

# National Care Service Bill: Committee Response



## Executive Summary

### 1. **We should make changes now, not wait for structural change**

We are firmly of the view that our efforts should be on improvements that can and should be made now rather than waiting on costly and disruptive structural change. Instead of dismantling systems, we should be building on existing good practice, as well as listening to people with lived experience to enhance service design and delivery.

We believe there is significant value to keeping care local, however, we recognise improvements that could come through a National Care Service which is designed to complement, not disrupt, local service delivery. Whilst retaining local accountability, a National Care Service could provide national leadership on matters such as workforce planning, training, terms and conditions, national standards, ethical procurement, registration, inspection, and improvement.

2. The significant improvements that are needed in relation to adult social work and care services cannot await legislative and structural change. Scottish local government has been working on the key areas identified in the jointly agreed [COSLA/ Scottish Government Statement of Intent](#). This includes a focus on securing a Real Living Wage for all care workers; developing minimum standards; terms and conditions; improving the workforce voice; working to remove charging for non-residential care services; applying ethical commissioning principles; designing new criteria for and entitlements based model of care; improving the voice of lived experience in care services; and improving the support to unpaid carers. These areas of improvement will progress faster and with more impact if properly resourced and without the distraction of an unnecessary structural change.

### 3. **The National Care Service Proposals fail to tackle the issue of underfunding**

Many of the issues within the current system are a result of underfunding. Ambitions to improve care services have been drastically hindered by budget cuts inflicted upon Local Government. Since 2013/14, Local Government revenue budgets have reduced in real-terms by 4.2% (when Covid-19 funding is excluded) while the Scottish Government budget has increased by 2.3% over the same period. This means that there has been a 4.3% real-terms increase in Scottish Government funding of other areas of the budget over the same period. Local Government has protected social care budgets as much as possible in this period, with real-terms increases in adult social care of 13%.

The Bill and its financial memorandum fail to offer the investment needed to help make improvements and ease pressure on staff, services and improve the experience of service users. For example, COSLA has estimated the total costs of implementing the recommendations of the Independent Review of Adult Social Care (IRASC) as being over £1.5 billion – far in excess of the “more than £840 million” stated by the Scottish Government in the Resource Spending Review as the value of its commitment to increase investment in social care by 25% during this Parliament.

The Financial Memorandum shows that the establishment of the National Care Service national body alone will cost up to £250 million with subsequent overall NCS running costs of up to £500 million per year – equivalent to a significant proportion of the above increase in investment, but which would be spent solely on structural reform rather than directly on the improvements in service delivery or meeting of unmet need recommended by the IRASC, for which there is a high risk of insufficient funding being available as a result.

A number of significant questions and risks remain, such as in relation to VAT, pensions and assets, each of which have major financial implications for the National Care Service itself and for local authorities.

#### 4. **We believe communities benefit when services are locally delivered and locally accountable**

What works for someone living in a large urban area often differs from someone who lives in a rural or remote area. Local democratic accountability is essential to ensuring local needs and circumstances are reflected in the care and support that is available. Diversity and difference are positive features of democracy.

There is a distinct lack of detail in this Bill on what accountability and governance will look like in a National Care Service, as well as the membership and geographical spread of ‘local care boards.’ Furthermore, this Bill confers regulation-making powers onto Ministers and relies on secondary legislation, which may weaken effective scrutiny of future decision-making.

Finally, according to Article 4 (3) of the European Charter for Local Self Government, “Public responsibilities shall generally be exercised, in preference by those authorities which were closest to the citizen.” This Bill runs counter to the ambition set out in the Charter, which has been adopted by the UK Government and is in the process of being incorporated into Scots law by the Scottish Government.

#### 5. **We oppose the transfer of Local Government functions, staff, and assets**

Removing the statutory responsibility for services from Local Government would impact on the ability to deliver a joined-up approach across other essential services that affect a person’s health and wellbeing. In communities across Scotland, councils ensure there are critical links between social care, social work, community health, children’s services, justice services and wider teams, such as: education, housing, welfare, employment, leisure, environment, and social support. Erecting barriers between these services represents an unnecessary risk and fails to appreciate links

between care and early intervention and prevention services.

The potential transfer of 75,000 Local Government employees as allowed by the Bill would be a remarkable undertaking, again with no information provided on how this may be logistically facilitated. There can be no underestimating the complexity of the local authority employment landscape and how challenging a process this transfer would be. Such a move would involve deconstructing and navigating a large number of employers, a range of terms and conditions policies, local agreements, and the Local Government Job Evaluation Scheme.

The provision to transfer staff out of Local Government has already caused uncertainty within the Local Government workforce, at a time where many staff are still recovering from the difficulties faced during the pandemic and where recruitment and retention challenges already exist. Furthermore, the potential transfer of staff and assets on this scale poses a serious risk to council's ability to deliver a wide range of services for communities, including non-social work, care, and community health services. The complete removal of this critical mass of staff and assets will disrupt the entire financial structure of local authorities, their support services and may even have an impact on the viability of some councils' ability to perform necessary statutory functions and responsibilities.

As part of the transfer of functions, this Bill empowers Ministers to remove assets and liabilities from Local Government and transfer them to a National Care Service. In many instances, these will be assets which have been funded and financed through Local Government initiatives during a prolonged length of time. Local communities may have invested, through measures such as Council Tax, into such assets, for the benefit of their community.

The intention to transfer council assets may prove challenging in other ways. Council properties are unlikely to be easily disaggregated, with years of integration between different Local Government services. Such a transfer will involve a serious disruptive unwinding of not just council services, but the Local Government estate. This measure has been proposed without much detail on how this may occur or how a National Care Service plans to finance assets going forward and take on the related debt.

Alongside assets, should plans proceed, the National Care Service would also have to inherit Local Government liabilities. No information or discussion has occurred with Local Government to date, but an example may include liabilities surrounding Local Government's £100m contribution to historic child abuse redress scheme should social work services be moved to a National Care Service. There is also a need for further clarity and discussion surrounding the impact of the potential transfer of staff on the Local Government Pension Scheme (LGPS).

## **6. Children's services, justice services & public protection arrangements require careful consideration and further clarity**

We believe children's services and justice services should remain in Local Government, where they benefit from the critical integration with other council functions such as education, community mental health and welfare services.

The Bill as drafted enables Ministers to make regulations to transfer functions relating to children's services and justice services, following public consultation. We would express concern at the significant power this confers to Ministers using statutory instruments with minimal parliamentary scrutiny and with no requirement that the results of the public consultation should inform the direction of travel.

Across the Bill, there is also a need for greater detail on the incorporation on public and child protection duties and arrangements. By changing public protection structures without any apparent strong evidence base that has been rigorously consulted on and reviewed, this Bill is introducing significant risks to our current public protection arrangements.

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## General Questions

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

1. COSLA is committed to ensuring that every individual and community has access to high quality health and social care regardless of where they are in Scotland. We are firmly of the view that our effort needs to be on improvements that can and should be made now, rather than the focus being on costly and disruptive structural change. We also recognise the wide-ranging good practice within the current health and social care system which should be built on. In addition, we believe that people with lived experience should be central to social care design and delivery and any new approach must have that at its heart.
2. As will be articulated through our response, we believe there is significant value to keeping care local. However, we recognise improvements that could come through a National Care Service which is designed to complement, not disrupt, local service delivery. Whilst retaining local accountability, a National Care Service could provide national leadership on matters such as workforce planning, training, terms and conditions, national standards, ethical procurement, registration, inspection and improvement. Currently, our vision of what a National Care Service should look like differs considerably from that outlined in the Bill. Indeed, we have significant concerns that the Bill as introduced will not address the stated purpose set out in the Policy Memorandum. These are set out below and in further detail in our response to the questions posed by the Committee.
3. The significant improvements that are needed in relation to adult social work & care services cannot await legislative and structural change. Scottish local government has been working on the key areas identified in the jointly agreed [COSLA/ Scottish Government Statement of Intent](#). This includes a focus on securing a Real Living Wage for all care workers; developing minimum standards terms and conditions; improving the workforce voice; working to remove charging for non-residential care services; applying ethical commissioning principles; designing new criteria for and entitlements-based model of care; improving the voice of lived experience in care services; and improving the support to unpaid carers. These areas of improvement will progress faster and with more impact if properly resourced and without the distraction of an unnecessary structural change.

## **Transfer of Powers and Accountability**

4. A main provision of the Bill includes the transfer of powers and accountability away from local communities to Ministers and unelected boards. This runs counter to the view of the Christie Commission on the future delivery of public services, that “effective services must be designed with and for people and communities – not delivered ‘top down’ for administrative convenience.” If the Bill is passed as introduced, Ministers will have wide ranging powers which in our view represents over-centralisation and control at the expense of services being designed and delivered locally, based on local knowledge and expertise.
5. This also runs counter to the principles of the European Charter for Local Self Government Article 4 (3) – Public responsibilities shall generally be exercised, in preference by those authorities which were closest to the citizen. This Charter has been adopted by the UK Government and the Scottish Government are in the process of directly incorporating this into Scots Law. The 2014 Commission on Strengthening Local Democracy highlighted the extent to which Scotland is already the most centralised nation in Europe when considering the extent of its local democratic powers in relation to population and land area.
6. Crucially no account has been taken of the impact of detaching social care and social work from other vital local support services. Under current arrangements, care and social work are integrated with other local support services such as housing, education, welfare advice and employability. Underpinning these services is an in-depth knowledge of local dynamics, local democratic accountability and a close proximity to citizens ensuring the care offer is responsive to people and communities. This overarching framework is designed to deliver responsive local services with and for individuals and communities, reflecting the diversity of those communities and the geography of Scotland.

## **Consistency**

7. It is vital that we have a social care system where consistency of outcomes is achieved regardless of where a person lives. However, we know that what works for someone living in a large urban area often differs considerably from someone who lives in a rural or remote area. Local democratic accountability is critical to ensuring that differing local needs and circumstances are reflected in the care and support that is available to people when they need it. Diversity and difference across local functions and services are positive features of democracy. Given the variation in local demography, geography and workforce supply across Scotland there will be variation in provision but with the right investment this should not mean that quality of service is affected. We do not think that a centralised approach will deliver higher quality social care services. Indeed, we know that there is significant variation across NHS services which continue to face many of the same pressures as those experienced in social care.

## **Finance**

8. Fundamentally, many of the issues within the current social care system are the product of under-resourcing from central Government and not how the current system is structured. COSLA has called for appropriate funding for social care since before the pandemic, and significant investment in the system is now urgently

needed to support meaningful change across a range of service improvement recommendations set out by the Independent Review of Adult Social Care.

9. Ambitions to improve care services have been drastically hindered by budget cuts inflicted upon Local Government. Since 2013/14, Local Government revenue budgets have reduced in real-terms by 4.2% (when Covid-19 funding is excluded) while the Scottish Government budget has increased by 2.3% over the same period. This means that there has been a 4.3% real-terms increase in Scottish Government funding of other areas of the budget over the same period. Local Government has protected social care as much as possible in this period with a 13% real-terms increase in adult social care spending. The Scottish Government's Resource Spending Review is expected to put additional pressure on Local Government, delivering a 7% real-terms cut over the next four years.
10. However, these increases have not been enough to keep pace with the increase in demand resulting from demographic pressures, the increasing complexity of care and the additional investment required to keep people in their own homes for longer. This situation led to the rationing of care by local authorities using a prioritisation of need framework and an assessment process that left services users and carers frustrated and often unsupported. This is the source of the first-hand testimony and lived experience referenced by the IRASC report, however, they are a product of the financial context rather than a true reflection of local government performance. The Bill and its accompanying Financial Memorandum do not address the underfunding of social care and Local Government, which places pressure on services, impacting both those who deliver and those who receive support, nor does it accurately reflect the true costs of the proposals.
11. The underfunding of Local Government more broadly over the last decade will also have an impact on social care as there is reduced investment and support in the wider determinants of health which ultimately impact the demand for social work and social care available. These challenges will be compounded by further loss of economies of scale, efficiencies, and integration if a significant proportion of funding is removed from the Local Government budget. It is worrying that such significant structural change and transfer of duties, staff, assets, and budget is being proposed without the publication of a detailed assessment of the impact on Local Government and associated risks. This would, at the very least, be required to demonstrate due diligence.

### **Children's Services**

12. Detaching children's social work and community mental health services from school and early years learning carries risks which need careful consideration. Under current structures, children, young people and families benefit from holistic support which is enabled by the integration of schools with youth work, counselling, mental health, advice and employability services. These support services are also backed by wider local housing, education, leisure, environment, employment, and social support teams which all make an impact on improving health and wellbeing within communities. Instead of making support more accessible, removing children's services and social work from Local Government threatens to erect barriers between critical services, and fragmenting this important support.

### **Mental Health**

13. Recently, significant work has been underway to improve mental health services including ongoing collaborative work to develop standards of care and substantial local investment in early intervention and support. Local authorities support children through school counselling and community-based services. These community services are designed- based on the principles of collaboration with children, young people and families. The centralisation of delivery risks destabilising work being undertaken, removing the opportunity to work closely and innovatively with our communities. The mental health system is also underpinned but local knowledge and connections across local authority provisions that would be put at risk by some of the provisions in the Bill.

