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REPORT TO: Members' Library Service

MEETING DATE:

BY: Chief Executive

SUBJECT: East Lothian Council response to call for views from Scottish Parliament Health, Social Care and Sport Committee on the National Care Service (Scotland) Bill

1 PURPOSE

- 1.1 To present members with the East Lothian Council response to call for views from Scottish Parliament Health, Social Care and Sport Committee on the National Care Service (Scotland) Bill

2 RECOMMENDATIONS

- 2.1 Members are asked to note the response at Appendix 1

3 BACKGROUND

- 3.1 The National Care Service (Scotland) Bill was introduced to Parliament on 20 June and its accompanying documents were published on 21 June. The Bill sets out provisions to enable Ministers to transfer social care responsibility from local authorities to local care boards and a National Care Service. The Bill establishes a National Care Service; sets out provision for the processing of health and social care information; and sets out provision for the delivery and regulation of social care.
- 3.2 The Council responded to an initial consultation exercise on the proposal to establish a National Care Service, a copy of this response was lodged in the Members Library Service in November 2021 – **ref 114/21**. The report can be viewed here: [November 2021 MLS Reports](#)
- 3.3 The Bill, as published, includes the power to transfer Children's (Social Work) Services and Justice Social Work Services to a National Care Service using secondary legislation, but a final decision on this will not be taken until further public consultation and evidence gathering with key

partners has been carried out. The results of this consultation will be laid before the Scottish Parliament alongside further regulations. While the Bill has only just been introduced and will be subject to full parliamentary scrutiny it is anticipated that a process of assessment and co-design will be initiated while the Bill is progressing.

- 3.4 At its meeting on 16th August 2022, East Lothian Council granted delegated authority to the Executive Director for Education and Children's Services to approve and submit any response to a consultation on the NCS on behalf of the Council, after consultation with the Group Leaders and Councillor McIntosh. This was in recognition that it will not always be possible to bring a proposed response to a consultation exercise to a meeting of the Council for approval, given the likely short timescales involved. Copies of all consultation responses will be shared with Members through lodging these in the Members Library Service.
- 3.5 The Scottish Parliament Health, Social Care and Sport Committee launched a consultation on the detail of the NCS (Scotland) Bill on 8th July 2022. A working group, formed of officers from a broad range of Council services and officers from the H&SCP considered the questions and drafted a response on behalf of the Council. In line with the delegated authority as outlined at paragraph 3.4, the Executive Director for Education and Children's Services consulted Group Leaders and Councillor McIntosh prior to submitting the consultation response by its due date of Friday 2nd September 2022.

Consultation Response

- 3.6 In summary, the consultation response noted that East Lothian Council 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. It also set out that efforts need to be on improvements that can and should be made now, rather than the focus being on potentially costly and disruptive structural change. The implementation of further improvements, service redesign and embedding a person centred, relationship-based and human rights approach would be quicker, less disruptive and more effective without further structural upheaval.
- 3.7 It also noted that the framework nature of the Bill means it is not yet possible to assess if it will meet the aims of the policy objectives, the stated vision for the National Care Service (NCS) or the recommendations of the IRASC. A framework Bill, with much that is still to be decided, means that there are many uncertainties. The implications of this Bill are far reaching and significant and there are still many questions and unknown factors. In particular, we drew attention to the potential implications in respect of children's services and public protection. In our view, with sufficient resource, improvements could be made to service delivery, within the current governance arrangements and without the need for potentially damaging structural change.

