COSLA Response – National Care Service Consultation

Supporting narrative document

- o **Section 1: Introductory remarks and context.** Here we set out a number of key contextual factors we believe are crucial to a proper understanding the issues raised by the NCS proposals. We contend that these contextual considerations need to be understood – and ultimately addressed – and it concerns us that there is a lack of explicit recognition of these underlying factors.
- o **Section 2: Uncertainties and Ambiguities**. We highlight numerous areas of ambiguity or lack of detail within the proposals as set out in the consultation document. In our view these limit the scope for meaningful discussion at this stage. These uncertainties are reiterated as appropriate in the detailed considerations which are elaborated throughout section 4 below.
- o **Section 3: Human Rights and Equalities.** Here we set out some supplementary information on human rights and equality in social care and in relation to the proposals.
- o **Section 4: Issues, risks and challenges.** Here we look in detail at the specific themes within the consultation document, considering the areas listed below in turn. Our aim is to comment constructively on each topic, and we necessarily go into some detail where the consultation proposals allow. In many instances however there is insufficient clarity at this point in time to fully assess the implications and potential consequences/risks etc of the proposals, and we highlight these within each topic.

  4a – Improving care for people
  4b – Complaints and putting things right
  4c – Residential Care Charges
  4d – National Care Service/Scope
  4e – Community Health and Social Care Boards
  4f – Commissioning of services
  4g – Regulation
  4h – Valuing people who work in social care
  4i – Unpaid Carers
  4j – Data Sharing, Analysis and Policy Development
  4k – Governance and Democratic Accountability

- o **Section 5: Scoping the NCS.** Drawing upon section 4 above, we consider the scope of the proposed National Care Service and its implications across service areas. This is particularly important given the expansion of the proposals beyond the recommendations of the Independent Review of Adult Social Care.
- o **Section 6: Concluding remarks and Recommendations.** We summarise the key points within the consultation response and make recommendations on how to move forward to deliver the improvements in outcomes identified in the Independent Review of Adult Social Care report. COSLA confirms its commitment to work constructively with the Scottish Government on these areas.

Section 1: Introductory remarks and context.

1.1   COSLA welcomes the opportunity to respond to the Scottish Government's consultation on proposals for the creation of a National Care Service (NCS). The scope of the consultation covers a range of service areas that are essential to communities across the length and breadth of Scotland. This is undoubtedly a critical moment, in which the many challenges that face these valued public services – whether financial, demographic or because of underlying inequalities that have been exacerbated by COVID-19 – could not be more acute. It is vital that we work together in a collaborative manner if we are to enact meaningful change.

1.2   That is why COSLA expresses disappointment at the outset of this response that Local Government was not involved in the development of the proposals prior to the publication of the consultation, given the current statutory duties held by Local Authorities and the significance of the emerging proposals. Indeed, neither COSLA, or our partners across Local Government, were given any sight of the expansion of the scale of the proposals beyond the recommendations contained in the Independent Review of Adult Social Care (IRASC) to include a range of areas – including children's services, community justice, alcohol and drug services, social work.

1.3   This is disappointing given the partnership approach that is so central to the relationship between the Scottish Government and Local Government, as can be seen in the collaborative efforts taken in response to the COVID-19 pandemic, and indeed since, including agreement to work collectively as we seek to recover from the pandemic. It continues to be our view that a collaborative approach is the best means of supporting meaningful change in the communities that we serve. If this top-down and directive approach to policy making, which does not appear to be supported by a robust evidence base, is replicated in the functions of a NCS, it will not only create undue challenges across the system but will serve to undermine the core concepts of localism and collaboration that are so central to our work.

1.4   Given the scale of the proposals being put forward, and the lack of detail or evidence contained in the consultation in certain areas, this document is being provided as a means of highlighting all of the information that we believe should be taken into account when the proposals are considered in further depth. To assist with this process, we have structured our response thematically to reflect the sections within the consultation document where possible.

1.5   It is also important to highlight that the timescale given for the consideration of these proposals is simply too short, given the scale of the changes that are being proposed. This would be true in normal times but is especially pertinent given the current challenges faced across health and social care services as we continue to deal with the impacts of COVID-19 and the pressures facing the sector as we prepare for what will be the most challenging winter period Scotland has faced in a long time. Whilst the consultation events that have accompanied this process have been welcome, the tight time period allotted for this process does not provide the sufficient time to consider in full the implications for social work/care service users, carers, staff in the sector, provider organisations and for Local Government as a whole. COSLA is also concerned about the likely timelines for the progression of these proposals being in close proximity to the Local

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Government elections in 2022 and the impact this will could potentially have on local democratic engagement and scrutiny of legislative proposals that may have significant implications for current local democratic arrangements.

1.6   Whilst we raise several concerns about the current proposals throughout this document, this should not be seen as a push for a retention of the status quo. This is categorically not the case. COSLA agreed with many of the findings of the IRASC and share many of the frustrations that were so clearly expressed through lived experience. We similarly recognise the scale of the challenges that currently exist, which have been exacerbated by years of underfunding and by the challenges brought about by the COVID-19 pandemic.

1.7   That is why we took forward a [Statement of Intent](#) with the Scottish Government with the intention of implementing key recommendations contained in the IRASC report as soon as possible. This was based on an agreed programme of intentional and progressive action to improve social care services for those who use and deliver them to drive high quality consistent services with human rights at the heart of them. With the necessary funding and support, we are of the view that meaningful change can be enacted now and not at the end of an extended period of structural change. COSLA, and our partners throughout Local Government, will engage with the Scottish Government in a constructive manner throughout this process and will continue to carry forward actions aimed at supporting improvement across the system, despite the considerable resource pressures that are being experienced by Local Authorities and our partners delivering essential services daily.

Section 2: Uncertainties and Ambiguities.

2.1   There are several uncertainties and ambiguities contained in the consultation. Many of these are drawn out in the information provided in section 4 of this document and in the many responses provided by Local Authorities and Local Government professional associations. However, there are key issues surrounding the financial underpinning of the proposals, their implications for the Local Government workforce, human rights and other key areas where there is a need for further information and clarification, and of which further information is provided in this section of our response. It is imperative that further detail relating to these areas is provided immediately as there is a not inconsiderable risk that information relating to these issues will not be given due consideration as a result of not being emphasised in the formal consultation respondent form

Finance

2.2   Fundamentally, many of the issues within the current social care system are the product of under-resourcing. Investment in the system now would not address all of the challenges experienced in the system but would support meaningful change across a range of recommendations set out by the IRASC. Local Government revenue budgets have been cut by 2.1% since 2013/14, while the Scottish Government budget has increased by 2.3% over the same period. Local Government has protected social care budgets as much as possible in this period, with adult social care seeing a 13% real terms increase. Children's services and criminal justice services have also seen real terms increases in this period. Despite this, the referenced increases have not been enough to keep

pace with the increase in demand that we have witnessed as a result of demographic pressures, the increasing complexity of care and the additional investment required to keep people in their own homes for longer. This is the financial backdrop against which the recommendations in the consultation are set.

2.3 The IRASC was only able to cost *some* of its recommendations, totalling £660m at 2018-19 prices, with annual demography uplifts estimated at 3.5%. However, it should be noted that two of the most important un-costed recommendations in the IRASC related to the need to strengthen the foundations of social care: Fair Work pay increases for social care workers above the £9.50 per hour living wage with improved terms and conditions, and increased rights and support for Scotland's unpaid carers, whose numbers have increased to over one million during the pandemic. These alone would increase the need for *additional* adult social care funding on top of the £660m running into at least hundreds of millions of pounds.

2.4 The recent Programme for Government committed the Scottish Government to significant investment in social care. While the exact costs of the reforms will be dependent on this consultation, and in turn legislation, as a minimum Scottish Government have stated it will increase public investment in social care by 25% over this Parliament – providing over £800 million more by 2026-27.

2.5 COSLA and Local Government professional associations are very concerned that the gap between the IRASC's part costing of £660m additional funding (at 2018-19 prices), and the Scottish Government's commitment at a minimum of "over £800 million more by 2026-27", is far too small to cover all of the un-costed recommendations. Unless significantly extended beyond this "minimum", it would not provide sufficient funding for paying fair wages to social care workers, let alone increased rights and support for unpaid carers, reform or abolition of eligibility criteria, the increased demand from the removal of care charges, implementing "ethical" and "collaborative" commissioning and procurement, improved data and information technologies, potential VAT and other costs.

2.6 Investment is needed to address the increasingly serious challenge of social care staff recruitment and retention. The IRASC estimated that "in broad terms, every pound beyond the Real Living Wage will increase the national social care support wage bill by about £100m per annum" (page 92). However, the IRASC estimates are too low. The costings in the report included £19.5m to increase the Real Living Wage for social care workers to £9.50 an hour in 2021-22, but the Local Government Finance settlement for 2021-22 required £64.5m for social care to contribute to the delivery of the Real Living Wage at £9.50 an hour, and the recently announced increase to £10.02 per hour for commissioned services is estimated at £144m per year. This does not include any increase in pay for services provided directly by Integration Authorities or Local Authorities.

2.7 Currently only 3% of all carers have a short break or respite, and this is still only 9% for full-time carers providing 35 hours a week or more of care (Scottish Health Survey data). During the pandemic, the number of carers in Scotland increased to over one million; a much-needed statutory right to a break from care, including necessary replacement care for the person cared for, will be expensive. In addition, investment is needed to expand the range and quality of respite care

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available, as the IRASC recommended, and also to expand local access to carers centres and other prevention support infrastructure.

2.8 These, and the other un-costed IRASC recommendations mentioned above, will increase the full implementation cost significantly – by our best estimates to over £1.5bn. The proposed expansion in the scope of a NCS to include children and families social work and justice social work also brings the underfunding of these services into sharper focus. This was recognised by the IRASC, where a crude estimate that the current unmet demand from 2009/10 to 2018/19 would cost around £436m to address – this is at 2018/19 prices and does not take in account any further increase in unmet need from 2019 onwards nor the impact of the pandemic. These budget cuts to Local Government also have a direct impact on the wider determinants of health, which in turn influence need and demand within communities.

2.9 There has also been a systematic failure to move resources within the wider health and social care system away from acute settings to support community-based preventative interventions and this has ultimately compounded the pressures within the social care system. No Local Authority or Integration Authority has tightened the Scottish Government's eligibility criteria thresholds to reduce access to support through choice, but because of the insurmountable budget pressures.

2.10 It is clear that the current system has substantial challenges, due to the significant underfunding that this response has outlined. This does not provide a justification for changing structures, rather provides evidence that the current structures should be properly resourced to enable support and services that meet the needs of individuals, and our communities to be developed. Recent research outlines how disinvestment in local government services comes at the detriment of public health, and potentially increasing inequalities in communities ([The Lancet, 2021](#)). This is particularly true given Integrated Joint Boards (IJBs) are very new structures themselves, only established in 2016. It is not surprising that it is taking a number of years for the new structures to bed in and show the improvements. There is continuous learning and improvement that can be done, and this should be the focus rather than diverting resources and capacity in unnecessarily changing structures.