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

14. The Bill as introduced is not the best way to improve social work and social care services. Communities benefit most when services are delivered as close to them as possible, and that is why we believe in a care, social work and community health system which is locally delivered and accountable. Whilst we recognise the positive contribution that national support and leadership can provide to local services; this Bill represents a national overreach, which fails to value the importance of local service delivery. We believe in the value of local community services and believe our priority now should be on ensuring improvement to services.
15. Social care, social work and community health staff are the heartbeat of local communities. During the pandemic, despite facing remarkable pressures, thousands of dedicated staff across Local Government stepped up to provide an emergency response to support those across society who needed assistance. Councils mobilised quickly and as local system leaders were at the forefront of local resilience efforts. Social care workers continued to demonstrate their commitment and compassion, in often traumatic circumstances.
16. The implications of the Bill are not restricted to staff working in social work, however, but are likely to have an impact across every resource in local authorities. Some of these impacts may be direct such as for those working in support services directly linked to Social Work (e.g., Personnel Services, Payroll, Fleet Services, Finance Services, etc.), however, the potential loss of local authority functions and budget would have a consequence for the corporate overhead and administration of local authorities and may indirectly lead to a loss of income or budget in every service area of councils. The potential consequences of this legislation cannot be overstated; however, it is difficult to be precise regarding these impacts due to the lack of detail in the Bill.
17. Emerging from Covid-19, it is a central priority for COSLA to continue to support staff and their wellbeing; to be an exemplar as Fair Work employers; to work in partnership to deliver the joint National Workforce Strategy for Health and Social Care 2022; and to bring added strategic focus around priority workstreams with partners, supporting both the social care and social work professions, recognising the current serious system pressures. In supporting and developing these workforces, both within and outwith Local Government, action is required now and across the workforce journey – including improving access to the professions and supporting recruitment, retention, and staff development.



18. It is unclear how the Bill will improve issues in social care around skill shortages, ensuring social care is an attractive career option. Indeed, wider labour market pressures, and competition from other sectors, remain significant today. Councils will continue to undertake creative and flexible approaches to recruitment, drawing on their expertise in local labour market conditions. We will work with the government and other national and local partners to highlight social care and social work as highly valued professions, with development opportunities and career pathways. We will also continue delivering on the commitments contained within the Joint Statement of Intent with the Scottish Government. This work includes progressing Fair Work commitments in the wider sector to improving pay for adult social care workers as well as developing a minimum standards framework for terms and conditions and effective voice across the sector.
19. Paragraph 69 of the Policy Memorandum refers to a 'collaborative approach in relation to improvement (that) will be taken to developing a national framework via a multi-agency steering group co-chaired with COSLA and SOLACE.' There have been initial discussions on this, but it should be noted that this does not require legislation let alone the creation of a National Care Service.
20. The Bill and its accompanying Financial Memorandum fail to address the improvements or investment needed now to help ease pressure on staff, services and ultimately improve the experience of service users. To the contrary, the far-reaching structural change may have a destabilising effect over the next few years, creating further uncertainty in a system with long standing recruitment and retention challenges. Given the interdependent nature of health and social care, the sustainability of the wider system may also be affected, including the NHS.
21. The power to potentially remove 75,000 staff from Local Government would significantly impact communities. With councils often the largest employer in our areas and as local system leaders, we lead by example in areas such as understanding our communities and labour markets; providing holistic and preventative services across people's lives; in planning and developing our workforce; and in working in partnership with communities and others at a local level to meet citizens' needs. Our core role in supporting public health and the wellbeing of communities and workforce is central to Local Government and to citizens' physical and mental health.
22. The rationale for enabling the removal of such a large proportion of the Local Government workforce, while actively prohibiting such a move for NHS staff, is unclear in terms of leading to improvements for social care. Furthermore, this will reintroduce division that Integration Authorities have been working to remove for the past 6 years.
23. The social work profession plays a critical role in improving the lives of people across Scotland. Our ambitions are to continue to work with the profession and with Government to ensure sustainable and valued social work services across the country ensuring social workers are empowered to deliver high-quality, wrap-around support working with individuals and the communities they serve. However, we also know that years of underinvestment in Local Government has placed a strain on services and has required social workers to make difficult decisions to ration services while managing larger caseloads.

24. Improvements to support the systems and structures that the social work profession needs should happen now and not wait for the creation of a National Care Service. Indeed, with no increased investment in social work and care services in the supporting Financial Memorandum, it is unclear at this stage what improvements are to be expected through the creation of the National Care Service and when they would be delivered.
25. COSLA is committed to supporting the social work workforce and acknowledge that progress must be made in the short and medium term. This includes efforts to improve the professional support for social workers, empowering colleagues to work to the benefit of people across society who rely on services. COSLA is committed to continue building on existing relationships with Social Work Scotland, the Office of the Chief Social Work Advisor, government colleagues and other partners to progress joint work in this regard.
26. It is COSLA's hope that Scottish Government funding will match ambition to address current challenges. For example, 53% of councils reported shortages of social workers and 28% of councils reported shortages of mental health officers in 2021, the result of which is higher caseloads for colleagues and less opportunity to deliver person-centred support. Additional qualified and trained staff will be required to fill these vacancies and ensure social work is well regarded as an attractive profession, offering fulfilling career opportunities.
27. As with other areas, structural change without additional resources will see no change in the level and quality of justice social work services offered to citizens. The Bill comes at a time where community justice is still working its way through the last reform. Continued upheaval is likely to constrain future service development and place increasing burdens on the workforce for some time.
28. Sustained underfunding of Local Government over recent decades has also forced a decline in publicly owned, locally delivered care provision to the extent that 76% of care home provision for older people is now delivered by the private sector (*SPICe*, 2022). In a recent report the STUC argued that there was significant 'leakage' from the system, with the most profitable privately owned care homes taking out £13,600 per bed in profits, rent, payments to directors and interest payments on loans (*STUC*, 2022).
29. Recognising that there are still improvements that must be made, there is evidence that Local Government owned care provision delivers the best pay for its workforce, higher staffing levels to support care residents and delivers more reliable service with less complaints upheld (*STUC*, 2022). It is clear that if given sufficient financial resource, Local Government is a reliable investment in delivering care which supports its workforce and its people.
30. Considering Adult Support and Protection (ASP), It is worth noting the findings of the most recent set of ASP inspections which have highlighted ways in which local adult protection partnerships are currently delivering well. Arrangements are proactive, thorough, effective, professional, and inclusive of supported people and their families and carers. There is evidence that strong leadership can be delivered through local Chief Officers' Groups (COGs) and Adult Protection Committees. There are also areas for improvement, some which appear to contradict these areas of strength.

31. It goes without saying that any improvement in this area of service delivery cannot wait for the NCS to be implemented. It is important, then, to highlight some of the key areas for improvement noted in the recent ASP inspection reports.
32. The most common theme to emerge in ASP was inconsistency both within individual areas themselves and between the areas inspected. Inconsistencies related to recording practices, including variable use of chronologies, risk assessments and risk management plans which were recurring themes. A lack of 'routine' engagement by non-social work professionals in ASP case discussions and protection planning arrangements as well as a lack of routine engagement with key family members or support givers and/or the adult at risk of harm, were also notable. It is submitted that these matters of consistency raised by the Care Inspectorate can be tackled, as they have been in relation to children's services, by a clear national ASP improvement programme which is co-designed and co-delivered between the Scottish Government and all members of the Public Protection Chief Officers' Groups
33. Finally, though our alternative approach to the Bill is largely centred around increased investment now to improve local delivery, we do recognise the potential positive impact a National Care Service intended to support local services could have. Acknowledging the points listed above, a National Care Service which recognised the importance of local direction and accountability for services, could provide national support on workforce planning, training, terms and conditions, national standards, ethical procurement, registration, and inspection. This would allow for the operation of local services, designed and accountable to local communities and their specific needs, whilst facilitating a national structure to oversee improvement on agreed areas across Scotland.

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

34. COSLA is extremely concerned that the Bill as introduced would potentially see the transfer of local authority staff, functions, and assets to local care boards under the direction of Ministers. For many of the reasons set out above and elsewhere in this response we disagree that this is an approach that would deliver a care system that meets the needs of all of our communities. **COSLA believes the Bill should be amended in such a way that decision-making, staff, functions and assets in relation to the delivery of care should remain with local authorities.**
35. The Bill has extremely significant implications for Local Government and yet contains very little detail and information. The legislation provides for the transfer of Local Government staff but does not outline what consideration has been given to the potential ramifications of such a move. Furthermore, no rationale has been offered to explain why Local Government staff are expected to be transferred to a National Care Service whereas Health Board staff are not. If enacted, it is likely that progress that has been made through integration will be lost.
36. In addition to removing staff from Local Government, the Bill empowers Ministers to transfer council assets and liabilities to a National Care Service. No detail has been offered on whether property will be purchased at market value, adequately compensating current owners who have invested in assets through Local Government financing.

37. COSLA does not agree with the potential centralisation of preventative and non-clinical community mental health services. These community services are shaped by local people to meet the needs of their local area and can range from efforts to address social determinants of mental health, such as access to green space and isolation, to more directly focusing on distress. It is essential that such local services remain within Local Government and are not transferred into a system which risks detaching them from their local context and risks over clinicalising early support for mental health.
38. **COSLA believes that commissioning powers should be retained within Local Government so that communities can design and direct services as appropriate for their circumstances and context.** The provisions within the Bill surrounding the reserved right to participate in certain contracts also require greater clarity and explanation. As written, it is not explicitly clear whether Local Government would qualify under the reserved criteria and greater detail is required as to the tender process following the end of a contract secured under the reserved criteria.
39. Whilst we agree with ethical commissioning – and we are involved in active discussions with a wide range of partners on developing such an approach – what is outlined in the Bill fails to fully acknowledge the current context across Scotland and does not address the issue of profit which was raised in the Independent Review of Adult Social Care.
40. We are concerned that the Bill relies on secondary legislation which would confer greater powers to Ministers to make significant changes to fulfil the vision and ambition of the National Care Service. We believe that it is inappropriate for decisions of this scale and nature to be taken without full parliamentary scrutiny.
41. As will be outlined in later sections, COSLA maintain that sufficient resource must be provided to ensure responsibilities outlined in the proposed Charter can be delivered and hopes that further clarity will be offered to explain the interaction between public protection duties and rights-based approaches to care. In relation to Principle (b), we would welcome further detail on what constitutes financial stability, and how the Scottish Government intends to deliver it.
42. COSLA has concerns over the Bill's intention to create a new, centralised complaints procedure. There has been limited evidence provided which highlights significant issues of dissatisfaction with either the visibility or access to the existing complaints system.
43. The Bill also introduces excessive intervention powers to Ministers and carries a risk of inappropriate political interventions without due consideration and professional expertise of the context of a situation.
44. We do not agree that the Bill as introduced gives enough weight to options and possibilities of improvement within current governance arrangements and does not take into account evidence of improvement and integration over many years. For example, we have seen remarkable shifts in the delivery of care. Scotland has moved from older people living in nightingale wards in the care of elderly hospitals and people with complex learning disabilities and mental health challenges being contained in institutions, to a point where the vast majority of people living at home or

homely environments. This has been supported by care at home services moving from home help Monday to Friday from 9am to 1pm to the current 24/7 models. Whilst there are clearly challenges centred on workforce and finance it has been demonstrated that improvement can be achieved without dismantling the arrangements that have delivered change. With additional investment, improvement can be facilitated quicker rather than moving ahead with disruptive and costly restructuring.

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

45. There is a lack of evidence underpinning the central objective of this Bill, that transferring accountability for the delivery of social care to Ministers will deliver consistency and improve the user experience. Indeed, this argument is repeatedly stated in the Policy Memorandum despite the lack of evidence. Evidence from similar existing models would suggest that other centrally directed public services in Scotland do not necessarily operate 'consistently' from region to region. The biggest example of this would be in acute health systems in Scotland where, despite being centrally directed, local variation occurs.
46. The central argument within the Bill - that centralisation will drive consistency - has recently been challenged by the Institute for Fiscal Studies in their response to the draft legislation. In August 2022, the IFS wrote,
 

“...the local discretion councils currently have to vary council tax rates or shift funding between services may actually facilitate greater (rather than less) consistency in service provision. In particular, councils can use their discretion to offset flaws in the centralised spending needs assessments – spending more or less than the centrally assessed amount if that is what is needed to effectively deliver the services expected of them.”
47. As highlighted throughout our response to the Financial Memorandum, a clear business case with evidence of due diligence should have been undertaken and published ahead of this legislation. As it stands this information has not been shared publicly and therefore it is unclear what assessments were undertaken, what the results were, and how they informed the development of the draft legislation. It is disappointing that legislation of this magnitude is accompanied by a Financial Memorandum with a lack of clarity, seemingly uncoded commitments and no apparent intention to make any additional investment to improve social care, social work or community health. Any proposal to improve and enhance Scotland's care model should be supported by sustainable investment and rigorous financial planning.
48. A focus on prevention must be an essential component of any effort to improve our system of care. Currently, Local Government is well placed to offer a wide range of services that holistically support citizens and communities, such as education, housing, welfare, environment and of course social care, social work and community health. The Bill notes that “services provided by the National Care Service are to be centred around early interventions that prevent or delay the development of care needs...” However, early intervention and prevention costs have notably been excluded from the costings in the Financial Memorandum. The absence of a financial commitment to address early interventions calls into question the extent to which this may be prioritised going forward.

