

## NATIONAL CARE SERVICE – OVERVIEW OF CONSULTATION RESPONSES

### BRIEFING NOTE FOR NHS LANARKSHIRE BOARD MEMBERS

#### 1. Purpose of Report

##### 1.1. The purpose of the report is to:

Provide NHS Lanarkshire Board Members with an overview of the Scottish Government's published analysis of the responses to its consultation on A National Care Service for Scotland published on 10 February 2022; and raise awareness of the significance and scale of the proposals ahead of legislation being brought forward.

#### 2. Background

##### 2.1. On 9 August 2021, the Scottish Government launched a consultation on A National Care Service for Scotland to seek the public's views ahead of the creation of a National Care Service (NCS):

<https://www.gov.scot/publications/national-care-service-scotland-consultation/>

##### 2.2. This followed on from the Independent Review of Adult Social Care (IRASC) report, which was commissioned to recommend improvements to adult social care in Scotland, primarily in terms of the outcomes achieved by and with people who use services, their carers and families, and the experience of people who work in adult social care:

<https://www.gov.scot/publications/independent-review-adult-social-care-scotland/>

##### 2.3. The IRASC took a human-rights based approach and the final report was published in February 2021. It concluded that whilst there were strengths of Scotland's social care system, it needed revision and redesign to enable a step change in the outcomes for the people in receipt of care. It provided a number of high-level areas of focus and recommendations including:

- Ensuring that care is person-centred, human rights based and is seen as an investment in society.
- Making Scottish Ministers responsible for the delivery of social care support with the establishment of a National Care Service to deliver and oversee integration, improvement and best practice across health and social care services.
- Changing local Integration Joint Boards to be the delivery arm of the National Care Service, funded directly by and reporting to the Scottish Government.
- The nurturing and strengthening of the workforce.
- Greater recognition and support for unpaid carers.

##### 2.4. The Scottish Government stated its commitment to implementing the recommendations of the IRASC. The National Care Service for Scotland consultation was focused on exploring the suggestions for significant cultural and system change that would need to be supported by primary legislation and new laws to ensure the governance and accountability across the system to deliver successfully for people.

The proposals set out within the consultation document were informed by but not limited to the recommendations of the IRASC.

- 2.5. The reforms proposed represent one of the most significant pieces of public service reform to be put forward by the Scottish Government; and have the potential to be the biggest public sector reform in Scotland for decades.
- 2.6. The consultation closed on 18 October 2021. The Scottish Government published the consultation analysis on 10 February 2022:  
  
<https://www.gov.scot/publications/national-care-service-consultation-analysis-responses/documents/>
- 2.7. The NHS Lanarkshire prepared, agreed and submitted a response to as part of this process.
- 2.8. Overall, responses were received from 1,291 respondents, many of which were organisational responses. It was also clear from some organisational responses that they were representing the views of a wider body of constituents.
- 2.9. The analysis of the consultation feedback will be used to shape and develop new legislation. A Bill is expected to be introduced in the Scottish Parliament in summer 2022. The legislation is expected to be extensive and complex; and is likely to take at least a year to be scrutinised by Parliament. The Scottish Government intend the NCS to be fully functioning by the end of the parliamentary term in 2026.

### 3. Overview of Consultation Analysis

- 3.1. The published document acknowledges that the consultation process itself attracted a substantial number of comments; and that the analysis of responses should be considered in light of these comments. Many respondents highlighted issues such as the length of the consultation questionnaire; the relatively short space of time in which they could prepare a response; the lack of detail around the proposals; and the nature of some of the questions which were thought to lead the respondent to a particular answer.
- 3.2. Improving Care for People  
The consultation document pointed to a difficulty for social care in Scotland in being able to consistently scale up good practice – partly due to lack of investment but also due to the many complexities of different professional governance and regulation structures, multi-agency working and the different cultures that underpin practice across the sectors.

