financial resource and unsustainable workforce challenges. Re-allocating existing resource from care and social work delivery, to service additional reporting arrangements to the NCS, risks overwhelming an already stretched workforce.
12. Genuine and sustained improvement to social care, social work and community health requires the prioritisation of care and recognition of its role as a key pillar of Scotland's diverse communities. In the face of demographic changes and sustained financial and workforce pressures, there is a need for us to collectively consider our appetite on the opportunities for enhancing investment in care, and the path this may provide for building a stronger society.

² <https://www.improvementservice.org.uk/benchmarking/reports>

COSLA's Role in National Care Service Reform

13. Following the publication of the National Care Service (Scotland) Bill in June 2022, COSLA and Local Government joined partners across the health and social care sector in expressing concern at the legislation brought forward. COSLA supported the case for change, including a role for a National Care Service in providing national leadership on matters such as workforce planning, training, national standards, ethical procurement, registration, inspection and improvement. Nonetheless, the Bill did not appear to tackle the serious challenges facing social care. COSLA made the case that communities benefit most when services are locally delivered and locally accountable. Local Government also outlined the unnecessary risks presented within the original Bill's provisions which would have enabled the transfer of up to 75,000 council employees to new public bodies overseen by Scottish Ministers.
14. Following concerns expressed by local authorities, trade unions and other partners, Scottish Ministers committed to working collaboratively with Local Government and stakeholders to reconsider how National Care Service reform could be delivered. In the summer of 2023, Scottish Ministers, Council Leaders (through COSLA) and the NHS reached consensus around a shared accountability model for the National Care Service. This included agreement that local authorities would retain responsibilities for social care and social work and removed the risk of the unnecessary transfer of up to 75,000 local authority employees to new public bodies. The shared accountability agreement also set out a path to creating a new National Care Service Board as a primary vehicle through which shared accountability was operationalised, offering new and enhanced national leadership and oversight for social services in Scotland.
15. The effective delivery of high-quality social care, social work and community health services requires strong collaboration between partners, including spheres of government, and flexibility to respond evolving needs of people and communities. Scottish Local Government welcomed the decision of Scottish Ministers to seek partnership in how National Care Service reform be delivered.
16. Since the shared accountability agreement was reached in the summer of 2023, Scottish Local Government has continued to work with Scottish Government, NHS, alongside sector partners and stakeholders to further consider the details of National Care Service reform. Though the public would expect spheres of Government to be actively working in partnership on such reform, we know that the consensus between spheres of Government to deliver the NCS in an alternative way to that which was set out in the original Bill understandably left some stakeholders with questions on the implications of these changes, and assurance that their voice would be reflected in reform. COSLA wishes to offer the assurance that Local Government, like Scottish

Government, are committed to the principles of co-design with people of lived experience of accessing, working and providing care, in considering how reform is shaped.

Summary of COSLA's View on Revised NCS Legislation

17. COSLA welcomes the principle of revising the legislation to reflect the shared accountability agreement reached with Local Government. This includes the removal of provisions included within NCS Bill as introduced which would have provided for the transfer of functions and up to 75,000 staff from local authorities to new public bodies overseen by Scottish Ministers. As outlined in COSLA's original response to the Bill, these provisions introduced significant risk to the Local Government workforce, the delivery of wider essential council services and the ability for communities to shape services to meet local needs.³ As confirmed via the Scottish Government's revised Financial Memorandum provided in December 2023, the approach to transfer Local Government staff to newly created public bodies also incurred significant, unnecessary public cost at a time where services are under sustained financial and workforce pressures.
18. Though COSLA and broader partners were aware of the policy intent for most changes outlined within the revised NCS Bill, Local Government did not have an opportunity to meaningfully contribute to the translation of policy intent into legislation. COSLA was not involved in the drafting of legislative amendments, including those which have a potentially significant impact on local authorities.
19. As a partner in shared accountability and having agreed in principle with key policy elements informing the development of the revised Bill, COSLA is concerned key amendments provided to translate "shared accountability" into legislation risk confusion and complicating responsibilities by adding dubiety into an already complex system, both operationally and strategically
20. In summary, COSLA's key legislative concerns relate to:
 - i. **Approach Adopted Toward Shared Accountability:**
COSLA believes a model of shared accountability which enshrines enhanced national leadership, strategic oversight and coherence, alongside strong local decision-making is possible. Nonetheless, the proposed model of the NCS Board does not appear to embed shared, whole system accountability and collaboration. It instead appears to introduce a top-down model of national monitoring, oversight and performance management without a clear role of translating local learning into national improvement, strategy and modelling of resource requirements. The scope of proposed powers for Scottish Ministers

³ https://www.cosla.gov.uk/__data/assets/pdf_file/0025/38626/COSLA-Public-NCS-Response-Final.pdf

and the NCS Board risks complex accountabilities. COSLA is unclear on the precise role of Local Government within the model outlined and the extent to which local decision-making would be possible.

ii. **Approach to Children’s and Justice Social Work Services:**

The intent of Scottish Government to include children’s and justice social work services within the scope of the National Care Service is not backed by sufficient evidence that such significant governance reform would support improved outcomes and represents a distraction from the core issues of workforce support, sustainable resource and service improvement. Following publication of the NCS Bill, SG commissioned research to inform decision-making regarding children’s services and justice social work services. COSLA welcomed the key learning and conclusions drawn from CELCIS Scotland’s research on children’s services and IPSOS Scotland’s research on justice social work as the basis for improvement work. Both research reports identified challenges faced and opportunities for change. Neither research report provided the evidence base for the large-scale structural reform being sought by Scottish Ministers. SG must carefully consider the impact that a decision to restructure children’s services would have on current focus and efforts across the children’s services sector and Local Government to Keeping the Promise by 2030.

iii. **Unclear Definitions and Scope of the National Care Service:**

Local authorities have been defined as a “National Care Service institution” in the carrying out of functions delegated to the Integration Authority, with the Bill also referencing a “National Care Service workforce.” A broad definition of “National Care Service services” has been provided as including everything within an integration scheme. These definitions require further consideration regarding their implications for the role of Local Government in Scotland. Local authorities are currently well understood and legally defined, these provisions may introduce increased complexity and confusion.

iv. **Reliance on secondary legislation:**

As with COSLA’s response to the NCS Bill as introduced, the use of framework legislation for the NCS Bill provides significant powers for Scottish Ministers to introduce large-scale public-sector reform via secondary legislation and therefore by consequence, would be subject to less scrutiny. The extent to which the NCS Bill provides powers for the use of secondary legislation is an ongoing concern for COSLA. For example, COSLA would welcome further clarity and re-assurance on amendments the effect of which appear to provide Scottish Ministers with the ability, via Regulations, to add and subsequently mandate additional local authority functions to an integration scheme and by

consequence, the scope of the National Care Service Board.