49. A good example of Local Government providing holistic support is in mental health, where local authorities deliver and commission preventative and non-clinical community mental health services. These services can span from working around the social determinants of mental health, such as housing, access to green space and isolation, to those that deal directly with distress. These services are flexibly delivered to ensure they correspond with local need as it evolves. Moving community-based provision such as this into a National Care Service would hinder the ability for services to deliver to the needs of a local area. The move may also risk clinicalising and stigmatising early support and community based mental health efforts, something there has, and continues to be, a collective will to prevent.
50. Across the Bill, there is a need to include greater detail on the incorporation of public protection duties. For example, part of the public protection role requires the removal of an individual's rights in order to protect them and those around them and therefore it is not always possible to allow every individual the ability to enjoy their rights without restriction. With this reality, there are questions as to how such public protection duties will interact with rights-based care as detailed in the Charter.
51. Public protection duties must be considered and outlined within the Bill regardless of the future shape of the National Care Service. For example, should a National Care Service be created with a focus on adult services, then attention would need to be given to the interface between public protection arrangements. In this example, consideration would need to be given to child protection and MAPPA, to ensure that matters relating to age and stage transitions and / or the running of concurrent risk management processes are adequately addressed in national and local guidance and operating procedures. On the other hand, should children's services be transferred over to a National Care Service, but education and other universal services remain within local authorities, 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. These examples highlight significant gaps within the draft legislation which must be addressed.
52. It is COSLA's belief that social care functions, staff and assets should remain within Local Government, benefiting from the integration with other essential services such as education, housing and welfare services. We are disappointed that the Bill does not make provisions for such local accountability and ownership. Should plans proceed to transfer Local Government staff, current legislative plans require further definition, particularly if the new arrangements are not going to impose detriment to the existing workforce. It is essential if the financial and workforce planning for this policy is to be meaningful that these costs are transparent.
53. There remains a lack of detail as to the geographic coverage membership and make up of local care boards as outlined in the legislation. This absence of specificity opens the possibility that Ministers may overlook established local boundaries and opt for greater centralisation and regionalisation. Clarity on geographical coverage is vital regardless of the shape that local care boards take when the legislation is passed.
54. It is disappointing that the Bill was laid before a comprehensive review and analysis of children's and criminal justice services and social work, including feedback from professionals and service users, was undertaken and determination made whether

they were to be within scope of a National Care Service.

The Scottish Government proposes that the details of many aspects of the proposed National Care Service will be outlined in future secondary legislation rather than being included in the Bill itself.

55. Developing a full response to the Bill has been challenging given the lack of detail and evidence base outlined in the legislation and its supporting documentation. This was made more difficult by the relative lack of meaningful consultation and engagement prior to the publication of the Bill, and that the Call for Views has fallen over a summer recess period. Clearer proposals supported by an accessible evidence base could have empowered stakeholders to provide quality and informed input into the drafting of proposals.
56. Schedule 3 of the Bill currently provides for a list of functions that can be transferred to a National Care Service. Under Section 45 of the Bill, ancillary regulations are permitted to enable further adaptations to Schedule 3. It must be the case that such ancillary regulations should be subject to the affirmative procedure and not the negative procedure – the former requiring parliamentary approval before coming into force, the latter not requiring regulations to be approved before coming into force.
57. The approach in not putting forward full plans for parliamentary scrutiny, opting instead for pursuing ‘framework legislation’, has caused great uncertainty among those working across a range of social care, social work, children, justice, elements of mental health and alcohol and drug services. We are concerned that this may have a destabilising effect on the workforce and current service provision and that this uncertainty could exacerbate existing recruitment and retention challenges within social care. It also makes it extremely difficult to assess the full cost and potential impact of the proposals and this in turn has an impact on Parliament’s ability to fully scrutinise the impact of the legislation. In relation to service change on this scale, it is unacceptable that there has not been a full and transparent risk assessment and mitigation plan.
58. It is essential that Parliament and stakeholders can offer effective scrutiny of any proposals. Such a reliance on secondary legislation creates risks in terms of what powers Ministers will/will not use and crucially what parliamentarians are being asked to scrutinise. Furthermore, developing any service through ‘policy and practice’ instead of legislation must be taken very cautiously and should not seek to further dilute effective scrutiny. Close examination by professionals and stakeholders will assist in mitigating potential risks that may occur should changes occur in this vital area of public service provision.

Much more detail is needed in the Bill and supporting documents regarding:

- Finances – what it will really cost to set up the National Care Service that is able to deliver on all of its ambitions, as well as how it will be sustainably funded.
- Governance, structure and accountability of the National Care Service and care boards.
- Number, membership and nature of local care boards.
- What will be delivered and managed locally vs nationally.
- Impact on the social care, social work and community health workforce.

- Clarity on any entitlements-based model.
- Detailed rationale and specific, quantified benefits via cost-benefit analysis
- Risk Assessment of proposed provisions on Local Government.

The Bill proposes to give Scottish Ministers powers to transfer a broad range of social care, social work and community health functions to the National Care Service using future secondary legislation.

59. COSLA is clear that services should be designed, delivered and accountable to local communities and as such we do not believe the transfer of services and staff to a centralised structure directed by Ministers is the right approach.
60. It is worth noting again at this stage that the scope of services which may be transferred as a result of this Bill go beyond that outlined in Derek Feeley's Independent Review of Adult Social Care. Indeed, Feeley outlined that he had, "*not made recommendations about the social work workforce in proposed new arrangements as we believe these will require careful consideration alongside the implementation of The Promise, the review of children's services, and any changes planned for criminal justice social work.*"
61. In general terms the delivery model for care should reflect local need. Local authorities have a solid reputation nationally for improvement activity that is strongly linked to lived experience within more rural communities. This is evidenced through Accounts Commission Best Value Reviews. The centralisation of services presents a real risk that local need, local context and local initiatives could be lost.
62. There is no evidence outlined within the pre-legislative consultation, the Bill, nor accompanying documents, as to how or why the transfer of accountability and power to Ministers would result in improved quality of support and better outcomes for people. Many of the aims and ambitions proposed by Scottish Government have always been shared by Local Government, including the need for better early intervention and preventative support and a desire to continue to build on and strengthen progress with integration.
63. That is why COSLA has long called for improved and sustainable funding beyond single-year settlements to Local Government in order that local areas can effectively plan, commission, invest, and deliver on the essential services that impact on wellbeing, and which can help prevent individuals from reaching crisis point. It is unclear how a transfer of powers and accountability to Ministers would address this; indeed, there is a significant risk that costly structural reform will disrupt the very services, plans, and workforce needed to achieve these ambitions.
64. By changing public protection structures without any apparent strong evidence base that has been rigorously consulted on and reviewed, this Bill is introducing significant risks to our current public protection arrangements. If the plans are taken forward without due consideration and caution, there is a risk that we will be putting our most vulnerable children and adults at further risk of harm. Consideration needs to be given to maintaining service delivery and public safeguarding during this extended period of uncertainty. Furthermore, as this Bill progresses there is not only the question whether services are likely to be more consistent but *whether people are more likely to be safer.*



65. The centralisation of accountability of public protection functions of adult protection, Child Protection, MAPPA, Alcohol and Drugs, Violence Against Women, effectively diminishes the role of councils on public protection Chief Officer Groups and directs this accountability to Ministers. COSLA notes that during the establishment of Police Scotland, public discussion focused on the requirement to protect the operational independence of the Chief Constable from political interference. In contrast, these proposals will see Ministers having direct control of public protection operations. Moreover, the accountability of Ministers will take effect immediately from the “go live date” and on this date, the existing Chief Officer Groups, who currently carry the accountability for public protection, will cease to be accountable.
66. Removing the statutory responsibility for 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 potentially included in the National Care Service 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. Thought needs to be given to where council owned/registered regulated services will sit, including fostering, adoption, and local authority children’s homes. It is not clear whether these services would also move to the National Care Service or be commissioned from the local authority.
67. Should statutory responsibility for services be removed from local authorities, it is possible that some councils may not wish to remain as providers, only to be commissioned by local care boards. In a scenario where councils no longer retain care staff or functions, there is a need to clarify and identify who takes on the responsibility of being provider of last resort.
68. As part of the transfer of functions, this Bill empowers Ministers to remove assets and liabilities from Local Government and transfer them to a National Care Service. In many instances, these will be assets which have been funded and financed through Local Government initiatives during a prolonged length of time. Local communities may have invested, through measures such as Council Tax, into such assets, for the benefit of their community.
69. The intention to transfer council assets may prove challenging in other ways. Council properties are unlikely to be easily disaggregated, with years of integration between different Local Government services. Such a transfer will involve a serious disruptive unwinding of not just council services, but the Local Government estate. This measure has been proposed without much detail on how this may occur or how a National Care Service plans to finance assets going forward, pay for the acquisition from councils and take on the related debt.
70. Alongside assets, should plans proceed, the National Care Service would also have to inherit Local Government liabilities. No information or discussion has occurred with Local Government to date, but an example may include liabilities surrounding Local Government’s £100m contribution to historic child abuse redress scheme should social work services be moved to a National Care Service. There is also a need for

further clarity and discussion surrounding the impact of the potential transfer of staff on the Local Government Pension Scheme (LGPS).

71. The potential transfer of 75,000 Local Government employees as allowed by the Bill would be a remarkable undertaking, again with no information provided on how this may be logistically facilitated. There can be no underestimating the complexity of the local authority employment landscape and how challenging a process this transfer would be. Such a move would involve deconstructing and navigating a large number of employers, a range of terms and conditions policies, local agreements, and the Local Government Job Evaluation Scheme.
72. The provision to transfer staff out of Local Government has already caused uncertainty within the Local Government workforce, at a time where many staff are still recovering from the difficulties faced during the pandemic and where significant recruitment and retention challenges already exist. Furthermore, the potential transfer of staff and assets on this scale poses a serious risk to council's ability to deliver a wide range of services for communities, including non-social work, care, and community health services. The complete removal of this critical mass of staff and assets will disrupt the entire financial structure of local authorities, their support services and may even have an impact on the viability of some councils' ability to perform necessary statutory functions and responsibilities.
73. The scale of the transfer of functions, staff and assets listed above necessitates the need to consult with the Controller of Audit. Such a large transfer of services will impact the entire operation of councils. The Scottish Government commits to working with COSLA to identify such implications "at the appropriate time, and further impact assessment information will be developed alongside the relevant secondary legislation." This is work that needs to be carried out without delay.
74. In considering the potential transfer of staff and functions away from Local Government, little acknowledgement has been given to the implications this may have in relation to support staff and functions. Local Government has experienced and skilled support staff carrying out functions such as training, performance, and administration, but also wider services including finance, legal and human resources. These functions and staff all add to the delivery of care, social work, and community health services.
75. Ultimately, when considering the future of staff, there remains a lack of clarity on the key outcomes for the workforce element of this ambitious change. Little evidence has offered to show how the National Care Service will be a better, more attractive place to work and, in turn, provide better outcomes. There is no outline provided to show how the National Care Service will address costs and changes required to achieving Fair Work, with the merging of several local authority workforces, alongside divergent NHS and care workforces.
76. As outlined throughout this submission, there has been no provision of meaningful evidence to support claims that any transfer will deliver higher quality services, and why restructuring should be prioritised over increased investment in services. The Christie Report (2011) set out an agenda for change that would put people at the heart of public services. The report is clear that building services around people and communities would only work if more recognition was given to the role that the third sector and local communities play in improving lives in their local area.

77. The Christie report also outlined the importance of moving towards prevention and delivering on improved long-term outcomes for individuals and communities. Eleven years on and the focus is still on measuring the success of public services by short-term, service-specific measures. Embedding the correct culture into initiatives takes time and the integration of care only began in 2014. Integrated Joint Boards (IJBs) are comparatively new have made progress despite disruption caused by the pandemic. Provisions in the Bill threaten to disregard progress towards integration and start again, against the backdrop of workforce and financial pressures and increasing levels of need and complexity of care.
78. A report by the Nuffield Trust published in 2021, *Integrating Health and Social Care*, further emphasised that meaningful progress will require shifting the focus away from organisational and structural reform towards creating a cultural change that would enable deep cooperation while also uplifting skills and resources required to see successful integration of services. Structural change typically fails to address long-standing systemic barriers, with integration being challenged by a lack of resource, infrastructure, and staff. As things stand, we risk repeating the cycle of successive reorganisations that change how services are planned and coordinated – and come with a significant opportunity cost and disruption – but fail to address the fundamental and deep-rooted changes needed to integrate services at the front line.

Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

*Please see points 10, 11, 84, 85, 89, 90 and our full response to the Financial Memorandum through points 83 to 125.*

The Bill is accompanied by the following impact assessments:

[Equality impact assessment](#)

[Business and regulatory impact assessment](#)

[Child rights and wellbeing impact assessment](#)

[Data protection impact assessment](#)

[Fairer Scotland duty assessment](#)

[Island communities impact assessment](#)

79. It is important that in being asked to approve the Bill, that the Scottish Parliament has a full understanding of the impact of the Bill on any stakeholder whose functions are impacted either directly or indirectly. At a minimum, this should include the impact on Local Government, Health Boards and Health and Social Care Partnerships who are likely to be the most impacted by the Bill. There is no impact assessment on these crucial public bodies, their workforce nor indeed the continued operation of critical services whilst they are subjected to greater uncertainty.
80. Although no Local Government assessment was offered, it is notable that the Island communities impact assessment reveals the serious need to consider the distinctive local challenges that island communities face. Local communities face unique circumstances, highlighting the need for local democratic ownership of service

provision so that communities can tailor services to support their needs. The Island communities impact assessment notes the challenges around workforce recruitment, transport limitations and dispersed populations. As discussion around future provision progresses, it is essential that local decision-making remains central to service design.

