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Dear Ms Haughey

Self Directed Support Scotland welcomes the chance to respond to the call for written evidence on the draft amendments proposed by the Scottish Government to the National Care Service (Scotland) Bill.

We have set out our response below but wish to take this opportunity to share our frustration with the consultation process and particularly the lack of accessible information that has been provided to make sense of the amendments to the Bill, letter from the Minister, updated Policy Memorandum and related papers with which individuals and organisations are required to become familiar in order to submit an informed response.

We feel that this failure to provide an accessible process to enable individuals to engage with the process will inevitably limit the variety and content of responses, particularly from individuals who will be most affected by the proposed introduction of the National Care Service – supported people, carers and frontline workers.

We also acknowledge that many of the proposed amendments to the Bill reflect the accountability agreement reached between Scottish Government, COSLA and the NHS in July 2023. We wish to share our view that the process by which this deal was reached, and the major consequences it has had for the Bill itself, has had a significant impact on our confidence in the Bill to bring about the essential changes needed to reform and improve social care support in Scotland. We also believe that the agreement has fundamentally undermined the parallel codesign process in which people with lived experience had put good faith, energy, and time to try to influence the change they so strongly feel is needed.

**1. What is your view of the proposed National Care Service strategy (see proposed new sections 1A to 1E)?**

Strongly support

Tend to support

**Partly support and partly oppose**

Tend to oppose

Strongly oppose

Undecided / no opinion

We partially welcome the proposal to develop a national strategy for the National Care Service.

However, we are concerned that the proposed method of creating the strategy is not robust enough to give us confidence that it will be focused on the most appropriate priorities. While the Bill references consulting the “public” (1D 1) b)), the National Care Service Board, NCS Local Boards and other authorities, we believe this process will be inadequate to ensure the experiences and feedback of people accessing NCS services are reflected in the strategy.

While we welcome the potential for a national strategy to bring about greater consistency of the delivery of social work and social care support services in Scotland, we are concerned that it may risk overriding the necessary variation that exists at local level to respond to the needs of disparate communities.

Given the Scottish Government’s current focus on addressing delayed discharge as a priority of social work and social care support services, we feel there is a risk that without a more robust process, a national strategy may fall into the same trap of focusing on priorities created by pressures in other systems (ie. healthcare) and not on the principles of social care support being to enable independent living for all citizens.

While the proposed amendments to the Bill shift some accountability for social work and social care support services to Ministerial level, it is our view that the National Care Service should ultimately be accountable to the Scottish public and any strategy needs to demonstrate how it will reflect the needs of the population of Scotland.

We also recommend the Bill ensures that the strategy is adequately resourced – without additional investment and resource across the system any strategy will fail to be implemented.

**2. What is your view of the proposal to create a National Care Service Board, and the provisions about the role and functions of the Board (see in particular new Chapter 1B of Part 1, and new schedule 2C)?**

Strongly support

Tend to support

**Partly support and partly oppose**

Tend to oppose

Strongly oppose

Undecided / no opinion

We are not confident there is enough detail in the Bill as amended to demonstrate that the introduction of a National Care Service Board will bring about the reform needed to governance structures to achieve the stated aims of the Bill.

It is not clear at this stage, for example, how reporting and accountability will operate between the National and Local Boards and how this will strengthen existing reporting arrangements.

We welcome the as a positive step forward the inclusion of the perspectives of people with lived experience and unpaid carers at the highest governance level of the National Care Service, with full voting rights, but we are concerned that, since the overall makeup and size of the Board has not been defined in the Bill beyond minimum criteria, these roles risk becoming tokenistic, and perspectives drowned out by others on the Board. To reduce the risk of this, we recommend the Bill includes the provision that the make up of the National Board will not allow any one constituent group to represent a majority of Board members.

We also wish to see acknowledged that the full and meaningful involvement of people with lived experience and carers requires dedicated investment and resource to ensure all those involved are supported appropriately and able to be fully included in decision making.