- 3.8 The response noted concerns that removing local democratic accountability and transferring responsibility to Scottish Ministers is contrary to the principles of the Christie Commission and the European Charter of Local Self-Government, which the Scottish Parliament wishes to incorporate into Scottish law. {Article 4 (3) – Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements for efficiency and economy.}. The response also did not agree that taking a centralised approach would improve the delivery of services at a local level.
- 3.9 The response also noted that the policy memorandum appears to dismiss options for improvement within current governance arrangements. Bringing all social work services under the control of a single National Care Service could bring about greater synergy and closer working between different parts of social work. However, there are potentially very significant risks in breaking up the existing ‘whole system approach’ that is provided through social work being part of local government, in particular, within the sphere of public protection.
- 3.10 The response also noted that a local approach to service delivery is essential in the delivery of care. Centralisation has the potential to put at risk the effective collaboration and shared leadership that has been developed through Community Planning, Community Justice, Children’s Services and Public Protection Partnerships, and local community capacity building achieved through multi-agency locality planning with, and in, targeted communities. Without clarity on the number of care boards proposed, there is also a risk that the centralisation of responsibility and services under a National Care Service could remove or dilute this local approach to service delivery. In addition, the importance of close working between NHS and local government which has been supported by the integration of health and social care within local government has been evidenced during the COVID pandemic. The pandemic has shown the importance of the links between local authorities and their communities and local third sector organisations in providing the community resilience which is so vital during emergencies. The Scottish Government has relied on Local Government, which in turn relied on its close ties with communities and the third sector to deliver crucial services during and after lockdowns. The response noted that there is a very real risk that these links and close working relationships would be dissipated or even lost if responsibility for all social work and social care services is centralised within a National Care Service

4 POLICY IMPLICATIONS

- 4.1 There are no policy implications from this report. However, if the proposals contained in the National Care Service (Scotland) Bill are implemented they would constitute the biggest change to social work

services since the 1968 Social Work (Scotland) Act and result in the largest re-organisation of Local Government since 1995. It is therefore essential that the views of the Council continue to be reflected in the ongoing consultation processes.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The subject of this report does not directly affect the wellbeing of the community or have a significant impact on equality, the environment or economy.

6 RESOURCE IMPLICATIONS

- 6.1 Financial – none.
6.2 Personnel – none.
6.3 Other – none.

7 BACKGROUND PAPERS

- 7.1 East Lothian Council Response to the National Care Service (Scotland) Bill

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**Health, Social Care and Sport Committee Call for Views
National Care Service (Scotland) Bill**

**East Lothian Council
2 September 2022**

Appendix 1

General Questions

1. 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?

East Lothian Council 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 potentially costly and disruptive structural change. The implementation of further improvements, service redesign and embedding a person centred, relationship-based and human rights approach will be quicker, less disruptive and more effective without further structural upheaval.

We believe that it is essential that the provision of care is as local as possible, supported by professionals who know and understand communities best. Local systems, services and workforces are best placed to identify the specific needs of people and communities in their local authority area and to ensure that workforces have the knowledge, skills and resources to respond to these needs. We believe that local decision making and accountability, through local relationships and partnerships, ensures pace and flexibility, aligned to our local priorities and that current proposals could lead to an erosion of local accountability and democracy.

The framework nature of the Bill means it is not yet possible to assess if it will meet the aims of the policy objectives, the stated vision for the National Care Service (NCS) or the recommendations of the IRASC. There are too many uncertainties and too much that is yet to be determined. The implications of this Bill are far reaching and significant and there are still many questions and unknown factors. In particular, we draw attention to the potential implications in respect of children’s services and public protection. In our view, with sufficient resource, improvements could be made to service delivery, within the current governance arrangements and without the need for potentially damaging structural change.

The creation of a new National care Service will require significant resourcing and may lead to years of uncertainty and anxiety within the workforce, at a time when there are already recruitment and retention challenges, and possibly also amongst service users and carers. It also risks loss of momentum and progress with existing multi-agency collaborative improvement programmes. The complexity of transferring responsibility for one of Local Government’s largest, most complex and important services to a new national agency cannot be over-estimated. We note that previous structural reform to deliver a single agency such as with the establishment of Police Scotland or the Scottish Fire Service required significant additional funds and staff resourcing and there were areas of service risk for some time due to unintended and unanticipated consequences of the changes. We also note that there is not yet any publicly available evidence that, this has delivered better outcomes for people.

2. 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?

There is limited analysis and the absence of a compelling evidence base as to the root cause of why there is variability in the quality of social care services. The Bill has therefore been drafted without that root cause analysis and therefore there is no guarantee that a National Care Service in of itself will resolve any of these issues and risk that potential damaging structural change could result in poorer outcomes overall.

There appears to have been limited consideration of what further investment could be made to improve current service delivery now without the need for this scale of structural change which carries significant risk for service users as well as service providers and will take years and significant resources (staff and finance) to implement.

We would suggest that evidence is gathered around the experience of setting up other public bodies such as Police Scotland and Scottish Fire and Rescue Service.

