

**ARGYLL AND BUTE COUNCIL
DRAFT RESPONSE TO NATIONAL CARE SERVICE CONSULTATION**

INTRODUCTORY REMARKS

Argyll and Bute Council welcomes the opportunity to respond to the Scottish Government's Consultation on the National Care Service (NCS) although we are disappointed that Local Government was not involved in the development of the proposals prior to the publication of the document given the current statutory duties held by Councils and the significance of the emerging proposals. As a remote/rural Council, we feel that there has been a lack of consideration of the particular and unique challenges that we face as an authority, compared to those within more urban areas, when developing the proposals and would urge the Scottish Government to ensure that the impacts of this proposal are fully assessed in an Islands Impact Assessment and Fairer Scotland Duty Assessment. For example, being able to provide consistent provision to all our residents and communities is a significant issue for a remote/rural area like Argyll and Bute and there is a concern that consistency could compound the inequities in current service provision that currently exist. To give an Argyll and Bute example it is not practically possible to deliver the same level of service in the same way on Coll as it is in Helensburgh.

The Council has concerns about the current proposals and the time and disruption that would be caused by such significant change. The Council feels that building on existing structures, responsibilities and good practice, whilst tackling the barriers to improvement would be more effective. Local Government can make a positive and active contribution to the shared objective of improved social care and this Council would encourage Scottish Government to engage with COSLA in shaping the proposals to harness the positive contribution that Argyll and Bute and other councils can bring to the discussion.

The Council also believes that the period of consultation is unnecessarily short given the scale of implications for social work/ care service users, carers, staff in the sector, provider organisations and for local government as a whole. It is also being carried out at a time of unprecedented pressure on public services as they seek to recover from the impact of the pandemic.

The Council's substantive response is detailed within this document as the format of the consultation document and question set is considered to be limited and too simplistic to allow the Council to sufficiently express its views. This response from the Council is based upon the limited, and sometimes unclear, information provided as part of the consultation document. The Council have concerns around the level of detail and evidence that has been made available. Given the significance of the proposals there is an expectation of greater clarity but this does not currently exist. On this basis, the Council would welcome further engagement and dialogue as the consultation process progresses.

COMMENTS ON CONSULTATION THEMES

1. Improvement

The Council recognise that there are potential benefits of a centralised improvement and research function and that a NCS could provide improved coordination and joined up working amongst the wide range of existing organisations that currently contribute to this work. However, as a result of such an arrangement, the Council would not wish to see a duplication or diminution of the work already being done by existing establishments, but rather an enhancement to that provision.

2. Access to care and support

The Council are in agreement that the use of an underpinning national practice model / holistic approach to planning and provision of support services should provide similar benefits as per the GIRFEC model, and result in improved outcomes for the individual. However, the Council do have real concerns about the proposals in terms of accessing services within the unique remote/rural area that is Argyll and Bute. There are significant challenges within our area in terms of being able to provide equity of provision and consistency of approach due to the lack of availability of service provision in some localities. The proposals as they stand would amplify these issues. It is anticipated that there will be an increase in demand for services, and for the additional capacity which will be required to aid individuals understand their choices, which will create challenges in terms of unmet needs and managing expectations. The consultation document makes multiple references to a consistent approach to service delivery but this does not serve rural communities. This Council understands the need to adapt services for the locality in order to achieve the best outcomes and feels strongly that services should be led locally by those who understand our communities.

Removing the statutory responsibility from Local Government would impact on the ability to deliver a joined-up approach across other essential services that impact on health and wellbeing. The services proposed as being included in the National Care Service have wider linkages with areas such as housing, employability, education, public safety and protection. Indeed, the Scottish Government and COSLA had previously agreed that education and early learning and childcare should not be delivered separately from children's services, given the evident need for joined up delivery in these areas, and we feel that splitting these services out into the proposed NCS may have a negative impact on young carers. This is a very important point and one that is also picked up under section 7 below.