2.11 These problems have been compounded by short term funding settlements which inhibit strategic whole system planning and service design. Alongside this, there has been increased ringfencing of budgets or direct spending to specific policies or interventions. This means that services can be short term and not joined up, nor achieving the best outcomes for service users and our communities.

2.12 Additionally, there has been the introduction of a wide range of, at times, disconnected health and social care initiatives and duties. These are frequently underfunded, creating pressures in other parts of the system. For example, the Carers Act included no funding for the replacement care required to enable unpaid carers to take the breaks they need to sustain caring. This makes it extremely challenging for carers to realise their rights to support.

2.13 The proposals within the consultation are lacking a significant amount of detail, which makes it very challenging to consider the implications of the proposals. As there are no costings at all in the consultation paper, it is impossible to consider

whether a NCS would provide a Best Value approach, or what the opportunity cost of some of the proposals are in other areas. It is difficult to respond to consultation on such significant changes without a candid conversation about the resourcing implications for the whole public sector.

2.14   There is frequent reference to 'consistency' with the implication that adult care services should be exactly the same across Scotland. This runs counter to a person centred, rights-based approach to service design and the Scottish Service Design principles. It also is not possible to achieve given different population and needs across the system. Consistency in the sense, ignoring warranted local variation, would additionally have significant resourcing implications and could result in services being funded which do not meet the needs of the service users.

2.15   Enabling social workers and other professionals to focus on the rights of individuals "without being hampered" by the consideration of eligibility and cost is a commendable aspiration but there are finite resources available to support service users and carers. A rights-based system will still require reformed eligibility criteria and would not mean that service users get everything that want, rather than need to fulfil their rights. Furthermore, to suggest that community health does not have eligibility criteria is a misrepresentation of how resources are managed within the NHS through equivalent but less transparent mechanisms – to access services individuals will usually require a referral through a GP, this requires getting an appointment and then any referral onwards. There are usually then waiting lists for access to these services which are also a form of eligibility criteria.

2.16   There are potentially similar themes in the right to breaks for unpaid carers. This section presents a number of potential options for a 'right' to a break without any clear costing to inform decisions or clarity on the offer available.

2.17   With regards to the removal of charging, taking a human rights-based approach to budgeting, there is an obligation to raise revenue for use in the progressive realisation of rights. While the proposals on charging are important for establishing equity with the NHS, they will not increase the volume of social care available. It is therefore questionable whether reducing income which can be used for investment in services which improve people's rights and outcomes is in fact the best approach.

2.18   A blanket removal of charges must also consider the likely increase in demand for services which compound the resource implications. Furthermore, the removal of future income streams must be considered. As new technology or services develop, being unable to charge for them may ultimately mean they are too costly to implement, which may mean that the best services are denied to all.

2.19   There is no detail on the proposed intention on the long-term financial resourcing of any new service to ensure they are sustainable. There is also no information on the relationship of the NCS funding to either the Local Government grant settlement, or the health settlement.

2.20   There is no detail on the proposed financial arrangement for the NCS relating to borrowing, ability to hold reserves, audit, financial regulation, VAT etc. This includes liability for civil and other suits. Local Government has built practice and

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insurance policies to manage legal challenges. Any transfer of services to the NCS will also need to see a consequent transfer in liabilities. A live example of this is with regards to Redress Scotland, which is established to address cases of historical child abuse. Local Government has agreed to contribute to the funding for the victims, this will be met through the Local Government Settlement. As Local Government liability is due to being successor organisations, were services to be transferred to a NCS we would expect the liability and financial contribution to the redress scheme to also transfer.

2.21 The consultation paper also does not discuss how an NCS would purchase or lease local authority assets used for the delivery of social work or care services. This needs significant discussion with both legal and practicalities being explored. Local Authorities and Integration Authorities have designed digital infrastructure that is integrated into Corporate Services and is designed for critical service delivery. Previous examples of moving to a single IT infrastructure across multiple authorities have been highly costly and taken prolonged time periods to ensure they are safe and adequate for their use. For instance, the harmonisation of Police and Fire IT systems. Local Authorities have transformed digital services and infrastructure to be agile and adaptable for service delivery. Transformation projects continue to improve efficiency, safety, and security across Local Authority social care services.

Local Government Workforce

2.22 The consultation document does not provide information on the current Local Government workforce who are employed by Local Authorities in social work and social care. If it is intended that these staff are to be transferred to a new employer under the auspices of the NCS, then there are significant financial and employment law considerations that need to be considered.

2.23 The integration of health and social care has resulted in staff on different contractual arrangements. Moving to a system with potentially three sets of terms and conditions would cause even greater issues. If it is intended that staff transfer over to a new employer, then TUPE arrangements would need to be in place to protect existing staff. The sheer scale of TUPE arrangements that would need to be undertaken requires independent discussion. Local Government have considerable experience with the challenges of these arrangements and the risk of equal pay settlements.

2.24 The document does not mention any change in employment status for NHS employed staff who work in health and social care, even though the remit of the reformed boards is Health and Social Care. If NHS employed staff are not under consideration to move to a new employer than it would appear that this is a backwards step to the work that has been progressed to integrate health and social care. The consultation document also doesn't mention any change in employment status for people working in the third or independent sector. It is unclear why it would only be Local Government employees in scope to move.

2.25 Throughout this consultation response the issue of current shared support services has been raised. This is a significant issue and clarity is required on whether the intention is for duplicate services to be set up under the auspice of the NCS or whether these services would be purchased or commissioned via

other means. Shared services would include services such as finance and creditors, legal, IT, HR and payroll, procurement, Health and Safety, Corporate training and Internal Audit and many others. There would be a significant financial investment required if support services are to be established for the reformed boards and this could have significant impact on the sustainability, particularly within smaller Local Authorities. The loss of critical mass of work within Local Authorities will lead to diseconomies of scale and risks the sustainability of some key roles and services which may currently operate across social care and other local authority services. This may lead to further challenges for employees within support services.

Localism and place

2.26   Issues surrounding local democratic accountability are outlined as part of section 3j of this response, however it is important to emphasise the potential implications of these proposals to core concepts of localism and place that are well established in Scottish life.

2.27   It is a core COSLA principle that decisions impacting communities and individuals should be taken at the closest level possible to those affected and that communities should be empowered to this effect. The importance of this approach was clearly articulated in the recommendations emanating from the Christie Commission some ten years ago. Services should be designed and delivered as close as possible to the people that use them for the purpose of ensuring that resources are targeted in the most flexible and effective way to meet the needs of local people. The delivery of place responses was central to the response to the pandemic and is indicative of the continued key role of Local Authorities as the anchor in our communities. This is a prevalent theme throughout the Audit Scotland [Local Government Overview Report 2021](#), where it is stated that *"Councils have worked effectively with community partners to respond to the impacts of Covid-19. Partnerships between Councils and community partners have developed and strengthened in some areas."*

2.28   The consultation is often critical of different areas of Scotland adopting different approaches and putting in place differing arrangements. This is often based on the argument that this can lead to fragmentation and uneven standards. However, little recognition is given to the importance of local arrangements being put in place which consider the differing needs and circumstances of local areas. This is a particularly important consideration given the geographic context in Scotland, where the needs of people in rural or island communities differ substantively from more urban locations. To put it simply, what works for someone living in Edinburgh differs from someone who lives on the Isle of Eigg.

2.29   The approach set out in the consultation document presents a risk to this core principle of localism and represents an unnecessary and unevidenced removal of local responsibility and decision making for the services covered by the proposed NCS. The proposals are progressed under the auspices of greater democratic accountability – a point that can be contested given that Local Government is a legitimate sphere of democratic government in Scotland in its own right.

2.30   It is also notable that there is no reference to the Local Governance Review or consideration of how these proposals fit with the themes around localism and

subsidiarity expressed as part of the extensive public consultation on the Review. This is an area we expect further detail discussion and consultation on given its important impact on the very fabric of Scottish life and the vast amount of relevant evidence that was collated during the engagement surrounding the Local Governance Review

2.31   It is also worth noting that social care services are primarily locally operated throughout Europe, especially community-based care for young and for older people (*Sijmen A. Reijneveld, The return of community-based health and social care to local government: governance as a public health challenge, European Journal of Public Health, Volume 27, Issue 1, 1 February 2017*). Indeed, it is also the case that in two thirds of OECD countries, decentralisation processes have resulted in an increase of economic importance of subnational government, measured both as a spending share of GDP and share of total public spending between 1995 and 2016.

2.32   The proposals are also contradictory to a wider trend in OECD countries, that of the increasing role localities hold in decision making. Today, regions and cities account for 40.4% of public spending and 56.9% of public investment in OECD countries. Regions and cities play an increasing role in key policy areas, such as transport, energy, broadband, education, health, housing, water and sanitation. They are responsible, for example, for 64% of environment and climate-related public investment (*OECD 2019, Making Decentralisation Work: A Handbook for Policy-Makers, OECD Multi-level Governance Studies, OECD Publishing, Paris*). No study that we came across has investigated the link between centralising social care and other relevant services and the effect on outcomes. However, the impact of decentralisation on the delivery of public services and user satisfaction has been thoroughly studied in the literature, as has been briefly noted above.

Impact Assessments

2.33   There is no inclusion of a statutory Islands Impact Assessment; Equalities Impact Assessment; Environmental Impact Assessment; or Social Impact Assessment, only a commitment to produce impact assessment at an unconfirmed future point. For example, the provisions in the Islands (Scotland) Act 2018 outline the need for a relevant authority to prepare an islands impact assessment in respect of a policy, strategy or service where it is likely to have a significantly different impact on island communities than other communities. Given the maturity of integration arrangements in a number of island settings, as well the importance of established local democratic arrangements in islands more generally, it is our contention that an islands impact assessment is required prior to any proposals being progressed, and certainly before they are finalised. More generally, there is a lack of clarity with respect to how impact assessments were considered in the drafting of the proposals within the consultation document. As such there is little reference to the delivery of services to communities with specific cultural needs. We expect these statutory requirements, alongside a detailed Financial Memorandum, to be produced without delay to allow detailed scrutiny of these issues alongside any supporting Primary or Secondary legislation.

Section 3: Human Rights and Equalities

Human Rights

3.1   From the outset, we want to be clear that human rights, equity and equality must be placed at the heart of social care. We see this as an opportunity to support change within social care to ensure it is based in human rights and that rights inform the design and use of services. In embedding rights, it is critical that we involve service users.

3.2   It is crucial that, whatever the outcome of the proposals outlined in this consultation, that they are future proofed to pick up the recommendations from the National Taskforce on Human Rights Leadership including: the right to highest attainable standard of physical and mental health; the right to adequate standard of living; and the right to healthy environment. It is recognised that these rights are ones which must be progressively realised, though there should be consideration of a minimum core below which no one should fall. These are also subject to the principle of non-regression.

