



## National Care Service Bill Stage 1 Scrutiny: Call for Evidence

### Response from UNISON Scotland

#### **In Summary: Ten Key Points about the Bill**

1. The primary purpose of a National Care Service is to address the care crisis. Dismantling social work, and degrading local government, is not a valid or effective response to the care crisis. Nor is it a route to high quality social care. The Bill is significantly flawed and would be better withdrawn and a process of engagement begun with councils, unions, NHS, service users and their communities to design a bottom up, grassroots review of social care to create a NCS that is based around nationally agreed standards, employment conditions, resourcing, but delivered locally by Councils and not-for-profit organisations working in partnership. This would create an opportunity to explore all aspects of the challenges facing social care and social work, creating a shared vision of the purpose and value base of social work and care in the context of stronger communities. This would also allow a shared and agreed approach to the balance between national standards, employment conditions and locally identified need.
2. UNISON remains committed to the quality, engagement, empowerment, Fair Work and accountability principles described by Derek Feeley in IRASC. Degrading a range of integrated local government services will undermine those important goals.
3. The Bill paves the way for extensive outsourcing and privatisation, placing profit before people. UNISON sits firmly with the people of Scotland in saying that quality care services put people before profit.
4. The Bill retains and expands the failed market approach to care thereby investing in unfair work and poor care quality
5. The IRASC vision of a human rights-based power shift to service users and workers has been lost to a power grab by central government, private companies and tax dodgers.
6. The Bill greatly undermines local government and local democratic accountability for high quality care services.
7. The Bill and associated publications deny a link between private ownership and poor care quality, but it is a recorded fact that complaints are more prevalent in the private sector where investment in staffing levels is demonstrably less.
8. All the key interventions for driving up service quality and standards (investment, sectoral collective bargaining in social care and a National Social Work Agency) can be achieved without the Bill.
9. It puts the future of up to 75,000 council workers and an unknown number of NHS workers into question.
10. The Bill lacks detail and relies on secondary legislation. This impedes proper scrutiny and risks weakening parliamentary democracy.

## Introduction

UNISON is Scotland's largest trade union with more than 150,000 members across the public, private and voluntary sectors. We are the largest trade union in social care, social work and across Scottish public services as a whole. In addition to crucial roles in the delivery and practice of social work and social care, our members are involved in the planning, commissioning, procurement, management, monitoring and regulation of social work and care services. Around 40 UNISON lay representatives serve in IJB governance roles.

## UNISON's Evidence

UNISON is a democratic lay-member led organisation. This written evidence reflects the experience of the workforce. It represents our sector committees and sub-committees including our Social Care Committee, our Social Work Issues Group and workers with a decade of experience in care governance as members of Integrated Joint Boards.

It reflects views gathered through a survey of our members in local authority social work services across Scotland. Our member survey, conducted during August 2022 (*presented in italics*) covering all areas of social work, all grades of staff, and all members of the social work team: paraprofessionals and administrative staff as well as registered social workers. Our members' voices are represented using quotations selected to reflect the views of the wider workforce.

## The Bill represents a fatal blow to local government in Scotland

The Bill presents a comprehensive assault on local government. Social work and social care currently account for a third of local government expenditure.<sup>1</sup> The centralisation under Ministers of such a strategically important service is a derogation of local authorities. The existence of councils as a tier of government is at stake if this attempt to remove local democratic control over social services succeeds.

The Bill means local authorities will lose their statutory duties and responsibilities for social services, duties they have held since social work became a statutory public service over 50 years ago.<sup>2</sup> The transfer of functions from councils to unelected quangos spells the end of publicly run and delivered democratically accountable social services for local communities.<sup>3</sup> The Bill means that councils will either lose their role entirely in the delivery of social services, as their staff (up to 75,000 in total) transfer to a Care Board<sup>4</sup> or become contractors alongside the voluntary and private sectors, with their services procured by Care Boards<sup>5</sup>.

Once their statutory duties are removed, local authorities will have no reason to employ social work or social care staff. The Bill has had to address this by introducing a clear legal basis for them to continue doing so.<sup>6</sup> It means some local services may in future be commissioned nationally by central government.<sup>7</sup> The bill discriminates against councils as future providers by

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<sup>1</sup> [A National Care Service will mean big changes and challenges for Scottish council funding - Institute For Fiscal Studies - IFS](#)

<sup>2</sup> <https://www.legislation.gov.uk/ukpga/1968/49/contents>

<sup>3</sup> National Care Service (Scotland) Bill, Section 27 ( Hereafter – NCS Bill)

<sup>4</sup> NCS Bill Section 31

<sup>5</sup> NCS Bill, Section 7

<sup>6</sup> NCS Bill, Schedule 4, Section 2

<sup>7</sup> NCS Bill Section 29

enabling contracts to be reserved for the voluntary sector only. The Bill also enables Ministers or Care Boards to grab any local government or NHS property assets they feel appropriate.<sup>8</sup>

UNISON has always argued that procurement law permits public bodies to commission services from organisations that are suited to the service required. We advance that argument to highlight the ability of Government to remove profiteering tax dodgers from care services. It is very disappointing that private companies have been retained in the proposed continuation of the market model for social care despite valid grounds for their exclusion, whereas the same equality of opportunity is not guaranteed for local authorities. The Bill will extend market mechanisms throughout social work and in to health services.

The bill, taken at face value, appears to protect NHS staff while other workers are placed in jeopardy. NHS staff are specifically exempted from transfer of employment by Ministerial diktat should health functions transfer to the NCS, guaranteeing their Agenda for Change conditions.<sup>9</sup> It is unclear whether this protection will prevent transferring staff out of the NHS by Health Boards should functions transfer to the NCS. This matter needs to be clarified urgently by the Scottish Government. Partly because staff deserve to know about their futures, but also because the answer to whether staff can be outsourced from the NHS gives an indication of how the NCS will be expected to operate. UNISON has always resisted the outsourcing of NHS functions and will do so again. It is likely that other unions would do the same.

While NHS staff acquire a degree of protection, the NCS Bill enables Scottish Ministers to radically change the identity, role, and function of the local government workforce.<sup>10</sup>

For council workers the NCS means insecurity, with uncertainty surrounding their future employer, pay, terms and conditions including pensions. They will either continue to be local government employees or TUPE transfer either to the employment of the NCS, or to an alternative provider.<sup>11</sup> Pay, terms and conditions and pensions of NCS staff will be determined by Scottish Ministers under arrangements still unknown.<sup>12</sup> Pay, terms and conditions for social workers once the NCS is established will be the responsibility of a National Social Work Agency. The Committee should note that TUPE does not guarantee the maintenance of existing pension arrangements. This obviously has implications for the individuals concerned, but mass transfer of staff out of the LGPS on the scale envisaged by the Bill could have repercussions for the local government pension schemes themselves.<sup>13</sup>