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

We believe that removing local democratic accountability and transferring responsibility to Scottish Ministers is contrary to the principles of the Christie Commission and the European Charter of Local Self-Government, which the Scottish Parliament wishes to incorporate into Scottish law. {Article 4 (3) – Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements for efficiency and economy.} We do not agree that taking a centralised approach will improve the delivery of services at a local level.

The policy memorandum appears to dismiss options for improvement within current governance arrangements. Bringing all social work services under the control of a single National Care Service could bring about greater synergy and closer working between different parts of social work. However, there are potentially very significant risks in breaking up the existing ‘whole system approach’ that is provided through social work being part of local government, in particular, within the sphere of public protection.

A local approach to service delivery is essential in the delivery of care. Centralisation has the potential to put at risk the effective collaboration and shared leadership that has been developed through Community Planning, Community Justice, Children’s Services and Public Protection Partnerships, and local community capacity building achieved through multi-agency locality planning with, and in, targeted communities. Without clarity on the number of care boards proposed, there is also a risk that the centralisation of responsibility and services under a National Care Service could remove or dilute this local approach to service delivery.

The importance of close working between NHS and local government which has been supported by the integration of health and social care within local government has been evidenced during the COVID pandemic. The pandemic has shown the

importance of the links between local authorities and their communities and local third sector organisations in providing the community resilience which is so vital during emergencies. The Scottish Government has relied on Local Government, which in turn relied on its close ties with communities and the third sector to deliver crucial services during and after lockdowns. There is a very real risk that these links and close working relationships would be dissipated or even lost if responsibility for all social work and social care services is centralised within a National Care Service.

East Lothian Council continues to believe that staff, functions and assets in relation to the delivery of social care, should remain, wherever possible, with local authorities. It is not clear why the Bill allows for the transfer of a large proportion of the local government workforce, while prohibiting such a move for NHS staff. Further, there is very little detail or consideration of the significant implications for local authorities, not only in respect of workforce, but also in respect of council assets and liabilities, which Scottish Ministers would be empowered to transfer.

We are also very concerned at the reliance on secondary legislation which would give Ministers greater powers to make significant changes, without full parliamentary scrutiny. Several sections and parts of the Bill (for example, Parts 2 & 3) could proceed much faster if they were separated out from the NCS Bill as they are not contentious and do not rely on the creation of the NCS.

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

Since this is a 'framework' Bill it does not take account of many key factors that will need to be dealt with if the proposed NCS is to be created. It leaves too much to secondary legislation, regulations and guidance.

We are particularly concerned at the lack of detail about how the local authority workforce will be treated. The Bill is not explicit regarding the future employee status of staff working in social work and whether they would be TUPE transferred to the National Care Service or the proposed Care Boards (CBs). Further clarity is required to avoid any uncertainty about this and other issues. For example:

- Local authorities have 32 individual sets of terms and conditions of service; how would these be harmonised across the National Care Service or CBs?
- Will staff transferred to CBs be on local government, NHS or civil servant terms and conditions and collective bargaining arrangements?
- If CB staff remain under local government will their Terms & Conditions and salaries be set nationally and who would negotiate with employees? How would pay equality (and risks) be impacted?
- If services remain within local authority control (e.g. Care Homes) and the CB decides not to commission those services would the redundancy and other associated costs sit with the local authority, CB or National Care Service/ H&SCPs?

5. The Scottish Government proposes that the details of many aspects of the proposed National Care Service will be outlined in future secondary legislation rather than being included in the Bill itself. Do you have any comments on this approach? Are there any aspects of the Bill where you would like to have seen more detail in the Bill itself?

Professor Daniel has been appointed to lead a review on children's services. Whilst this is welcome, the review of adult social care and the review of children's services ought to have been conducted concurrently. In addition to the Daniel review, the Scott Review of Mental Health Law in Scotland is currently underway. The Government, within the policy memorandum has committed itself to reviewing Child and Adolescent Mental Health Services (CAMHS) and criminal justice review. The Government's response to these reviews could lead to significant changes to the Bill or to the secondary legislation. The inter-connectedness of these services mean they should not be considered as discrete decisions with assumptions about how and when they might be transferred without full parliamentary scrutiny. Since this is a 'framework' Bill it is not possible to assess if it will meet the aims of the policy objectives.