National Care Service Strategy

21. COSLA supports enhanced strategic direction for adult social care, social work and community health services and for the setting of priorities for the NCS Board. The setting of a 5-year National Strategy is appropriate and indicates the intention to ensure greater stability and time to implement strategic priorities. In light of the recent shared experience of the pandemic and the associated requirements to respond to unexpected developments, it is also recognised that a degree of flexibility may be required in priority setting.
22. Considering the shared accountability agreement for the National Care Service, it is unclear why the strategy should be statute and the sole responsibility of Scottish Ministers, and not a shared endeavour with Local Government. COSLA would also welcome further clarity on the intended role of the NCS Board in the setting of national priorities. Given the potential unique vantage point of the NCS Board, it would appear well positioned to offer a constructive contribution on the national actions required to overcome core strategic sustainability and workforce challenges faced by social services.
23. COSLA and Local Government regularly work in partnership with Scottish Government on the development of joint strategies related to areas of shared ownership and responsibility, including within health and social care. A key benefit of this partnership is the opportunity for spheres of Government, and for national and local leaders, to co-produce and work together towards a common purpose, in collaboration with key partners. It is crucial that national strategies provide overarching ambition and intended outcomes, whilst also allowing flexibilities to take account of local circumstances and local decision-making. The Policy Memorandum rightfully acknowledges the importance of local areas being empowered within implementation to meet local priorities and circumstances. COSLA would welcome greater insight into the role local areas and local system leaders, alongside the NCS Board, would have in shaping priorities, in addition to implementation.
24. Joint strategies between Scottish Government and COSLA are a helpful tool for ensuring a holistic, whole system approach to planning and delivery that is informed by local partners and endorsed by Elected Members. These strategies have been non-statutory. Given the extent of existing legislative requirements and powers, it is not clear why an additional strategy being set out in statute is necessary or would enhance people's experience of social care and community health. The core challenge with existing national strategies has been the lack of resource to support effective implementation of policy ambition, given current funding pressures on both Scottish

Government and Local Government budgets. It is not clear how any actions in a statutory strategy will be funded. Should a National Strategy place additional asks on Local Government (as well as other delivery partners), without sufficient Local Government input or the necessary funding, this would present a serious risk to local democratic decision-making in Scotland, and the success of the strategy overall.

National Care Service Board

25. In the summer of 2023, Scottish Ministers, COSLA Leaders and NHS reached agreement around a model of shared accountability for the National Care Service. This included the proposed creation of a NCS Board to bring together shared, whole system accountability.
26. At the point of the shared accountability agreement, the creation of a NCS Board presented the opportunity to provide enhanced national leadership and embed collaboration between system partners, people and stakeholders; to develop national policies, standards and guidance in collaboration with the health and social care system; as well as provide effective oversight and support for improvement for the local system.
27. Overall, COSLA is concerned at the draft amendments introduced which legally translate the policy intent for the NCS Board. The proposed NCS Board does not appear to embed shared, whole system accountability and collaboration within the legislation. The NCS Board instead appears to introduce a top-down model of national monitoring, oversight and performance management, without a clear role of translating local learning into national improvement, coherent strategy and policy planning, and the modelling of national resource requirements.

The General Purpose and Functions of the National Care Service Board

28. Part 1, Chapter 1B, 12E introduces the general purpose of the NCS Board:

“The general purpose for which the National Care Service Board is to exercise its functions is to oversee the National Care Service local boards and the provision of services by the National Care Service so as to secure continuous improvement in the wellbeing of the people of Scotland in the way that seems to the Board most consistent with—

 - (a) the National Care Service principles, and
 - (b) the National Care Service strategy”
29. Given the NCS Board is the point by which shared accountability is brought together within a strategic board structure, the purpose outlined appears overly restrictive and limited to an oversight and monitoring role of local boards. It does not appear to offer the ability for the NCS Board to translate its

learning of local systems into national action.

30. COSLA may have expected a more generalised function for the National Care Service Board to promote and facilitate the promotion of the National Care Service Principles and National Care Service strategy, and for this function to have not been limited to within its role of providing oversight of local boards and services.
31. Given the potential for the NCS Board to have a unique vantage point of Scotland's health and social care system and an opportunity to learn from local systems and provide enhanced collaborative national leadership which may help to overcome core strategic challenges, such as resource and workforce pressures, experienced by local systems. COSLA may also have expected, for example, the NCS Board to have a general function for advising Scottish Ministers, Local Authorities, NHS Boards, public bodies and other relevant persons.
32. Point 80 of the Policy Memorandum included within the Scottish Government's draft Stage 2 package provides greater policy detail on the expected role of the NCS Board. Whilst COSLA is supportive of the creation of a NCS Board to fulfil the role of providing national oversight, it is notable at this stage the extent to which its role is focused on the monitoring of local systems. There is a risk that the remit of the National Care Service Board continues to expand, and that reporting asks on local systems will continue to grow. This is particularly a concern with the further engagement on the Board's operation detailed in the Policy Memorandum, and the regulations (Part 1, Chapter 1B, 26B) that would allow Scottish Ministers to confer additional functions on the NCS Board. This would could result in ineffective and burdensome reporting requirements which risk detracting from the core objective of providing high quality support to people.
33. Scotland's social services are currently under sustained and acute financial, workforce and access pressures. The introduction of new legal duties, reporting and information requirements require either the provision of greater resource to local system partners, or for local system partners to re-prioritise existing resource to meet new requirements. COSLA would request that further consideration be given to the balance of any new asks, given the level of sustained pressures currently being experienced by services.