The Bill presents two very different options for current local government social work and social care services. The possibility that the NCS could *directly deliver* social work and social care services is the single most significant difference between the Bill and the proposals consulted on in 2021. The original proposal was for Care Boards to be local commissioning bodies, employing a relatively small number of staff in strategic roles only, who would transfer across from councils or HSCPs. In contrast, the Bill enables the mass transfer of staff from councils/HSCPs to Care Boards, with the Financial Memorandum costing the implications of a

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<sup>8</sup> NCS Bill, Section 32

<sup>9</sup> NCS Bill, Section 31 (2)

<sup>10</sup> NCS Bill, Section 31 (1)

<sup>11</sup> NCS Bill, Section 31 (4)

<sup>12</sup> NCS Bill, Schedule 2, Section 18

<sup>13</sup> NCS Bill Financial Memorandum p15

transfer of up to 75,000 social work and social care employees.<sup>14</sup>

**It is important that Committee members are clear what is at stake here. This is about the future of publicly provided social work and care along with the security of jobs and pensions.** The “framework” character of the NCS Bill, with radical powers delegated to Ministers, tends to obscure the scale and impact of the proposed change. Service users and workers are wholly reliant on the diligence of MSPs to ensure that the future of local government receives the detailed scrutiny it deserves.

### **Government proposals that can be made to work**

Degrading local government and local government services is unacceptable in plain terms, but it also deflects resources and attention from the primary task – ending the care crisis. Before attention, resource and parliamentary time was deflected into a debate about the future of local government, social care reformers had identified consensus around several key issues. Although the Bill is not fit for purpose, these initial gains should not be lost.

### **Independent Review of Adult Social Care**

We welcomed many key recommendations of the Independent Review of Adult Social Care (IRASC) led by Derek Feeley, specifically around sectoral collective bargaining for adult social care and implementation of Fair Work in Social Care. In particular we believe a substantial degree of national intervention is necessary to create a strong infrastructure for improved care standards in the form of sectoral collective bargaining arrangements and Fair Work.

We continue to work constructively with government to put these in place. While sectoral bargaining and Fair Work in Care formed part of the National Care Service consultation in 2021, they are not part of the Bill **and can be progressed independently of any structural reform.** The same applies to the proposal for a National Social Work Agency, also contained in the 2021 consultation paper but not part of the bill. **In our view most of the actions required to improve our social care and social work services can be achieved without this Bill.**

### **Staffing crisis**

Our frontline members gave harrowing evidence that unfair work has broken social care services. In the space between peak Covid and the looming financial crisis, many care workers are at breaking point. In a tight labour market, there is a clear consensus – the need for Fair Work in Care is now urgent. When the National Care Service was first announced it appeared to be a vehicle to take Scotland to both Fair Work and Fair Care. For reasons set out below, that shared agenda is now under threat, not least because the Fair Work and Fair Care provided by local authorities now faces outsourcing. Scotland needs a Care Service Bill with a primary focus on Fair Care.

### **System change**

At a structural level, UNISON’s many reps in social care governance give evidence that integration has failed at an institutional level. Rather than foster cooperation between NHS and local Government, the 2014 Act has led to three agencies who struggle to cooperate – HSCPs, NHS Boards and local authorities.

Although the position varies by locality, many strategic plans are only integrated on paper,

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<sup>14</sup> NCS Financial Memorandum p.15

funds are rarely integrated, implementation is undermined, and weak integration of budgets and services often undermines attempts to deliver a person-centred approach. Structural change is required to create clarity, purpose and momentum behind change. Fair Work in Care is a classic example of a policy that is good on paper and weak in implementation. On those high level, care crisis issues, there is cross-sector agreement. The Bill breaks that consensus.

Although leadership, finance and management functions are fragmented, workers report some success in making the best of the requirement to integrate more effectively in the frontline. Where leaders and bosses have failed to integrate, frontline staff have formed pragmatic and effective partnerships. Our members do not want services to lose the local arrangements where partnership works. An attack on councils risks having that effect.

The NCS Bill proposes radical centralisation as the means of driving local cooperation and integration. That is not the person-centred provision of accountable care UNISON can endorse.

### **Structural change could endanger Fair Work**

UNISON agrees that better design, commissioning, monitoring, enforcement and review are key opportunities to change the sector. We also agree that the system needs to change, but the system also needs investment. Although we agree in principle that change is required, the specific structure proposed in the NCS Bill will make the situation worse. For example, **Fair Work in local government is an asset we can't afford to outsource. Unfair care in private companies is a price we should no longer pay.** Commissioning should focus on services that put people before profit. The Bill is an alarming failure in this regard.

### **Fair work and human rights deficit**

Funders and commissioners are duty bearers and contracted services inherit those obligations under contract. One area of strong agreement with Government is the need for action on equality and human rights. UNISON supports the incorporation of global human rights standards and looks forward to the process of change.

However, contractual commitments to equality and human rights are not monitored, enforced or reviewed in the existing system. To retain UNISON's support for a rights-based approach, Government will need to ensure that the NCS Bill creates a service within which rights become a reality. Evidence of a rights-based approach to care is not clear in the NCS Bill as it stands.

The equality and human rights impact assessments do not address the adverse impact arising from the breakup and outsourcing of council services. There is no detail in ethical commissioning measures to reassure service users that existing rights will be retained, far less improved. This absence of a rights-based approach to the Bill and impact assessments does not bode well for the future of enforceable rights in new services.

### **Safety and wellbeing**

In the context of a failed or failing system, it was unsurprising that social care workers reported numerous pandemic related problems; most notably they shared distressing evidence of avoidable infections and deaths. It was also unsurprising that our members reported a disproportionate covid impact on equality grounds.

Having collated and reported that evidence, UNISON welcomed the initial commitment to a National Care Service. UNISON gave evidence to IRASC and gave a conditional welcome to Derek Feeley's recommendations. Part of the attraction of IRASC was the enhanced safety and

wellbeing of service users and staff under a rights-based approach.

The NCS Bill undermines that rights-based approach. And safety is a good illustration of a far wider problem in the NCS Bill.

- Why expand outsourcing when public services keep people safe and private companies don't?
- Why invest in tax avoidance when we know equity-backed care homes were linked to avoidable deaths? Public service investment keeps people safe and well.

Scottish Government should know we are totally opposed to the approach in the NCS Bill given the NCS Bill's emphasis on an expanding market for contracted services. There is no evidence to support the retention of unfair work in private care, and we certainly oppose the threat to safety and wellbeing from an expansion of outsourcing.

### **A person-centred approach**

UNISON remains on record as supporting the rights-based person-centred approach set out in IRASC. In particular, our members support the transfer of power to service users and workers as described by Feeley.

Under the NCS Bill as proposed, it is not clear how power will shift to the frontline. What the Bill does make clear is that power will travel up to Government. Lived experience groups are currently invited to co-design some of the details missing in what is described as a "framework bill", but the Feeley vision was surely about meaningful co-production of the services people receive day-to-day, rather than a seat at the table during the high-level design of a new national institution?

### **Fair Work in Care Implementation**

Finally, there is harrowing evidence about unfair work in care. Fortunately, the centralisation agenda set out in the NCS Bill has not adversely affected progress on the implementation of Fair Work in Care (FWiC).