3.3   There is significant inconsistency in the use and understanding of some key terms of 'rights', 'entitlements' and 'needs'. We believe there needs to be further thought given to the difference between 'rights', 'needs' and 'entitlements' and how these are communicated and understood by those developing, providing and accessing services. The hope would be that 'rights' and 'needs' will align in most instances but there may be gaps for example: (i) rights (particularly if we see the legislative change we expect to in the coming years) may go further (or more accurately be *perceived* to go further) than 'need'; or (ii) someone may wish to assert their rights in a way that is inconsistent with what it is assessed that they require (to meet 'need').

3.4   We must recognise that the proposed NCS will be asked to operate within some limit of resources – a human rights-based system does not mean that people will have an entitlement to everything they might ask for or need for their wellbeing. We completely support a greater emphasis on prevention and early intervention and people having access to support at the point they need it. However, if we want to abolish or substantially reform eligibility criteria for example, this is dependent on significant additional resources as well as the changed understanding outlined above. A rights-based system may still have some form of eligibility criteria, but a way of doing this must be set out which works from a human rights focus.

3.5   Additionally, proposing to shift towards rights-based models will involve further work on how to balance competing rights, and on the complex relationships between rights, harm and risks. For social work services for children and families, for example, there is ongoing work to inform discussion of these issue within the "The Promise". "Scotland must broaden its understanding of risk. This is not about tolerating more risk or becoming more risk enabling. It means ensuring Scotland has a more holistic understanding of risk that includes the risk to the child of removing them from the family. There must be a shift in focus from the risk of possible harm to the risk of not having stable, long term loving relationships." ([The Promise Children's Social Care Briefing Autumn 2020.pdf)](#)

3.6   There is also a need for a better understanding about the approach taken to balancing rights in social care and in a wider context. People should be supported to help understand what their rights are to social care and support and

duty bearers should be focussed on realising these rights. This requires better information for both rights holders and duty bearers. This could be in the form of training, guidance, sharing of best practice. There is opportunity here to ensure that there are strong linkages with existing work planned following the recommendations of the National Taskforce on Human Rights Leadership. Of critical relevance are the right to an adequate standard of living and a right to the highest attainable standard of physical and mental health. These human rights are the foundations of the "rights to practical assistance and support to participate in society and live a full life" that the IRASC said should be the basis of the social care system in Scotland.

3.7   Human rights are not only engaged in assessments of needs for care, support planning, and service provision. Relational social work with people of all ages, families and communities is more complex, and simplified "transactional" accounts will not do justice to the issues involved in balancing rights. Social workers also operate in an environment where their statutory duties may require involvement with measures of compulsion, in child and adult protection, in safeguarding adults with incapacity, as Mental Health Officers, or in work with offenders subject to community sentences or in prison. Conflicts are likely between the rights of individuals, other family members, communities, and the State.

3.8   The proposals in the consultation frequently refer to the need for greater consistency of service. Indeed, this is one of the main drivers behind the proposal for a NCS. This fundamentally ignores a rights-based approach to service design and use – consistency of rights-based approaches does not necessarily lead to consistent services responses. When people are actively involved in the decision-making process about their own care, they will choose different kinds of solutions and support, depending on what works for them int their personal, family, social and community contexts. There is much existing good work being done locally around this but there is more which could be done to further embed current good practice around having supportive processes which involve people in conversations around their care including full exploration of all SDS options.

3.9   It is clear we need to further embed the PANEL principles in service design and delivery to help deliver a rights-based system. This does not mean that there will or should be necessarily a consistent service which is the same in every part of Scotland. The services must reflect the needs and strengths of local areas and individuals.

3.10   Additionally, there needs to be a greater recognition and explanation on how any NCS contributes to and does not negatively impact the wider determinants of health including social, environmental and economic. To realise the right to the highest attainable standard of physical and mental health investment cannot just be made in acute health service or social care. There must be investment in education, housing, employability, financial inclusion, planning, transport and more. These are services that Local Government deliver, many of which have been impacted by the reducing funding settlement, which has undermined the community development and prevention envisaged by the Christie Commission. Creating a NCS which detaches care services from the wider service design and delivery of the fundamental drivers of health will not lead to improved health outcomes and in fact risks increasing them. The NCS proposals must be

considered against the principle of non-regression as they may be negatively impacting the realisation of people's rights.

Gender Issues

3.11   The issue of gender is a crucial consideration for the development of the NCS. The consultation document makes little in the way of acknowledgement of the potential disproportionate impact on women. Only a robust gendered approach will ensure improved outcomes are proportionately considered in terms of women's needs. This needs to be underpinned by the evidence that explains how women face inequalities and, in some cases, disadvantages because they are women.

3.12   There are additional gendered issues which have not been taken into account in the proposals in relation to the fact that the majority of the social care workforce is female, and the majority of unpaid carers are female.

3.13   The biggest risks to women and children experiencing Violence Against Women and Girls (VAWG) lie in the fragmentation of services that are core to early intervention, supporting through crisis, recovery and rebuild of lives. Early intervention, support, justice and behavior for perpetrators/offenders with respect to VAWG will be similarly disrupted. Fragmentation of services, and the joined up and coherent pathways of support we strive to offer in line with our 32 VAWG strategies reflecting local needs, will further undermine an already vulnerable and struggling sector and approach. A range of elements that are critical to a whole system approach, including but not limited to, close relationships with Drugs and Alcohol Partnerships, Community Justice, Social Work and many other services sitting between or across current H&SC partnership, may be dislocated from local needs and relationships undermining the provision of coordinated pathways of support in tandem with Community Planning Partners. There is a key risk that this will leave women with less coordinated protection and support and our joint ownership of the aims of Equally Safe – to prevent and eradicate VAWG across all its forms in Scotland - will be unreachable.

Protected Characteristics

3.14   The significant structural changes proposed in the consultation must not result in a widening of inequality in means of either access or outcomes. It is not clear how the proposals will address inequality in health or society and in fact there is a risk that they will negatively impact the wider determinants of health, leading to worse outcomes and increased inequality.

3.15   It is critical that the needs of minority groups such as Gypsy/Travelers, asylum seekers and refugees are accounted for. This again highlights that the driver of consistency is not appropriate to deliver services which meet the cultural needs of those in our communities.

3.16   The impact on disabled people of the proposals is of critical importance. This is not a homogeneous group and it cannot be assumed that all will be equally affected positively or negatively by the changes. This also confirms the need for a rights-based approach as described earlier, not consistency of service across Scotland as that will neither meet the needs nor realise the rights of service users.

Section 4: Issues, risks and challenges.

4.1   This section provides relevant information in relation to the key themes that are considered in the consultation document. As has been previously indicated, this information provides information additional to the question set contained in the consultation respondent form which we do not believe were sufficient to provide relevant responses to the issues being discussed. Throughout much of the feedback provided, we emphasise the need to provide a robust evidence base, beyond what is currently set out, for respondents to be able to accurately assess the implications of the proposals.

4a – Improving care for people

4.2   There is widespread agreement that improvement is central to the reform of adult social care to, as the consultation states, ensure consistent high levels of performance and to share learning across Scotland. However, the consultation also notes that *'it is crucial that we continue to make improvement as soon as possible and that we do not see stagnation, a lack of innovation or significant disruption during the development of the NCS.'*

4.3   There is no clear reason why improvement cannot be progressed in the short-term through collaborative engagement between the organisations who are currently involved in this space, without embarking on a period of structural re-organisation. Indeed, we have already seen the development of the 'National Organisations Integration Huddle' which meets monthly and is a vehicle by which organisations share details of work they are delivering in the integration space and identify opportunities to collaborate. Additional resource to support this work may represent an immediate means by which to progress work in this area. Any improvement work also needs to be integrated on a whole system basis and this means across public health, acute, primary care, community health and social work/care.

4.4   The proposals, as outlined in the consultation document, are limited to one paragraph of description. Further detail of the proposals is required at the earliest possible opportunity to enable respondents to conduct an accurate appraisal of the potential benefits and risks associated with the proposals. Without it there is limited evidence to demonstrate that the centralisation of decision-making for services will lead to better outcomes with respect to improvement. Depending on how a NCS is configured, it could impact significantly on local decision-making, flexibility, choice and ultimately outcomes.

4b – Complaints and putting things right

4.5   The core principle that should feature in any complaints handling procedure is that first stage resolution should be available as close to the operational as possible to ensure most complaints can be resolved in an appropriate manner. This should be supported by a second stage complaints level to ensure appropriate local oversight is given in the case of appeal or where the complaint is at a system level. There is limited information provided in the consultation document, or indeed available, that highlights a significant issue of dissatisfaction

with either the visibility or access to the model complaints handling process. If a process in line with the above works in an effective manner, then it is unclear as to whether the introduction of a more centralised system would improve the responsiveness of complaints handling – however evidence to this effect would be useful to better understand the rationale for pursuing such a change.

4.6   In general, the proposals surrounding complaints would benefit from an expanded evidence base to support the suggestion that there are systemic issues with complaints handling. For example, looking at the number of complaints received by an authority as a proportion of the hundreds of thousands of hours of care at home/daycare/residential care/ other care services offered; the proportion of complaints resolved at stage 1, stage 2 and total referred to the SPSO and also looking at service user satisfaction rates on the large-scale satisfaction surveys administered by authorities at regular intervals.

4.7   Greater consistency in the collation and analysis of data for performance monitoring and improvement purposes is to be supported, however an NCS is not required to achieve this. Nonetheless, the development and communication of a Charter, as is outlined, has the potential to help communicate rights and entitlements – and again this can be done without full scale structural change.

4c – Residential Care Charges

4.8   COSLA Leaders have already politically agreed to undertake the work required to remove charges for people in non-residential care. This can be taken forward within the current system, without the requirement to wait for the establishment of the NCS. The consultation focuses on the issue of equity for people in residential care following the commitment that has already been made to end non-residential charging. The two charging regimes are distinct for these two services therefore the issue of equity is not quite as straight forward as the proposal suggests.

4.9   The consultation incorrectly sets out how the Charging for Residential Accommodation Guidance (CRAG) works. Those people placed under the National Care Home Contract who must contribute towards the cost of care, have their contribution assessed based on their individual financial circumstances, their income and capital. Any changes to the capital limits or FPC and FNC allowances will impact on this cohort of people and the financial impact must also be costed.

4.10   The consultation does not make any recommendations in relation to the amount a person self-funding their own care should pay or any recommendations to protect people from the rising cost of these placements and lack of oversight on this. Unless this issue is tackled, then simply increasing the free personal and nursing care allowances may not see the benefits that are intended.

4.11   The consultation document does not deal with the difficult issue set out in the IRASC of profit within the sector. Private sector provision has grown and approximately 80% of the market is provided by this sector. This does bring into question some of the complex financial structures of some of the larger UK wide providers and the issue of 'leakage' from the system. The consultation sets out a proposal of moving commissioning arrangements to the NCS but does not set out any solutions in relation to how to move to a more actively managed market.

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4.12   There is an increasing issue within the sector where private providers have business models based on high self-funding fees, meaning businesses target areas where there may be higher rates of wealth or property ownership. Some providers are unwilling to accept the NCHC rate and there is little control over business acquisitions if providers leave the market, or where care homes are built. This means that it is very difficult for the statutory bodies to ensure that the provision in the market meets the level of need set out in local areas strategic plans.