National Care Service Board Shared Accountability

34. The shared accountability agreement reached between spheres of Government in June 2023 proposed the creation of a NCS Board which would report to Scottish Ministers, Council Leaders and NHS Chief Executives. The draft Bill provisions clearly establish the role of Scottish Ministers in relation to the NCS Board, but it is less clear how Local Government may have a

legislated role in supporting and shaping the direction of the NCS Board.

35. The Policy Memorandum outlines the policy intent to develop a Memorandum of Understanding which would outline an approach to joint decision-making between Scottish Government, Local Government and NHS shared accountability partners at a level above the NCS Board.
36. With local authorities retaining core social care and social work responsibilities and workforce, an appropriate relationship between Council Leaders and the NCS Board should be established. Local democratically elected leaders should have appropriate opportunity to engage and review the effectiveness of the Board as a public body providing support to local boards. COSLA would welcome consideration of further amendments to expand upon the oversight and accountability mechanisms provided for within the Bill. An example of such a mechanism could be in relation to paragraph 15(1)(c) and (2) of Schedule 2C which permits Scottish Ministers to terminate a board member's appointment to the NCS Board. An amendment here could establish that such a decision be taken only after consultation with certain persons, such as local authorities. COSLA would welcome further engagement on this area.
37. The creation of the NCS Board provides a valuable opportunity for enhanced national strategic direction. Missing from the draft revised NCS Bill, nonetheless, is an expressed principle which would ensure the NCS Board has regard for local decision-making. One way of strengthening this, in part, may be the introduction of an additional principle which recognises the value of local decision-making to best meet the needs of local circumstances.

Creation of local boards and removal of other integration models

38. COSLA welcomes the intention to reform Integration Authorities rather than create new public bodies, as outlined in the original NCS Bill. The integration of health and social care in Scotland and creation of Integration Authorities and by extension Health and Social Care Partnerships, was introduced by the Public Bodies (Joint Working) (Scotland) Act 2014. This introduced a new way of planning, commissioning and delivering health and social care across Scotland. Large-scale reform of this type takes time to embed. A decade on from the Public Bodies Act, there is an opportunity to strengthen and build upon the progress made within health and social care integration and look to propose solutions to the challenges posed. It is right that we seek to engage in this process to build and strengthen existing mature relationships, rather than initiate a complex process of the development of new bodies.
39. COSLA notes the Scottish Government's proposal to rename local Integration Joint Boards as "National Care Service local boards". This proposal was not formally agreed by National Care Service shared accountability partners prior

to the publication of the Stage 2 package.

40. COSLA is open to considering the renaming of Integration Joint Boards, should there be an appetite among stakeholders and partners that this move would assist in the public communication of the role of IJBs / local boards. Nonetheless, consideration should be given to work which has been undertaken in recent years to establish and build the brand of local health and social care partnerships, which in effect would be what would be renamed, rather than the technical IJB construct.
41. Removal of the term 'integration' from the title of local boards may reduce the significant work that has taken place since the 2014 to successfully integrate health and social care support, as well as the importance of continuing to build on and strengthen integration so that the journey through and across health and social care is seamless for the individual. Furthermore, COSLA would welcome clarification on the anticipated costs associated with a possible rebranding exercise for boards across Scotland and further opportunities to reflect upon the balance of benefits of undertaking this expenditure now, considering the severe pressures – including financial pressures - being experienced by Scotland's health and social care system.
42. Clarification would also be welcomed on whether the proposed changes to Integration Authorities / NCS local boards would necessitate the creation of new integration schemes and, if so, recognition of the resource and time this may require.

Removal of Integration Models

43. The Public Bodies (Joint Working) (Scotland) Act 2014 allowed each Local Authority and their NHS Board (as Integration Authorities) to determine whether to adopt the Lead Agency Model or the Integration Joint Board Model.
44. Highland opted to adopt the Lead Agency Model, in which Highland Council has responsibility for integrated health and social care services for children, and NHS Highland deliver integrated health and social care services for adults. COSLA believes local decision-making over planning is critical, and thus supports discussions occurring within Highland on their approach.
45. Any legislative removal of the Lead Agency model from the Public Bodies Act should consider the potential impact and implications for Highland Council and NHS Highland. This could include implications connected to TUPE and the transfer of staff, as well as other impacts identified within Highland. Any associated costs with the implications of the NCS Bill should be fully considered by Parliament and costed within the accompanying Financial

Memorandum.

Monitoring and improvement and commissioning

46. In principle, COSLA supports a National Care Service Board assuming a national oversight role and maintaining a progressive support and improvement framework. A support and improvement framework, if delivered well, could help ensure appropriate guidance and support is provided to local systems to support progressive change which realises improved outcomes for people and ensures standards are met.
47. COSLA has strong concern, and would welcome further clarity, on the inclusion of several broad provisions within the revised Bill related to the fulfilment of a support and improvement framework. It is unclear to what extent proposed powers may impact upon local authorities exercising their functions, would work in practice, and may risk overriding local democratic decision-making.
48. Part 1, Chapter 1B, Sections 18 and 19 enable the transfer of a local board's function in an emergency, or due to a service failure. No definition has been provided for what constitutes an emergency and, as such, it is difficult for local authorities, health boards or NCS local boards to understand expected parameters and trigger points for intervention. With local authorities retaining statutory functions, there is a lack of clarity on how the possible transfer of a local board's functions would impact on how/who would direct a local authority to carry out their functions and the impact on the local integration scheme. It is unclear whether the proposed support and improvement framework would intervene in the strategic commissioning role of the local board, or in the operational service delivery role of the Council or Health Board (via the Health and Social Care Partnership). This is an important distinction. Finally, neither section 18 nor section 19 deal with difficult liability questions that may arise surrounding wider liabilities (e.g. personal injury and "damages" claims for actions arising as a result of a person performing functions on behalf of the NCS local board but under a direction from the NCS Board.)
49. The Policy Memorandum ties these powers to the higher stages of a possible support and improvement framework. It is unclear how the transfer of a local board's functions to another local board may be achieved in practice, nor how transferring strategic governance functions is likely to effect the meaningful change required, given the local authority and health board in practice perform the operational delivery of functions under the direction of the board.
50. For example, clause 18 allows the NCS Board to direct that a delegated function is to be performed by another person if there is an emergency though making a direction setting out "who is to perform the function". However, although the board carries out the function, it does not deliver the services – it

is not operational and does not “perform” the function. Section 26 requires that the Board issues a direction to one of the constituent authorities. COSLA’s assumption is this would not change if an order was made under clause 18, and thus would pose the following questions:

- i. What is the purpose of transferring the delegated function to another person when the “other person” does not actually deliver the service on the ground?
 - ii. Can the “other person” issue directions to the local authority and health board under section 26 of the Public Bodies (Joint Working) (Scotland) 2014 Act which is the legal mechanism by which those bodies are directed to deliver the services? Section 26 appears quite clear in its terms that the direction must come from a local Board. Can it only come from the Board linked to the constituent authorities? Section 61 of the Public Bodies Act, which defines “constituent authorities” would appear to have that effect.
 - iii. Given the wide-ranging powers to issue directions and guidance to local boards and local authorities already, why does there need to be a separate transfer of power “in an emergency”?
51. COSLA would welcome further clarity on the scope of the support and improvement framework, and which bodies such a framework would apply to. Clause 12K notes that it will apply to “services provided by the National Care Service”. Nonetheless, the definition provided at clause 35(3A) appears vague, and it could be argued to apply to all services, whether provided by the local authority or secured by them (i.e. carried out by third and independent sector providers).
52. The draft Bill outlines that the NCS Board may prepare a new support and improvement framework at any time, whilst the Policy Memorandum outlines the intent of the Scottish Government to co-design details of the support and improvement framework following the passage of the Bill. COSLA would welcome the introduction of a duty for the NCS Board to consult with local shared accountability partners prior to each Support and Improvement Framework being prepared, to ensure such a framework is responsive to the needs of local systems, the people who access their services, and those who work to deliver them. Such a duty would be consistent with various powers conferred on Scottish Ministers under the Bill which also require consultation prior to exercise: e.g. sections 1A, 1D, 12, 26B, 40. COSLA would also welcome clarification on what professional and other advice the NCS Board would have access to in developing the support and improvement framework, as well as mechanisms for formal scrutiny of the framework.

53. When developing and implementing the support and improvement framework, the NCS Board should have regard to the NCS principles, so that it can be seen to taking these principles into account and be proportionate in making a judgement about a response of when it needs to “take action.”
54. COSLA would welcome further clarity around the role of the NCS Board and other authorities, particularly with respect to 12L (4). It is unclear what a local authority would do if, for example, a direction was received from the NCS Board which was in conflict with a requirement or improvement action made by another body. Currently, 12L (4) notes that the NCS Board must “have regard” to its work complementing that of other authorities. The updated explanatory notes make clear that issuing directions is to be part of the framework, but that means there is a need for a clear demarcation in relation to roles and remits, to ensure there is no contradiction or conflicts with the role of another regulator.
55. The responsibility of the National Care Service Board to monitor services and effect a support and improvement framework must be proportionate, avoid placing excessive and burdensome reporting asks on local areas and be equipped to offer supportive and effective tools when required.
56. The support and improvement framework is to be tied to a local board’s fulfilment of their strategic plan. It is worth noting that, circumstances occur outwith control of a strategic plan, including changing market forces. This should be recognised and considered within the implementation of a support and improvement framework.

Commissioning and Procurement

57. COSLA recognises that the NCS Board may have a role in undertaking national commissioning of agreed complex and specialist services. Nonetheless, COSLA would welcome clarity on the broad approach adopted within the revised Bill which appears to enable the NCS Board to undertake procurement activity on behalf of NCS local boards, health boards and local authorities and that this may extend to any goods, works and services including back-office requirements. This presents additional risks, including the duplication of the existing valuable role and activity of Scotland Excel in relation to national social care commissioning and procurement. The approach also risks impacting current shared efforts regarding Community Wealth Building.
58. COSLA understands Scottish Government have been consulting on the third sector reserved procurement process provisions within the Bill as introduced. There is an opportunity and need to learn from the existing reserved processes. The clear drafting of the definition of qualifying organisations is essential to ensuring procurement professionals can effectively operate a

reserved process. COSLA is concerned that the definition as currently provided may prove operationally challenging for procurement officers to effectively validate, given complex organisational structures and financial models within the care sector.

National Chief Social Work Adviser and the National Social Work Agency

59. COSLA supports in principle the creation of a National Social Work Agency to provide support and enhanced national leadership for the social work profession, including areas outlined in the Policy Memorandum:

- social work education (pre- and post-qualifying)
- workforce planning
- policy rationale and improvement activities based on evidence-based insight
- implementation support with social work employers to ensure Scotland achieves its policy intentions
- training and professional development

60. COSLA has engaged constructively with Scottish Government and Social Work Scotland to understand how a National Social Work Agency could operate in practice, based around a shared partnership model. The amendment introduced within the revised Bill would appear to define the National Social Work Agency as an agency led by the National Chief Social Work Adviser and accountable to Ministers. This definition requires further consideration as to whether this is an appropriate means to achieving a shared partnership.

61. COSLA welcomes and supports amendments which seek to strengthen the position of the National Chief Social Work Adviser, given its important national leadership role for the social work profession.

Amendments to the Public Bodies (Joint Working) (Scotland) Act 2014

62. COSLA is concerned at draft amendments introduced to the Public Bodies Act which would have the effect that Scottish Ministers may add or remove to the list of functions which local authorities must delegate to NCS local boards, and therefore come under the scope of the NCS Board. The powers introduced appear widely drawn, and COSLA would welcome clarity on the scope of which local authority functions may be added by Scottish Ministers. The amendments present the risk that Scottish Ministers expand the scope of the National Care Service to potentially draw in other elements of Local Government, and therefore override local democratic decision-making and the role of Local Government.

Direct Funding

63. Direct funding is an area which requires further work and development to better understand the rationale and risks of including a provision within the Bill. Considerably more work is required to understand the implications of Scottish Ministers / the NCS Board providing direct funding to Integration Authorities when local authorities remain legally responsible for functions, staff and assets. Given the framework nature of the NCS Bill, it is likely any power introduced for Scottish Ministers in this area is likely to be general and therefore presents undefined risk to local authorities in exercising their functions.

64. COSLA continues to hold concerns on the potential impact of direct funding on the role of Local Government, the Local Government Settlement and how such a provision may undermine and contradict the approach outlined in the Verity House Agreement between Scottish Government and COSLA.