Fair work arrangements are being developed through a conventional tripartite process of discussion and agreement. This dialogue sits outside the NCS legislative process. However, it is over three years since the Fair Work Convention reported, and given the consensus behind the need for change, FWiC progress has been painfully slow.

The link between FWiC and the NCS Bill is tightly focused and significant. Fair Work standards will be set by discussion and agreement. There is no need for legislation. However, the NCS Bill will define new rules for Ethical Commissioning. As a minimum, the Bill must ensure that all registered care providers conform to agreed minimum standards if the staffing crisis is to end and the move to care quality is to begin.

### **Care at a Crossroads**

This summary of favourable elements of the NCS process has a common theme. The initial vision was progressive, but the direction of travel has now changed. A powershift to service users and workers in the frontline has pivoted into a power grab by Government.

This Bill will mean the erosion of the quality, capacity, resilience, Fair Work and democratic accountability of local government. Social work and social care currently account for a third of

local government expenditure.<sup>15</sup> Councils are the resilient bedrock of Fair Work and Fair Care in the current system. **This is an asset to preserve and build around.**

It is irrational to embark on social care transformation by attacking Fair Care in councils, while expanding the unfair care of outsourced services. The project has lost direction. The following sections chart the dangerous waters ahead if the Bill proceeds.

**The Bill has as its aim “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?**

**The Bill will fail because it deals a fatal blow to local government**

The Financial Memorandum refers to the possible transfer of up to 75,000 social work and social care employees.<sup>16</sup> This amputation of social care and social work services from local government will have multiple adverse effects.

- Social work services will be damaged. Essential staff may leave. Service users will be impacted.
- Council care services will be damaged. Essential staff may leave. Service users will be impacted.
- Integrated local government services will be fragmented or broken. Services will be damaged.
- The financial and institutional resilience of councils will be significantly damaged

For council workers the NCS means insecurity, with uncertainty surrounding their future employer, pay terms and conditions including pensions. They will either continue to be local government employees or transfer either to the employment of the NCS, or to an alternative provider.<sup>17</sup> Pay, terms and conditions and pensions of NCS staff will be determined by Scottish Ministers under arrangements still unknown.<sup>18</sup>

We have already listed the serious adverse effects on local government employees and local government pensions arising from this Bill. MSPs also need to consider the damage to council service users.

Published impact assessments focus on the projected benefits of the NCS without interrogating the direct and indirect damage of closing local social services in their current form. The demography of council service users is heavily skewed towards people with protected characteristics. Closing social services as a council function, and dispersing them to quangos, will have a disparate adverse effect by race, gender, disability, and social class. It is not a necessary, effective or proportionate way of improving social services, not least because the

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[UNISON welcomes National Care Service recommendations in Feeley report - UNISON Scotland \(unison-scotland.org\)](https://www.unison-scotland.org/) :

<sup>15</sup> [A National Care Service will mean big changes and challenges for Scottish council funding - Institute For Fiscal Studies - IFS](#)

<sup>16</sup> NCS Financial Memorandum p.15

<sup>17</sup> NCS Bill, Section 31 (4)

<sup>18</sup> NCS Bill, Schedule 2, Section 18

evidence does not point to improvement of any kind.

**It is important that Committee members are clear what is at stake here. This is about the future of publicly provided social work and care along with the security of jobs and pensions.** The “framework” character of the NCS Bill, with radical powers delegated to Ministers, tends to obscure the scale and impact of the proposed change. Service users and workers are wholly reliant on the diligence of MSPs to ensure that the future of local government receives the detailed scrutiny it deserves.

### **The Bill will fail because it overlooks this damage to local government**

Degrading local government takes Scotland backwards to more outsourcing, not forwards towards Fair Care. The Bill is accompanied by Impact Assessments painting a rose-tinted picture of new service structures. There is little or no regard taken for the negative impacts arising from the decimation of local government.

Equality groups are disproportionately represented among existing social care and social work service users. Many are vulnerable. It is unrealistic to assess the impact of the proposed service transfers by focusing exclusively on the perceived benefits of the transfer. More importantly, it is unlawful to dismantle local government without researching and evaluating the adverse impact on equality grounds.

Government must therefore conduct a more open and realistic impact assessment of the losses and damage arising from the demolition of local government.

*“I have witnessed the ongoing erosion of social work as a valuable profession over the last 25+ years. I think the NCS will continue the process of privatisation by the back door, dressing it up as a positive change in Social Work, when in fact it’s fundamentally all about saving money, and contracting out as much social work-related functions as possible. As a Social Worker, I have never felt so scared or depressed about the future of my profession and the implications for both the workforce and the people that we serve.” (Response to UNISON survey on NCS proposals)*

UNISON is concerned that the NCS Bill will degrade many existing services rather than focus on the quality improvements required. The NCS Bill is solely an enabling bill; it provides only the skeleton of the future Care Service. None of its provisions provide any information about *how* the quality and consistency of services will be improved. The Financial Memorandum is explicit that the creation of a new delivery structure (the NCS) does not guarantee delivery of government commitments because “...these are policy decisions to be made or sustained under the new framework, not necessary consequences of the Bill provision.”<sup>19</sup>

### **The Bill will fail because it attacks Fair Work & Fair Care**

We have already described how the Bill means local authorities will lose their statutory duties and responsibilities for social services, duties they have held since social work became a statutory public service.

The transfer of functions from councils spells the end of publicly run and delivered, democratically accountable social services for local communities.<sup>20</sup> However, these transfers

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<sup>19</sup> NCS Financial Memorandum p.4

<sup>20</sup> National Care Service (Scotland) Bill, Section 27 ( Hereafter – NCS Bill)

are also an attack on the Fair Work and Fair Care that the Government seeks to create.

Location, service integration, fair pay, fair work, local accountability, and regulatory control are key reasons why council care is better than private care. By ending direct public provision of care by councils in its present form the Government is closing a large chunk of such Fair Care as exists in the present system.

### **The Bill will fail by setting worker against worker**

The Bill reassures NHS workers that their role, location and conditions are protected.<sup>21</sup> The Bill heralds the expansion of outsourced services. This shift to contract providers is at the expense of council staff.<sup>22</sup> This is illogical on grounds of care quality (above) but also undermines the cooperation and partnership essential for care integration. The evidence from UNISON members is very clear: frontline care workers cooperate effectively across sector divides. The barriers to integration of strategy, planning, finance and delivery are at an executive level. Council workers and NHS workers have integrated their roles despite the barriers to integration. Council workers should therefore share the same security and reassurance the Bill rightly offers NHS staff.

### **The Bill will fail because it panders to the market**

UNISON members are staggered to find that after the long experience of the care crisis, and the recent experience of Covid, the private market for care is being retained and expanded.