**A majority of respondents thought that the main benefits of a NCS taking responsibility for improvement across community health and care services would be more consistent outcomes for people accessing care and support across Scotland; and better coordination of work across different improvement organisations.**

The risks identified included the potential loss of the voices of people accessing care and support and care workers; the impact on local services; the loss of an understanding of local needs and local accountability; the variation of needs across

Scotland especially where more rural and remote areas such as the Islands are concerned; staffing concerns with regards to retention and morale; the potential for increased bureaucracy; and disruption to those areas that currently work well as the changes are implemented.

### 3.3. Access to Care and Support

The consultation document referred to how the IRASC labelled eligibility criteria as a 'barrier to accessing care', with supported people describing a 'maze of benefits'; a complex system that is challenging to navigate; and that the support received depends on where they live.

In respect of which routes respondents would use to access care and support), the options most likely to be used were speaking to a GP or another health professional; a national helpline; or national website or online form. Speaking to another public sector organisation or a drop in centre were the least popular options. The majority of respondents thought that a lead professional to coordinate care and support would be appropriate at an individual level.

Respondents were almost unanimous that they or their friends, families or carers should be involved in their support planning. There was also a majority in agreement with the statement that "decisions about the support I get should be focused on the outcomes I want to achieve to live a full life". Respondents also expressed strong support for a single plan under the Getting It Right For Everyone National Practice model alongside an integrated social care and health record. It was thought by many that these measures would streamline processes and make the system easier to navigate.

### 3.4. Right to Breaks from Caring

The term 'respite' usually refers to support which enables a carer to have a break. While the term 'respite' is widely understood, it can be contested as implying a burden or negative representation of the relationship in which care takes place. The consultation document therefore referred to 'breaks from caring' or 'short breaks'. The Carers Act gives carers the right to support to meet their eligible needs. The Carers Act does not use the term respite and does not create an automatic right to breaks. Instead, it requires the need for a 'break from caring' to be considered as part of carers' wider rights to support.

Around two thirds of respondents thought that there should be a universal right to a break from caring; and with a majority valuing personalised support over a more standardised support package. Around half thought that flexibility and responsiveness were more important than certainty of entitlement.

### 3.5. Using Data to Support Care

The consultation document posited that there is a wealth of data available about individuals in receipt of care and support, but it is not always easily available – including to service users and their carers – or used for maximum benefit. It presented a NCS as an opportunity to meet expectations around how information is used to provide and support care, across all care settings and social care decision

making at all levels. It noted that the NCS and the proposed Community Health and Social Care Boards (CHSCB) would be subject to the Freedom of Information (Scotland) Act 2002 (FOISA), but also raised the possible extension of those requirements to bodies that either exercise functions of a public nature or have a contract with a Scottish public authority (which could include private or voluntary sector providers).

A large majority of respondents agreed that there should be an integrated and accessible social care and health care record; and that information about an individual's health and care needs should be shared across the services that support the. There was support for legislation to ensure that care services and other parties provide information in line with common data standards. Concerns were raised by some in relation to data security and General Data Protection Regulation; cybersecurity; and the implementation risks of large national IT systems.

### 3.6. Complaints and Putting Things Right

The consultation document described how a robust, credible system that people (or their advocates) can access easily to provide feedback and complaints is necessary for a well-functioning system.

There was relatively high support for a charter of rights and responsibilities and agreement that there should be a Commissioner for social care. It was thought that a Commissioner would give people accessing care and support a voice and provide assurance that complaints would be addressed properly. Concerns related to fears of an additional layer of bureaucracy and to structural issues such as independence.

### 3.7. Residential Care Charges

The consultation proposed to increase the sums paid for Free Personal and Nursing Care for self-funded care home residents to the levels included in the National Care Home Contract or consider alternatives, such as revising means testing, to assist in ensuring self-funding residents are treated fairly in their financial assessment.

Respondent opinion tended to lean towards the view that residents in care homes should make some contribution to the costs, particularly in terms of food and rent. There was less agreement that care home upkeep should be something for which contributions should be expected, such as cleaning, food preparation, transport, maintenance, furnishings and equipment. There was also a majority view that the current means testing arrangements should be revised.