Approach to Children's Services

65. COSLA would wish to note the following areas of work which are either longstanding or relatively new with respect to ensuring children's services continually develop and improve, to secure the better outcomes for children, young people and families that Local Government is fully committed to. Improvements can and are being made without structural reform, and this is only a snapshot of work which demonstrates this. The risk of undermining this progress through the upheaval of structural reform is significant, as are the resource implications. Any resource available should be to support improvement work and frontline service delivery capacity.

- **The Promise Local Government Programme Board** – chaired by SOLACE and established to monitor and drive delivery of the actions required of Local Government to Keep the Promise.
- **COSLA and Scottish Government Joint Governance Board for The Promise** – being established in line with the Verity House Agreement to support and improve joint monitoring and improvement programmes across governments in our work and ambitions to Keep The Promise.
- **Children and Families National Leadership Group** – chaired by SG and SOLACE and is considering future work based on the improvement priorities as determined by CELCIS research – Leadership & Culture / Supporting the Workforce / Collective Resources / Outcomes, Data and Information Sharing
- **Children and Families National Leadership Group – Workforce Subgroup** – chaired by COSLA and Scottish Government. Prioritising work to support improvement and develop the children's sector

workforce. It has existed since 2020 and is now focusing actions on CELCIS research.

- **Children’s Hearings Redesign Board** – co-chaired by COSLA and Scottish Government to oversee the change and reform required within the Hearings System as identified through the ‘Hearings for Children’ report.
- **The Promise Collective** – co-chaired by COSLA, The Promise Scotland and Scottish Government. It is developing a Monitoring Framework for Plan 24 – 30 to understand progress and determine where improvements are required.
- **Children’s Third Sector and Local Government Group** – chair rotates around members. It was established to support and improve collaboration, partnership working and improvement between Local Government and children’s third sector organisations.

66. It should also be noted that each area will have also local improvement work underway.

67. The Committee may wish to consider the existing data and evaluation reports:

- **Local Government Promise Annual Report** – demonstrates progress to Keep The Promise from every local authority.
- **Children’s Social Work Statistics (Published by SG)** – show a decrease in the number of looked after children (down 20% since 2015/16) and a decrease in the number of children from Scotland in secure care (as examples).
- **Care Inspectorate Joint Inspections of Services of Children and Young People** – recent inspection reports are positive and show action on previous recommendations. East Lothian and North Lanarkshire as recent examples were rated as ‘very good’ for services protecting children and young people as risk of harm.
- **Attainment** – the Achievement of Curriculum for Excellence Levels (ACEL) data for 2022/23 showed improvements in literacy and numeracy levels.
- **Local Government Benchmarking Framework** – outlines improvement ELC setting quality and positive destinations for young people.

68. The Committee may also wish to consider the potential impacts of mandating delegation of children's and justice social work services to the local Board and inclusion within the NCS. This information is based on survey responses from Local Authorities who have not delegated services.

- i. **There is no evidence that demonstrates structural change leads to better outcomes and improvements:** The CELCIS report, commissioned by Scottish Government, highlighted that very point. This shows continuity from the conclusions of the 2018 joint report by Social Work Scotland, Care Inspectorate and Health Improvement Scotland. Care Inspectorate reports highlight collaborative leadership across the partnership in non-delegated areas.⁴
- ii. **Service delivery:** just as there are existing arrangements with Children & Justice integration through Integration Authorities, there are also different, successful structural arrangements where Children & Education Services are integrated, noting in some areas this integration has evidenced positive outcomes particularly for Looked After Children and Children with ASN. Mandated delegation threatens to undo the progress made in joint working, fracturing current inclusive practice between Children's and Justice Social Work and wider council services. Risk and impact assessments have not been considered for crucial interfaces between services.
- iii. **Governance and accountability:** integrated children's services operate through Community Planning Partnerships rather than the Public Bodies Act - there would therefore be consequences across community planning.
- iv. **Governance and accountability:** there are concerns around the capacity of proposed NCS arrangements to give sufficient attention to the strategic planning and delivery of children and justice services given the comparative scale and priority of adult services issues. In particular the current metrics, principles and priorities which have been set out for the NCS have arisen from a focus on services to adults and those who require ongoing packages of care, a cohort which is important.
- v. **Performance and Improvement:** a national performance focus, specifically linked to the adult acute health sector, draws attention away from local improvement opportunities.
- vi. **Risk of duplicating reporting duties:** the separation of strategic and improvement planning and delivery from that of education and other council services would also carry clear risks of disconnection

⁴ Integrating-Health-and-Social-Care-in-Scotland-The-Impact-on-Childre....pdf
(childreninscotland.org.uk)

at both local and national levels.

- vii. **Finance:** lack of adequate resourcing and sequencing of the complex policy landscape continues to be a major weakness. Ongoing funding issues have consequences for potential transition resourcing: councils have limited resilience and capacity to contribute to practical aspects of transition. Any disruption to the system creates uncertainty and volatility, while diverting money towards structural change which may result in a deterioration of the quality of services.
- viii. **Finance:** should delegation of services be mandated it is unclear if a transfer of these activities would be based on budgets or actual costs. In particular would the Council be required to supplement budgets if they are in an overspend position? It is also unclear how any required or committed capital funding held by the Council in respect of these activities would be treated and/or following a mandated transfer.
- ix. **Workforce:** large scale structural change within an already fragile and diminishing workforce, while need becomes more complex, risks destabilising organisations and threatens quality of service delivery. Potential implications for terms and conditions could lead to industrial action. The Bill contains no reference to implications for backroom support staff, or to salary costs of providing equivalent support in a new organisation.
- x. **Remote and Rural areas:** large scale centralised approaches often fail to understand the uniqueness and diversity where planning services are fundamentally more complex.

69. COSLA and Local Government professional associations have suggested the following alternative approaches to support the continued improvement of children's and justice social work services: rationalisation and enhancement of existing national bodies; a robust national improvement and support framework aligned with joint inspection regimes; a legal duty on national and local partners to collaborate; long-term flexible funding; pooled budgets; bolstered local governance arrangements; consistent national leadership; workforce partnership development; and enhancing the role of Children's Services Partnerships to strengthen joint-working.