The government could use the bill to end profit from care and the race to the bottom created by the privatisation of social care since the 1980s. The government could have made it a founding principle of the NCS to exclude profit from care, thereby creating a National Care Service genuinely on a par with the NHS.<sup>23</sup> **Instead, the bill locks in social care as a commodity in a market rather than a public service for citizens.**

*“We have historical evidence that moving towards privatised, financial competition leads to poor service, poorly paid staff, lowering of standards, greater insecurity among staff and low morale. Detracts from the purpose of social work.”*

In making the choice to actively discriminate against local authorities, the government seems to have gone beyond the arguments made by the IRASC, that who provides social services makes no difference in terms of the quality of services provided to citizens. It has also chosen to ignore the mounting evidence of harm associated particularly with large private providers with private equity involvement. The bill still leaves money exiting the system via profit, rents, bogus internal corporate charging structures etc. Many of these lucrative payments are untaxed.

Recent reports for the STUC<sup>24</sup> and UNISON<sup>25</sup> have demonstrated the human and financial cost of providing care as a commodity rather than a service.

- A quarter of all private care homes are the subject of a Care Inspectorate complaint. The

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<sup>21</sup> NCS Bill, Section 31 (2)

<sup>22</sup> NCS Bill, Section 31 (1)

<sup>23</sup> NCS Bill, Section 1 (NB Ministers have talked of an NCS having the as the same status as the NHS. The Bill in fact puts the NCS on a superior footing. Services, property and possibly staff can be transferred to the NCS from the NHS – but not the other way round)

<sup>24</sup> Profiting From care, STUC <https://stuc.org.uk/files/Reports/Profiting-from-Care-Report.pdf>

<sup>25</sup> Death, Deception and Dividends <https://unison-scotland.org/wp-content/uploads/Death-Deception-Dividends-Dec-3.5.pdf>

equivalent for non-profit facilities is 6%.

- Private care homes invest 20% less in staffing than non-profit providers.
- Of the millions spent on residential care every year, over £13,000 per bed vanishes in profits or internal corporate charging systems. A non-profit system would spend that money on care.<sup>26</sup>

Learning the lessons from the outsourcing of adult social care to the private and third sector is crucial. Rather than clamp down on tax evasion and poor care quality, the Bill has an express aim of expanding this model into new areas of services provided to vulnerable people.

*“This feels like privatisation of a service / services by the back door”*

*“When you have to 'bid' for services, the successful bidder is the service with the lowest running costs. This will be a 'race to the bottom' for quality of services offered and cuts to staff training, pay and conditions.”*

The Bill therefore retains and expands the market while removing statutory duties and responsibilities from councils and actively enables the expansion of the market to new areas.

The Bill as presented allows for increased privatisation of social care services despite the evidence that public service delivery and non-profit delivery of care results in higher care standards. Instead of learning the lessons from the outsourcing of adult social care to the third and private sectors, **the government appears, through this Bill, to be ready to repeat the same mistakes across a wider field of service provision.**

*“Councils are not for profit organisation and should therefore not be bidding for social care. they should be providing what is in the communities best interest”*

### **The Bill will fail by setting social work on the road to market competition and market failure**

The Bill provides for two possible futures for social work. Care Boards may take over direct delivery of social work services with local authority staff transferring under TUPE. Or alternatively social work services may continue to be provided by local authorities, but under a procurement arrangement with a Care Board.<sup>27</sup> This implies that local authorities will compete against voluntary sector and private sector providers for contracts to deliver social work services. The effect of the Bill is to open up to the market social service functions currently provided 'inhouse' by local authorities in a financial context in which, we believe austerity will continue to drive cost-driven procurement decisions, to be made in future by Care Boards. By expanding the market, the Bill will lead to increased spending on bureaucracy and the diversion of resources away from needs.

### **The Bill will fail because it is biased against public sector provision**

As we have said, UNISON members' evidence is that integration works on the ground, through day-to-day cooperation in the frontline. Partnership. Mutual respect. Cooperation. Where integration fails is at the organisational level where there are institutional tensions, strained

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<sup>26</sup> <http://stuc.org.uk/files/Reports/Profiting-from-Care-Report.pdf>

<sup>27</sup> NCS Financial Memorandum p.3.

relations and the hoarding of scarce resource. The last thing the NCS needs is a deterioration in the relationship between care providers.

The Bill is overtly biased against local government. This bias puts the success of the NCS project at risk. The loss of all social services from councils will further destabilise local government in Scotland. In terms of resource allocation, powers, duties, role and function, Scotland's councils will be greatly diminished. The bias is evident across all provisions of the Bill.

In addition to the loss of functions to an expanding market for care, councils are further restricted in the work they can “bid” for. **The Bill makes it possible to exclude councils from contracts across the whole spectrum of social services and instead to reserve these exclusively for third sector organisations, excluding councils.**<sup>28</sup>

It is not clear whether Government has considered the legality of the proposal to strip councils of services, put those activities out to tender, and then ban councils from “bidding” for the work they previously performed. The general principle of commissioning is that there should be equal treatment of bidders, something Government tend to be very quick to argue in defence of private contractors.

The outcome of the Bill will be to eliminate public delivery of public services and boost large third sector providers. Giving Care Boards the ability to exclude councils from procurement exercises across virtually every area of social services creates understandable concern and anxiety for the workforce about their security of employment. We expand on this later.

### **The Bill will fail if reforms are underfunded as before**

The financial climate in which the Bill provisions take effect will be critical. Both social work and social care are in crisis: we simply cannot separate the improvement of quality and consistency from the question of resources. Audit Scotland identifies underfunding as the key reason for the focus on cost rather than quality within current social care commissioning.<sup>2930</sup> It has also identified a very significant shortfall in spending on social work.<sup>31</sup> This explains the rationing of social work and social care resources through tighter criteria and higher thresholds leaving thousands without the support they need.<sup>3233</sup> Integration has largely been hindered by partner agencies fighting over scarce resources within an underfunded system.

Between 2013/14 – 2017/18<sup>34</sup>, local authorities suffered a real-terms cut in Scottish Government funding of 7% and a 4.2% real-terms cut<sup>35</sup> over the past 7 years, disproportionately higher than other areas. The aim is for a National Care Service to be in place by 2025/26. Assuming the Bill is passed, councils face a further 7% real terms cut in funding from Scottish Government in the run up to the NCS being established, as announced in the 2022 Spending Review. The 25% uplift associated with establishing a National Care Service (an additional £840 million) is for delivering the recommendations of the IRASC. Other than

<sup>28</sup> NCS Bill Section 41 Procurement

<sup>29</sup> [https://www.audit-scotland.gov.uk/uploads/docs/report/2022/briefing\\_220127\\_social\\_care.pdf](https://www.audit-scotland.gov.uk/uploads/docs/report/2022/briefing_220127_social_care.pdf) p.11

<sup>30</sup> [https://www.audit-scotland.gov.uk/uploads/docs/report/2016/nr\\_160922\\_social\\_work\\_0.pdf](https://www.audit-scotland.gov.uk/uploads/docs/report/2016/nr_160922_social_work_0.pdf)

<sup>31</sup> <https://www.audit-scotland.gov.uk/publications/social-work-in-scotland>

<sup>32</sup> [Keeping the Promise](#)

<sup>33</sup> [Setting the Bar](#)

<sup>34</sup> <https://spice-spotlight.scot/2018/06/08/local-government-funding-the-story-behind-the-figures/>

<sup>35</sup> [https://www.audit-scotland.gov.uk/uploads/docs/report/2022/nr\\_220525\\_local\\_government\\_overview.pdf](https://www.audit-scotland.gov.uk/uploads/docs/report/2022/nr_220525_local_government_overview.pdf)

adult social care, no additional resources have been pledged for services to be included in the NCS.