We would also like to see more detail about the process which will enable Ministers to appoint these individuals to the Board and how Ministers plan to ensure that a wide variety of perspectives from people with lived experience and carers can be represented at national level, given that no two people will have had the same experience of, or views on, social care support. We therefore recommend that the process for appointing all individuals to the National Care Service board be open to public scrutiny, and that the Bill makes explicit how the experiences of all people who access NCS services will be captured and used to drive national priorities.

We also feel that given the vital role the third sector plays in providing services, information and access to social care support, this perspective should be represented on the National Board. We therefore recommend that the proposed amendment to the Bill include requirement that at least one member of the National Board is appointed to represent the third sector.

On section 12G, the Duty to have regard to Ministerial guidance, we agree with the proposal that Ministers must publish any guidance issued to the National Care Service Board. However, we feel the Bill should include the provision, as for the previous statement on Ministerial direction in 12F, that Ministers must publish a statement of their reasons for issuing this guidance, and explain the impact the guidance is expected to have as well as a measure for ensuring it has met its intended purpose.

**3. What is your view of the proposal to establish National Care Service local boards and to remove other integration models (see in particular Chapter 1A of Part 1, and new schedules 2A and 2B)?**

Strongly support

**Tend to support**

Partly support and partly oppose

Tend to oppose

Strongly oppose

Undecided / no opinion

We welcome a move away from the Lead Agency model and the establishment of a consistent approach across all 32 Local Authorities.

However, as stated in our responses to other questions in this consultation, we believe that while the move to a consistent model for NCS Local Boards is welcome, this consistency of structure is not enough in itself to achieve the reform needed to improve care and support in Scotland. We do not feel the National Care Service Bill as amended goes far enough in forming local structures to bring about the intended and much needed improvements.

**4. What is your view of the proposed new provisions on monitoring and improvement (see new sections 12K and 12L) and on commissioning (see new section 12M)?**

Monitoring and improvement

Strongly support

Tend to support

Partly support and partly oppose

**Tend to oppose**

Strongly oppose

Undecided / no opinion

We feel this section of the Bill should be more explicit in that it is the **quality** of the services, and not just the services themselves, which should be monitored.

We also feel that in line with Self-directed Support legislation, the Bill should include provision that the monitoring of the quality of services takes into account whether services provided by the National Care Service are helping individuals achieve their identified personal outcomes.

Likewise we feel there is a need to ensure any monitoring includes gathering of data on unmet need. The capture of this data is currently very limited and has impacts on the ongoing planning and commissioning of services. We therefore recommend that the capture of data on unmet need is added to the proposed amendment.

It is unclear from the Bill as amended how the proposed monitoring of services will align with, or potentially duplicate, that already undertaken by the Care Inspectorate.

In section 12L on the Support and Improvement Framework, we would like to see more clarity on the remit of Healthcare Improvement Scotland and Public Health Scotland within the National Care Service. Our concern is that any support and improvement framework introduced for the National Care Service influenced by improvement frameworks from these bodies will take an inappropriate, medicalised approach to monitoring and improvement.

On a broader note, we feel that current monitoring frameworks which take a performance rather than learning approach have limited success in bringing about improvement. The proposed amendments to the Bill maintain a focus on performance based frameworks, and we feel there is an opportunity instead to ensure the National Care Service Board has a role in supporting a learning approach, sharing of good practice and identifying emerging issues and trends through more robust data gathering and analysis.

Commissioning

Strongly support

Tend to support

Partly support and partly oppose

**Tend to oppose**

Strongly oppose

Undecided / no opinion

We are disappointed to see the removal of references to ethical commissioning in the proposed amendments to the Bill (removal of sections 6 (3)(c), 7(2)(f) and 10). We feel that many of the current challenges around provision of social care support are influenced by market-driven and competitive commissioning practices which have the result of pricing providers out of the market, leading to a decreasing level of choice for supported individuals. This in turn undermines the principles and successful delivery of Self-directed Support legislation.