81. The issue of gender is a crucial consideration for the development of the National Care Service. Equality gains made have been significantly eroded through the culmination of austerity measures, the pandemic's gendered impacts, and the cost-of-living crisis - all disproportionately impacting on and increasing women's burdens and vulnerabilities. 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 in relation to all areas in scope of the legislation including workforce implications in respect to the burden of unpaid care carried throughout women's lives.
82. The biggest risks to women and children experiencing violence against women and girls as both a cause of and an outcome of gender inequality - lie in the fragmentation of services this would create that are core to early intervention, supporting through crisis, recovery and rebuild of lives. Early intervention, support, justice, and perpetrator behaviour change/ management pathways will be similarly disrupted and potentially broken. Fragmentation of services will further undermine both the joined up and coherent pathways of support and care that the Scottish Government and COSLA strive to ensure.

## Questions about the Financial Memorandum

*Note: Some of the points raised and conclusions drawn in this section have been informed by analysis of the Financial Memorandum, and of broader social care and social work finances, conducted and shared by Social Work Scotland.*

[Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?](#)

83. Yes, we responded to the consultation in Autumn 2021. However, no information was provided in the consultation document about the finances of the National Care Service, so it was not possible to comment on the financial assumptions made. In our response, we highlighted the many areas where there was significant uncertainty or lack of clarity regarding finances, such as: the long-term resourcing of the National Care Service; matters in relation to borrowing, holding of reserves, pensions, audit and VAT; and shared services. Disappointingly, the draft Bill and memoranda do not address these points explicitly and there is an unacceptable lack of clarity.
84. We also expressed concern about the likely cost of the National Care Service in the context of the total costs of implementing the recommendations of the Independent Review of Adult Social Care (IRASC). While the review costed some of those recommendations at £660m (in 2018-19 prices), COSLA has estimated the total costs of the IRASC recommendations as being over £1.5 billion – far in excess of the "more than £840 million" stated by the Scottish Government in the Resource

Spending Review as the value of its commitment to increase investment in social care by 25% during this Parliament.

85. The Financial Memorandum shows that the establishment of the National Care Service national body alone will cost up to £250 million with subsequent overall NCS running costs of up to £500 million per year – equivalent to a significant proportion of the above increase in investment, but which would be spent solely on structural reform rather than directly on the improvements in service delivery or meeting of unmet need recommended by the IRASC, for which there is a high risk of insufficient funding being available as a result.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

86. No – the areas that we highlighted as requiring greater clarity have not been addressed in the FM, with the cost of existing policy commitments excluded from figures that purport to represent the "costs of services that may be transferred". These exclusions are in spite of the fact that increased investment in social work services and in early intervention and prevention, in Fair Work improvement to social care pay and conditions, in reforming residential care charges while abolishing those for non-residential care, and investing in data and digital solutions, were all covered in the 2021 consultation. It is possible that this omission may, at least in part, have arisen from a lack of time to adequately estimate these costs within the compressed timescale for producing and publishing the Bill and its accompanying documents, which is extremely concerning given the nature of the proposed reform.
87. A number of significant questions and risk remain, such as in relation to VAT as well as pensions and assets, each of which has major financial implications for the National Care Service itself and for local authorities; these are all acknowledged in the FM as requiring further work, but this work should have been done before the Bill and the FM were published to enable Parliament and the public to adequately scrutinise the implications of the Bill. There should also have been a Business Case produced before the draft Bill setting out the rationale, costs, benefits and risks of the National Care Service to facilitate meaningful scrutiny by Parliament, the public and affected organisations as to whether the proposals represent Best Value.
88. In relation to Fair Work, the costs of pay and terms and conditions in the FM are said to be based on "current assumptions", but it's not clear what this means – for example whether it includes the uplift to £10.50 per hour and/or any estimated future uplifts (bearing in mind that the "costs of services" for future years are – as explained below – based on 2019/20 costs plus inflation plus 3%). It is also unclear how or if the FM accounts for any of the much-needed growth in the baseline supply of workforce, given the National Care Service will both deliver and commission services. We must actively seek to improve the recruitment and retention of our social care workforce and the FM does not recognise this.
89. Overall, the failure to reasonably and realistically estimate the cost of social care and social work services compounds the fact that many of the issues facing the current system today are the product of under-resourcing. As acknowledged in the IRASC, Local Government has protected social care spend as much as possible during the

past decade, despite a 15.2% reduction in the core revenue settlement since 2013/14:

- Adult social care revenue expenditure increased by 22%, and children's services spend by 19%, in real terms between 2010/11 and 2020/21.
- With the exception of education (14% increase), spending on all other service areas fell in real terms, some (such as culture and leisure, roads, and planning) by more than 25% in real-terms.

90. However, what increases there have been in funding for social care have not been sufficient to keep pace with increased demand as a result of demographic pressures, the increasing complexity of care and the additional investment required to keep and care for people in their own homes for longer. This is the financial backdrop against which this costly and disruptive structural reform is due to be carried out, and it is not acknowledged or dealt with in the Bill or the FM.

[Did you have sufficient time to contribute to the consultation exercise?](#)

91. No. As we stated in our response – and we know from the official analysis of consultation responses was echoed by many other contributors – the timescale given for the consideration of the proposals in the consultation was too short given the scale of the proposed changes. This would have been true in normal times but was especially pertinent given the ongoing challenges faced across health and social care services in recovering after the pandemic. The tight time period allotted for the whole consultation process simply did not provide sufficient time to consider in full the implications for social work/care service users, carers, staff, provider organisations and Local Government as a whole.

92. We also expressed concern about the likely timelines for the progression of the proposals being in close proximity to the Local Government elections in 2022 and the impact this would potentially have on local democratic engagement and scrutiny of legislative proposals that may have significant implications for current local democratic arrangements. We are aware that some engagement events have been held either side of those elections, the timing of which has served to preclude elected members in particular from meaningfully participating in that process.

93. The timing of this stage of the legislative process – with the call for views held almost entirely during the summer holiday and recess period – has also caused difficulties in terms of carrying out thorough analysis and consideration of the FM (and the Bill as a whole), especially considering its significant lack of clarity and detail, which we address in this response. With crucial details about the scope, structure, operation and costs of the National Care Service including its impact on services, the workforce, the public and local authorities reserved to secondary legislation, it is disappointing that there has been so little transparency and engagement around the Bill.

[If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.](#)

94. No. There is a real lack of clarity regarding the impact of the National Care Service proposals on local authority budgets – especially given the different treatment of the NHS and Local Government in relation to the transfer of functions and in particular staff. As a result, it is extremely challenging to evaluate or make decisions on the basis of the FM.
95. This lack of clarity is exemplified by the inaccurate and incomplete figures provided for the "costs of services that may be transferred" (Table 2 in the FM). These figures are misleadingly uprated each year, from a 2019/20 baseline, by inflation plus 3%. This uprating does not reflect subsequent Local Government settlements and is completely at odds with the reality presented by the Scottish Government's own Resource Spending Review, of a 'flat cash' settlement (a 7% real-terms cut) for Local Government and 2.6% real terms increase in Health and Social Care budgets over the next four years.
96. Additionally, these costs use as a starting point current expenditure, not the actual cost of delivery of social care as envisioned by the National Care Service. The IRASC itself identified unmet need in the existing adult social care system to the value of £436 million in 2018-19, despite Local Government having protected social care spending as much as possible. At the same time, the estimates specifically exclude the cost of several other social care policy commitments (listed in the FM) which substantially alter how much it will cost to deliver social care services in the period covered by the FM.
97. Though the rationale for this is to reflect the cost of the changes proposed by the Bill compared to the counterfactual scenario in which those other costs would still occur, the figures in Table 2 are explicitly intended to reflect the cost of the services that may be transferred, but with these omissions fail to do so. Put another way: those reforms are necessary for the future sustainability of a National Care Service, however delivered, so it is not credible to present the costs of the services to be delivered by the National Care Service without factoring those reforms in, and the expected costs of delivering them merit Parliamentary scrutiny as well as wider public discussion.
98. The unavoidable implication of the inclusion of these figures, albeit described as "illustrative", is that they are the first draft of the budgets associated with the services that may be transferred and therefore the portion of Local Government funding that may be removed as a consequence, can be quantified – despite being based on 2019/20 *actual spend* rather than funding allocations, and thus including funds from other sources, including direct income, used to fulfil commitments.
99. This means the figures in Table 2 simultaneously:
- *overstate* the funding being made available to Local Government for these services in the Resource Spending Review period, and
  - *understate* the actual costs of providing the services,
- rendering the figures wholly unreliable. And as [the Institute for Fiscal Studies has pointed out](#), there are a number of difficulties that would need to be overcome in transferring budgets, owing in part to the local autonomy and degree of discretion over spending that is a strength, not a weakness, of the current social care system.
100. It is essential that the Scottish Government undertakes further work jointly with COSLA and other stakeholders on the quantum of funding that would be transferred

from Local Government to the National Care Service. The financial transfers cannot be based on the total actual expenditure of local authorities on social care, as this is funded from several income sources and not just Scottish Government grants. It would also disadvantage councils which have sought to protect social work and care budgets, compared to others.

101. Various other significant financial implications for Local Government are not addressed in the FM – these include VAT, assets and pensions.
102. The proposed structure and governance of the National Care Service is such that it is likely to be liable for VAT, at least unless and until arrangements can be made to exempt it. Clearly – as the FM itself acknowledges – this would significantly increase its costs of operating and consequently reduce the funds available to spend directly on social care support. Under HM Treasury rules, local authorities and certain other bodies are able to recover the VAT incurred on certain purchases – in order that VAT costs are not funded through local taxation – whereas other public sector organisations including the NHS cannot reclaim VAT incurred on many goods and services, which is therefore a cost that must be covered by departmental budgets.
103. There is no clarity or detail about the financial treatment of assets, particularly whether they would simply be transferred to new ownership or whether they would be purchased. This causes great uncertainty and a risk of disincentives for local authorities to invest in assets they believe they are unlikely to have possession of in the coming years and where there is no assurance that they will be recompensed at market value; there is also no acknowledgement of the associated maintenance costs or clarity on how the National Care Service would continue to finance any assets it does take on.
104. The FM also fails to acknowledge the long-term trend of increasing co-location of Local Government services over the past 15 years, meaning assets may not be easily separated from other functions. In addition, these are community assets which have been financed by Local Government through a number of routes including borrowing which have been funded by Local Government budgets including Council Tax; there are legal considerations were the Scottish Government to remove these assets from communities without reasonable recompense.
105. The FM states that there is the potential for 75,000 staff to be transferred from Local Government to the National Care Service; this would have considerable implications for pension funds both for those that may no longer be able to remain members of the scheme and any impacts on the scheme for remaining members, which also do not appear to have been quantified. This is a very complex issue which will require significant expert consideration to enable accurate assessments and decisions to be made. For example, detailed assessment is required on whether and how this will impact on existing pension schemes, including viability given the Local Government Pension Scheme is a fully funded scheme, and whether or not the National Care Service would be able to be an admitted member of that Scheme.
106. It is also unclear what the costs to Local Government will be of the introduction of rights to breaks for unpaid carers. The FM assigns costs to "local authorities" from 2025/26, but that is also the year from which Care Boards are expected to be established. Other costs of the provision of breaks are provided for years prior to 2025/26, but these are assigned only to Scottish Ministers, even though Local



Government will ultimately be responsible for providing the necessary support – including replacement care, which is costed but only for adult carers (and possibly underestimated, as we explain elsewhere), and for which there is currently no specific funding under the existing Carers Act.

107. Finally, the FM anticipates savings or efficiencies through shared services across the National Care Service if significant numbers of staff and services are transferred. However, it fails to acknowledge the corresponding loss of economies of scale in Local Government arising from the loss of such a sizeable portion of its workforce, and the broader impact that that is likely to have. Local Government has been driving efficiencies for over a decade, particularly in central services, and there is a risk that a necessary critical mass will be lost for some services, such as audit and other professional services which are often provided by the same individuals or teams for the council and the integration authority.
108. The mass transfer of functions, staff, assets and liabilities out of Local Government poses a risk to the effective delivery of services – or in some cases the sustainability of core statutory activities – that have a vital role to play in reducing demand for health and social care by addressing social determinants of health and wellbeing such as education, housing and employment.

**Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?**

109. No. As explained above, there are a number of major issues with the way that the costs of the National Care Service have been accounted for and presented in the FM; for example:
- The uprating of the costs of services by inflation plus 3% significantly diverges not only from the 'flat cash' reality for Local Government, but also from the 0.6% real terms annual increases for health and social care, both of which are indicated by the Scottish Government's own Resource Spending Review.
  - The exclusion of the future cost of existing policy commitments, while based on a sound rationale, undermine the stated purpose of the figures.
  - The use of gross costs fails to reflect the role of income received and other resources used to meet spending commitments.
  - The FM does not include or account for VAT, or the impact of pensions, and does not provide clarity about the treatment of assets or acknowledge the financial or investment implications for the local authorities that currently own them.
110. Staffing costs is another area that requires further clarity and consideration, and where the figures presented are likely to be underestimates. As described above, it is not at all clear what assumptions and calculations have been made regarding pay and terms and conditions, and the intended harmonisation of those is likely to be costly.
111. Meanwhile, it is likely that the gradual uptake of the new entitlement to breaks from caring assumed by the FM also represents an underestimation of the costs associated with this new provision. The FM assumes that in the future steady state,

the proportion of carers receiving personalised Adult Carers Support Plans or Young Carers Statements will be the same as the proportion assumed in the Financial Memorandum for the Carers (Scotland) Act 2016 – but the National Care Service Bill serves to remove eligibility criteria for short breaks, which is likely to result in a significant increase in demand for assessments. The calculations thus assume that assessment costs are already met by Carers Act funding, but that was based on lower numbers of carers and on unit costs at 2013-14 prices.

112. In addition, while the inclusion of replacement care costs this time is welcome, it is unclear why this is only provided in relation to adult carers and not to young carers – many of whom (contrary to the assumptions implicit in the FM) do fulfil the primary caring role, or undertake intensive caring duties, and therefore will require replacement care in order to take breaks. There is nothing in the Bill that leads us to expect access to replacement care to be limited to adult carers, however this should be clarified and should be part of the cost considerations of the National Care Service Bill.
113. The FM itself acknowledges that the transfer of functions from local authorities may have other financial implications depending on the nature and timing of those transfers. It also offsets the costs of establishing and running care boards by a figure of £25-40 million that is estimated to be the existing running costs of Integrated Joint Boards plus related health board and local authority support services – but there is no explanation of how this figure is calculated or what it does and does not include.
114. More fundamentally in terms of the contents of the FM itself, it is not apparent whether the figures for expected costs of the various elements of the National Care Service are in cash terms or real terms (or at what year's prices they are stated) – especially in the current context of high inflation, this has a substantial impact on the actual costs that will be incurred. Following contact with Scottish Government officials, we understand that varying uplifts, generally of 2-3%, have been applied to different elements of the costs shown in the FM, based on a degree of intuition about each of those costs. Given the nature and scale of the financial implications of what is being proposed, the lack of transparency around this process is disappointing.
115. In addition, cost figures throughout the FM are presented in such large ranges – on the basis of extreme uncertainty about what costs will arise and when, as well as key aspects such as the number of care boards – that it is almost impossible to make meaningful calculations or conclusions about the additional costs or affordability of the National Care Service.
116. There is also no clarity of the impact on health budgets nor how they will be treated and transferred to support the National Care Service and care boards. Additionally, there is no rationale as to why services currently delegated to Integrated Joint Boards from health should be treated differently to those from Local Government, for example through the guarantee that health staff will not be transferred.
117. In terms of savings, the FM rather vaguely claims that the creation of the National Care Service – at an additional cost in itself of up to £250m in the establishment phase plus a similar sum across the first two years of its operation – will deliver savings across the public sector, but these are not specified or quantified in any way, even within health and social care itself. It is not unreasonable to expect the Scottish Government to be able to demonstrate the anticipated return on such a significant

investment in structural reform, especially in the context of the savings expected to be delivered across the public sector, including through similar reform, following the Resource Spending Review.

118. Overall, it is deeply concerning how much is still unclear and how many questions remain unanswered by the FM and by the Bill itself - both in terms of:
- aspects of how the National Care Service will be funded, whether it is affordable and the severe financial impact it is likely to have on Local Government; and
  - the transparency, reliability and robustness of the figures presented, including underlying assumptions and treatment of factors such as demand and inflation.
119. Consequently, we have significant reservations about the rationale for directing such substantial sums at a disruptive and time-consuming medium-term structural reform at this time. Investment is needed now to improve services and tackle challenges such as staff recruitment and retention, in order to deal with the growing pressures and ever-increasing demands facing social care – which are also having real and significant knock-on effects for health services too. It is greater capacity, rather than consistency, that is most urgently needed across the health and social care system.

[If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?](#)

120. As explained above, while there is a lack of clarity about the impact of the National Care Service proposals on local authority budgets, it is clear that the mass transfer of functions and activities risks having a significant broader impact on Local Government services. Focus should instead be placed on ongoing reform in social care that delivers improved outcomes for service users and supports staff – but those reforms need to be properly funded.
121. We have highlighted previously an apparent shortage of funding for implementing all of the IRASC recommendations – many of which are excluded from the calculations used in the FM – and the disparity between the 3% above-inflation annual increase in funding for social care that the FM states is required to deal with increased demand and other cost pressures, and the flat-cash settlement for Local Government and 0.6% real terms annual increases for health and social care afforded by the Resource Spending Review.
122. We have also highlighted previously the protection that Local Government has put in place over the years for social care budgets, at the cost of other services. And as we have set out, there are also considerable concerns about the financial costs that Local Government will incur as a result of the Bill, including in relation to the loss of economies of scale and efficiencies, pensions, assets, impact on support services and so on.
123. In this context it is very difficult to see how the costs of the National Care Service can be met without significant additional funding being provided – or at all. To deliver on the IRASC recommendations and to achieve the stated aim of ensuring parity between health and social care, it is essential that fair funding is provided to Local Government in a way that allows councils to make decisions about the best use of resources based on local needs and priorities – something that COSLA has been

calling for since before the pandemic.

Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

124. Overall, no, due to the many un-costed elements of the Bill. Regarding those figures which have been presented, yes – the figures throughout the FM being presented in such large ranges reflects the significant uncertainty about what costs will arise and when. In fact, it is not clear what the basis is for that uncertainty, although we believe that at least in some cases it is likely to relate to how many care boards there will be and/or when services will be brought within the remit of and transferred to the National Care Service. It is also not clear what financial powers the National Care Service may have going forward and how that may help or hinder a National Care Service budget and any impacts on the wider public sector.
125. It is deeply concerning that so many questions remain unanswered regarding both the fundamental and practical aspects of the National Care Service, and that so little detail is available regarding its finances, despite the Bill having been published and with the relatively short timescale expected for the implementation of what has been described as "the most ambitious reform of public services since the creation of the NHS". We would like to see much more clarity and transparency around how the costs of the National Care Service will be managed and met, with detailed and costed options being developed and appraised at every stage as the design and implementation of the National Care Service progresses. This is essential to enabling effective Parliamentary scrutiny of the financial and policy detail of the Bill.

## National Care Service principles (Section 1)

126. COSLA shares the ambition to drive a system of care which is rooted in human rights, enables people to thrive and fulfil their potential and enables communities to flourish and prosper. A system of care should also be inclusive, promote the dignity of the individual and advance equality and non-discrimination. People who work to deliver care should be entitled to Fair Work and valued for their critical work, and the those who receive support should have a voice in how care is organised. Finally, early interventions are essential to preventing the development of care needs.
127. Fundamentally, COSLA believes the delivery of such principles is better served with the critical integration of care and support with housing, education, welfare, and community services which only Local Government offers in partnership with service users and communities. COSLA is proud of the examples of person-centred approaches, which benefit from local integration and knowledge, to be found in councils across Scotland. For example, the 'Fit Like?' Family Wellbeing Hubs delivered in Aberdeen group local services such as education, social work and health together to support children and young people's mental wellbeing. There is also the example of the 'no wrong door' approach delivered in East Lothian, learning from experiences during the pandemic. These models use local connections to deliver person-centred care, and deserve enabling, not re-designing.

128. It is notable that there is no principle for local communities to have ownership over the services in their area within the National Care Service Bill. COSLA would also like to see more consideration given to the protection of adults and children. Finally, we would suggest the principles reflect the need to build upon the foundations of successful Health and Social Care Partnership Integration, particularly recognising the importance of local leadership and operational management in making integration successful.
129. The successful delivery and implementation of any principles will be dependent on the provision of sufficient financial resource. Proposal (b) within the Bill sets out that the services provided by the National Care Services must be financially stable. However, no definition or metric for evaluation of what is considered financially stable is outlined. It is therefore unclear how the financial sustainability of the National Care Service will be evaluated. One key factor is whether funding routinely considers demographic and other changes driving demand, as recommended in the Independent Review of Adult Social Care. The Bill and its supporting Financial Memorandum are notably silent on this essential element of service sustainability.
130. Finally, focus throughout the Bill is given primarily to adult social care, though proposals may see the transfer of a range of services including social work, community health, justice social work, children's services, alcohol and drug services and adult support and protection. The diversity of these services has to be rooted through principles and ensure there is an appropriate reflection of safeguarding services.

## **Accountability to Scottish Ministers (Sections 2 and 3)**

131. COSLA questions the appropriateness of assigning accountability to Ministers over certain responsibilities which are better left to the judgement of professionals. For example, as mentioned previously, these proposals will see Ministers having direct control of public protection operations. It is our view these sensitive responsibilities should sit with trained professionals and protected from political interference. For example, such public protection operations currently lie with existing Chief Officer Groups.
132. We have set out elsewhere in this response our significant concerns over the transfer of accountability and decision-making from local government to Ministers and unelected, unaccountable care boards. This move would raise real and fundamental questions about the state of localism, democracy, and governance in Scotland.
133. In 2021, the Scottish Parliament unanimously voted to adopt the European Charter of Local Self-Government, which holds that "Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen." This Bill therefore stands counter to both the European Charter and the expressed will of the Scottish Parliament.
134. It is our view that retaining local accountability is a central tenet of care and an important element of empowering citizens and communities in the planning and delivery of services. Under this Bill, should a citizen wish to engage politically to change or support the care they had received, instead of contacting a locally elected

Councillor, an appeal would have to be made to a Scottish Government Minister. This pushes democratic engagement and accountability further away from citizens and furthermore, it is questionable whether Ministers are best placed to make appropriate local interventions.

135. This lack of democratic accountability extends to the lack of detail regarding the membership, number, geographical area and governance of local care boards outlined in the Bill. Beyond detailing that power will lie with Ministers to appoint and remove care board members; little information is provided. There also appears to be no requirement for Scottish Ministers to consult with local communities on such matters. Consideration should be given to whether care boards will result in aggregated geography that builds on existing Local Government boundaries as this would not be meaningful to local people or communities and will weaken local community planning.
136. If care boards were to be created and aligned with NHS Boards, this would have serious implications for progressing links between Local Government functions and care. In considering NHS Boards however, it is notable that where this Bill does not legislate board membership, in contrast the NHS Scotland Act makes the specific provision that NHS Boards shall have Councillor members.
137. The Bill's *Statement of Benefits* states that "planning at a local level will play an important part in ensuring that support and services meet the needs of people in their own communities. Combining national accountability with local expertise will ensure that the right balance can be struck in ensuring consistent and fair quality of service provision across Scotland." However, the Bill fails to address how potential tensions between what Ministers instruct, and what 'local expertise' calls for, might be managed. As laid, the legislation would appear to empower Ministers to override local expertise.
138. Finally, the centralisation underpinning this legislation would also see Scotland contradicting wider OECD trends towards 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 (*OECD, 2019*). 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.

## **Establishment and abolition of care boards (Sections 4 and 5 / Schedules 1 and 2)**

*Please see points 53, 58, 67, 135, 136, 137 & 163.*

## Strategic planning and ethical commissioning (Chapter 2)

139. National work to drive improvement across social care takes place currently and could be supported by a National Care Service if delivered in the correct way. For example, COSLA has undertaken work to progress ethical commissioning in social care, as outlined in Joint Statement of Intent between COSLA and the Scottish Government. A National Care Service could help deliver this work, if structured appropriately to accommodate both local and national input and vision.
140. Central to the success of any ethical commissioning strategy or efforts to drive up pay and conditions in the social care sector will be the Scottish Government providing sufficient resource to match ambition. The full additional costs of an ethical commissioning strategy and impacts on the system are not known.
141. This Bill fails to address the difficult issue set out in the Independent Review of Adult Social Care, that of profit within the sector. Private sector provision has grown to such an extent that it now accounts for 76% of care home provision for older people. This raises the issue of 'leakage' from our system and questions over the complex financial structures of some of the larger UK wide providers. Recent research by the Scottish Trade Union Congress (STUC, *Profiting from Care 2022*) has argued that the most profitable privately owned care homes take out £13,600 per bed in profits, rent, payments to directors and interest payments on loans. This Bill does not set out any solutions in relation to how to move to a more actively managed market, despite this being a recommendation from the IRASC.
142. There is an additional challenge in that this section of the Bill seems to presume there is an ample supply of commissioned providers at the ready. There needs to be a clear effort to address a sector struggling with levels of unmet need, where some providers are no longer viable and where care packages have been handed back to local authorities. This raises the question, what happens in this context if a provider does not meet the necessary commissioning requirements?
143. Regarding Fair Work, a National Care service could take the lead in the development and monitoring of national workforce quality standards that support the delivery of Fair Work principles. It could also oversee the creation of a National Job Evaluation framework which providers could opt into.
144. COSLA welcomes the inclusion of progressing Fair Work as a principle of ethical commissioning, there remain uncertainties as to how these ambitions will be progressed through statute. Local Government already incorporates Fair Work practices as part of local commissioning strategies and tender exercises, in line with existing statutory guidance. However, the Bill and its accompanying documents do not clearly set out, for example, how national terms and conditions will be competently rolled out in a mixed social care market which comprises thousands of employers, and employees with varying job titles and descriptions. Existing employment and procurement law must be clearly recognised.
145. Strategic planning as proposed in the Bill would centralise decision-making to Ministers further. Of course, it is not unhelpful to have national improvement plans with key goals which systems across Scotland can work toward. However, this Bill

does not match local knowledge with national ambition, instead creating a power imbalance between Ministers and local delivery partners. By centralising national strategic decision-making to Ministers, it risks local expertise being underrepresented or absent altogether in decision making forums. There is the potential for Ministers to set plans without necessary local expertise, risking the creation of initiatives which may prove impractical in local delivery. Furthermore, Ministers will be empowered to override local plans and issue directives to local care boards. This system may ultimately prevent local co-design of services to meet local need and move away from person centred and rights-based approaches.