3. Rights to breaks from caring

The Council wholly supports the principle that unpaid carers should have easy access to respite/short breaks which meet their needs and welcomes a shift to a preventative early intervention model of support

Should the proposals go ahead, it is essential that any new arrangements provide flexibility for commissioners and carers to work together to create support plans which deliver assessed outcomes for carers and the people they look after. The

arrangements should enable carers to benefit as much as possible from the range of care and non-care support services available to them where they live. This is especially acute where carers live in remote rural and island communities where the range of supports available is likely to be much narrower than in more populous areas.

4. Using data to support care

The Council agree that there should be a nationally consistent, integrated and accessible electronic social care and health record and that information about health and care needs should be shared across the services that provide support. However, the Council are of the view that the creation of a NCS is not required in order to simplify the current arrangements. Careful consideration needs to be given to data sharing arrangements and this can be driven at a national level, however, this does not need to be achieved through the application of new legislation to require all care services to provide data as specified by a NCS. Whilst it would be reasonable to have a set of common data standards and definitions there is no need for legislation to allow this to happen. The Scottish Government currently have a number of data sharing arrangements with Social Work where data is provided to them on a regular basis and although this could be enhanced, constitution of a NCS is not a pre-requisite for this to happen.

5. Complaints and putting things right

The Council believes that a charter of rights and responsibilities seems a reasonable approach, however it would not be appropriate to have a complaints handling system in place that would overlap or conflict with the Scottish Public Services Ombudsman (SPSO) who already carries out the regulatory function in terms of the model Complaints Handling Procedure.

This system provides a two-stage complaints procedure for most public services in Scotland allowing matters to be resolved, where possible at a local level to ensure engagement and accountability where services are delivered. The SPSO is a final resort where matters can't be resolved locally. Any move to centralise complaints or remove the ability to engage locally with the service provider diminishes local engagement and the ability to resolve matters and to learn and evolve services through the experience of its users. This would be a major departure from the outcomes of the Local Governance Review, the four pillars set out by the Christie Commission and the recent legislation on the European Charter of Local Self Government which support the idea that services are designed and delivered as locally as possible.

It would be helpful to understand the rationale for proposing a new complaints system for Social Care/Social Work, and what the perceived issues are with complaints handling across the various channels to support the proposals.

6. Residential care charges

Firstly, the Council would like to highlight a material error in the third paragraph of the "How it Works" section. The consultation suggests that care home residents with capital and assets with a combined value below the lower capital limit of £18,000 "will not ordinarily be asked to contribute towards the cost of their care

and be placed within a care home on the National Care Home Contract (NCHC).” This is incorrect. Where a resident has capital and assets with a combined value below £18,000, their capital and assets are disregarded in their assessment but they will still make a contribution towards their care costs based on the amount of income they receive.

The Council is concerned by the absence of any detail of the Scottish Government’s proposals to fund the very significant, but as yet unquantified, additional investment necessary to fulfil the step change in an entitlement based model. This makes it difficult to respond fully to this part of the consultation. The proposal does not provide any details on the value of the proposed rates, a timescale for implementation and how parity with the relevant parts of National Care Home Contract rates will be reached – in one uplift or phased over more than one uplift/year. Yet, this detail is absolutely critical to any proper consideration of the issue of charging.

The Council welcome the opportunity to comment on a potential revision of the current means testing arrangements and recommend several areas where the current rules could be changed to improve outcomes for residents and increase fairness as follows:

- Increase the upper capital threshold to avoid people with moderate levels of capital and assets being classed as self-funding and asked to pay higher fees. An assessment of a fair level would need to be undertaken.
- Increase the personal expenditure allowance to provide residents with more money to spend on their weekly needs. The weekly rate is currently £29.30, leaving residents with a very small amount of money for clothing, personal items etc. This particularly affects residents with little to no capital to fall back on to meet these type of costs and an increase would make the system fairer for those who are less well off.
- Review the regulations to remove several loopholes which are often used by people with high capital to avoid paying care fees, including:
 - Monetary gifts paid to family members – there is no limit or guidance in place leaving it open to different Councils to do different things reducing consistency in approach and leading to excessive time spent resolving disputes with families around what is fair and what is deprivation of assets;
 - The use of discretionary trusts by people who transfer capital and property to trusts to reduce their controllable capital and assets. We have had cases where the resident is the beneficiary of the trust and has used the trust deliberately as a mechanism to reduce their capital and assets and avoid care fees; and
 - The increasing use of life insurance schemes linked to investments for the purpose of having capital disregarded in assessments.