The only assessment of needs and financial costings produced is for the specific right to short breaks for carers to be introduced by the Bill. There is no evidence of a comprehensive needs assessment having been conducted to accompany the Bill and inform the design of the NCS.

To improve the quality and consistency of service provision across Scotland, the government must have information about the current and projected scale of unmet need in communities.

**Otherwise, the ambition of the NCS will be confined to achieving a level of provision that fails to meet need at a broadly similar and consistent level across the country.** The financial memorandum is clear – the care that is actually provided through the NCS will depend on secondary legislation, future government policy and future budget decisions<sup>36</sup>.

### **The Bill will fail if the sole driver for change and quality improvement is Scottish Ministers**

The rationale for the Bill rests on claims that a combination of direct oversight by Scottish Ministers (achieved by removing duties and responsibilities from local authorities) combined with a more actively managed market system (via ethical commissioning) is sufficient to improve the consistency and quality of services. We are not convinced that there is an evidential base for the claim that a centralised system with reduced local accountability will be more effective in resolving specific difficulties in social services. No information is available to evidence how this will be achieved; how exactly ethical commissioning will work and critically, how it will be enforced through providers.

The absence of an evidence-based rationale is especially true of social work. This Bill is the single most significant piece of legislation for social work since the 1968 Act. **And yet the Bill's rationale is not based on any vision of what social work should or would look like within an NCS.** This flaw has run throughout the process to date. The IRASC displayed a very narrow conception of social work and, like the 2021 NCS consultation paper, gave no serious consideration to it. The absence of research, consultation, analysis, and preparation for social work centralisation risks catastrophic disruption of vital, complex, and highly regulated services targeted at various vulnerable or at-risk communities.

An absence of due diligence was clear at the time of the 2021 consultation with regard to what currently works. Reform has been embarked on without a comparative evaluation of existing models, and assessment of the weaknesses of a reliance on private sector providers and of adequate funding for local authority social work and care services.

The 2021 consultation paper included a proposal for a National Social Work Agency to be created within government as part of the NCS. The rationale presented for a NSW Agency is linked to how a NCS might in practical terms have an impact on the quality and consistency of social services. However, as with ethical commissioning, the National Social Work Agency is not part of the Bill and no further information is available to evidence what it might do or how. As a result it cannot be scrutinised by the Committee. **However, we can read from its exclusion that any benefit that might be gained from a NSW Agency could in fact be achieved without any of**

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<sup>36</sup> NCS Bill Financial Memorandum, p4

### **the structural reform contained in the Bill.**

It is difficult to have confidence in a piece of legislation which contains so little detail and where almost everything relevant to delivering improvement in the quality and extent of provision is left to secondary legislation and post legislative action.

*“My concern is that these changes are about saving money and will level down services. I've not seen any concrete plan about what the NCS would do for children and family social work, how it would be funded? How pay will be awarded equally? The long term plan to retain social workers?”*

UNISON's position is as follows:

- Central Government DOES have a key role to play in the removal of organisational barriers to effective integration;
- However, this changemaking role should be precisely defined and not become a trojan horse for complete, centralised control over strategy, design, delivery and quality;
- In terms of central Government overreach, the annexation of social work reform will damage services to vulnerable people, impose detriment on social workers and undermine the original objective of improving adult social care;
- Local accountability of regulated services is an established, effective and highly valued asset within social care and social work and must be retained.

### **Our view is that a stable, respected and valued workforce is the key component in driving up social care standards across Scotland.**

To improve the quality and consistency of social care and social work services the government should:

- improve workers' rights, improve terms and conditions for staff in social care by introducing sectoral collective bargaining;
- remove profit from care and begin a process of moving to a not-for-profit social care model by in-sourcing key and core services to council direct provision;
- increase not diminish local democratic oversight and control of community-based social care and social work services;
- increase levels of funding for councils to deliver and support services.

Unfortunately, this Bill does the opposite of this. It creates additional stress and insecurity for a workforce already over stretched and struggling to cope with demands resulting from the public health emergency. Our members are apprehensive for the future.

*“Stability is key for staff and clients. This is added stress in an already extremely stressful role and the significant stresses of clients who need continuity.”*

*“Will we be made redundant? Will we still have a salary will it affect our pension? “*

*“There will be constant uncertainty for staff. There is likely to be a decline in people training to be social workers.”*

*“This could impact on terms and conditions and result in uncertainty within the workforce. This could lead to staff leaving the sector and compound the current social*

*care crisis which we are experiencing.”*

Whether to directly deliver or procure social work services is described as ‘decisions to be taken locally as care boards are established, following careful options appraisals.’

As already mentioned, while not in the Bill, the consultation paper proposed the creation of a National Social Work Agency as a unit within the NCS, sitting within government. The NSWA will be responsible for workforce planning, training and development. It appears to be the government’s intention that social workers – possibly all social work staff, but this has not been confirmed - will be removed from local government pay bargaining arrangements and, according to the Financial Memorandum, their pay rates “rationalised within a single service” under control of Scottish Ministers <sup>37</sup>

Although not part of the Bill, it appears that the harmonisation of pay and conditions is an underlying aim, and this will happen regardless of whether staff transfer to the NCS. In our view this will create consequent pressures for the achievement of equal pay across all staff groups.

Scottish Ministers will also determine the pay, terms and conditions including pensions of all social care staff who transfer to Care Boards. In parallel, but separate to the Bill, work is progressing on a sectoral bargaining scheme for social care workers. Desperately needed in any case, it becomes more urgent as thousands of social care staff are removed from current collective bargaining arrangements in Local Government and the NHS. Whether these arrangements will match up to the existing public sector arrangements remains to be seen. Agreements via these arrangements will need to be able to be applied and enforced against hundreds of employers in the private and voluntary sector.

Local authority social care staff – care at home, residential care workers – along with social workers who TUPE over will not have protection for their pensions. Social work and social care members have significant concerns regarding the transfer of pension rights. Indeed, there are concerns about the impact on the local government pension funds themselves.

UNISON has been working constructively with government and a range of partners to implement Fair Work in Social Care and establish sectoral bargaining arrangements. However, it is obvious to all that labour is the major cost in delivering social services; in a system where profit taking is still allowed any significant effort at generating ‘value for money’ is likely to come at the expense of the workforce; it would be naïve to think otherwise.