146. With regards to national commissioning activity, Scotland Excel already undertakes a national role across a number of the commissioning areas being proposed to be under the scope of a National Care Service. In this respect, it is unnecessary to create a new function which already exists and performs to a high standard. Scotland Excel are recognised for their expertise in commissioning and procurement, it would therefore seem appropriate that they may be funded to work collaboratively to develop the national structure of standards and processes. This would allow for a system that supports local and person-centred decision-making, whilst helping support improvement and driving change.

## **National Care Service Charter (Sections 11 and 12)**

147. COSLA welcomes this Charter and agrees with the ambition it sets out. People accessing care services in Scotland should know what to expect and a Charter of Rights should help ensure a rights-based approach to care. Such a Charter does not require wholesale structural upheaval and could be established under existing operational arrangements.
148. The extent to which the Charter included in this Bill will have meaningful effect is undermined by Clause 4 of Section 11, which states that, “Nothing in the charter is to a) give rise to any new rights, b) impose any new responsibilities, or c) alter in any way an existing right or responsibility.” This suggests the new Charter of Rights may not be an ambitious charter of new rights, but a charter of already existing rights.
149. There must be sufficient resource invested into the system to ensure rights are understood, protected and respected. In the past there has been the introduction of a wide range of, at times, disconnected health and social care initiatives and duties. There must also be support for both rights bearers and duty holders about the need at times to balance rights where they might compete – this requires capacity and knowledge building with all parties.
150. There is a need for clarity on the nature of any rights-based / entitlements-based model. To fully understand and be able to fully scrutinise this legislation, and the accompanying Financial Memorandum, explicit information is required which sets out:
- Precise entitlements.
  - Whether there are tiers of entitlement which reflect different levels of need.
  - What criteria will determine eligibility to entitlements.
  - How many people will be entitled at each tier of support.



- The cost of each tier of support.
- The total cost of the new entitlements.
- How such an entitlements-based model will be funded.
- Arrangements to ensure resourcing remains in line with demographic changes.

151. As mentioned previously, there is also a need to clarify how a 'rights-based approach' may interact with public protection duties, recognising that there may be instances where individual freedoms must be curtailed in the interest of protecting their and others' safety, as well as countervailing rights.

## Independent advocacy (Section 13)

152. COSLA recognises the importance of independent advocacy as it aims to support people to access information, make informed decisions about their care and also recognises the benefit in ensuring people who use social care have consistent and person-led access to a range of independent advocacy services.

153. Under the Care Act 2014, local authorities must provide an independent advocate for people who fall under the following eligibility criteria: there is no appropriate person to support and represent them; and they feel that the person (or carer) would experience substantial difficulty being involved in the care plan process. Under the Mental Health (Care and Treatment) (Scotland) Act 2003 there is also a duty for local authorities to collaborate with health boards to ensure availability of independent advocacy services in their area.

154. Advocacy service provision across Scotland is complex as not all services provide all types of support. Some services are generic and will work with all age ranges of adults, with a small number also working with children and young people. Some services support people with specific conditions, most commonly adults with mental illness, dementia or learning disabilities. Local authorities can find it challenging to uphold their duties as a majority of advocacy services must limit access to their services and prioritise referrals who have a compulsory measure under the 2003 Act (Mental Welfare Commission for Scotland, 2018). For children and young people commissioned services often provide support for those who are looked after or have experienced trauma or abuse; but for those who do not fit such criteria or have not been detained under the 2003 Act then accessing mental health advocacy can be challenging.

155. When considering a national approach, the provision of services needs to be sufficient locally to serve all those who are entitled to advocacy; and ensure there is capacity in services at a local level to meet the needs of all the people, including those who are not provided with care, treatment and support on a compulsory basis.

156. This is another provision within the Bill which sets out broad powers to Ministers but is accompanied by very little detail. There are also no costings associated with this proposed approach to independent advocacy services. As with so many other elements of social care support, financial and resource constraints mean these services often must target provision to those in most urgent need so we would question how this provision within the Bill will be properly implemented if there is no additional resource attached to it.

## Complaints (Sections 14 and 15)

157. There has been limited evidence provided which highlights significant issues of dissatisfaction with either the visibility or access to the already existing model complaints handling process. Indeed, it is unclear whether the introduction of a more centralised system would improve the responsiveness of complaints handling. This is particularly apparent given the core principle that should feature in any complaints handling procedure is that first stage resolution should be available as close to the operational matter as possible to ensure the complaint can be resolved in an appropriate manner. Currently, local elected members who know communities and often individuals are frequently approached to progress complaints and enquiries. As set out in the Bill, this personalisation and local connection would be lost as it would be replaced by a centralised model.
158. The current model 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. Finally, stage three provides access to the national Scottish Public Services Ombudsman.
159. While the proposals to centralise the complaints procedure is without a demonstrated evidence base, there are reforms which could be undertaken without the need for large scale structural reform. For example, greater consistency in the collation and analysis of data could improve performance monitoring and improvement processes. Furthermore, the development and communication of a Charter has the potential to help communicate rights and entitlements, though again this can be done without full scale structural upheaval.

## Ministers' powers to intervene (Chapter 4)

160. Intervention is sometimes necessary to ensure a quality delivery of service. Under current arrangements, local authorities hold the role as providers of last resort, intervening to provide care where necessary.
161. Empowering Ministers to intervene in care risks inappropriate political interventions without due consideration of the context of the situation. Sensitive decisions over care would be better placed in the context of local expertise and knowledge. Furthermore, granting the power for Ministers to apply for emergency intervention orders, including entering and occupying premises, appears excessive and goes beyond comparable powers Ministers have over the National Health Service, for example. The Bill fails to set out any definition for what a failure of goods or services would entail and appears to rely on Ministerial discretion to determine whether this point has been reached and whether a further inquiry is required.
162. The Bill raises questions over the future of local authorities being specially designated as bodies to which responsibility can be assigned. Given the wide range of critical services Local Government currently delivers, one may expect this to continue. However, the ability of local authorities to act as providers of last resort was contingent on them having the power and duties for social care provision and the scale of local authorities which enabled to step in, at least temporarily, and meet the

financial costs. Given there is no certainty that local authorities will choose to remain as care providers should commissioning powers be moved to the National Care Service, and statutory duties for adult social care would likely be transferred, it is difficult to see how local authorities could continue to be providers of last resort. This matter remains unclear, however, as proposals appear to pass discretion to local systems to decide whether to transfer councils' in-house provision to the National Care Service or not. There is a need to explicitly outline whether councils will have a statutory duty or not.

163. Finally, should locally elected representatives hold membership on local care boards, this Bill would appear to grant the ability for Ministers to remove them. Although it is acknowledged that this would not adversely impact the person's membership of their respective council, it does call into question the principle of subsidiarity if a democratically elected member, appointed by their council, is removed from that body by a Minister. This provision within the Bill appears to lack the necessary checks and balances which would limit power of government Ministers to intervene in operational issues.

## **Connected functions (research, training and other activities and compulsory purchase) (Chapter 5)**

164. There is recognition that enhanced support for learning and development across the fields of social care, social work and community health would be welcome. There may also be efficiencies in co-ordinating and providing such training nationally, helping ensure there is appropriate and accessible development opportunities across Scotland.
165. A good example of a once for Scotland approach being beneficial for training is in building digital skills and leadership. It has long been acknowledged that health and care services need to use digital solutions to better effect. This will achieve improved outcomes for communities and more efficient public services, while ensuring that technology supports person-centred care. To support this transformation, workers need to know when, why, and how to use digital as well as their ability to identify where digital could be used which is essential to embed digital transformation within the sector. This will require the development of appropriate training resources. Currently there are a number of organisations across health and social care working to address this including Scottish Social Services Council (SSSC), NHS Education for Scotland (NES) and Local Government Digital Office (LGDO). Adopting a collaborative approach across public services around developing appropriate training will ensure that there is a consistent approach, that training is accessible, and that duplication is reduced.
166. Utilising research organisations to find new and innovative ways for delivering health and care services will help develop more efficient and effective ways of working, increase capacity, improve service delivery, and most importantly support a person-centred approach to health and care that meets people's outcomes. It must also be recognised however that most interventions to support health and wellbeing lie out with the health and care system. The role of prevention and early intervention and the social determinants of health, the work of local authorities, the third sector, communities, and carers, must also be better understood and resourced.

167. A key issue with undertaking research will rely on the quality of data that informs it. One of the ambitions outlined in the consultation for the development of the data strategy for health and care is to ensure opportunities for innovation, industry and research are driven by high quality data. This data needs to give insight into the key issues in social care affecting people who use and deliver services, rather than data that meets the needs of the system.
168. In recent years, there have been several research reports that have highlighted challenges across current services. A key component of such research is of course working to make improvements based on observations and recommendations. Unfortunately, the Bill turns attention away from improvements we could make now to services, and instead prioritises disruptive and time-consuming structural change, in many cases contrary to, or without support of, evidence. It is widely recognised that a number of the challenges are connected to the real-terms cuts to Local Government. Additional revenue and capital resource would go a long way in enabling professionals to truly be empowered to deliver high-quality, person-centred care.
169. COSLA notes the absence of the creation of a National Social Work Agency contained within the face of the Bill, though reference is made to such an organisation in the Policy Memorandum. COSLA supports any efforts to raise the status of the social work profession, improve training opportunities, enhance continuous professional development and better support workforce wellbeing.
170. The National Social Work Agency as referenced in the Policy Memorandum appears to be a department which would sit within Government, and not an 'agency' with structural independence. It is also noted that a NSW Agency would "contribute to meeting the Scottish Ministers' duties to provide a national care service..." There are questions therefore, as to how such an organisation would effectively operate with professional independence while being expected to contribute to the delivery of Ministers' political priorities.
171. Should a National Social Work Agency be created, it should do so with a degree of separation from Government. Such an agency could helpfully support raising the status and value of social work as a profession, to improve post-qualifying training, scale up good practice, and enhance leadership development.
172. There may be practical challenges should social work remain within Local Government and such an agency is created, which would need further consideration. These include ensuring that there is no duplication of systems and, if a NSW Agency was to propose a national approach to pay and terms and conditions, this would require significant investment and assessment of impact on existing bargaining arrangements. It is also unclear how social workers practicing within children and families or justice social work would be 'treated' within the context of a NSW Agency particularly if these services do not form part of the National Care Service. There is also the need for clarity on the role of the Scottish Social Services Council in relation to the NSW Agency. There may be a case for SSSC sitting within the NSW Agency to improve co-ordination.

## **Transfer of functions, including scope of services (Chapter 6 and Schedule 3)**

*Please see points 59 – 78.*

## **Inclusion of children’s services and justice services (Section 30)**

### ***Children’s Services***

173. The Bill as drafted enables Ministers to make regulations to transfer functions relating to children’s services and justice services, following public consultation. We would express concern at the significant power this confers to Ministers using statutory instruments with minimal parliamentary scrutiny and with no requirement that the results of the public consultation should inform the direction of travel. We are also concerned that if these functions are transferred, they must be accompanied by clear and robust impact assessments and Financial Memorandum as these services were excluded from the Bill’s accompanying documents.
174. COSLA is also concerned on the proposed timeline outlined for the future of children’s services. It is our understanding that the review will begin with a two-year research programme which will report in 2024. Thereafter, the Bill requires the Scottish Government to consult on its proposals regarding children’s services. It is therefore likely that we could have the Scottish Government consulting in the summer and autumn of 2024 on proposals, in knowledge that the National Care Service would be due to go live in 2025/26. This tight timeline raises serious issues over the ability for the current system to be ready for whatever model the Government proposes for children.

### **Impact of the National Care Service on the Promise**

175. Whilst there is no evidence base for the inclusion of children’s services in a National Care Service, there is a bank of evidence showing both 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 these proposals have on the implementation of the Promise that cause the most concern.
176. 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 to include children’s services in the National Care Service. It is then worth setting out here in detail the commitment and progress that local authorities have made to its implementation.

177. In April 2020 the Independent Care Review published a report looking back at progress on the review's 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
178. 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.
179. It is particularly important to note what the Promise learned about the reasons 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.
180. 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.
181. 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.
182. 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.