### 3.8. National Care Service – Case for Change

The consultation document highlighted a conclusion articulated within the IRASC that a key problem is a lack of national accountability and leadership for social care support.

The majority of those that responded to this question agreed that Scottish Ministers should be accountable for the delivery of social care through a NCS. The main themes emerging from the responses to this question related to the need to avoid adding additional bureaucracy; maintaining local accountability; the role of local

authorities; and the challenges faced by rural and remote areas, including the Islands.

### 3.9. Scope of the National Care Service

#### 3.9.1. Children's Services

The consultation document acknowledged that the provision of children's social work and social care services is inextricably related to the provision of services to adults. It proposed that children's social work and social care services should be located within the NCS to ensure a more cohesive integration of health, social work, and social care. This consultation proposal went beyond the IRASC recommendations.

Overall, the majority of respondents agreed that Children's Services should be included in the NCS. A number of key stakeholders however did express concerns about the proposals, with several suggesting that more evidence on the likely benefits of the proposals is required. There were a number of risks identified here by individuals and organisations, including the potential loss of a local dimension to responding to need; and the potential loss of the link to education.

#### 3.9.2. Healthcare

The consultation document indicated that it would also possible to consider the NCS and, in turn, CHSCBs taking responsibility for the commissioning and procurement of a range of health services, similar to (and potentially wider than) the range of services currently delegated to IJBs. This included CHSCBs managing GPs' contractual arrangements; and might include a revisiting of the distribution formula to support rural and remote areas. The proposals did not envisage a wholesale change in employment status for people in the NHS - rather that robust commissioning and procurement arrangements be in place taking account of clinical and care governance.

The majority of respondents agreed that the proposed NCS and CHSCBs should commission, procure and manage community health care services. The main reasons given in support of the proposals related to a more streamlined and consistent service; and improved accessibility for people accessing care and support. Reasons given by those who disagreed with the proposals included the availability of funding; and perceptions of the existing relationships between health and social care.

The most frequently cited benefits of CHSCBs managing GPs' contractual arrangements were better integration of health and social care; and improved multidisciplinary team working. The most frequently cited risks were unclear leadership and accountability requirements; and fragmentation of health services.

#### 3.9.3. Social Work and Social Care

The consultation proposed that duties and responsibilities for social work and adult and children and families' social care services should be located within the NCS.

The most frequently benefits of social work planning, assessment, commissioning and accountability being located within the NCS cited by respondents were more consistent delivery of services; and better outcomes for people accessing care and support and their families. Risks identified included a loss of local understanding; the potential loss of accountability; and the risk that social work would be overshadowed by other services.

### 3.9.5. Nursing

The proposals highlighted the need for professional nursing governance and assurance across community health and social care services of a similar standard to that provided for registered nurses hospitals.

A majority of respondents agreed with the proposed leadership role of Executive Nurse Directors; and that the NCS should have responsibility for overseeing and ensuring consistency of access to education and the professional development of social care nursing staff, standards of care and governance of nursing. There was also strong agreement with the proposal that Executive Nurse Directors should have a role in the proposed CHSCBs.

### 3.9.6. Justice Social Work (JSW)

The consultation document referred to evidence put forward by the IRASC of where integrated arrangements were working well under IJBs and their delivery arm, Health and Social Care Partnerships; and that this was especially the case where all social care, social work and community based healthcare were delegated to its greatest extent.

A majority agreed that Justice Social Work should be included within the remit of the NCS. Reasons given included the need to keep all forms of social work together; and the fact that offending behaviour is often linked to other care needs. Those who disagreed tended to say that the proposed NCS is too large and centralised; and that there is a need to reflect local requirements. The main benefit was thought to be a more consistent delivery of justice social work services. Around half of respondents to the question on risks selected less efficient use of resources; worse outcomes for people accessing care and support; poorer delivery of services; and weaker leadership of justice social work.