4.13   Only the National Care Home Contract which is in place for older people is referenced. Separate contractual arrangements are in place for adults but there is no national rate. Therefore, if the same proposal is to apply then a mechanism to ensure people are only charged for accommodation costs would need to be developed. This would not be straight forward as contractual arrangements would not necessarily be broken down in this way.

4.14   The consultation asks for input in three areas relating to whether the current means testing regime should be reviewed and what the potential impact could be of this. We are supportive of reviewing the means testing arrangements, but consideration needs to be given to ensure that any review has the intended benefits for people paying for care. The impact on Local Authorities must also be fully considered to quantify impact on demand and sustainability of service.

4.15   If raising any capital thresholds, then oversight would also be required to ensure people benefit from the changes to the charging regime. The issue of top ups will also need to be explored carefully as there is little oversight of these arrangements, as they are a private arrangement between the individual and their family, and the care home provider.

4.16   If the proposal that the National Care Home Contract should be used as a benchmark for levels of FPC and FNC is taken forwards, work would need to be undertaken to separate out the FPC and FNC elements within the Cost Model. The sector would also need to agree to these levels and to an arrangement where the self-funding residents benefitted from the increased payments.

4.17   The removal of charging also will have an impact on demand. We have identified that demand will not only come from those who are already interacting with Health and Social Care services, but also those who to now have not accessed services yet will be eligible for support. An example of this previously was the introduction of Free Personal Care and an increase in uptake. COSLA commented that for "Free Personal Care, for instance, growth was close to 30% of the eligible population over the first 3 years of the new policy coming into place, compared with 16% over 5 years for take up of ACSPs estimated in the FM." (Finance Committee, 2015)

4d – National Care Service/Scope

4.18   As previously referenced, the scope of the proposals expand significantly beyond what was recommended as part of the IRASC. There is little rationale provided for this expanded scope beyond brief comments made regarding the need for consistency across the system. As has been highlighted in our comments relating

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to localism, consideration must also be made to the differing needs of people across varying areas in Scotland.

4.19   Removing the statutory responsibility for the aforementioned services from Local Government would impact on the ability to deliver a joined-up approach across other essential services that impact on a person's health and wellbeing. The services proposed as being included in the NCS have wider linkages with areas such as housing, employability, education, public safety and protection. Indeed, we had previously agreed with the Scottish Government that education and early learning and childcare should not be delivered separately from children's services, given the evident need for joined up delivery in these areas.

4.20   A range of information relating to the service areas set out in the scope of the proposed NCS are outlined throughout as part of section 4 of this document.

Prevention and Early Intervention

4.21   Prevention and early intervention is a shared aspiration between Scottish and Local Government. Prevention must also be understood to include investments in the wider determinants of health – social, environment and economic. These are the drivers of health and if there is to be any success in addressing health inequality and the stall in healthy life expectancy then there must be investment across the services of the whole of Local Government and a holistic and system wide approach taken to health and public health. Removing social care from Local Government risks damaging the cross-organisation approaches which are being developed through Integration Authorities. Neither the IRASC nor current consultation have included any estimated costs on early intervention or preventative work, these are over and above costs in meeting unmet need. One of the challenges that has been faced by the whole system in embedding preventative work is that effectively double running costs are required for potentially quite long periods of time, that is while we know prevention and early interventions are better for individuals and ultimately reduce costs to services as people are able to live healthier lives for longer, these resource benefits are often not seen for a number of years and can be difficult to identify.

4.22   There are a wide range of benefits of lower-level support, encouragement of people to be independent and engaging socially within their community. Grassroots intervention through community groups and charities can be at the beginning of this, and benefit from strategic coordination at a local level through Community Planning Partnerships to enable access and identify any gaps in services or support. Physical Activity Prescribing with support from Leisure Services is an initiative replicated across Scotland and has led to improved outcomes earlier on in a person's treatment plan. This continued innovation in early intervention is only possible with leisure services and facilities which are open, safe and fit for purpose. Capital and revenue investment into facilities ensures a local response to improving outcomes, without the need for specialised services in the first instance.

4.23   A recent [report from Health Improvement Scotland](#) highlights that intervening early with the right set of approaches delivered in the right way will lead to significantly improved outcomes for people, such as for those living with Psychosis. Integration Authorities and Third Sector providers remain committed

to supporting communities yet have faced uncertainty and capacity constraints for decades.

4.24   Third sector partners remain a vital link to the community. For decades, charities have been supporting individuals in communities. To ensure sustainable investment for the third sector, multi-year settlements must be provided to Local Authorities to feed sustainable investment across Scotland. The issue we have is having sufficient capacity and choice in the third sector to absorb demand in early intervention and prevention services. Local Authorities are already working with the third sector and remain committed for its communities.

4.25   Local Authorities have protected investment in social care despite budget constraints but investment in prevention and early intervention has been increasingly challenging as Local Authorities budgets have been cut in real terms over recent years.

4e – Community Health and Social Care Boards

4.26   There is a requirement for more detail with regards to the proposals that are set out in the consultation regarding Community Health and Social Care Boards (CHSCB). Several pertinent questions are set out throughout this consultation response, including the critically important matter of what they mean for the Local Government workforce and with respect to the implications for local democratic accountability. Clarity is required on the accountability of elected members in relation to their statutory obligations, and how elected member representatives would be identified and elected to their role. Specific consideration will be required to how this would work for independent authorities.

4.27   The consultation asks whether the CHSCB should employ Chief Officers and strategic planning staff directly. It does not mention whether the intention is that this would be a TUPE transfer, which has significant employment issues and a financial cost, or where the back-office functions and support roles would sit to support this.

4.28   If CHSCB are intended to be small scale employers, there are associated employment law issues. Consideration of shared services such as finance and creditors, HR and payroll, legal, procurement and many others would also be required. There could be duplication in setting these up separately for what may be a relatively small organisation, who will have to develop their own terms and conditions of employment.

4.29   There are complexities within the current integration system in relation to the two employer model, however moving to a three employer model would introduce even more complexity, bureaucracy, and costs to the system.

4.30   If it is intended that the workforce stay with their current employer but the statutory responsibility for social care and social work is removed, then there are significant employment risks retained by the employer. This would be very different to the partnership arrangement in place to provide direction on what is required locally.

4f – Commissioning of services

4.31 The consultation focuses on services in the third and independent sector. Clarity on Local Authority in house services is also required to fully respond to the questions asked. It is unclear whether Community Health and Social Care Boards would only commission services or be responsible for direct service provision. The question of the 'provider of last resort' is critically important as is the ownership of current Local Authority assets currently providing services.

4.32 A national structure of standards and processes would be a helpful framework to enable consistency for local flexible commissioning of services. However, this alone will not resolve the issues without the appropriate investment and a vibrant market of social care providers. There are a range of existing infrastructures and best practice already being utilised in this area and the role of Scotland Excel is not recognised within the consultation.

4.33 Scotland Excel are a national organisation with expertise in commissioning and procurement that could be funded to work collaboratively to develop the national structure of standards and processes. Establishing a function in the NCS to oversee commissioning and procurement will require significant investment and expertise, a more cost-efficient way to complete this function is to fund an existing organisation with the skills and expertise to undertake this role.

National commissioning and procurement of services

4.34 Scotland Excel already undertakes a national role in some of the commissioning arrangements that are referenced in the consultation document. It is unclear what is being proposed in the consultation document and whether the NCS will commission the services directly as opposed to overseeing national frameworks. If the expectation is that the NCS will commission the services directly then careful consideration is required of the balance between the national role to ensure that services provision is based on local need and provides optimum outcomes.

4.35 Simply moving the commissioning arrangements to a national body will not resolve the issues in commissioning complex and specialist services. The challenges are far more complex than the commissioning arrangements and are caused by a number of issues, such as the availability in the market of specialist social care support, workforce with appropriate training and skills in the right areas and high cost of specialist services. Capital funding to ensure that the right models of care are in place, linking closely with strategic planning for transitions between children and adult services is also critical. There is a risk that centralising commissioning arrangements could break these links.

4.36 There are areas where there would be value in considering economies of scale in national commissioning arrangements, but there would need to be a cost benefit analysis to determine these. There would also be value in setting national structures and principles to improve consistency of local arrangements.

Market research and analysis

4.37   A careful balance between local and national dimensions are important to ensure that local variation in relation to geography, economy and workforce pressures are accounted for.

4.38   There could be merit in a dual approach between the Care Inspectorate and Scotland Excel with appropriate and timely information sharing to ensure an effective response.

4g – Regulation

4.39   The relationship between the NCS and the regulators is unclear in the consultation. Regulation is critical to support staff and people using services and should be resourced adequately. Consideration will need to be given to scrutiny in relation to any new NCS body and the newly reformed community health and social care boards.

4.40   In relation to enhanced powers for professional standards there needs to be careful consideration of employment law issues. There are already regulations and statutory obligations for employers and a requirement to ensure fair processes. There are issues with the current process in relation to the length of time that the current process can take but it is unclear how the proposals in the consultation seek to address this. Enhanced regulation and scrutiny must also be considered from the impact on staff wellbeing and recruitment and retention in the sector.

4.41   In relation widening the regulatory requirements, consideration should be given to non-registered services and personal assistants to ensure they are treated as part of the wider social care and social work workforces.

Market oversight function

4.42   COSLA is supportive of the regulator having a legal duty for market oversight for all providers with formal enforcement powers. This will need to be done at a provider level given the current financial structuring of national providers. Local intelligence is also an important dimension as this can often be a signal of issues within providers and can give an early indication that issues are arising.

4h – Valuing people who work in social care

4.43   Scotland's dedicated social care workforce provide critical support to people across Scotland every day. This was ever so clearly highlighted throughout the response to the COVID-19 pandemic, and it is right that the workforce should be valued in a manner fitting with the essential contribution they provide to communities across Scotland.

4.44   We agree with the statement in the consultation that "we need to do more to ensure that there is a greater understanding of the role that they play in the economy, the skills strength of their response to the needs of individuals, and the compassion and care they bring every day to the job they do". The following information seeks to outline work being progressed to this effect and some of the

challenges that exist, and how they correspond with proposals outlined in the consultation document.

Fair Work

4.45   Fair work is a political priority for Local Government and the 'Fair Work Accreditation Scheme' could be an effective enabler to support this. However, without also considering the appropriate levers in procurement regulations to ensure that minimum terms and conditions are implemented and the appropriate funding it will not alone meet the intended outcomes. Local Authorities across Scotland already incorporate fair work practice as part of tender exercises and the consultation does not recognise this.

4.46   Local Government is already a Fair Work employer, however the ambiguity in relation to employment status of Local Government employed social work and social care staff could impact this.

4.47   The consultation asks for a ranking of what is important to people working in social care and social work in a range of areas. All of these areas are important for Fair Work to be achieved. Also of importance is staff wellbeing and high-quality support through line management and peer support mechanisms. Flexibility of working arrangements are also important to attract people to the profession.