**The proposed harmonisation of pay, terms and conditions will likely lead to a levelling down unless adequate additional government funding is made available.** We see no evidence that this is likely to be forthcoming. We welcome the progress being made towards delivering sectoral collective bargaining arrangements for social care, but these need to have teeth, by ensuring that mandatory collective agreements become incorporated contractual rights for social care staff whoever their employer. There must also be progress on agreeing effective arrangements for employee voice in social care through trade union recognition.

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<sup>37</sup> Reference financial memorandum.

## **Is the Bill the best way to improve the quality and consistency of social work and social care services?**

*“This is treating Social Work/Care services like a business. Our most vulnerable members of society are not businesses, they are human beings and deserve that dignity and respect.”*

*“Centralising social work will not improve the service - properly funding and staffing it will!”*

No, for the reasons already given. There are also further issues which the Committee needs to consider. Our members have highlighted – based on their experience of service planning and delivery - a range of potential unintended consequences arising from the Bill that carry a risk to service users and the services they rely upon. **This Bill represents the worst of both worlds – not only will it fail to address its intended aims, but it is also likely to create new problems.**

There is much learning to be had from previous centralisations of services – notably the creation of a national police service. Heavy costs can result when the complexities and level of risks involved are underestimated, particularly when cost savings are a driver. These are complex issues which we merely note for your attention.

### **The costs of a market approach**

Should local authorities become providers in a market for social work and care services one concern is that they are likely to develop many of the problems already entrenched within the third sector. That is an inability to plan for the longer term, insecurity over contracts causing staff retention difficulties and an ever-increasing proportion of management time spent on marketing and preparing bids rather than managing services and focusing on improvement. Replacing direct public provision of public services with a market system diverts resources away from matters of quality.

*“the first thing which occurs to me is a high level of job insecurity. Preparing to launch a bid for a major contract is a distraction from the day to day work of helping to improve people's lives. Many jobs will depend on winning or losing a contract. Such insecurity is bad for the service. ”*

### **The wider costs for council services**

*“Services in my area are supplemented by LA reserves and I fear that there will be a reduction in resources. This will result in poorer services and outcomes for individuals and this will lead to more complex cases and complaints for social workers.”*

*“Removing SW from LA's will decimate LA's and destroy the joint working arrangements we have now.”*

The Bill means the removal from the local government block grant of a sum equivalent to one third of their current revenue spending. The financial implications for councils are significant and could further undermine their financial stability. Councils allocate spending to social work and social care based on local priorities and per capita spending varies across Scotland. The reallocation of budget to the NCS has implications for local council tax, carries risks for the sustainability of services at a local level, and has potential to destabilise the core systems of councils such as common services. The removal of such a large part of council budgets will have an impact on other service provision and will necessitate restructuring. The potential

destabilising effect on the local government pension schemes has already been mentioned.

The centralisation of services, including the national commissioning of some types of social work services to meet specific complex and specialist needs, could have unintended adverse impacts. For example, it could result in top-down planning which undermines the sustainability of specialist in-house local authority social work services as well as disrupting valued and long-established local relationships. Concurrent work programmes such as the Strategic Review of funding for violence against women and girls services link with this and illustrate the issues.

### **Undermining participation and accountability for service users**

Pushing accountability upwards to ministers and out of local councils is a centralising measure which will reduce accountability to the individuals and communities who receive services. Local democratic control of social services provides a mechanism for direct accountability to service users in local communities. This will not exist in the National Care Service. Instead of their local councillor people will have a complaints system, as they do with their energy provider. UNISON favours the location of power and decision making in accountable forums that are as close to service users as possible. From a service user or low paid worker's perspective, Ministerial accountability might address concerns about system failure at a national level, but this offers little or no remedy for failed or failing services at a local level.

Core to the government's Scottish Approach to Service Design is the participation of individuals with lived experience in the 'co-design' of services. The main emphasis of the IRASC was on improvement through empowerment of people with lived experience. We support that, but centralisation **will undermine** the ability to engage locally with those with lived experience, as local authorities have been doing across a range of service provision. Codesign and collaboration by its nature needs to be done at as local a level as possible. Nothing has been set out which explains how power will be pushed down to service users and to staff – instead the bill centralises power. Local decision making and local accountability has a value that should not be discarded lightly.

The focus on consistency across the country misses the point that services need to be appropriate to local needs and circumstances within the national standards and guidance that exist and can be enhanced. Centralisation is contrary to local democratic decision-making. Services will be less democratically accountable and less responsive to local needs. It could also weaken the structures of community planning functions and partnerships should Ministers determine delivery models or priorities.

### **Undermining Integration**

*“At present joint working between social work and education is more effective than between social work and health. This is due to education and social work being employed by the same organisation. Removing this impacts on the ability to share information, communicate, build relationships and advocate for service users.”*

*“It would destroy all the hard work we workers have already done in making links with other agencies. It's taken years to make these links and this proposed change would be detrimental to social work services as a whole.”*

*“Social work works hand in hand with housing, education and all other services. If working with adult with learning difficulties it would be important to work with housing and education if they are leaving education to understand needs currently LA have systems in place for this and put clear systems in place, **to remove social***

***work erodes this. Likewise working with families will include housing, justice, education and we must have a whole system approach***

While the Bill will remove from local government its statutory duties and responsibilities for social services, it provides for a staged transfer of functions into the National Care Service. Adult services, adult protection and care for adults with mental health needs will be removed from local authorities by the end of 2026, while further public consultation will be required before decisions are made about transferring children’s services or justice social work functions.<sup>38</sup> Whether temporarily or permanently the effect of the bill will be to fragment the social work family and undermine integrated working.

Any future inclusion of Children’s and Justice Social Work Services in the NCS would create great risks to the delivery of these services by removing them from local council responsibility. The overall effect of the bill will be to undermine the integration of local services and the strategic approach taken at local level between social work, social care and other essential community services like early education and childcare, schools, housing and homelessness prevention, and employability. Indeed given the wide powers that the Bill gives to them Ministers could decide that many of these services should no longer be council responsibilities but should be NCS functions.

### **IT and information-sharing**

There are widespread concerns about the implications for information sharing and for IT systems if social work and care services are transferred to an NCS including IT-related costs.

*“Communication and sharing information can be a challenge but this would lead to more difficulties.”*

*“Currently we have excellent joint working as we have shared databases etc. But this will be lost if we are employed by different agencies.”*

### **If not, what alternative approach should be taken?**

The approach that the Scottish Government is taking is fundamentally mistaken. The underlying logic of the Bill is stated with admirable candour in the Financial Memorandum: *“to help ensure the market for social care as a whole remains vibrant and stable which will ensure continuity of quality social care provision.”*<sup>39</sup>

It is the stated view of the Scottish Government that the way to improve services is to have them as part of a ‘vibrant market’. The idea that the way that quality is sustained in services – particularly the services relied on by the most vulnerable - is by putting them into markets is pure Thatcherism. We reject this entire premise. Not least because we have had decades of marketisation in care, with each expansion failing to resolve existing problems. If a market in care was going to deliver – it would have done so by now. Not only does the proposed NCS continue this failed model of marketisation and outsourcing, it expands it into many other areas (Children’s services, Criminal Justice Social Work etc).