### 3.9.7. Prisons

The consultation document highlighted that responsibility for healthcare in prisons was transferred to the NHS in 2011 and is delegated to integration authorities as a result of the Public Bodies (Joint Working) (Scotland) Act 2014. However, social care in prisons is not integrated and continues to be delivered by the Scottish Prison Service.

A majority of respondents agreed that responsibility for social care services in prisons should be given to a NCS. Reasons given included better support for prisoners with mental health problems or learning disabilities; and smoother transitions at the point of release.

### 3.9.8. Alcohol and Drugs Services

The consultation stated that governance and accountability for alcohol and drugs services is challenging given that services range across the NHS, local authorities, and third sector organisations.

A majority of respondents agreed that Alcohol and Drug Partnerships would have the benefits of providing greater coordination of Alcohol and Drug Services; and better outcomes for people accessing care and support. Confused leadership and accountability was viewed as the main drawback of the Partnerships. Three quarters agreed that they should be integrated into the CHSCBs. Eight in ten agreed that residential rehabilitation services could be better delivered through national commissioning.

### 3.9.9. Mental Health Services

The consultation document referred to evidence of inconsistent integration of mental health care and social care to the detriment of service users.

Around three quarters of respondents agreed that the list of mental health services provided in the consultation document should be incorporated into a NCS. In response to the question on how best to link the mental health care elements into a NCS, suggestions included quicker referrals; the use of multi-disciplinary teams; and better sharing of information across services.

### 3.9.10. National Social Work Agency

The consultation document pointed to their being no single national body tasked with having oversight and leading social workers' professional development, education, and improvement. Terms and conditions are set by individual employers, resulting in local variations in social workers' pay and grading.

There was agreement on the potential benefits of a National Social Work Agency as outlined in the consultation: improving training and continuous professional development; supporting workforce planning; and raising the status of social work. Most respondents agreed that the proposed Agency should be part of a NCS; and that the Agency should have a leadership role in relation to social work improvement; social work education; and a national framework for training and development.

### 3.9.11. Reformed Integration Joint Boards: Community Health and Social Care Boards

A majority of respondents agreed that CHSCBs should be the sole model for local delivery of community health and social care in Scotland. Benefits mentioned included greater standardisation across Scotland; and helping to improve equality of access to services. Some concerns were expressed about the potential lack of local decision making; and that a "one size fits all" approach would not work. The majority agreed that CHSCBs should also be aligned to Local Authority boundaries.

A range of roles were suggested as potential members of the CHSCBs, including people with lived experience and frontline workers. There was a view that their involvement should be meaningful and that these members should not be included in

a tokenistic way. In line with this, there was a strong majority in support of the proposal that all CHSCB members should have voting rights.

A majority of respondents agreed that the CHSCBs should employ Chief Officers and their strategic planning staff directly. Other comments in relation to this question referenced the need to avoid unnecessary bureaucracy; and for strong leadership.

### 3.9.12. Commissioning of Services

"Commissioning" and "procurement" are terms used generally to describe how goods and services are planned and obtained. The consultation proposed that the NCS would develop and manage a National Commissioning and Procurement Structure of Standards and Processes for ethical commissioning and procuring of social care services and supports.

A majority of respondents thought that a NCS should be responsible for developing a Structure of Standards and Processes. A similar proportion agreed that a Structure of Standards and Processes would help to provide services that support people to meet their individual outcomes. Some thought that local as well as national considerations should be taken into account. A smaller proportion, but still a majority, agreed that an NCS should be responsible for market research and analysis. Comments here related to the need for independent research; and consideration of local circumstances.

A majority also agreed that there would be direct benefits in moving the complex and specialist services as set out to national contracts managed by the NCS. Comments here relate to the fact that the current system is perceived as disjointed; people should get the same help wherever they are; and the need to maintain an understanding of local needs.

### 3.10. Regulation and Scrutiny

The consultation document proposed that scrutiny, inspection, and regulation of care services and the workforce should be undertaken independently of the NCS.