4.48   The consultation proposes a national forum with appropriate workforce representation, employers, Community Health and Social Care Boards to advise on workforce priorities, terms and conditions and collective bargaining. A national forum across health and social care with an equal voice between health and social care could be helpful. However, there are real complexities with the proposed function of national job evaluation and national collective bargaining across the multitude of different employers across the sector. Additionally, it is unclear what the impact of a national job evaluation would have for Personal Assistants and whether this cuts across the principles of SDS and the role of the supported person as an employer.

4.49   National collective bargaining would cut across the responsibilities of an employer with different structures and terms and conditions who provide services out with the scope of the NCS or are UK wide providers. This needs careful consideration to prevent destabilising current service provision.

Workforce Planning

4.50   Local Government and social care providers do not have the resource to undertake workforce planning in the way the NHS currently does. This needs to be addressed and resourced adequately linking with clear, robust local strategic planning to ensure there is the right workforce in place to meet future demand.

4.51   An enhanced offer of national support would be welcome, but this needs to be balanced carefully with the role of local data, insight and intelligence in areas such as workforce and labour markets. There are variations across Scotland in relation to the requirements and actions that should be taken which should not be lost through any enhanced offer of national support. Workforce planning must

also be carefully linked with financial planning and active management of the market.

4.52   The issue of rurality, local recruitment challenges, migration issues, housing policy and wider population strategies are important and should not be lost in any national support that is developed.

4.53   This must also be linked to national work on higher education to ensure there is the appropriate number of places in health and social care to support anticipated future demand. Training must also be accessible, particularly for people who live in remote and rural areas.

4.54   Enhanced national support in relation to areas such as promotion of the social care and social work profession would be welcome to support recruitment and retention challenges.

Training and development

4.55   Enhanced support for learning and development provided by the NCS would be welcome and there may be efficiencies in providing this nationally. This would also ensure better national oversight that there is the appropriate, accessible training and of high standard across Scotland. Personal Assistants should be included within the social care workforce for the purposes of training and development.

Personal Assistants

4.56   With regards to the creation of a Personal Assistants (PA) register, we would like to see some further information around the scope and purpose of the register before this could be fully supported. We would be supportive of a central register which supported PAs to be recognised as an integrated part of the workforce and provide a collective identity and stronger voice. However, a register developed to scrutinise PAs which introduced stringent measures may take away PAs autonomy and deter people from the profession. We believe there are complexities which need to be fully understood and explored prior to this being introduced – these include data protection issues and providing support to PAs for them to join the register.

4.57   We are supportive of additional support for the PA workforce. However, there are some areas where we would like to seek clarity on such as what the national self-directed support helpline is intended to do and to achieve.

4.58   Personal Assistants should be equal partners and treated fairly as an integrated part of the social care workforce while continuing to recognise the unique relationship they have as being employed by supported people.

4.59   The role of a Personal Assistant is distinct in relation to working practices and there are areas such as employment status, working patterns, terms and conditions and rates of pay that need to be considered carefully to ensure that PAs are not negatively impacted. It is unclear how the proposed national job evaluation will impact on PAs.

4.60 In the current system there can be complexities with the statutory role of the Local Authority to support the supported person and the employer/employee relationship. Therefore, the role of independent support organisations should be scaled up and backed by long term and sustainable funding.

4i – Unpaid Carers

4.61 We have referenced unpaid carers throughout this response and COSLA is entirely supportive of carers involvement and of carers being an equal partner in policy development, service design and delivery. As outlined elsewhere in this response, COSLA engaged proactively to agree a Statement of Intent with the Scottish Government to take forward proposals to progress action on key areas, one of which was supporting unpaid carers.

4.62 Unpaid carers are critical to the entire system and they must be part of its design with their own needs and rights recognised. The consultation lacks clarity around the options relating to unpaid carers and whether the options outlined would adequately meet their needs or how they would be funded.

4.63 The consultation asks how support planning should include the opportunity for family and unpaid carers to contribute. While we agree that this is crucial, it should also be recognised that as there is already a duty to involve people and families including carers in support planning, we have the ability to better involve carers within the existing system without the extent of structural change outlined in the consultation.

4.64 Good person-centred support planning takes time to establish and to build relationships with people and their families – the issue is the capacity within the system to do this rather than the system itself. As we have outlined, enabling social workers and other professionals to focus on the rights of individuals "without being hampered" by the consideration of eligibility and cost is a commendable aspiration but there are finite resources available to support service users and carers. Support for unpaid carers is entirely un-costed but is part of a number of key recommendations from the IRASC, with significant resourcing implications depending on interpretation and implementation.

4.65 We recognise the importance of carers having a right to respite, or perhaps more accurately, a right to their own lives and the respite which is a means by which this can be achieved. With regards to establishing a right to breaks from caring, the cost of providing a universal right to entitlement is currently unquantified. Currently only 3% of all carers have a short break or respite, and this is only 9% for full time carers providing 35 hours a week or more of care (Scottish Health Survey data). We also know that during the pandemic, the number of carers in Scotland increased to over one million; a much-needed statutory right to a break from care, including necessary replacement care for the person cared for will be expensive. In addition, investment is needed to expand the range and quality of respite care available, as the IRASC recommended, and also to expand local access to carers centres and other prevention support infrastructure. Ensuring the availability of services will be critical to achieving the right to access respite. Achieving this aim is interlinked with wider issues across the sector such as recruitment pressures and lack of investment.

4j - Data Sharing, Analysis and Policy Development

4.66 The creation of a NCS does not provide a full-proof solution to many of the challenges associated with using data to support care. There are a range of issues that underpin the challenges that are outlined in the consultation document - including prevailing matters relating to financial resource, digital skills and with respect to existing I.T. infrastructure - that will not be immediately solved by instituting what is primarily a structural change. It should also be noted that progress on these areas can be achieved within the existing system with the appropriate resource that the consultation recognises is needed.

4.67 Whilst in the early stages of development, the Scottish Government commitment to produce a Data Strategy for Health and Care is a whole-system collaborative area of work that seeks to support citizen access to, and ownership and control over, their personal data and operational use of data across the health and social care system to improve personal outcomes. Again, this work is being taken forward in the recognition that there is significant scope for advancement within the current system and it is unclear how this ongoing work is linked in with the proposals outlined in the consultation. From a Local Government perspective, work is currently being progressed with the Improvement Service, the Local Government Digital Office and Local Government partners on the potential development of a Local Government Data Platform which could also support improvements in data and intelligence in relation to the service areas covered by the consultation.

4.68 Additionally, as one of the primary functions of the proposed NCS is digital enablement, it is disappointing that further information is not provided in the document as to how this would work in practicality. As is previously mentioning in the comments surrounding the sharing of services, in the current system, Integration Authorities primarily utilise the I.T. systems of Local Authorities to support their work and it is unclear if it proposed that this approach would continue, or if a NCS would take on this role on a national basis. There is no singular national I.T. infrastructure that the NCS could immediately adopt, so putting this in place would require significant levels of time and resource, with associated questions about the implications for the variety of systems that are currently being used across the sector and the impact on jobs and individuals employed within these roles within Local Government.

4.69 Working with the Scottish Government, COSLA has recently published a refreshed Digital Strategy for Health and Care that sets out a joint vision to improve the care and wellbeing of people in Scotland by making best use of digital technologies in the design and delivery of services, with an associated delivery plan currently being developed to accompany this strategy. Many of the commitments set out in this strategy are demonstrative of the potential to progress digital capabilities across the health and social care sector and require the collaboration of the Scottish Government, Local Authorities, Integration Authorities and the sector to achieve. It is unclear how this strategy has been factored into the proposals outlined in this consultation.

4k – Governance and Democratic Accountability

4.70 The formation of the NCS in the manner outlined would have significant implications for the general principles of local democratic accountability. Local Government has long supported involving people who use services and their families in the planning and delivery of those services. Local democratic

accountability is essential to achieving this ambition – providing the means through which people can directly influence and shape service delivery at as local a level as possible. As it is set out in the proposals, if a person wished to engage politically to support or change a local social care service, they would have to appeal to a Scottish Government Minister rather than to their locally elected Councillor – this runs counter to the direction of travel in Scotland over recent decades.

4.71 It is our view that retaining local democratic accountability is a central tenant of the delivery of social care and is an important element of empowering citizens and communities in the planning and delivery of social care, which is vital to ensure services are developed in a way that works for the people using them. The formation of the NCS, as it is currently outlined, would have considerable implications what we considered to be shared goals in this respect.

4.72 As mentioned, the proposals also appear to stand contrary to the four pillars set out by the Christie Commission and the legislation that was passed by the Scottish Government on the European Charter of Local Self Government. Indeed, centralisation of this nature also goes also against the European Charter of Local Self-Government, which recognises that "Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen" (Article 4.3). The Charter also states that "Local Authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly". Although the recent Supreme Court judgement concluded that provisions in this Bill were outside the competency of the Scottish Parliament, the fact that it was unanimously passed when considered by MSPs is indicative of the support that exists for its incorporation and the principles that it promotes.

4.73 Importantly, there is also no reference to the Local Governance Review nor explicit consideration of how these proposals fit with the emerging themes around localism and subsidiarity expressed as part of the extensive public consultation that was conducted as part of this work. We remain committed to reform that ensures services are designed and delivered as locally as possible – with genuine input from those using services.

4.74 There are also questions as to the extent to which locally elected politicians will be represented in the proposed CHSCB model. There is a strong case for strengthening the role of elected members on IJBs to improve the democratic scrutiny to meet local need, and it is central that this role is not diluted moving forward. The consultation document provides no clarity as to the Scottish Government's proposed model and if it will be in line with the recommendations that were put forward in the IRASC.

Section 5: Scoping the NCS

The current system has ability to work well

5.1 Before providing analysis of the implications of the proposals across key service areas in the extended scope of the NCS, it is important to emphasise that the current system can operate to a high standard. What is proposed is change of a significant scale, but we believe that there is already good practice out there.

Integrated services are already doing great work – Local Authorities are proactive in prevention and early intervention as well as exceeding targets for reducing alcohol related hospital stays. Community Safety Nurses across Local Authorities are working daily in collaboration with community partners, to provide multi-level support, such as clinics with Women and Children First and we have strong early intervention programmes within Secondary Schools. We believe it's necessary to consider how local work like this could be upscaled or replicated, instead of simply defaulting to structural change.

5.2   Integrated Joint Boards are also developing transformation programmes to provide additional community capacity and reduce delayed discharge through collaboration and leverage additional capacity within current arrangements. This has seen a reduction of 40% of bed days occupied due to delayed discharge in some areas. This initiative provides improved outcomes for the community and ability to enact change imminently, as opposed to reforming structures and governance, when the resource can be leveraged in alternative ways. This type of innovation was funded through a non-recurring contribution. The intention was to make this funding recurrent linked to improvement indicators, but this has not been possible to date in the context of wider pressures on Budgets. Additional community capacity reduces discharge delays within the NHS; investment through Social Care has led to a reduced pressure on NHS services.