70. Finally, the areas of concern highlighted in COSLA's original response to the National Care Service Bill remain. The inclusion of children's services within the National Care Service goes beyond the scope of the Independent Review of Adult Social Care. The report from Children in Scotland, commissioned by Social Work Scotland, Healthcare Improvement Scotland and the Care Inspectorate, highlighted that the answer to 'the delivery of more effective children's services is not more structural change. A period of stability is

essential'.⁵

71. COSLA strongly agrees further work is required to realise our collective ambition that Scotland is the best place in the world to grow up and therefore we remain fully supportive of the incorporation of the UNCRC into law, and of course collaborative working to deliver The Promise. The consensus among local authority leads that inclusion of children's services in a National Care Service would make it "hard, if not impossible" to keep the Promise, remains a significant concern for COSLA.
72. If the Promise is our guiding light to ensuring that children in Scotland 'grow up loved, safe and respected' then the focus should be on investing in achieving this through collaborative leadership and innovative partnerships, at the local level. The structural reform involved in the proposals puts at risk the prospect of keeping the Promise by 2030, and the work underway to improve children's services as detailed earlier in the submission.

Approach to Justice Social Work Services

73. Local Government has been committed to a process of improving both criminal justice social work and the broader based approach to community justice overall. The area is still managing the impacts of multiple restructuring over the last two decades, including the creation of the Community Justice Authorities by the Management of Offenders etc. (Scotland) Act 2005 and their replacement with the local Community Justice Partnerships by the Community Justice (Scotland) Act 2016.
74. Across the UK, the impacts of COVID-19 on the justice system continue to work their way through the system, increasing the pressures on custodial and community justice services. These are showing up with the high rates of imprisonment, unreasonable workloads for justice social work and limited resources to address of these issues, making it further challenging to develop and improve the community-based disposal offering.
75. At the outset of the discussions around the NCS, COSLA made clear our position that the impact costs of structural reform would have on our ability to address the improvements that were needed. As part of the attempts to inform the discussions over whether JSW should be 'in or out of the NCS', the Scottish Government commissioned IPSOS and the University of Strathclyde to undertake research in the area to inform of the benefits or otherwise of either position, drawing on international and other practice.
76. The research identified a clear theme from participants that there was a lack of vision and plans for the inclusion of Justice, with participants expressing a

⁵ <https://childreninscotland.org.uk/wp-content/uploads/2018/06/Integrated-Children%E2%80%99s-Services-in-Scotland-Practice-and-Leadership.pdf>

desire for more detail. 'It was noted that the NCS had developed out of challenges around adult social care; there was a perception that much of the information provided so far was focused on this and was not obviously relevant to JSW, who were perceived to have been “an afterthought”, and it was questioned how the NCS could avoid the voice of Justice being 'lost'. Reservations were also evident in respect of any potential impacts joining the NCS would have on the joint working relationships held with other key partners in Justice including Police Scotland, the Courts, Housing, employability services, education, and third sector partners.

77. The IPSOS Scotland report noted that JSW entails a dual remit, balancing “care and control” and straddling “justice” and “social work” services. Both aspects are seen as central to the professional identity and ethos of JSW and many JSW activities will combine elements of both care and control. It also highlighted some of the fundamental matters needing to be addressed. Amongst the multiple factors that were identified as contributing to JSW were:

- a perceived increase in expectations and demand on JSW and in the complexity of client needs over recent decades, reflecting both external factors (such as the cost-of-living crisis) and the changing policy and legislative context
- overall funding levels not being seen to have kept pace with this increased demand and expectation
- funding not always being provided on a sustainable basis
- challenges around staff recruitment, absence and retention
- availability of training to meet the needs of JSW, including the needs of teams in areas furthest from the central belt where training tends to be delivered
- suitability of physical resources, including offices with appropriate spaces for confidential conversations
- issues around external services' resources, and
- area-specific issues, including challenges arising from the additional delivery costs associated with the geography of rural areas.

78. A Justice Social Work Improvement and Action Plan was agreed to address these matters. Given the urgency around making progress, as with children's services, the case is strong that any resource available should be used to support improvement work and front-line service delivery capacity. Spending

resources on further restructuring creates additional burdens for these services without the likelihood of any gains.

79. Considerable work is underway to address the matters above. Additionally Working groups on a funding review and technical advice are in place. COSLA takes part in the delivery of the Community Justice Strategy, with COSLA holding membership of its Programme Board. Other key work is undertaken on the Multi-Agency Public Protection System, Diversion from Prosecution, Strengthening Alternatives to Remand, the Prison Population all with working and steering groups. At the same time there is engagement in the Implementation of Bail and Release from Custody.

80. Impact of mandating delegation of Justice Social Work. As with Children Services:

iv. **IPSOS / University of Strathclyde:** no evidence of better outcomes, but many issues that urgently need to be addressed.

v. **Service Delivery:** different successful structural and integration arrangements. Risk to local progress and inclusive practice. Require risk and impact assessments.

vi. **Governance and accountability:** consequences across community justice partnerships and planning. There are concerns around the capacity of proposed NCS arrangements to give sufficient attention to the strategic planning and delivery of justice services given the comparative scale and priority of adult services issues.

There is also the difference of culture with the 'care and control' role of JSW. This is at odds with the principles and priorities which have been set out for the NCS with its primary focus on services to adults who require ongoing packages of care

vii. **Performance and Improvement:** a national performance focus, specifically linked to the adult acute health sector, draws attention away from local improvement opportunities.

viii. **Risk of duplicating reporting duties:** the separation of strategic and improvement planning and delivery from those of welfare support, housing and employability - would also carry clear risks of disconnection at both local and national levels.

ix. **Finance:** lack of adequate resourcing and sequencing of the complex policy landscape continues to be a major weakness. Ongoing funding issues have consequences for potential transition resourcing: councils have limited resilience and capacity to contribute to practical aspects of

transition. Any disruption to the system creates uncertainty and volatility, while diverting money towards structural change which may result in a deterioration of the quality of services.

- x. **Workforce:** large scale structural change within an already fragile and diminishing workforce, while need becomes more complex, risks destabilising organisations and threatens quality of service delivery. Potential implications for terms and conditions could lead to industrial action. The Bill contains no reference to implications for backroom support staff, or to salary costs of providing equivalent support in a new organisation.
- xi. **Remote and Rural areas:** large scale centralised approaches often fail to understand the uniqueness and diversity where planning services are fundamentally more complex and difficult to achieve.