6. The Bill proposes to give Scottish Ministers powers to transfer a broad range of social care, social work and community health functions to the National Care Service using future secondary legislation. Do you have any views about the services that may or may not be included in the National Care Service, either now or in the future?

The scope of the National Care Service goes far beyond the consideration and recommendations of the Independent Review of Adult Social Care (IRASC).

The wholesale transfer to unelected boards of control and accountability of social care and separation from local partnerships within housing, homelessness services, leisure and education, risks the very outcomes that the Bill aspires to achieve. As such, East Lothian Council does not support the proposal to extend the scope of the NCS to include Children's Services, Community Justice, Alcohol and Drugs services and all social work functions.

Expanding the scope of NCS to include Children's Services is, in our view, contrary to the principles of GIRFEC and locality multi-agency planning for vulnerable children and families. There is no correlation between the consultation paper's proposals and the outcome of The Promise. The Promise requires transformational change and we are already over half way through year one of the 21-24 Plan. The required transformation straddles a ten-year plan against which we are making significant progress. Consideration needs to be given to the impact the creation of a National Care Service that includes Children's Services, and the risks associated with this, will have on our ability to meet the expectations of The Promise, and to bring about transformational change within the required timescales. The progress already achieved has only been possible due to Local Authorities prioritising the implementation of The Promise. The development of a NCS draws attention and resources away from this, meaning not only might momentum be lost but any existing progress could be undermined.

East Lothian Council is concerned that the centralisation of all social work and social care services within a National Care Service and as yet undetermined number of Care Boards presents a real risk that local need, local context and local initiatives could be lost. We continue to support local decision making about the most effective service model, based on, and reflecting, local circumstances, needs and priorities. East Lothian Council took the considered view not to include Children's services within the East Lothian Health and Social Care Partnership and recently moved Children's Services into a combined Education and Children's Service. This decision was taken because we see the value of even closer working between these two aligned services in order to achieve the desired outcomes to meet the principles of Getting It Right For

Every Child (GIRFEC). As the responsibility and accountability for the universal service of education sits firmly with local authorities, it would be detrimental to break that crucial link in ensuring consistency in meeting the principles of GIRFEC.

The commencement of the research into the impact of including children's services within the NCS is in itself recognition of the lack of evidence or data to support the proposals within the consultation and the powers included within the Bill. The focus of the Feeley review and the solution proposed by the NCS model for the problems he set out was never aimed at services for children. Whilst we welcome the research and look forward to engaging with CELCIS, it is of concern that by the time this concludes, arrangements for the NCS maybe further advanced and the opportunity to influence and shape the changes to ensure they meet the needs of vulnerable children and their families will be significantly reduced and subject to less parliamentary scrutiny.

The functions of Justice Social Work should not be transferred into the new service. While there is a component of social and health care to working with offenders and ex-offenders, there are other matters such as, housing, employability, community support, and welfare advice, along with the rehabilitation elements of the justice and community justice system which do not sit together with social work. That is why we have Community Justice Partnerships. Transferring responsibility for Justice Social Work from Local Government to a National Care Service and Community Health and Social Care Boards would add another unnecessary layer to the partnership working that is required to achieve the desired outcomes in relation to reducing re-offending.

The implications of any proposed transfer of Justice Social Work to a National Care Service would mean that critical services provided by local authorities for the effective community reintegration, and rehabilitation of, offenders would be disrupted and remain disjointed. In addition, there would be considerable disruption to the workforce at a time when they are trying to deal with the aftermath of, and recover from, COVID.

7. 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?

The proposal to create the new National Care Service is predicated on significantly higher levels of funding for social care than is currently provided. East Lothian council would suggest that the proposed investment in increasing access to social care services could be made without going through the legislative and disruptive structural change and potential risks to service users that would result from the creation of the NCS.

If this investment was forthcoming in the current system, in line with the Joint Statement of Intent with COSLA, without the significant structural reform and transfer of accountability to unelected boards, then issues such as charging for social care, eligibility criteria and waiting lists could be addressed by applying the provisions of the current legislative arrangements. This could also be achieved in a more timely manner within the current system as the processes and structures are already in place.

Impact Assessments

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

- **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**

Given the lack of any substantive detail in the Bill, it is difficult to assess whether the Impact Assessments are accurate.

Financial Memorandum Questions

9. Did you take part in any consultation exercise preceding the Bill and if so, did you comment on the financial assumptions made?