183. 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.
184. COSLA and its 32 member councils are fully committed to Keeping the Promise and to delivering on the changes required throughout Plan 21 – 24 and beyond. In April 2022 COSLA published 'Two Years On...Local Government's Work to #KeepThePromise'. The report demonstrates the breadth of service redesign and transformation; increased and innovative engagement with children and families; new models of family support; examples of workforce development; and multi-agency and multi-disciplinary partnership approaches across Scotland.
185. Local Government has been a leader, driver, and delivery agent of change in the years since The Promise was published. Examples of progress and innovation are included in the annual report above, as a snapshot:
- a. Glasgow City Council have reduced the number of children looked after and accommodated by 24% since the launch of the Independent Care Review.
  - b. 96% of looked after children in Stirling left school with a positive destination in in 2020/21.
  - c. 95% of the education and residential care workforce in Argyll and Bute Council have undertaken Trauma Training.
  - d. The Better Meetings Project in Moray, supported by Who Cares? Scotland and Children's Hearings Scotland have resulted in the physical redesign of rooms where Children's Panels are held, by and for young people.
  - e. Fife Council have launched a new website ([www.embrace-fife.com](http://www.embrace-fife.com)); a new community of care-experienced people coming together to share support, understanding and to celebrate the Care community in Fife.
186. There are significant concerns across Local Government and with our Third Sector partners that continued and lengthy uncertainty of the future of Children's Services will severely impact on Scotland's ability to Keep the Promise by 2030.

### **Evidence of Local and National Work in Place**

187. 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 Route map 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.

188. 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 placing children's services and social work within a National Care Service on the role of the Scottish Child Interview Model are unclear.
189. 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.
190. Additional national work is undertaken through the National Child Protection Leadership Group, chaired by the Minister for Children and Early Years. This was established to support, strengthen, and improve activity on child protection. The group oversees implementation of the recommendations of the Child Protection Improvement Programme (CPIP) Report and reviews arrangements for child protection across current planning and service delivery processes. The group reports to and is accountable to Scottish Ministers. In turn, the Scottish Government has provided regular updates through a series of blogs. These illustrate that, whilst improvement continues, progress has exceeded the initial expectations of the CPIP and Child Protection System Review reports. The Care Inspectorate reported on the findings of Joint Inspections held over a three-year period from 2018-2020. The improvement delivered was apparent in the overarching findings of the Care Inspectorate report. The report does not provide any evidence for, nor does it recommend, any significant change to local or national structures to further the pace of improvement.

### **Challenges for Children's Services**

191. The National Care Service Bill provides a very broad definition of what is meant by Children's Services:
- “A children's service” means a service that is provided to (either or both)— (a) persons under 18 years of age, (b) persons 18 years of age or over on account of a local authority having provided a service to, or in relation to, them when they were under 18 years of age’.*
- National Care Service Bill, Chapter 6, Section 30 (4)*
192. This could be better defined to mean 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.

193. COSLA is particularly concerned that the Bill 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.
194. 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 community 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.
195. 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, 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.
196. 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 National Care Service rather than resolving it.

### **The Impact of the National Care Service on Education and Early Learning**

197. There is a need to 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 would have an impact on ongoing work to close the poverty related attainment gap.
198. 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 Getting It Right For Every Child (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 any moves to include in children's services in the scope of the NCS are unhelpful and risk undermining progress made to date on closing the attainment gap.

199. In both the proposed inclusion of children's services in a National Care Service and the previous discussions on education governance, COSLA is 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.
200. 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.
201. 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 such placements could be delayed which would increase the complexity in accessing services.
202. The separation of children's services from education also risks impeding the successful identification and provision of support for young carers. As is reflected in the Carers Trust's [Education Toolkit](#), education staff have a crucial role to play in identifying young carers, ensuring they are supported in school, and linking them up with local support services (for which local authorities are currently statutorily responsible). The inclusion of children's services within the National Care Service would disrupt vital connections within the education and children's social work workforce and between local services, making a joined-up approach to supporting young carers in our communities more difficult. Under-identification of young carers is already a significant problem, and this proposal risks making the situation worse rather than better by disrupting connectivity at the local level. This in turn could lead to fewer young carers accessing vital support and ultimately risks poorer outcomes for young carers, who already face significant additional barriers and disadvantages.
203. Governance in relation to 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. The different service delivery models across the country reflects planning, engagement and consultation to design models that meets the varied needs of children and families across Scotland and is robustly

evidenced based.

204. **We are of the firm belief that children’s services, including social work, should remain within Local Government and adequate resource provided to deliver services, support the 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.

## ***Justice Services***

205. **Similar to our view on children’s services, we believe that justice services should remain within Local Government, alongside the rest of social work, supporting services and leadership for community justice.**
206. The Bill enables children’s services and justice social work to be brought into the National Care Service alongside adult social work and social care once Ministers have undertaken further consultation. It is again worth stressing that the recommendations of the Independent Review of Adult Social Care did not make any recommendations for the centralisation of justice social work delivery that the Bill as currently drafted would allow Ministers to take forward.
207. The Scottish Government published a revised National Strategy for Community Justice in June this year, preceded by the Vision for Justice in February. The Justice Vision stresses that *“iterative reforms and changes to our existing structures and processes will not take us far enough on the journey. We must transform our justice services, ensuring services are designed for and by those who need them”*. The National Strategy for Community Justice acknowledges that partners have worked hard since the publication of the last Strategy five years ago to help achieve the clear vision of a Scotland where offenders are held to account, while also offered support to facilitate reintegration where appropriate. The Strategy offers a roadmap for future improvement work for partners to focus on over the next few years, while recognising that capacity and resources are constrained. We believe our current focus should be on driving forward collaborative progress on delivering both the Vision and Strategy. This will require increased funding for justice social work services to enable the judiciary to make more community disposals, thereby reducing reoffending and over time reducing Scotland’s high rates of imprisonment compared to other developed countries.

## **Recent Reforms and Current Challenges**

208. Justice services have already been subject to recent reforms, including changes in line the requirement in Section 16 of the Community Justice Act in 2005 (which saw the creation of Community Justice Authorities) and again in 2015 (which saw the creation of Community Justice Partnerships). If the inclusion of justice social work goes ahead as proposed in the Bill, it is likely to constrain future service development and place additional pressures on the workforce. Staff delivering services are already facing significant challenges in relation to pandemic recovery and expect high volumes of work from the courts over the next three years. This legislation adds unnecessary additional uncertainty.

209. There has been an acceptance of the need to periodically evaluate what is underway 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 any guarantee of additional resources will see no positive change in the level and quality of services offered to our citizens.
210. We do acknowledge, as highlighted by the [2021 Audit Scotland report 'Community Justice: Sustainable alternatives to custody'](#) , there is work to do to further shift the balance of sentencing, from prison sentences to sustainable, community-based alternatives. For that we will need to see a shift in the amount invested in community disposals rather than prisons. If some of the additional resources required to establish the National Care Service were to be made available to Local Government, it could be transformative for the service. As acknowledged by the Scottish Sentencing Council in a [2021 report](#), "staff shortages in social work and general lack of capacity with local resources (existing prior to, but exacerbated by, the pandemic) are perceived by sentencers in some areas as limiting the effectiveness of community based disposals."
211. The Policy Memorandum supporting this Bill refers to the 2021 Audit Scotland *Community Justice* report for evidence to support this legislation. Indeed, the report did acknowledge there were improvements that could be made to services; however, the findings did not call for the level of overhaul justice social work and the wider community justice landscape would experience if the provisions within the Bill as drafted are enabled.
212. The Bill and its supporting Policy Memorandum fail to address fundamental matters such as the provision of sufficient resource, workforce issues, demand and system issues that go beyond justice social work. In not addressing these challenges, the legislation does not tackle the root causes of many problems within the system. Moreover, opting for a national arrangement does not necessarily create uniform services. For example, prisons are all unique and with different issues locally. The same applies to Health Boards. While it is key to ensure that individuals have access to effective supports and services, we need to be clear on what consistency of outcome and opportunity can realistically look like, allowing for a degree of flexibility in local delivery to reflect local needs, priorities, and geographies.

### **Impact on Justice Social Work and Community Justice Landscape**

213. There will be consequences for justice social work regardless of whether it is in or out scope of the National Care Service. Justice social work is currently delegated to 17 IJBs, should these be disbanded, this will have an impact on how justice social work is delivered, adding to the general uncertainty.
214. It is also unclear how the National Care Service will impact the role of Community Justice Scotland, Community Justice partnerships, their connection to public protection and the wider community justice landscape. Given the small numbers involved, there is also a risk that a disruptive change process may see children in justice social work services being overlooked and marginalised.
215. It is also a concern that if justice social work is incorporated in the National Care Service, there is risk it would stall the momentum and focus needed to reduce

incarceration and the overuse of prisons and the reorientation of the service to deal with human rights and with the effects of poverty and deprivation.

216. Removing community justice from Local Government 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 resulting in a fragmentation of services with a potential negative impact on some of most vulnerable citizens.
217. Over the last 9 years, community justice has been following a more local trajectory. Evidence shows that community sentences, delivered through local partnership working, are often more effective at reducing reoffending. In their 2021 report mentioned earlier in this response, Audit Scotland noted that of those released from prison in 2017/18 who had served a sentence of 1 year or less, 49% were reconvicted within a year, compared with 30% who completed a community sentence. The inclusion of justice social work in the National Care Service would reverse gears, not only for the profession but for the wider community justice landscape. It will make the delivery of the combined priorities and ambitions more difficult and uncertain.
218. Work on the evidence gathering to inform the potential decision to include justice social work services in the National Care Service is now underway, led by Scottish Government. While we welcome the Scottish Government's collaborative approach to date on this work, we do have significant concerns and reservations should the outcome of this work lead to the inclusion of justice social work in the National Care Service, for the reasons set out above.
219. We do nonetheless recognise that time and effort are required to look at evidence-based actions to improve the current models, with appropriate political scrutiny and oversight by both spheres of Government and with the input of service users, the workforce and key partners.

## **Consequential modifications / interpretation of Part 1 (Chapter 7 and Schedule 4)**

220. Schedule 4 includes the provision that a local authority may provide services for the National Care Service. At this stage, it is unclear how this may work in practice.

Should Local Government lose commissioning powers, there is a real possibility that councils may withdraw from providing care. This would be made more likely if, in addition to the transfer of commissioning powers, local authority staff were also transferred to a National Care Service.

## **Health and social care information (Part 2)**

221. Integrated health and social care records have been a key ambition for many years. Indeed, it is recognised that a nationally consistent, integrated and accessible

electronic record would facilitate improved information sharing and usage between partners and support better outcomes. Across health and social care there are significant number of information systems being used to gather and store data about people's health, care and support needs. Most of these systems are unable to communicate with other systems resulting in a siloed approach to health and social care rather than an integrated one.

222. Integration of services was a key message within the Audit Scotland Social Care Briefing (2022) which notes there is an inability to share information between agencies which has slowed the pace of integration and created major gaps in the information needed to inform improvements in social care. For people using health and social care the result is accessing services is complicated and often requires them to repeatedly share information with professionals. For people delivering health and care this results in duplication which is a poor use of over stretched resources.
223. Since the introduction of the Public Bodies (Scotland) Act 2014 there has been discussions across HSCPs on sharing information. Since the publication of the first *Digital Health and Care Strategy* in 2018 there has been considerable work and resources dedicated to information sharing and the development of a shared health and care record. Work to date includes:
- **National digital platform** – this aims to deliver a health and care platform through which relevant data and information from health and care records is available to those who need it, when they need and wherever they need it.
  - **The Social Care Case Management record** - The framework, developed to support local authorities' source social care case management systems, is designed to provide digital solutions that will enable people to access and update information about their health and wellbeing; enable health and social care staff to access, update and share information about the individual being cared for safely and securely; enabling shared decision making; and provide a platform to establish and implement the standards required to deliver interoperability and information sharing across different health and care systems.
  - **The digital front door** – a commitment within the refreshed digital health and care strategy, [Care in the Digital Age](#), published in October 2021. This would see the development of a safe and secure digital app that will support people to access information and services directly, self-manage, and access and contribute to their own health and care information.
  - **Innovation to support transformational collaboration between universities and businesses** - Work undertaken by innovation organisations has explored how data from different health and care sources as well as people's personal data can be brought together, providing a more holistic picture of a person's needs.
224. COSLA supports the introduction of an information standard indicating how information should be processed across health and social care services if this can improve delivery of social care for people using and delivering services.

COSLA is concerned that within this section of the Bill there is no reference to the

rights of people in relation to accessing, controlling, and agreeing what information should be held in a shared record and for how long. UK GDPR confers considerable rights on people in relation to how their data is managed, some of which are dependent on the lawful basis for processing. It is unclear from the information outlined in the Bill how the creation of an integrated health and care record will be aligned with UK GDPR. While the DPIA which accompanies the Bill mentions people's rights under UK GDPR and DPA 2018 it only mentions ensuring that there is a consistent approach, so individuals have access to their own information – no mention is made to control of their own information. It is essential that a health and care record ensures people have control over what data is included and those who can access this information.

225. [Care in the Digital Age](#) makes a commitment to enabling people to have access and control over their own health and care information including the ability to view and update information contained in their records, and access information such as test results, letters and treatment/care plans. Fuller information will be required as to how this Bill will meet this commitment.
226. A shared health and social care record must increase the way people can access the care, support and information they require. The national digital strategy [A changing nation: how Scotland will thrive in a digital world](#) makes a commitment to ensure that all public services are designed through the lens of inclusion and use digital technology to increase community engagement and participation.
227. An integrated health and care record needs to provide a holistic picture of a person. People's health and care is affected by more than the interventions of health and care professionals it is influenced by the social determinants of health and behaviour – a person's context and lived experience. A health and care record will need to include information on social and community context, economic stability, environment, and education. It should also, with informed consent include personal data about people's day to day behaviour including diet, exercise, alcohol / drug consumption, smoking status, and sleep pattern. It is only when there is a holistic picture of a person's lived experience that we will truly be able to support a personalised approach to health and social care. To ensure that this data is interpreted appropriately professionals will likely need to further support and training as recent reports about biases against people who are overweight or obese in health settings has demonstrated.
228. Considerable health data is collected by personal digital devices such as smartphones and smartwatches. There is an ever-growing number of people who are now using technology daily, and many are confident at interpreting personal data about their health and wellbeing. Utilising personal data from digital devices could support more person-centred care.
229. As outlined above COSLA is clear that Children's Services, including the social work workforce should remain within Local Government. However, the introduction of a shared health and social care record could deliver better outcomes for children, particularly those with additional care and support needs and those who have care experience. Significant information is gathered, stored and shared on children with additional care and support needs and those with care experience. This means that children and their families must repeat their stories. Often there is pain associated with retelling of stories and a shared health and social record could address this.