5.3   Local incident infrastructure and resourcing has proven crucial throughout the COVID-19 pandemic. The need for a local response has been evident through the devastating impact of COVID-19 on care homes. The capacity and flexibility of local senior management and governance has allowed for immediate action when a crisis occurs. For instance, local incident management in Dumfries and Galloway at Singleton Park Care Home meant decisions and resourcing were initiated quickly to protect the wellbeing of staff and residents. If the corporate structure and resourcing was not in place locally, this would require national organisations to take action on a local issue, without understandings of the local context, capabilities and processes. Local Government can provide the scaffolding of support services required for a truly early intervention and prevention approach. These upstream services are Local Government's unique selling point and should not be undervalued or underestimated and we do so at our peril.

5.4   Integration Authorities are relatively new organisations and while they are continuing to develop, there is significant positive learning which can be taken from across Scotland to support continuous improvement. There will be further important learning from the pandemic, and we should take stock of all that to identify the best way forward for the whole system, rather than seek to make vast structural changes which are not going to achieve improved outcomes and will prevent change in the immediate future.

5.5   Any improvements to the system will take investment. With investment a lot can be achieved right now without the real cost of structural change. The opportunity cost of structural change must also be factored in, as by introducing disruption and instability into the system there are immediate losses to improvements that could be implemented right now. This is because staff capacity will be focused on any impending national structural change, rather than local system redesign due to the uncertainty.

5.6   Care needs to be funded properly – there needs to be a reality understanding the current cost faced in the care system. The recent announcement of £300m additional funding is stark evidence of how close to collapse the whole system is, due to the years of under resourcing.

5.7   Parity with health is mentioned, but the importance of the wider determinants of health, most of which are also within Local Government are not. Without a fully functioning local system which supports education, housing, employment, planning, regulatory services and more there will continue to be bad health outcomes and increasing health inequality. This is the fundamental shift to prevention which is required – recognising that health is driven by these underlying elements, rather than focusing on the acute services required once something has already gone wrong. It is critical therefore that the investment is in the conditions needed for a healthy life. This is required to realise people's rights to the highest attainable standard of physical and mental health; an adequate standard of living and a healthy environment.

Children's Services

5.8   COSLA is clear that Children's Services, including the social work workforce should remain within Local Government. The inclusion of children's services within the National Care Service consultation goes beyond the scope of the Independent Review of Adult Social Care. It is a significant concern that the proposals in the consultation have been brought forward without any scoping, discussion and crucially without seeking the views of children and young people, their families or indeed those working with them.

5.9   COSLA is particularly concerned that the consultation does not set out what children and young people have said they want – this is critical to set the context of what children's social care should look like in Scotland. The UN Convention on the Rights of the Child (UNCRC), which is currently being incorporated into Scottish law, states that every child has the right to express themselves freely in all matters that relate to them (Article 12). Children and young people are experts in what their support should look like, and the consultation does not tell us what they have said.

5.10   The consultation document states that including children's services in the National Care Service "will provide the opportunity for services to become more cohesive – built around the child, family, or person who needs support – reducing complexity and ensuring improved transitions and support for those that need to access a range of services, including improved links with health." However, many of the professionals COSLA has engaged with over the period of the consultation have likened the proposal to 'sticking a pin in a map' and having no clear idea what the destination will look like. Many - including those working directly with children, young people and their families - have expressed the view that such an approach could actually undermine efforts to deliver cohesive and effective services.

5.11   As a recent report from Children in Scotland, commissioned by Social Work Scotland, Healthcare Improvement Scotland and the Care Inspectorate highlighted, the answer to 'the delivery of more effective children's services is not more structural change. A period of stability is essential'.

5.12 We agree that more needs to be done to realise our collective ambition that Scotland is the best place in the world to grow up and therefore we remain fully supportive of continuing the refresh and implementation of GIRFEC, embedding the UNCRC into domestic law and working collaboratively to deliver The Promise – all of which will take us forward in our commitment to improve experiences and outcomes for children and their families; and for which plans are in place which reflect the role of Local Government.

5.13 Whilst there is no evidence base for the inclusion of children's services in a National Care Service, there is a bank of evidence both showing the commitment of Local Authorities to making positive changes to the way they deliver services for children and families and progress towards this goal. All 32 Local Authorities have fully committed to the full incorporation of the United Nations Convention on the Rights of the Child (UNCRC). However, in all of the engagements COSLA has undertaken it is the potential impact that the proposals in the consultation have on the implementation of the Promise that cause the most concern.

5.14 In recent discussions around the consultation where challenges have been made to the lack of evidence for the proposed changes there has been some suggestion that the Promise itself is the evidence base for the proposals. It is then worth setting out here in detail the commitment and progress that Local Authorities have made to its implementation.

5.15 In April 2020 the Independent Care Review published a report looking back at progress on the reviews stop:go programme. The programme aimed to prepare the groundwork for a seamless transition into implementation of the Promise. It was found that
  • All 32 Local Authorities pledged to make changes and in total 224 pledges were made by Local Authorities
  • All 34 priorities on the stop:go list were progressed
  • In total 17 tests of change are underway demonstrating appetite for improvement
  • The 'bridges and barriers' to change both locally and nationally were identified
  • The voice of care experienced young people has been brought to every conversation

5.16 Overall the report concluded that the Care Review was thankful for the commitment demonstrated by all 32 Local Authorities to the stop:go programme. It asserted that all met the challenge of stop:go as relevant to their local context by those delivering or receiving care and made efforts to challenge and improve practice.

5.17 It is particularly important to note what the Promise learnt about the reasons for why recommendations fail to be implemented once a review has been undertaken. These include a lack of finance; a lack of buy-in; restrictive rules; no route map; risk; rigid adjacent systems and culture. All of these are issues which

were either addressed by the Promise through their methodology, the stop:go programme or other programmes such as follow the money or the Plan report.

5.18   Our view is that the investment and priority for the term of this parliament, and beyond, should be on achieving the conclusions set out in the Care Review. A review that lasted over three years and whose conclusions were based on evidence, data, and the voice of those with lived experience. It was not the conclusion of the Care Review that a National Care Service should be established which includes children's services, but that change should take place locally and that is the work that has been taken forward even before the review reported.

5.19   The centralised responsibility for a National Care Service would eradicate the local flexibility required to design and deliver services to meet the needs of children and families, in the places that matter to them--key areas that The Promise told us were fundamental and supersede the structure of 'scaffolding' around the child.

5.20   The Promise itself said 'The intention is not to build a new system', indeed it also stated that 'The system, the scaffolding around services, policy, budgets and legislation are secondary, and must shift to facilitate what children and families need and reflect what they have said matters at every level.' The primary focus regarding Children's Services should be delivering on what the Care Review told Scotland is required to ensure that children grow up 'loved, safe and respect'. The valuable cost and time required to establish new structural legislation and governance would be better allocated to improving existing structures and injecting much needed resource into underfunded local services.

5.21   In a consultation event with the majority of local authority leads for The Promise there was a strength of feeling that the inclusion of Children's Services in a National Care Service would make it 'hard, if not impossible' to keep The Promise. 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.

5.22   Much local and national work is already underway to identify and support improved delivery of family support through the Children and Families Collective Leadership Group and the Family Support Delivery Group. An Ambition and Blueprint for Change alongside a Routemap for delivery have been drafted following consultation, and both articulate what is required. Neither suggested that significant structural change and reform should be the focus of improved service delivery and outcomes for children and families.

5.23   More evidence that Local Government is working collaboratively with partners to improve experiences and outcomes for children and their families relates to progress on implementation of the Scottish Child Interview Model for joint investigative interviewing. This is a new approach based on national and international research and best practice and is designed to deliver a trauma-

informed interview experience which captures best evidence based on improved planning and interviewing techniques. This model took two years to develop and it is moving to national roll-out after successful testing in practice with several Local Authorities and police divisions. This new model of practice sits within local child protection systems and one of the strengths of the model is that it can accommodate some flexibility so that it truly meets local need, while retaining core components which mean a consistently high standard can be achieved across the country. While all key child protection partners are involved in this work, it is being jointly led by Local Government and Police Scotland. The implications of the changes proposed in the consultation on the role of the Scottish Child Interview Model are unclear.

5.24   It is widely recognised that the Scottish Child Interview Model is central to the development of Bairns Hoose and will be an integral part of other areas of work including implementation of the Age of Criminal Responsibility (Scotland) Act 2019. We believe that both the commitment and progress made on this vital area of practice relating to children and young people in sensitive and vulnerable situations should not be put at risk as a result of major structural reform.

5.25   The consultation document does not define what is meant by children's services and which services currently delivered by Local Authorities would be in "in scope". It indicates that "By children's services we mean any service provided to or for the benefit of children either by a local authority, Health Board, Third Sector, or commissioned provider including those who are leaving care, children with complex health conditions, young people involved in offending behaviour or those with additional support needs". This is a very broad definition and could extend to a wide range of services provided by or commissioned by Local Authorities such as all of Services for Children, Young People and Families (child protection and children's social work, adoption, fostering, kinship care, universal youth work), along with other services such as parenting and family learning, family support and services for children with additional support needs.

5.26   COSLA is particularly concerned that the consultation makes no mention of the statutory responsibilities on public bodies for both public and child protection, nor corporate parenting. These statutory duties are currently the responsibility of Local Authorities. Should education, and other universal services, remain within Local Authorities and children's services placed within a National Care Service there could be significant implications and unintended consequences for the safety and welfare of children where vital services, and statutory responsibilities, sit across two separate organisations.

5.27   As previously indicated such a shift will have significant implications for changes already underway in response to The Promise. In addition, the consequences of removing a large part of children's services will introduce fragmentation with key universal services such as early education for 2-18 years, housing and communities services. There is a risk that this will have the consequence of fracturing current integrated working. For example, the desire to ensure a joined-up approach to social care for children who will go on to require support in adulthood within a National Care Service may have unintended consequences.

5.28   Challenges faced in ensuring successful transitions from child to adult services can occur across the social care system, regardless of the structure in which services operate. Rather than being an issue of where these services sit this can stem from the   differences in the design and delivery of child and adult services (which are under pressure and dealing with large numbers), and the varying 'readiness' of a young person to access services designed for and sometimes alongside other adults. Pilot work being undertaken on transitions highlights person centred approaches, or bridging services for young people have been suggested as potential solutions. What supports good transitions needs to be well understood, and implementing solutions must be invested in.

5.29   It should also be acknowledged that children making transitions from child to adult services in social care will also be moving on, and potentially requiring support, in other areas of their lives. This may include for example, support with gaining access to employment, training, volunteering, further and higher education and other services such as housing, transport and recreation. As children move into these adult services and support is required to do so Local Authority provision plays a co-ordinating role. Moving children's services into the National Care Service risks disconnecting them from other support young people may need during the transition phase but also simply moving the challenge of transition into the NCS rather than resolving it.