We feel that inclusion of ethical commissioning on the face of the National Care Service Bill would be an opportunity to change the discourse and improve policy on commissioning practice in Scotland, recognising that a definition of ethical commissioning may need to be agreed outwith the Bill itself.

**5. What is your view of the proposed new provisions to designate a National Chief Social Work Adviser and for the creation of a National Social Work Agency (see new section 26A)?**

Strongly support

**Tend to support**

Partly support and partly oppose

Tend to oppose

Strongly oppose

Undecided / no opinion

We welcome the proposed introduction of the National Social Work Agency and in particular the potential it will have to lead to greater consistency in the training and professional development of the social work workforce. Our learning and that of our partners and member organisations across the past ten years since the Social Care (Self-directed Support) (Scotland) Act was introduced, is that consistent training and development of social work professionals, and overall lack of investment in the social work profession, remains a barrier to the full implementation of this legislation.

Although not referenced in the Bill itself, we support the intentions of the NSWA as described in the policy memorandum, namely that it will oversee:

* social work education (pre and post-qualifying)
* workforce planning
* policy rationale and improvement activities based on evidence-based insight
* implementation support with social work employers to ensure Scotland achieves its policy intentions
* training and professional development.

We also welcome the amendment to place the National Chief Social Work Adviser on a statutory footing, but we remain concerned that limiting the role’s remit within the Bill to that of adviser (rather than having any decision-making capacity) may limit the role’s ability to influence decisions on the National Care Service.

**6. What is your view of the proposed amendments to the Public Bodies (Joint Working) (Scotland) Act 2014, as set out in the marked up version of the Act?**

Strongly support

Tend to support

**Partly support and partly oppose**

Tend to oppose

Strongly oppose

Undecided / no opinion

We recognise the proposed changes to the Public Bodies (Joint Working) (Scotland) Act 2014 are necessary to reflect the shift in language from Integration Joint Boards to National Care Service Local Boards as outlined in the amended National Care Service Bill.

Our concern is that these changes amount to merely changing the name, and do not go far enough to describe the reform that will be needed to achieve the necessary improvements to social care support in Scotland.

We feel that the current model of Integration Joint Boards is not delivering social care according to current legislation (namely the Social Care (Self-directed Support) (Scotland) Act 2013) and are concerned that the shift to National Care Service Local Boards will not address the systemic challenges that are preventing the delivery of good quality social care support.

The recent report from the Accounts Commission (July 2024) into the performance of Integration Joint Boards described the range of challenges IJBs are facing in the delivery and improvement of social care support. We are concerned that without significant investment and reform, the new National Care Service Local Boards will be subject to the same challenges and systemic issues that have hampered IJBs' performance to date.

**7. What is your view of the Scottish Government’s proposed approach to addressing the areas of further work outlined in the Minister’s covering letter?**

Direct funding

Strongly support

**Tend to support**

Partly support and partly oppose

Tend to oppose

Strongly oppose

Undecided / no opinion

We believe that Direct Funding would enable a welcome improvement in the provision of specialist services, and hope it would allow gaps in services to be addressed more quickly and efficiently than at present. However, we are unsure whether a legislative approach is the best way to achieve this, as it could be brought about by reforming existing funding arrangements.

Either way, if the provision for direct funding is introduced in the NCS Bill or by other means, we recommend that it carries with it the need for reporting on and monitoring of the impact of this funding to ensure it is having the intended impact and being appropriately prioritised.

Inclusion of children's services

Strongly support

**Tend to support**

Partly support and partly oppose

Tend to oppose

Strongly oppose

Undecided / no opinion

We believe it is vital to include Children’s services within the National Care Service Bill. Social work and social care support is a holistic approach, and we recognise that whatever affects a child also affects their family.

We are concerned that if not included at this stage of the Bill, day one of the National Care Service would see a two-tier system of care and support in Scotland and further complicate already problematic transitions from children’s services to adult services.