230. The Promise states that Scotland must be committed to the development of digital tools that ensure information ownership enabling children and young adults with care experienced to have control over their information and how it is shared.
231. The development of the health and social care record should be aligned with the development of the data strategy for health and social care which is currently being developed. As outlined above people's health, care and support data is currently collected by numerous information systems making access to health and social care very complex to navigate. The data collected needs to be able to demonstrate the impact of the support on the person and the outcomes it helps people to achieve. All of this will require enormous funding not only to upgrade legacy systems but for some third and independent social care organisations, will require funding to purchase an information system to enable them to start this work. It will also require significant investment in training, information governance and cyber security, COSLA is therefore disappointed that no cost estimate has been included in the Financial Memorandum.

## **Rights to breaks for carers (Sections 38 and 39)**

232. COSLA recognises the valuable contribution of carers to society, which has only increased during the pandemic with more people taking on caring roles and caring for longer hours; the estimated number of carers in Scotland has increased to over one million during the pandemic.
233. Carers must have good support in place to be able to have a higher quality of life and to look after their own mental health and wellbeing. One aspect of this is having access to breaks. COSLA agrees that carers should be able to take breaks from caring to help sustain their caring role and to prevent more acute needs from arising.
234. Local authorities help facilitate breaks from caring including through Self-directed Support options, through local Carers Centres and through third sector organisations. Many local authorities are innovative in their approach to breaks in an otherwise resource limited environment. Breaks can vary from nights away to funding provided to take part in a class. There is a risk that strong local connections and partnerships as well as good practice and innovative approaches will be lost in a move to a National Care Service.
235. Despite a willingness to provide as much support as possible, there are a number of key challenges Local Government faces currently. Namely, a lack of workforce to provide respite and day services, a lack of social care available for replacement care, insufficient funding, services struggling to return to pre-pandemic levels (again largely tied up with workforce challenges), and carers not self-identifying and coming forward for support and assessment. There is no evidence within the Bill or accompanying documents that legislating a Right to Breaks would solve the fundamental issues and increase the numbers of carers being able to access breaks from caring in practice.
236. The Bill amends the Carers Act so that local authorities (and eventually care boards) are not able to apply local or national eligibility criteria when determining whether a carer can access a sufficient break. Local authorities are responsible for determining



the provision of care services in their areas, taking account of their financial and other resources and the costs of service provision. The application of eligibility criteria to social care support is a transparent way in which local authorities manage finite resources alongside growing demand for increasingly expensive services. While we recognise the good intention behind removing eligibility criteria from a carers' right to a break, we would express concern that this is rooted in a fundamental misunderstanding of *why* eligibility criteria are applied to social care support. With the right scaffolding in place – adequate funding, a workforce ready and able to respond to demand, and the care provision required to ensure a 'break' is available – local authorities can continue to facilitate access to breaks for carers. These necessary conditions to succeed must be created, or else we may create the conditions for carers to face disappointment.

237. The concept of a 'sufficient' break from caring will need to be clearly defined and this definition should be on the face of the Bill rather than secondary legislation. Break from caring will also need to be further defined: for example, would a break from caring include technology that could be provided to help the supported person and therefore free up time for the carer to have a break? It is essential that flexibility, choice and control of the carer and supported person are central considerations in line with Self-directed Support.
238. When considering the costs associated with Right to Breaks from Caring, it is essential that the demographic context of an aging population is considered. The uptake in accessing break provisions laid out in the Financial Memorandum appears to be a very conservative estimate with only 20% of those caring for 20-34 hours a week expected to receive a personalised break through their ACSP and 40% through easy access breaks. Given it appears there is no proposed eligibility criteria to take up easy access breaks this represents an alarming underestimate. There is also no attention paid to the second part of Recommendation 11 of the IRASC, which was to increase the range and volume of different types of breaks, to better meet needs and increase uptake. This cannot be achieved by commissioning alone without investment.
239. The inclusion in the Financial Memorandum of replacement care costs is welcome progress toward making the funding for break enablement more accurate and it illustrates one of the challenges of underfunding local authorities currently face. Had local authorities received funding for replacement care at the time of the introduction of the Carers Act this would undoubtedly have enabled more carers to access breaks.
240. Availability of support for carers is representative of the wider issues facing the social care system and the long-term issues facing the sector. COSLA and Scottish Government are working together, along with other partners, on embedding Fair Work principles and Workforce planning with the aims of increasing the workforce for Health and Social Care provision, the results of these interventions will necessarily be achieved across years. There isn't a quick and easy fix to the obstacles to provision of breaks.

### **Young Carers**

241. The needs and circumstances of young carers can often differ significantly from those of adult unpaid carers. This includes types of rest activity and breaks required

to meet their needs. It is important to note that the IRASC did not consult young carers. It is critical that young carers' needs and views are fully understood and taken into account in the design and delivery of a right to breaks (and wider aspects of support for unpaid carers within the National Care Service) and further clarity is required on how this will be achieved.

242. While the inclusion of replacement care costs within the Financial Memorandum is welcome, it is unclear why an estimation of replacement care costs in relation to young carers has not been included. We acknowledge that many young carers are not the sole provider of care (for example, being part of a network of carers within their family), meaning that replacement care will not always be required. However, some young carers in Scotland do fulfil the primary caring role, or undertake intensive caring duties, and therefore in some cases replacement care will be required to enable young carers to take breaks. There is nothing in the Bill that leads us to expect access to replacement care to be limited to adult carers, however this should be clarified and should be part of cost considerations of the National Care Service Bill. Under-identification of young carers is an ongoing issue, and the mechanisms for collecting data on young carers are limited, meaning that official estimates of the number of young carers in Scotland may be lower than the reality. It is important that this is taken into account when considering the costs involved in delivering a right to breaks for young carers, as there is a risk that data limitations could lead to an underestimation of costs.

## **Implementation of Anne's Law (Section 40)**

243. Residents are entitled to high quality care and support which is reinforced by the Health & Social Care Standards. The principles of dignity and respect, compassion, inclusion, responsive care and support and wellbeing all remain vital. COSLA supports the implementation of Anne's Law, allowing a designated visitor into care homes to support loved ones. It is important to recognise that care homes are individuals' homes and there is a need to guard against reducing them to clinical settings.
244. Throughout the pandemic, outbreaks within care homes have brought about a need for Public Health directive for restrictions on visitors to mitigate the risks relating to Covid-19. The introduction of legislation could enhance the entitlement of residents and/or visitors, as well as placing a formal obligation on providers. It should be noted that prior to the pandemic there were few known concerns relating to allowing visitors into care homes to support loved ones.
245. The right must be balanced with a need to ensure that the access is not excessively disruptive to the other residents and to the caring responsibilities of staff. Visits and contact should not be denied because they would be inconvenient or require staff to alter their work plans and schedules. That should be accepted. There is a difference between inconvenient and disruptive, however. If for whatever reason it would mean that other residents' mealtimes were disrupted, or medication plans could not be fulfilled for example that would be unacceptable. If there is goodwill and flexibility from the resident, visitor, and staff such conflicts should be able to be managed and avoided.

246. In implementing Anne's Law, consideration must be given to the safeguarding of residents and staff. The health, safety and wellbeing of staff and residents should always be accounted for. Furthermore, there is also the need to underline the important role of clinical decision-making by public health professionals who may make judgements regarding access arrangements.
247. Legislation to support people living in adult care homes to have the right to see and spend time with those who are important to them must fully consider the United Nations Principles for Older People, ensuring rights of Independence, Participation, Care, Self-Fulfilment and Dignity are given top priority.

## **Reserved right to participate in certain contracts (Section 41)**

248. The commissioning of social care services is best handled at a local level, driven by local contextual knowledge and an understanding of local economic and social circumstances. It is unclear the extent to which there will be genuine local democratic ownership over the commissioning of services under the Bill.
249. Should commissioning powers be centralised into a National Care Service, Section 41 raises additional questions for the future of Local Government's role in the provision of services. At this stage, it is not explicitly clear whether councils meet the criteria to qualify as a reserved organisation able to bid for contracts for certain services, initial reading would indicate they will not qualify. If councils do meet the reserved criteria, COSLA would welcome clarity under which specific provision this applies.
250. There is also a need for clarity around the duration of a reserved contract. For example, if an organisation was successful in securing a reserved contract, and the contract term was 5 years, it is unclear whether the renewal contract could also be secured as a reserved contract. This is unclear as provision 41 (5)(d) states that an organisation is a qualifying organisation if they have "not been awarded... a contract for services concerned by the contracting authority concerned within the past 3 years." This system requires further clarity and explanation, not least whether it is open to Local Government participation.
251. Finally, if the Bill is passed as drafted, it is important these provisions are implemented in such ways which assist in tackling wider contextual challenges around system pressures, and do not exacerbate them.

## **Regulation of social services (Sections 42 and 43)**

252. Firstly, it is worth considering whether there is a need for two separate regulators, if there is a case for a single regulation body. Be that as it may, COSLA recognises Health Improvement Scotland's expertise and commitment to rights-based care, should they support the work of the Care Inspectorate. Considerations will need to be given on how the two regulators interlink current working practices, and the governance around this arrangement. If HIS were to charge a fee for intervention,

then further clarification is required on what circumstances this will be sought. Furthermore, a system to monitor and audit charging disputes will have to be developed.

253. As the Bill stands, it is unclear how the current powers proposed will affect Local Government. Currently, where there is a serious breach of regulation(s) or conditions of registration, an improvement notice will be issued under Section 62. Where an Improvement Notice has been issued to the Local authority by the Care Inspectorate, Scottish Ministers must be notified, and a copy provided to them. When the timescale has elapsed for meeting the terms of Section 62 without compliance, the Care Inspectorate can issue a notice of proposal to cancel registration under section 64. This will only be granted if the Care Inspectorate are able to provide evidence that if left in its current state, there will be continued serious risk to life, health or wellbeing. Currently Scottish Minister should also be made aware when an Improvement Notice has been deemed non-compliant within a local authority setting.
254. Considerations will need to be given on the governance of the proposed system as it is unclear who will be responsible for ensuring that suitable placements are found for vulnerable people. Currently this is the responsibility of the local authority, however, through the proposed National Care Service it seems this will now be transferred to Care Boards. A systematic approach to resilience planning which enables a rapid response with sufficient thought being given to the requirements of the community, combined with high quality local leadership at all organisational levels, is needed. This will need to be supported through synergies of health and social care strategic plans. Further clarity is required on what circumstances would result in a closure, what is the benefit of removing the enforcement notice process, and how will this be monitored and audited. As commissioners, local authorities hold critical relationships with providers and an excellent track record of supporting providers to make necessary improvements to sustain safe care provision. Indeed, local authorities monitor the quality of provision and support providers to make improvements before regulators act. Any implementation of the power to cancel the registration of a care service ought to involve appropriate local professional oversight.
255. If the amended Section 42 of the Bill allows for quicker closure time, or an ability to increase the amount of service closures, thought will need to be given to the current capacity within the system and the additional pressure this may add. Resilience planning will need to consider the availability of care homes, what facilities are on offer recognising clinical complexities, and whether there are trained staff available to ensure individual needs are met. All these factors will need to be funded to ensure services are adequately resourced.
256. Given this legislation is one of the largest reforms within the age of the Scottish Parliament, it is vital there is sufficient local capacity freed up to support the transition to any new arrangements should the Bill proceed. Ministers must take a proportionate and realistic approach to the capacity to withstand external inspections and prepare for the National Care Service.
257. COSLA continues to assert that care, and interventions in care, are best taken at a local level to ensure appropriate local expertise and judgement in decision-making.

## Final provisions (Part 4)

258. We would express concern that so much of the detail surrounding a National Care Service has not been set out within the Bill, nor indeed has it yet been developed or decided. The Bill relies heavily on future secondary legislation which by its nature is more limited in the breadth of scrutiny. The decision-making powers conferred on Ministers to make the statutory changes required to fulfil the vision and ambition of the National Care Service, informed through a to-be-established co-design process, makes full public and parliamentary scrutiny near impossible.
259. The regulation making powers set out in Section 46 of the Bill are wide reaching and with significant implications for public services across Scotland, most notably Local Government. COSLA have expressed concern at the proposals set out in the Bill and, throughout this submission, we have attempted to highlight to the Committee the very real consequences these structural reforms would have on our communities, our workforce, and on Local Government as a whole. The potential impact of these proposals and powers requires detailed and robust impact assessment, scrutiny, debate and, crucially, clear timelines for commencement and implementation that are not adequately afforded through secondary legislation.