81. The inclusion of Justice Social Work services within the National Care Service consultation goes beyond the scope of the Independent Review of Adult Social Care.

Scope and Definitions of the National Care Service:

82. The revised Bill introduces terms such as National Care Service “services”, “institutions” and “workforce” which have not been sufficiently defined to provide adequate clarity.

83. “Workforce” is not defined within the revised Bill. Given local authorities have been defined as National Care Service “institutions” in their exercising of delegated functions and that National Care Service “services” have been defined as all functions included within an integration scheme, it would appear National Care Service “workforce” would apply to the local authority workforce exercising delegated functions. The Local Government’s workforce is vast and not limited to those members of the workforce that deliver delegated social care and social work functions.

84. The revised Bill introduces a definition of National Care Service “services” which includes all functions delegated within an integration scheme. This means that all delegated functions would be within the scope of the National Care Service and have a reporting arrangement to the NCS Board. As noted in the Minister’s correspondence accompanying the revised Bill, areas where children’s and justice social work services have been locally delegated would be in scope of the NCS and those that have not done so would not. The Minister notes that this system would introduce further complexity to the system, and that the preference of Scottish Government remains the introduction of an amendment which would provide Scottish Ministers with the power to make regulation to mandate the delegation of local children’s and

justice social work functions.

85. As noted, COSLA does not believe that there is sufficient evidence which supports the view that the mandated delegation of children's and justice social work services within local boards and to the National Care Service would lead to improved outcomes. Furthermore, COSLA believes that current national reporting arrangements for children's and justice social work services should remain, and that these functions should not report to the NCS Board, regardless of whether the local authority has delegated those functions to the local board. This would empower local areas to plan services on the basis which best meets the needs of their communities.
86. COSLA is strongly concerned that the broad definition of National Care Service "services" introduced within the revised Bill would also see homelessness services, where delegated locally, included within the National Care Service and under the scope of the NCS Board. The inclusion of homelessness services within the National Care Service is without sufficient evidence, consultation and consideration. Currently, only a limited number of local authorities have opted to delegate homelessness services, with these strategic decisions based on local circumstances and planning arrangements. The introduction of the broad legislative provision introduced may disrupt such arrangements. It is unclear what benefit would be realised by having the few local boards who have delegated responsibility for homelessness services report to the NCS National Board, while all other councils who have retained this function would not. COSLA also have questions as to how the proposed support and improvement framework would operate with regard to functions such as homelessness. Would there be support available via this mechanism for homelessness services only if they are delegated (and in turn, under the auspices of the National Care Service)?
87. Local Government had not been made aware of the intention to define local authorities as a National Care Service institution. The full implications of the definitions provided on Scottish Local Government require further consideration and scrutiny.

Anne's Law

88. COSLA continues to support the principles of Anne's Law, recognising that care homes are people's homes and should not be reduced to a clinical setting, and as such will approach proposals brought forward from the basis of seeking to maximise visitation rights where possible.
89. As per the letter from COSLA spokespersons to the HSCS Committee on 30th July, Anne's Law was erroneously included within a list of areas for which Scottish Government identified COSLA and Local Government had sought further time and capacity to consider, in light of the prioritisation of the First

Minister and COSLA's Mission to Reduce Delayed Discharges. COSLA continues to support the principles of Anne's Law and is committed to working with partners on its development and implementation.

90. The effective introduction of enhanced visitation rights must also balance consideration to the safeguarding, health, safety and wellbeing of residents and staff, including the important role of clinical decision-making by public health professionals. In implementation, thought must also be given to how such rights are achieved and realised, whilst also seeking to ensure access is not excessively disruptive to other residents and the caring responsibilities to staff.

Draft National Care Service Charter

91. COSLA has supported the principle of a Charter to clearly communicate existing rights and what people should expect when accessing social care, social work and community health services.
92. It is important that the Charter sets out deliverable expectations, which can be met within an evolving environment. There is strong a risk, in seeking to communicate complex legal duties and guidance, that important nuances are lost which may create misleading expectations.

National Care Service Complaints Service

93. COSLA supports efforts to improve access to complaints and has engaged constructively in considerations of how complaints infrastructure and processes may be strengthened within the context of NCS reform. It is unclear at this stage how the NCS may improve complaints processes, and there is a risk of further complication.
94. In considering the revised draft legislation, it is of note that the Complaints Service section appears unchanged from the original NCS Bill, though the structure of the proposed NCS has shifted with local authorities retaining existing legal functions and workforce. It appears Scottish Ministers would be a central repository for complaints about "NCS services", Ministers would then send a complaint to the appropriate person, and where a service is provided by a local authority on behalf of the NCS local board, the existing statutory complaints scheme would stand. Clarity would be welcomed on the intent and implications of Chapter 1C 14/15, 4(b) which outline that Scottish Ministers may assume responsibility for dealing with complaints about different services at different times, and in particular whether this could see Scottish Ministers responsible for complaints made about a local authority service, despite the local authority holding responsibility for the function and workforce.

95. It appears that the complaints process outlined within the revised Bill would not stop the usual statutory complaints process from applying, or the important role of the Scottish Public Services Ombudsman (SPSO) or the Care Inspectorate, in accordance with section 97 of the Public Services Reform (Scotland) Act 2010. Nonetheless, there is, subject to any Regulations, a chance for multiple complaints processes to potentially apply. COSLA would welcome further assurance and guidance around the intended interaction of the complaints process in the Bill and any existing jurisdiction of the Care Inspectorate, SPSO and relevant organisations. Furthermore, COSLA would welcome an indication from Scottish Government as to whether there is an intention to rely on section 15 to make regulations which prevent multiple complaints processes from applying to the same set of circumstances where multiple actors are involved (for example, in a scenario where a local authority provided services via a care home on behalf of an NCS local board).