There was a general agreement amongst respondents with the 10 Principles proposed for regulation and scrutiny. Several respondents noted that care should be taken not to overburden providers with too much regulation or scrutiny; and that regulation should be proportionate. The Scottish Human Rights Commission and the Equality and Human Rights Commission suggested that there should be explicit reference to human rights legislation in the Principles. Overall comments related to the need for the Principles to be clear; in Plain English; and to reflect the views of people with lived experience.

There was also strong support for the proposals outlined for additional powers for the regulator in respect of condition notices; improvement notices; and cancellation of social care services. Other comments in regard to the powers of the regulator included the ability to disbar providers on the grounds of poor performance; and more unannounced visits. There was strong support for the regulator having a



market oversight function. Around nine in ten thought that this function should apply to all providers, not just large providers. There was support for the proposal that the regulator should have formal enforcement powers which enable them to inspect care providers as a whole as well as specific social care services. A large majority of respondents agreed that the regulator's role would be improved by strengthening the codes of practice to compel employers to adhere, and to implement sanctions resulting from fitness to practise hearings. There was also a view that all workers in the care sector should be regulated, with Social Work Assistants and Personal Assistants mentioned in particular.

### 3.11. Valuing people who work in social care

The consultation document highlighted the work of the Fair Work Implementation Group to ensure the workforce is recognised as a central pillar to the high quality outcomes expected.

There was strong support amongst respondents for the concept of the Fair Work Accreditation Scheme. There was a view that such a scheme would help underscore the value and importance of people who work in social care. Improved pay and conditions for people working in the care sector were also supported. Some respondents highlighted issues such as the need for parity of pay and terms; and conditions across all sectors (including the private and third sectors) and between the NCS and NHS; and the need for more investment in the workforce as a whole.

The majority of respondents were in agreement that a national forum should be established to advise the NCS on workforce priorities; terms and conditions; and collective bargaining which would include workforce representation, employers and CHSCBs. It was suggested that a national forum would be an opportunity to give employees a voice and would make the sector more attractive to recruits and increase engagement of staff.

The majority of respondents agreed that the NCS should set training and development requirements for the social care workforce. There was also support for a national approach to workforce planning.

Personal assistants are individuals directly recruited by people in receipt of direct payments of Self-directed Support (SDS) and/or Independent Living Fund (ILF) funds from among the general population. The majority of respondents agreed that all Personal Assistants should be required to register centrally in the future. There was also widespread agreement that national minimum employment standards for the Personal Assistant employer and promotion of the profession of social care personal assistants would be useful.

## 4. **Conclusion**

- 4.1. The reforms proposed here represent one of the most significant pieces of public service reform to be put forward by the Scottish Government; and have the potential to be the biggest public sector reform in Scotland for decades.
- 4.2. Audit Scotland's most recent publication on Social Care in Scotland emphasised that there is much to do to improve social care across Scotland; and that:

- The Scottish Government's commitment to a NCS indicates that they recognise the significance of the challenge - but that the need to address the significant and pressing challenges facing social care in Scotland cannot wait to be solved by a new NCS
- The Scottish Government should identify where improvement can be made now, drawing on existing work and recommendations and bringing together key stakeholders.
- The pandemic has exacerbated the long-standing challenges facing the social care sector, highlighting the precarious situation of many vulnerable people who rely on social care or support. It has highlighted the need to invest in a social care system, based on human rights, that meets people's needs and improves outcomes.
- The importance of ensuring that additional investment is used effectively to make the changes required in social care and that services do not continue to be funded and delivered in the same way.
- The importance of strong, consistent strategic leadership. There are no sustainable development issues associated with this report.

4.3 The analysis of the consultation feedback will be used to shape and develop new legislation. A Bill is expected to be introduced in the Scottish Parliament in summer 2022. The legislation is expected to be extensive and complex; and is likely to take at least a year to be scrutinised by Parliament. The Scottish Government intend the NCS to be fully functioning by the end of the parliamentary term in 2026.

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