Inclusion of Justice Social Work

Strongly support

**Tend to support**

Partly support and partly oppose

Tend to oppose

Strongly oppose

Undecided / no opinion

We would welcome the inclusion of Justice Social Work within the National Care Service Bill. As with children’s services, we believe social work and social care support is a holistic approach, and we recognise that whatever affects individuals who come into contact with Justice Social Work also affects their family.

Anne's Law

Strongly support

Tend to support

**Partly support and partly oppose**

Tend to oppose

Strongly oppose

Undecided / no opinion

We support the right to person-centred care and welcome Anne’s Law in principle. But we believe that it is not necessary to include Anne’s Law in the National Care Service Bill. We feel Anne’s Law could be introduced through separate legislation, potentially more quickly than if included in the National Care Service Bill, and without impacting on the fundamental principles or operation of the National Care Service as set out in the amended Bill.

**8. What is your view of the initial draft of the National Care Service Charter?**

Strongly support

Tend to support

Partly support and partly oppose

Tend to oppose

**Strongly oppose**

Undecided / no opinion

We understand that the National Care Service Charter will be developed separately from the Bill, but welcome the chance to give our views on the draft Charter, which reveals some of the Scottish Government’s current thinking about how the National Care Service will operate in practice.

We broadly welcome the idea of introducing a Charter to ensure people accessing the National Care Service have an understanding of their rights and what they can expect from the service. Our learning from the way social care support services are currently delivered is that the public have very little understanding of their rights according to legislation, and this impacts on their ability to advocate for themselves and their loved ones and therefore to access the support they need.

We also welcome the proposed amendment that would place a responsibility on the NCS Board to promote public awareness of the Charter (12A), with the caveat that learning needs to be taken from where Charters have been introduced elsewhere (ie. the NHS) and whether the way this has been promoted has helped the public understand their rights.

That said, we also believe that since the proposed Charter does not introduce any new rights and merely restates existing rights, it does not need legislation to be introduced. If the intent of the Charter is to help people understand their rights, how to access information, advice and advocacy, and how to make a complaint, this could be done now without needing to wait to be introduced in legislation.

On the content of the Charter, we have significant concerns about the language used within the Charter and feel that it undermines many of the values and principles concerning individuals’ right to flexible and person-centred support enshrined in current legislation, namely the Social Care (Self-directed Support) (Scotland) Act 2013.

The way that Self-directed Support has been included in the draft Charter on p10 risks falling into the familiar trap of viewing SDS as an “add-on” and somehow separate from the way that all social care support is delivered in Scotland. Our learning from more than ten years of SDS implementation is that one of the main barriers to transitioning to this model of support is too great a focus on the processes of delivering the four SDS Options and too little on the principles and values behind the Act.

We are disappointed to see no reference in the Bill itself or in the draft Charter to the principles of the SDS Act, namely participation and dignity, involvement, informed choice and collaboration. We believe these principles are fundamental to underpin human rights based and person led support, which we understand is an overarching ambition of the National Care Service.

Similarly, page 2 of the draft Charter notes the existing standards in relation to health and social care support, but omits the [SDS Framework of Standards](https://hub.careinspectorate.com/resources/self-directed-support-library/self-directed-support-framework-of-standards-2024/), which represent the current, nationally agreed understanding of what good social care support should look like.

We also concerned that the sentence on p9, “If your support has to change for any reason you can expect us to give you information about the change” fundamentally contradicts the expectations people have according to current statutory guidance, that they can individuals will be fully consulted on and involved in decisions about any changes to support, not merely told when it has to change.

Multi-channel NCS advice services

The draft Charter makes several references to “Multi-channel NCS advice services”, but it is not clear at this stage what shape these services will take and how they will interact with existing advice and information services.

As a membership organisation representing services which provide independent support, advice, advocacy and brokerage to individuals seeking to access support, we have concerns about the assumed intention to establish separate NCS advice services. Given the lack of detail at this stage we are unclear on the intentions of establishing such services, how independent it is intended they will be, and how they will share space with existing well-established and effective independent support and advice services, including those currently funded through the Scottish Government’s [Support in the Right Direction](https://inspiringscotland.org.uk/fund/support-in-the-right-direction-2024-2027/#:~:text=Self%2Ddirected%20support%20is%20the,in%20all%20aspects%20of%20life.) funding stream.