East Lothian council commented on the Consultation paper on the National Care Services issued by the Scottish Government in August 2021. At that time, only limited information was available therefore meaningful comments were not possible.

10. If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

The Financial Memorandum does not adequately address the areas that we and others highlighted as requiring further detail. Since many aspects of how the National Care Services is to be structured and organised (for example: which local authority staff are to be transferred and under what terms and conditions; how many Care Boards are to be established; and, what arrangements are being made in relation to VAT liabilities) under are still undecided the Financial Memorandum cannot provide the level of detail and certainty required.

11. Did you have sufficient time to contribute to the consultation exercise?

Given the scale and extent of change proposed we are of the view that the consultation period was too short. The fact that the Bill is a 'framework' and that so much still needs to be considered and is the subject of co-design with people with lived experience and it will be determined by secondary legislation, regulations and guidance suggests that more time should have been spent on the pre-Bill stage so that a fully worked up and comprehensive Bill would have been published.

Given the current statutory duties held by local authorities in all aspects of the proposed National Care Service and the significance of the proposals in Bill it is very concerning that Local Government was not involved in the development of the proposals prior to its publication.

There are concerns about the consultation itself.

The publication of the Scottish Government's consultation and the consultation period have come at a time when local authorities, health and social care services are still fully engaged with responding to the COVID pandemic with business continuity plan arrangement in place. Senior officers across local government, health and social care

services, voluntary and private sector providers and users and carers organisations were massively stretched and under pressure due to rising case numbers, staff shortages and growing demand pressures on the NHS, care home and home care services. The breadth and fundamentally significant implications of the Feeley Report and then the Scottish Government National Care Service consultation required more time for a considered and full response to be provided. Whilst we recognise that change may be needed and should not be delayed unnecessarily, it could be argued that the Scottish Government is acting with undue haste.

We had concerns about the format of the consultation. Many of the 95 questions asked provided only a choice of retaining the current system or the one option of a National Care Service as outlined in the consultation paper. The questions introduced bias and directed respondents to support the proposed National Care Service. For example, while several questions listed potential benefits from the service respondents were asked to provide dis-benefits or risks without prompted suggestions. The consultation paper provided very little information about what the proposal would mean for vulnerable adults, children and families who rely on social work and social care services. It is therefore very difficult to see how the service users and their carers could respond in a meaningful way to the 95 questions in the consultation.

12. If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the Financial Memorandum? If not, please provide details.

No - There remains a lack of detail and clarity regarding the impact of the National Care Service proposals on local authority budgets. There is still not enough information on what the estimates in the Financial Memorandum are based on.

There are widely diverging views on the actual cost of implementing the recommendations of the Independent Review of Adult Social Care from the £0.65m per annum estimate provided by the Review to over £1.2bn per annum, estimated by COSLA. Whilst these estimates pre-dated the recent steep increase in inflation.

The Financial Memorandum anticipates savings or efficiencies through shared services across the National Care Service. However, it does not acknowledge the loss of economies of scale for local government that would flow from transferring services to the NCS or Care Boards.

13. Do you consider that the estimated costs and savings set out in the Financial Memorandum are reasonable and accurate?

The figures are based on LFR 3 (Local Financial Returns) that are completed on an annual basis. There are health warnings around the accuracy of what is included in LFR3 as it was open to interpretation and arbitrary allocation of costs that could lead to wrong assumptions being made. There is acknowledgement within the Scottish Government that the LFR has a number of issues. Workshops have taken place to clarify expectations in 2020/21. There are changes to LFR3 for the 2021/22 cycle that may address some of the issues going forward. There are further workshops in the near future for the 2021/22 cycle. We would welcome a detailed breakdown of these estimated costs at a local level in order to provide a considered response. The

additional investment made in 2021/22 and 2022/23 in Health and Social Care is not included in the figures.

14. 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?

Local authorities cannot absorb any additional costs that arise because of the introduction of the Bill. If Scottish Ministers wish to progress this policy, they need to resource it fully from Scottish Government funds.

15. Does the Financial Memorandum 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?

It is noted that many of the figures presented are based on estimates with wide ranges. Given the uncertainty about key aspects of the proposal to create the National care Service and Care Boards it is impossible to say how accurate these estimates and margins are likely to be.

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