Impact on Islands and Remote Communities

96. Within the context of National Care Service reform, it is crucial that the specific needs of rural, remote and island communities are considered. Island communities depend upon the ability to locally shape and tailor service provision to support community need, facing unique challenges regarding workforce recruitment, transport, housing, and dispersed populations. Local conversations are occurring within some island communities to explore cross sector, public authority models. Where local partners have identified appropriate models to meet local needs and priorities, the National Care Service cannot stand in the way of place-based reform and must support the need for asymmetric approaches that are based on local context and can best deliver improved outcomes for communities. It is currently unclear whether the legislative model outlined would enable such flexibilities and respect local democratic mandates, and the accompanying policy memorandum does not appear to reference this work.

97. To note, the statutory impact assessments accompanying the NCS Bill as introduced have not yet been updated. The updating of these impact assessments, including the Island Communities Impact Assessment, is of key importance. COSLA welcomes the commitment within the policy memorandum to update the ICIA.

Integrated Social Care and Health Record

98. COSLA has consistently stated its support for the development of integrated health and social care records. COSLA recognises that a nationally consistent, integrated and accessible electronic record would facilitate improved information sharing and usage between partners and support better outcomes. Currently, across health and social care, there are a significant number of information systems being used to gather and store data about

people's health, care and support needs. Most of these systems are unable to communicate with each other resulting in a siloed approach to health and social care rather than an integrated one.

99. COSLA supports the introduction of an information standard indicating how information should be processed across health and social care services if this can improve delivery of social care for people using and delivering services. An amendment has been proposed to this within the Bill and now states "The Scottish Ministers may by regulations provide for a scheme that allows information to be shared in order that public health and social care services can be provided efficiently and effectively".
100. COSLA welcomes the Scottish Government decision to bring together work on the shared record, the National Digital Platform and the Digital Front Door to reduce duplication. COSLA continues to work with Scottish Government to oversee several pieces of work which will support the development of the shared record such as the development of shared data standards for use across health and social care, the National Information Governance Programme. COSLA and the Digital Office have also been working to develop a business case for the use of the Community Health Index (CHI) number within Local Government to support better data matching and information sharing.
101. While COSLA have continued to express concerns about the inclusion of Children's and Justice Services within the NCS, we believe that the introduction of a shared social care and health should include all people accessing services. For example, a shared record could deliver better outcomes for children, particularly those with additional care and support needs and those who have care experience. Currently, significant information is gathered, stored and shared on children with additional care and support needs and those with care experience. This means that children and their families must repeat their stories, which can cause significant trauma. A shared social care and health record could address this.
102. While COSLA is committed to working with Scottish Government and other stakeholders to develop the shared social care and health record, COSLA remains concerned about the significant financial investment this will require, for which no resource has been provided within the accompanying Financial Memorandum, with much of the detail to be agreed within secondary legislation. Investment will not only be needed to upgrade legacy systems but for some third and independent social care organisations, funding will be required to purchase an information system to enable them to start this work. This will also require significant investment in training, information governance and cyber security.

NCS Financial Memorandums

103. COSLA and Social Work Scotland wrote to Scottish Parliament's Finance and Public Administration Committee on 12th February 2024 with an analysis of the revised NCS Financial Memorandum – and particularly costings related to the fulfilment of the Right to Breaks for Carers.⁶ COSLA emphasised that the Right to Breaks would mark an important extension in human rights for around one in five of Scotland's population, and we also recognise that improved support to unpaid carers is a key part of reducing or deferring the need for greater volumes of formal care services. Provided the policy is adequately funded, it should make an important contribution to the future sustainability of Scotland's health and social care services.
104. COSLA and Social Work Scotland acknowledged that the re-costings in the revised Finance Memorandum (FM) have increased the potential funding in real terms to local authorities and integration authorities to implement the legislation if and when it is passed, compared to the original costings in the 2022 FM. However, stated concerns that the potential funding to the third sector to provide additional "easy access breaks" has been reduced.
105. COSLA and Social Work Scotland set out six areas where the "right to breaks" costings require re-examination:
- i. There are anomalies in some of the unit costs, particularly for short breaks, and also in the use of different inflation and demography estimates to those used elsewhere in the revised FM.
 - ii. The continuing absence of any costings for additional carer assessments undertaken by councils in response to increased demand arising from the new carer rights.
 - iii. Reductions and delays in the funding of additional "easy access breaks" are likely to lead to increased demand on councils and are not compatible with prevention or increasing demand.
 - iv. The long phasing for funding of carers rights to a break does not seem consistent with investment in prevention.
 - v. The costing relies solely on the Scottish Health Survey for the prevalence estimate of adult carers when this is known from

⁶ https://www.parliament.scot/-/media/files/committees/finance-and-public-administration-committee/correspondence/2024/ncsbillfm_cosla_swstoconvener_12feb24.pdf

other population surveys to under-count adult carers.

- vi. There are problems with the estimates for current funding, which are subtracted from the costing model's gross outputs to produce the net costs in the FM for the right to breaks from caring for unpaid carers.

106. A detailed evidence paper was provided accompanying this correspondence.⁷

107. In addition to COSLA and Social Work Scotland's correspondence, the Health, Social Care and Sport Committee's Stage 1 report identified several elements of National Care Service reform which require more detailed costings, including in relation to indicative costs for Part 2 of the Bill such as the integrated health and care record and training provision.

108. Though a revised Financial Memorandum was provided by SG in December 2023, no updated Financial Memorandum has been provided to accompany the draft revised Bill, inclusive of intended Stage 2 amendments. Furthermore, as framework legislation, much of the detail of National Care Service reform is expected to occur following co-design and via the use of secondary legislation. This does not allow for the same level of scrutiny therefore we would welcome further partnership working to identify future costs of the legislation.

109. Of note within the Stage 2 draft amendment package are the proposed reform of Integration Authorities, to be renamed and rebranded as NCS local boards, the removal of the Lead Agency model of integration and enhanced National Care Service Principles. COSLA would welcome further clarification as to whether costings for these proposals will be provided within a revised Financial Memorandum.

110. Overall, much of the investment through the National Care Service Bill is intended to facilitate reforms to structural governance. It is only by sufficiently valuing Scotland's social care, social work and community health services – including through the provision of sustainable resource and support for its workforce – that Scotland's care support system will be empowered to reach its full potential.

⁷ https://www.parliament.scot/-/media/files/committees/finance-and-public-administration-committee/correspondence/2024/ncsbillfm_cosla_swstoconvener_12feb24.pdf