5.30   Crucially, the consultation fails to mention or recognise the fundamental relationship between education and children's services. Indeed, the Scottish Government and COSLA had previously agreed that education and early learning and childcare should not be delivered separately from children's services, given the evident need for joined up delivery in these areas. The separation of children and family's services from education will have an impact on ongoing work to close the poverty related attainment gap. Currently there is increasing acknowledgement that closing the attainment gap is not just the role for teachers and those working in education. There is a need for a whole system, multi-disciplinary approach which is embedded in GIRFEC and strongly outcomes based and Local Authorities are working to that end. At a time when both the Scottish Government and Local Government are being challenged to do more to close the attainment gap, and when there are other reforms within education, COSLA believe that the proposals in relation to children's services are unhelpful and risk undermining progress made to date on closing the attainment gap.

5.31   In both the proposed inclusion of children's services in a National Care Service and the previous discussions on education governance, COSLA are clear that splitting the delivery of education and wider children's services between different organisations will disrupt the ongoing efforts to integration of children's services. There is a risk that we add unnecessary complexity and barriers between the range of professionals who are key to supporting children and young people.

5.32   Locating children's services within a National Care Service could also create further complexity and fragmentation particularly for children with disabilities accessing services. The current approach is that the Local Authority coordinates

a local team around the child and removing existing supports and linkages of social work and social care to education and housing and other services such as educational psychologists' risks making the system far more complex to navigate for families and young people who would need to navigate across health, local authority and National Care Service.

5.33   An example of this is specialist schools where the local authority provides education and a degree of social care and in some cases residential care. Often these services are provided by independent schools and the local authority pays the child or young person's fees. There might be a need to breakdown the component parts of these fees to determine who funds what. In the event of disagreement on who funds what, such placements could be delayed which would increase the complexity in accessing services.

5.34   The Children and Families landscape is complex. Several local authority areas have children's services included in their Integrated Joint Boards, while others remain in Local Authorities and are included as joint services with education and / or community justice. Currently, there is at least one local authority preparing to move children's services into their Integrated Joint Board. The different service delivery models across the country means that further planning, engagement and consultation is required to design models that meets the varied needs of children and families across Scotland and is robustly evidenced based.

5.35   As discussions have developed in the consultation period it is clear that children's services are in scope partly as a result of this complexity and that the creation of the National Care Service necessitates that children's services – however defined – must be included. For all of the reasons set out above COSLA believes that this is an overly simplistic 'solution' to a complex issue. It also fails to recognise the rich diversity of provision. There is no better example of this than the position of rural authorities. It is very clear that what will work well in a large urban authority will not necessarily be an approach that would be adopted in an Island authority. Local multi-agency decision making and accountability must be retained to ensure that the needs of children and families in rural and Island authorities are fully addressed.

5.36   COSLA has long championed the importance of taking decisions as closely to the communities and people they impact as possible. In 2011, the Christie Commission clearly called for this as well: it highlighted that public sector reform 'ensure that our public services are built around people and communities, their needs, aspirations, capacities and skills, and work to build up their autonomy and resilience. '

5.37   We are of the firm belief that children's services, including social work, should remain within Local Government and adequate resource provided to deliver the services, support and development of the workforce to improve outcomes for children and their families. At the same time, we know that we must be constantly striving to make sure that the way in which services are delivered is the very best it can be. COSLA, and Local Government more generally, is open to consideration of how this can be done.

5.38   Any alternative options for service delivery or redesign must be fully evidenced based, made in consultation with children and families, the Local Government workforce, our professional associations and third sector partners to determine the best operating model to achieve our aspirations of The Promise and in meeting our collective responsibilities under the UNCRC. As part of this we need to carefully consider how best to support, develop and invest in the children services workforce and social work. COSLA greatly values the children's services workforce, and particularly so, as a result of the work that has taken place in extremely challenging circumstances throughout the pandemic. Social Work is an integral part of the Local Government family and it is the COSLA view that it should remain so.

Justice Services

5.39   Community Justice is a broad agenda. There are concerns about the uncertainty caused by the consultation proposals concerning both The Promise and the likely Children's Social Work shift to a position outside Local Authorities. Both the Promise and Children's Social Work are important parts of early intervention work. Presently, there is a great deal of policy work ongoing and it is not clear how this will join up. There are also a range of strategies that should be aligning. As a result, the implications of the consultation could make this a very complex landscape.

5.40   The Scottish Government are in the early steps of revising renewing the Justice and Community Justice Strategies. We have already had reforms roughly in 2005 (which saw the Community Justice Authorities) and again in 2015 (which saw the Community Justice Partnerships). Given this, it is not helpful to have other uncertainties while we are facing significant challenges in COVID-19 recovery and expect high volumes of work from the courts over the next three years.

5.41   There was an acceptance of the need to periodically evaluate what is going on in the community justice area. It is vital that the public have confidence in the arrangements, that what is done is fair and proportionate. However, the structural change without additional resources will see no change in the level and quality of services offered to our citizens.

5.42   Partners all recognise the area needs major review and bringing into the 2020s and a more thorough updating from the current 1990s model. Some items that are covered in the NCSC (the proposal of care plans in a GIRFEC and the HR charter approach) are long overdue. We need to see a shift in the amount invested in community disposals rather than prisons. If the additional resources mentioned in the NCS were to be made available to Local Government, it could be transformative for the service.

5.43   A problem is the proposed reform for community justice would come at a time when we still are working our way through the last reform. If the community justice reform is implemented, it is likely to constrain future service development and hobble the workforce over the period of change. In effect the proposal for one problem (the form) is being imposed on what we would do (function). There is a

need for an evidence base drawn locally, across Scotland, within the UK and internationally.

5.44 Going for a national arrangement doesn't necessarily create uniform services. Prisons for example are all unique and with different issues locally. The same applies to health boards.

5.45 Even if a national probation service is set up within the NCS it will be a small component of the new organisation. There will also be challenges around the integration of platforms that are currently used as well as diverse workforce.

5.46 Social work would be a relatively small part of an enormous organisation. Justice Social Work is currently at the margins of social work more generally and this won't change in the proposed new arrangement. However, the reality may be that it is too small to survive on its own. It is also not clear what the role would be of Community Justice Scotland and how it would fit into this NCS model.

5.47 It is not clear whether the ring-fenced money currently available to Local Government would remain ring fenced in this new model, if it doesn't there is a danger that the funding would be lost in amongst the other work of the NCS.

5.48 There is likely to be a marginalisation of children in justice systems. Children could fall between various stools, partly because so small numbers are involved. They could get lost in the system more than at present.

5.49 The later incorporation of Justice social work after a new culture has been established would be difficult and detrimental. Even a national response can still be piecemeal in its own way. There is no detail in the document and no real proposals are spelt out.

5.50 Given the reform period would perhaps last around ten years for community justice, it could reduce the interest and momentum around the strategic policy area needed to reduce incarceration/the overuse of prisons and the reorientation of the service to deal with human rights, to deal with the effects of poverty and deprivation.

5.51 Equally, things could get worse before they get better. Police Scotland already feel under pressure around their mental health related interventions. Disrupting what is already there could shunt even more work on to Police Scotland affecting community justice workloads too. Taking community justice out of Local Government on the basis of the importance of link with health and social care would still leave housing, poverty, benefits, employability and education, mentoring, public safety and protection, as well as softer diversionary activity within the Local Government sphere.

5.52 Over the last 9 years most of community justice has been following a more local trajectory. The community justice questions in the NCS propose using reverse gears. It will make the delivery of the combined priorities and ambitions more difficult.

Evidence Base for Justice Services Element of NSC Consultation

5.53 Time and effort is required to look at plausible models to deliver better outcomes. Back in 2003, Andrew Coyle, in the context of the Single Correctional Agency found limited evidence as to the value of national structures in delivering higher or lower rates of offending. Similarly, with the Angiolini Commission there was no evidence that a national arrangement was capable of achieving local connections. There is no evidence these assertions have changed.

5.54 Scotland is in a process of Recovery, Renewal and Transformation for Community Justice with the Scottish Government and a variety of partners. The arrangements including SPS and the CJS have civil servants on board. Due to the lack of specificity, it is difficult to offer informed input at this time and we would welcome further discussion on community justice within the context of reform.

Mental Health

5.55 The consultation provides little evidence for the inclusion of 'elements of mental health care' within a National Care Service further to highlighting Recommendation 20 from the IRASC: 'The National Care Service's driving focus should be improvements in the consistency, quality and equity of care and support experienced by service users, their families and carers, and improvements in the conditions of employment, training and development of the workforce'.

5.56 It offers no definition of mental health, mental health care, how the specific services outlined in the consultation are defined (what constitutes a crisis service is for example open to interpretation), why those mental health services were explicitly included in the consultation or how including them in the NCS would support the recommendation. This makes it impossible to provide a full response on if or which elements of mental health care should be included in the NCS. However, the proposal for the inclusion of 'elements of mental health care' presents a number of risks:

- Mental health care is complex and wide ranging, providing support that spans preventive work and work to support with crisis and long-term conditions, It usually involves statutory health and social care sectors working in partnership with the 3rd sector to deliver the right support at the right time for individuals underpinned by collaboration across multi-disciplinary teams, from volunteers to social care workers and mental health trained professionals. Links between services are essential and often locally formed; moving elements of mental health care without fully understanding this interconnectivity risks undermining important connections, both between mental health services but also with wider local services that prevent or mitigate the impact of poor mental health. The National Health Service should build upon rather than undermine local connectivity

- The restructuring of services without clear understanding of existing provision will have unknown impact on those currently accessing or who will require access to mental health support over the restructuring period and beyond potentially, for example, resulting in increased need or interagency referral and poorer experiences for service users.

- The process of restructuring, as well as the resulting structure, risks undermining work currently being undertaken to improve outcomes for those in need of mental health support. Wide-ranging work is being progressed across mental health policy and delivery both nationally and locally, for example in the development and delivery of new mental health pathways and services for children and young people. This risks being delayed, or impaired as new structures are consulted upon, designed and implemented. The implications of this risk are particularly notable where the voice of lived experience is being included in service design and delivery and there is a risk of a loss of 'buy in' to these services.

- Mental health services are subject to high demand and there are challenges in recruitment and workforce capacity across the mental health workforce that require appropriate resource to resolve. It is unlikely structural change is a solution to these issues.

5.57 In keeping with elsewhere in this response whilst recognising that there is need for improvement, this can be progressed through methods that do not require significant structural reform including sustained investment, frameworks and relational approaches. No element of mental health care should be moved to the NSC without a full understanding of both how it sits within the system and the implications of change, particularly where services are integrated and providing support which may exceed the expectations of the NCS.

5.58 A strategic, joined up approach recognising mental health need across the mental health continuum would be welcome as would long term investment in this area to enable appropriately resourcing services and effective strategic planning. Some areas of work could be taken forward as a national framework with local, cross sector implementation e.g. Standards of Care, supporting the consistency, quality and equity of care and support experienced by service users, their families and carers.

Housing/Homelessness

5.59 Almost half of people who experience homelessness have no reported support or housing support needs based on the published homelessness statistics (HL1). This is not the same as social care needs and is based on the judgement of those working in housing and homelessness rather than social care or social work.