Resources in the areas that are proposed to be covered by the NCS need to be sharply

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<sup>38</sup> NCS Bill, Section 30

<sup>39</sup> NCS Bill Financial Memorandum p4

increased. The Scottish Government is promising an increase in spending but as the Bill makes clear – the setting up of the NCS will in and of itself not improve funding... *“However, these are policy decisions to be made or sustained under the new framework, not necessary consequences of the Bill provisions.”*<sup>40</sup> The Spending Review to 2026/27 makes no identifiable commitment to increase resources for social work services. Our members say that financial austerity is now the main barrier to improved integrated working and meeting the needs of individuals and their families.

*“Everything comes down to a battle for resources.”*

*“In my local area I feel we have good networking with colleagues from housing, community nursing etc but feel that services are still disjointed despite integration being in place for several years, **largely due to lack of funding and reduction in services available**. I do not think this will change if responsibility is moved to the National Care Service”*

*“Joint working has become fragmented due to individual workloads and budgets across all sectors.”*

*“Bidding for lottery money and seeking 3rd sector investors should not be what we depend on to run a service.”*

Our members perceive this Bill as an outsourcers’ charter – it’s about removing service provision from the public sector (local authorities) with its higher employment standards – and giving it to lower cost third sector providers.

*“Social work will be in danger of becoming peripheral and potentially vanishing altogether as the 3rd sector and private providers will be seen by managers as a cheaper option.”*

*“Multi agency working may be a thing of the past if community resources are being put out to tender which could lead to different service users having a variety of different professionals engaging with young people. this could create a struggle to build professional relationships and a sense of trust within residential child care houses.”*

**An approach should be taken which removes the profit from care. Care should be provided in the community, for the community, as a service not a commodity. A priority should be determination to end profit from care.** The government accepted the recommendations made in the report of the Independent Care Review (‘The Promise’) to end the model of profit from care in children’s services.<sup>41</sup> The ICR report states: *“Scotland must avoid the monetisation of the care of children and prevent the marketisation of care...Scotland must make sure its most vulnerable children are not profited from...Scotland needs to take a different approach to how it invests in its children and families.”* The Scottish Government has not explained why it has changed its mind and now believes a market system enabling profit from care need not be removed for children and should be continued and expanded for vulnerable adults.<sup>42</sup>

We would urge the Scottish Government to withdraw this Bill and rethink its approach. We note

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<sup>40</sup> NCS Bill Financial memorandum p4

<sup>41</sup> [Action needed on “dysfunctional” children’s social care market - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604422/action-needed-on-dysfunctional-childrens-social-care-market-2019.pdf)

<sup>42</sup> [Care Review Reports – Independent Care Review](https://www.independentcare.org.uk/reports/care-review-reports-independent-care-review) P.111

that the Welsh Government is also looking at setting up a National Care Service. Their starting point is that “Social care will remain a responsibility of local government and continue as a public service, embedded in our shared commitment to equalities and human rights and where the service user voice is clearly heard.”<sup>43</sup>

The outsourcing of staff from either Local Government or the NHS should be explicitly ruled out in any plans the Scottish Government brings forward.

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

We disagree with most of the Bill. It starts from a flawed premise and promises to do terrible damage to Scotland’s democratically elected councils, threatens the jobs and prospects of thousands of public servants, and will fail to resolve the crisis in care. We think the Bill should be radically amended or withdrawn.

The Committee asks for specific amendments. This is a challenge in many respects. It is impossible to suggest amendments to things that we do not know – and for vast areas of responsibility and concern – these are to be decided after the Bill is passed.

We will however provide the committee with some changes that should be made. We suggest amendments more in the spirit of highlighting failings in the Bill that should concern anyone wishing to see the establishment of a real national care service that will tackle the crisis in care. The following list is far from comprehensive.

#### **Chapter 1**

The National Care Service principles

- *Add* no profit from care
- principle (g) on fair work should be strengthened to refer to all aspects of fair work, and hold to action on compliance and enforcement
- The principles could and should be strengthened by adding more here on voice of the workforce, subsidiarity, care planning and decisions about care being made as close as possible to the communities concerned.

#### **Section 12 Further provision on the Charter –**

b) “have particular regard to the importance of eliciting the views of”— *add* “(iii) the recognised Trade Unions in the areas covered by the National Care Service”

Sections 15 & 16 deal with a complaints service and how complaints should be handled.

Commissioner for Ethical Standards in Public Life, Commissioner for Children and Young People, Scottish Commission for Human Rights, Scottish Information Commissioner, Scottish Public Services Ombudsman, Standards Commission for Scotland.

The bill enables any of these to be designated responsibility for the NCS complaints process –

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<sup>43</sup> <https://gov.wales/written-statement-national-care-service-expert-group>

OR for powers/functions regarding complaints to be taken away from them and reallocated as part of an NCS complaints process. We do not think that the removal of responsibilities from any of these bodies would be helpful. (We would also note that currently people who are having problems can go to their local councillor rather than phoning a national helpline).

Sections 26 gives Scottish Ministers the powers to transfer functions from councils to the National Care Service. These could be amended to specifically exclude social work services, or children's services. Or deleted entirely. (If amended, Section 30 consultation instructions would be redundant)

Section 27 gives Scottish Ministers the power to transfer functions from the NHS to the NCS – this could be amended to prevent the outsourcing of functions from the NHS. Or deleted entirely.

Section 31. – Section 31 (1) Gives Ministers the power to transfer people out of the employment of Local Government. Section 31 (2) specifies that Ministers “may not transfer a person from the employment of a health board or a special health board into the employment of another person.” This seems to be clear cut discrimination against Local Government staff who are, it seems, unworthy of the same protections as NHS Staff – if this section IS setting up two tier rights then Section 31 (1) & (2) should be amended to give *all* staff the same rights to remain with their employer. If it does not prevent outsourcing of staff from the NHS then the Scottish Government needs to clarify this quickly (for the avoidance of doubt, outsourcing of NHS staff will be contested by UNISON)

Section 41 – procurement. The proposed amendment to the The Public Contracts (Scotland) Regulations 2015 (S.S.I. 2015/446) should be changed rather than “Contracting authorities may reserve to qualifying organisations the right to participate in procedures for the award of reservable contracts” should be changed to “must reserve”.

In Section 41 (5) it is scandalously anti democratic that the list of non profit organisations that can be allowed to seek to deliver care has been designed specifically to exclude local authorities – they should be specifically listed as qualifying organisations.

In schedule 2 of the Bill, section 3 alters the Freedom of Information Scotland Act 2002 (FOISA) to add Care Bords as a category of body which comes under the scope of Freedom of Information. This should be added to, so as to ensure *that any and all* bodies which provide services for Care Boards come under the scope of FOISA for the services they provide. If this does not happen then there will be a massive drop in transparency and rights as services shift from councils and the NHS (which are covered by FOISA) to third sector and private providers which are not.

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

As outlined elsewhere in this response – we believe the Bill is unfit for purpose and should be withdrawn. Suggestions as to what could be added or removed should be read in that context.