We also note that the suggested amendment to the Bill now references “**independent advice, information** and advocacy” rather than just advocacy as was in the original Bill. We strongly support this amendment but note that this refreshed language is not included in the draft Charter. For example, p3 notes “you have rights to... get information on how to access independent advocacy services”, but not independent advice and information.

Language and medical model of disability

We believe the framing of social care support services and the National Care Service needs to be aligned with the social model of disability, ie. that it is society which disables individuals, and not impairments. Some of the language used in the draft Charter, (“illness and conditions”, “care and treatment”) reinforces a medicalised model of disability and risks cementing the focus of NCS services on support with specific needs and not a strengths-based approach which emphasises the right for individuals to participate in their community and to independent living.

Complaints

We recognise the Charter does not create new rights but simply repeats existing rights. Nevertheless, we feel an opportunity is being missed by not including strengthened rights around complaints in the National Care Service Bill.

The NCS Bill as amended and the draft Charter do nothing to address the inadequate complaints processes that currently exist. The Charter includes information on taking a complaint to judicial review without acknowledging the enormous barriers that exist for this to be a realistic option for many people. There is also no mention of the existing option to escalate a complaint to the Scottish Public Services Ombudsman, although with current waiting times of up to 12 months to investigate complaints, without further improvement in complaints process for the NCS this route will remain inadequate.

**9. Do you have any other comments on the Scottish Government’s proposed draft Stage 2 amendments to the National Care Service Bill?**

One proposed amendment that has our support is the inclusion of independent advice and information alongside independent advocacy in Minister’s regulation making powers (Chapter 1C, 13).

For the past 20 years we have supported and developed organisations working across Scotland whose remit is to help people to navigate the social care support system and to be able to access support to live independently. We have seen in this time how vital this support is for individuals, with recent research revealing that 86% of people who had accessed this type of support describing it as “essential” or “very helpful”.

We also welcome the acknowledgement that the independence of these services is an important part of their make up – our experience has shown that independence from the Local Authority is hugely important in enabling these services to advocate for individuals they support.

While we welcome this draft amendment in principle, we also wish to see further detail of how the vision for independent advice, information and advocacy will be realised in the National Care Service and particularly how it will be funded to enable it to maintain its independence.

We are hopeful that inclusion in the Bill and the acknowledgement of the vital nature of this support will lead to further investment and resource made available to increase the capacity of independent advice and information services across Scotland.

We would also like to see this proposed amendment strengthened further by the explicit inclusion of Community Brokerage support for individuals, which plays an important role in supporting people to access social care support while maximising the use of natural networks and community supports, with a focus on early intervention.

When the National Care Service Bill was introduced in June 2022 our hope was that it would lead to the simplification of the complex systems that currently prove a huge barrier for many people in accessing social care support, and also lead to a greater consistency of delivery across Scotland. Independent advice and support services are vital to enabling people to navigate these complex systems, but it is our view that the proposed amendments to the Bill will not bring about the structural reformed needed to reduce this complexity.

There is, further, a risk that introducing this legislation may distract from improvements that can be made within existing structures. But these are improvements that need a realistic level of investment to realise.

We are disappointed that the suggested amendments to the Bill have missed the opportunity to strengthen existing SDS legislation by reaffirming the values and principles enshrined within that Act.

We are also concerned that the Bill does not address the systemic issues which are preventing the improvement of social work and social care support in Scotland in line with existing legislation, including:

* The removal of eligibility criteria to access support
* A clear focus on early intervention and preventative supports
* The removal of care charges
* A clear focus on promoting and enabling relationship-based social work practice
* Addressing issues with commissioning which have led to market failure among care and support providers
* Appropriate resourcing of the social work and social care system overall.

**Contact**

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