5.60 Access to affordable homes is the key factor in preventing homelessness, however good health and social care support plays a pivotal role for around 30% of homeless folk and is critical in the prevention of repeat homelessness. The recommendations of the Homelessness Prevention Review Group (PRG) on new legal duties to prevent homelessness included that there should be a shared public responsibility to ensure no one ends up homelessness. As people facing housing difficulties may be involved with various services, most often healthcare, before housing or homelessness services, public services - including health and social care services- have a key role in identifying risk of homelessness early and intervening.

5.61 The PRG also noted that health and social care services should work with Local Authorities to plan for the needs of applicants for homelessness assistance who may have health and social care needs, and that planning should involve all services that support people to ensure a coherent approach to homelessness prevention.

5.62 It is also worth noting that the recent Housing First Pathfinder interim evaluation report confirms that that access to mental health services continues to be difficult for people experiencing homelessness. The report also shows that death is the most frequently recorded cause of a tenancy ending, and that it was widely believed that the majority (if not all) of those deaths were in some way drug related. This further highlights the importance of good health care and support for people experiencing homelessness.

5.63 Given the work of the PRG, and Scottish Government's commitment to taking forward the recommendations including legislation for a prevention duty it will be important for there to be coherence between the NCS and prevention duty work.

5.64 Implementation of the Ending Homelessness Together Plan and delivery of Rapid Rehousing Transition Plans have shown the value of sectors, organisations and professions working together, sharing expertise across areas and promoting the use of local solutions and flexibility to meet local needs, structures and circumstances. The focus on collaboration and partnerships has aided learning in terms of collaboration across agencies. As such, it is important to note that perceived boundaries across sectors, organisations, professions and geographies can be overcome through shared ambitions and clear plans with individuals and communities at the centre.

5.65 Strong working relationships are crucial, and any change to structures must ensure that existing relationships are not compromised and do not cut across existing good practice in terms of partnership working.

5.66 Housing providers can be well placed to identify early when people need support, or if there is unmet need that is contributing to deteriorating health, welfare and/or wellbeing. The value and input of housing services, providers and housing professionals, should be viewed as equal to that of health and social care professionals.

5.67 Liberation from custody (both on completion of a sentence and short-term police custody or remand) and links to housing could be improved through closer partnership working. Around a third of those leaving custody present as homeless, with the figure for women leaving custody at over half. This remains the case despite good joint working between housing, criminal justice, and the prison service in recent years, further enhanced through the response to the pandemic. With 60% of those that are homeless at liberation going on to reoffend, there is a pressing need to improve on links and support offered and this should be a key focus going forward. There is however no evidence nor case that a NCS would make a significant difference to this.

5.68 Homeless Network Scotland held a consultation event entitled "Health, Homelessness and a National Care Service". Many of the above points were made, alongside a view that the proposed principles in relation to scrutiny and

regulation relate more to systems than people and noted that the role of lived experience is not reflected strongly enough in these. It was suggested that these should be more "people-focused" and based on what outcomes people should expect from care.

5.69 Those at the event also noted that "Getting it right for everyone" is a strong guiding principle and the idea of a single plan could be important though it should not become a one-size-fits-all approach. They spoke about Getting it Right for Every Child (GIRFEC) and that this approach means that children and families work in partnership with those who provide support, across organisations and professions. GIRFEC is about getting the right help, at the right time, from the right people and does not require a single body to deliver, it is in fact enhanced by the multiagency, child and family centred approach.

Alcohol and Drug Partnerships

5.70 In 2018, COSLA signed up to 'Rights Respect and Recovery' - Scotland's strategy to improve health by preventing and reducing alcohol and drug use, harm and related deaths. Rights Respect and Recovery states: "Delivering the best health outcomes possible for people can only be done effectively in partnership. The success of this strategy depends on our ability to take an asset-based approach to working together to plan, invest and deliver in partnership."

5.71 It is unclear from the Consultation document whether what is being proposed is Community Health and Social Care Boards taking over the existing role of Integration Authorities, or a National Care Service taking on some form of overall control of the process. Given the extensive number of partner organisations, it is unclear how a National Care Service would be able to exert any additional control over constituent members of Alcohol and Drug Partnerships, or how that would make a difference.

5.72 'Rights Respect and Recovery' called for the development of a whole family approach, underpinned by family inclusive practice across alcohol and drug services, children's services and other settings where individuals and families seek help or are protected. A Working Group developed a framework document for Alcohol and Drugs Partnerships which is due to be published soon. The Framework links the needs of individuals experiencing difficulties with alcohol/drugs with those who may be directly or indirectly affected. As noted elsewhere in this response, removing existing links between social care, social work, education, housing and community services creates unnecessary barriers and may make whole family approaches more difficult to foster and maintain.

5.73 On the proposals to nationally commission rehabilitation services, there does not appear to be a current barrier to this as Ministers have recently made a number of funding announcements to support this sector. As noted in relation to other comments we have made on national commissioning, Scotland Excel have experience in developing national frameworks.

Appropriate Adult Services

5.74 Appropriate Adults provide communication support to vulnerable people, aged 16 and over, during police investigations. Services in Scotland have been in existence

for approximately 30 years using a variety of delivery models. The Criminal Justice (Scotland) Act 2016 (Support for Vulnerable Persons) Regulations 2019 confer on Local Authorities the duties to deliver Appropriate Adult services. This is not a prescriptive duty and Local Authorities have flexibility to design and deliver services locally. The development of sustainable Appropriate Adult services with national oversight to promote consistency is seen as necessary in supporting the commencement of a new duty in Section 42 of 2016 Act which requires the police (and other investigative bodies) to request support for vulnerable individuals in their custody.

5.75   There are 22 Appropriate Adult services covering all 32 local authority areas. The models for this vary between services but all are linked to social work or social care arrangements. Developments of transitioning to statutory provision are in their infancy, delayed by the shifting priorities required to address the impact of the global pandemic and are implemented according to local need.

5.76   Appropriate Adult services are not considered in the Consultation but will be impacted by any resulting framework. They span a variety of policy and operational areas with national oversight, direction and guidance representative of this. Given the lack of detail of any proposed NCS and how this will impact Appropriate Adult services, an informed response cannot be provided.

National Social Work Agency

5.77   The consultation proposes the establishment of a National Social Work Agency to raise the status of social work, improve training and continuous professional development and support workforce planning.

5.78   There is some support across Local Government for an Agency that would support raising the status of social work as a profession and procuring training. However, there is some concern about potential duplication with current systems in place and loss of whole system planning, in relation to the proposed functions in the NCS.

5.79   The proposed remit to set a national approach to terms and conditions, including pay is an area of division. The employment status of social workers is not clear within the consultation, which make this question difficult. However, if the intention is that social workers would remain employed by Local Authorities, it would require a separate bargaining structure for this section of the workforce which has significant complexities. These complexities include determining what representation from both the employer(s) and trade unions would look like in such an environment. If a set of national terms and conditions are established there are fundamental questions of cost and a range of statutory implications, not least relating to Pensions, which have to be considered as does the duty to ensure equal pay.

Impact on other Local Government services

5.80   The impact of stripping out these core services will also have a resource impact on the wider services delivered by Local Government. The ability to benefit from economies of scale will be significantly reduced.

5.81 In crude terms, for Local Government the services in question represent around 40% of the budget. Removing this is likely to result a loss of critical mass within Local Authorities for some key services and posts. This will diminish Local Government and lead to a loss of expertise and innovation in the system. This will ultimately have knock on effect for the services remaining within Local Government, our communities and individuals. The proposals would also contribute to challenges in providing wrap around services to individuals.

5.82 In the past decade, Local Authorities have transformed services to work as efficiently as possible whilst enduring sustained financial pressure. The re-designing of services often drives a whole Local Authority change to service delivery. Central Finance, IT, and Human Resource departments ensure that Local Authorities can deliver services locally, whilst corporate services can advantage from economies of scale. Scale is a driving financial efficiency and leads to a better level of corporate service. When diseconomies of scale commence, this leads to increased cost of providing the same central services.

5.83 The loss of a sizeable proportion of the workforce can have a severe impact on the ability and capacity for delivering other services. Throughout the Covid-19 pandemic, employees from multiple services in Local Authorities have come together to deliver key support services. For instance, employees from Corporate Services supporting the delivery of PPE to Social Care Staff and the ability to support local teams during incident management. There is a risk this local response and capacity is lost when the critical mass of Local Authorities is lost.

5.84 Some key posts and services may become unsustainable for both Local Authorities and any new structures as the organisations are not of sufficient size to maintain posts or recruit and retain staff. Ultimately this loss of skill and expertise will damage outcomes and communities.

Section 6: Concluding remarks and Recommendations.

6.1 The preceding sections have outlined the COSLA response to the key aspects of the National Care Service consultation. Throughout this process we have engaged with professional associations across Local Government to inform our comments, as well as partners involved in the referenced service areas across Scotland more generally. We are grateful for the support that has been provided by partners throughout this process.

6.2 Throughout this response we have highlighted where the proposals lack clarity or require further detail, and where alternative approaches exist. We have raised particular concerns about the lack of detail available to consultation respondents and we are of the understanding that much of the information that would be expected to support decision making on such a significant policy proposal does not yet exist. There is, in general, a need for a robust evidence base to support many of the proposals that are put forward, in all too brief terms, in the consultation document. We would strongly recommend that further detail is provided as a necessity before proposals of this scale are progressed.

6.3 COSLA remains committed to working with the Scottish Government and partners to put in place immediate solutions to tackle the underlying causes of the issues identified by the IRASC. However, it is our view that transformative change will not

be achieved through the primarily structural change that the consultation is proposing, but by acting now to tackle the underlying challenges that have been prevalent in our care system for decades.

6.4 As is set out in this response, there is a considerable risk that the proposals being progressed would move away from the key principle that local systems, services and workforces are best placed to identify the specific needs of people and communities in their local authority area and to ensure that workforces have the knowledge, skills and resources to respond to these needs. It is our contention that this is not desirable and that there is limited evidence that this approach would lead to improved outcomes.

6.5 On the basis of the information provided throughout this consultation response we recommend the following broad next steps which are aimed at supporting collaboration moving forward:

- Constructive engagement immediately takes place with Local Government, in line with the approach already taken across a range of policy areas, to ensure that our experience and knowledge of service delivery is clearly reflected in proposals as significant as those outlined in the consultation document. This engagement must recognise the core underpinning role of localism and the importance of ensuring services are designed and delivered as close as possible to the people that use them.
- Further detail is provided at pace with respect to the issues highlighted throughout this response, including in relation to funding, the potential impacts localism and local democratic accountability, implications for the Local Government workforce and a range of other matters.
- Collaborative action is undertaken to progress the joint COSLA and Scottish Government Statement of Intent, which is aimed at taking forward immediate action on key recommendations outlined in the IRASC report, relating to areas such as charging for non-residential services, ethical commissioning, eligibility criteria and supporting unpaid carers. We would also recommend that this work is used as the basis for further collaborative action to respond to the issues raised in the IRASC.
- Action is taken to support, upscale or replicate the many examples of good practice that are already evident across our integrated health and social care system.
- Meaningful proposals are progressed in a collaborative manner aimed at tackling the underlying issues in our adult social care system, such as under-funding and under-investment, that is central to the challenges the sector faces.