A vast amount of detail essential for proper scrutiny of the Bill is missing. Amongst matters

presented on a ‘pass the legislation and then we will tell you what we intend to do’ basis are;

- The number of care boards and the geographic areas they will cover;
- The membership of the boards and their relationship with the national NCS structures;
- The duties, functions and services they will provide, both directly and commissioned from other bodies;
- Workforce, employment and contractual arrangements (including transfer of staff from local authorities);
- the NCS charter;
- The complex and likely contentious issue of data sharing.

The Bill should make an explicit commitment to removing profit from care. The provisions which discriminate against councils should be removed.

We have outlined elsewhere in this response the provisions we would like to see in relation to the protection of democratic accountability and the future and well-being of staff who deliver public services. Local Government staff should have the same protections from outsourcing as NHS Staff. Trade unions should be specifically included in the list of those whose views must be elicited by the Minister for strategic planning purposes.

The Bill as presented will see a massive decrease in the transparency of service delivery. Councils and the NHS are covered by the Freedom of Information Act 2002 (as are IJBs). The Bill states that care boards will be subject to FOISA – but does not extend the coverage of the Act to those contracted to provide services by Care Boards. So as services are outsourced from councils and the NHS to third sector or private providers – they will also move out of the scope of FOISA.

**The Scottish Government proposes leaving the details of many aspects of the proposed National Care Service to 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?**

The Government has declared this “the most significant public service reform” since the creation of the National Health Service in 1948.<sup>44</sup> The government cannot have embarked on such a large and complex undertaking without an idea of its destination.

It is a democratic affront that everyone with an interest – from service users to the workforce, to statutory bodies – is being left in a state of uncertainty over major elements of what the NCS will look like and how it will operate. All of this will be provided later via secondary legislation which Parliament has little scope to amend. Instead of scrutinising the government’s plans, Parliament will have to spend this time trying to discover what these plans are merely to secure answers to fundamental questions.

By failing to set out transparently and comprehensively what its version of a National Care

Service is, the Scottish Government has deprived everyone with an interest the opportunity to engage in a meaningful democratic process. If an employer embarked on a restructure affecting up to 75,000 employees based on a business case so lacking in information, we would be complaining about the failure to meaningfully consult. This is an elected government denying Parliament the opportunity to carry out meaningful scrutiny of legislation.

Our experience of government engagement events so far, is that the government has no answers to crucial questions on workforce matters. Worse, it appears only now to be starting to think these through.

This underlines our impression of the 2021 consultation on the original proposals: the poor quality of the consultation paper and the apparent absence of essential groundwork and research having been conducted to inform the proposals.<sup>45</sup> This included inadequate consideration of children's services and implementation of the Independent Care Review for looked after children ('The Promise') a fact which motivated The Promise Scotland to commission an independent analysis of the NCS consultation responses<sup>4647</sup> and has led to subsequent reparation work by Scottish Government.<sup>48</sup>

The legislative process is one dimension of the problems in the government's approach to the development of a NCS. UNISON has placed on record its serious concerns about the role of KPMG in the design work and Price Waterhouse Cooper in the consultation process and the conflict of interests which this represents.<sup>49</sup> The involvement of two rapacious companies who have reaped the benefits of private sector failures in delivery of public services at home and abroad. What this signifies in terms of the government's approach to this most significant public service reform does not instil confidence.

### **Are there any aspects of the Bill where you would like to have seen more detail in the Bill itself?**

- The Bill fails to specify- the number of care boards and the geographic areas they will cover.
- The membership of the boards and their relationship with the national NCS structures.
- In particular, UNISON has around 40 senior reps who promote Fair Work in care through their governance role on Integrated Joint Boards. We are concerned that the Bill gives no indication of how the value of that work will be retained.
- The duties, functions and services they will provide, both directly and commissioned from other bodies.
- Workforce, employment and contractual arrangements (including transfer of staff from

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<sup>45</sup> The Government has had to conce

<sup>46</sup> [Fiona Duncan-One question and one question only: a question without a simple answer - The Promise](#)

<sup>47</sup> [National Care Service Consultation Analysis - The Promise](#)

<sup>48</sup> [Keeping the Promise implementation plan - gov.scot \(www.gov.scot\)](#)

<sup>49</sup> [First Minister must rescind National Care Service contracts awarded to PwC and KPMG, says UNISON - UNISON Scotland \(unison-scotland.org\)](#)

local authorities).

- What the NCS charter will be.
- There is little detail on the complex and likely contentious issue of record sharing.
- We are uncertain whether NHS staff will be protected from outsourcing.

**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?**

As we have made clear we think the Bill is unfit for purpose and should be withdrawn. We have a clear view of what services we think should be legislatively outsourced from being publicly provided and put into market – none.

**Do you have any general comments on the 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?**

As the Financial Memorandum makes clear, the setting up of a National Care Service will not by itself deliver any greater level of investment in services “...*these are policy decisions to be made or sustained under the new framework, not necessary consequences of the Bill provision*”<sup>50</sup> we do not therefore feel that the estimated set up costs of between £241 - £527m<sup>51</sup> represent a sensible use of resources.

The fragmentation of services between third and private sector providers will inevitably lead to losing economies of scale. The shift from directly providing services to having to continually prepare contract bids will inevitably divert efforts and resources at the expense of service provision. Almost by definition a ‘vibrant market’ is one with a variety of competitors, most of which will fail.

As mentioned elsewhere, neither the Bill nor the Financial Memorandum make any attempt at assessing unmet need. So we will have a system based on a level of provision which fails to meet need at a broadly similar and consistent level across the country.

The Bill will centralise funding of all social services under Scottish Government ministers. The capacity of locally elected councils to decide priorities and make efforts to provide particular services for which there is felt to be a greater than usual need locally, and then fund those services via their own resources will be zero. Instead, all funding decisions will be taken by a Scottish Minister – based on plans which must meet the Minister’s approval, prepared by the Minister’s hand picked nominees. This is unlikely to make for locally responsive or sustainable spending decisions around local priorities.

We believe that the Bill has serious implications for council functions well beyond those that are to be stripped from them and centralised. The loss of one third of their funding will have

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<sup>50</sup> NCS Bill, Financial Memorandum p4

<sup>51</sup> NCS Bill, Financial memorandum, p6

implications for how able a council is to sustain employment and facilities after one third of their budget is removed. The weight of councils in local economies will be sharply reduced and they are likely to have to shed staff in core areas such as HR, IT, facilities management, transport, cleaning etc. The extent to which remaining services will become more expensive to provide due to loss of economies of scale is something that seems not to have been considered by the Scottish Government.

There are inherent risks to clinical staff and financial governance by splitting responsibility for NHS services. The Bill also creates risk by introducing a lack of clarity about the body responsible for overall health planning, commissioning and governance. The clinical professional leadership lines are cloudy at best introducing risk to an environment already overstretched, where workforce capacity and resilience is under huge pressure, this must not be underestimated.

**UNISON Scotland**

**September 2022**

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