7. National Care Service and extended scope

The Council are of the view that improved outcomes can be delivered better and quicker within existing structures. Building on existing good practice supported by increased investment will deliver greater improvement with strong local democratic accountability. There is no evidence that a national care service will

deliver better outcomes and it is incorrect to suggest that local leadership has been a key problem with regard to social care support when there are other, key factors at play such as significant underfunding of the sector over a period of time, which has led to resourcing issues.

The Council believe that the creation of NCS is counter to the localism and community empowerment agenda that the SG has been progressing over the period. Taking decision making and democracy away from local communities has the potential to be damaging and counterproductive. Local knowledge, systems, services and workforces are best placed to identify the specific needs of people and communities within a local authority area.

Scope

The Council are of the view that the following services should remain the statutory responsibility of local authorities and decisions on whether these services are delegated to IJBs/CHSCBs should remain locally determined to reflect the local context:-

- Adult social work and social care services
- Children and Families social work and social care services
- Mental Health Services
- Community Justice services
- Alcohol and Drug Services

Children's Services

In respect of "Children's Services", the Council would welcome some clarity on the precise definition and scope in the context of these proposals. It is not clear from the information within the consultation documentation what this includes, therefore making it difficult to fully comment.

Secondly, the Council do not support the proposal to include Children's Services within a NCS and have significant concerns in this regard. For example, disrupting the ongoing progress to strengthen integrated children's services planning and coordination, by moving the service further away from Local Authority provided Education Services. These services need to work in partnership with each other to ensure they deliver successful outcomes for children and young people and there is the risk that existing strong working relationships would be diminished if the proposals proceed.

It is not clear from the consultation how further structural reform and the associated disruption will result in better outcomes for children and young people. It would be beneficial to have further information on the perceived benefits of the proposals to provide a better understanding of the rationale. The timing of the consultation and the proposed implementation of these changes do not allow for a period of stability in which to respond to and recover from the COVID-19 pandemic.

The Council is of the view, as stated above, that the existing structures should be the vehicle for improvement. The Council strongly believes that the proposals

could drive distance between Education and Children's Services. The Council does not support the NCS proposals but if necessary suggests that an alternative model to the proposals is adopted to deliver Education and Children's Services under a single local authority department/service. This model has already been adopted by several local authorities who, unlike the Argyll and Bute model, have not delegated Children and Families Social Work functions to the HSCP. It would appear that such models work well and are a natural partnership. Such a model would assist services in the delivery of existing national policies and legislation in respect of children and young people, including GIRFEC, Children and Young People (Scotland) Act 2014, and the Mental Health (Care and Treatment) (Scotland) Act 2003.

Furthermore, there is a particularly close relationship between Education and Children's Services in areas such as educational psychology, early years, additional support needs, child protection, and equalities for children and young people which should continue.

It is suggested that this alternative would appear to be a more effective means of delivering joint working between Education and Children's Services. It would be fairly straightforward to implement a single model such as this for all local authorities by making the necessary amendments to the existing Public Bodies (Joint Working) (Scotland) Act 2014 legislative scheme (i.e. by removing children and families social work functions from the list of functions that may be delegated).

National Social Work Agency

The Council oppose the suggestion that a NSW Agency should have a lead role in setting a national approach to terms and conditions, including pay.

There is also a need to ensure there is no duplication between what NCS is doing and what employers do/what employers are legally required to do. It is unclear what the relationship would be between NSW Agency and the numerous other bodies who undertake such work at present, for example SSSC.

It would be helpful to have national standards and best practice, but the purpose of this in the context of the other bodies, employers and providers, needs to be considered and the added value for our communities needs to be clear.

There are no clear benefits to a NSW Agency having a role nationally in respect of workforce planning as there are already integrated workforce plans for HSCPs, which include social work and social care. These feed into national integrated HSCP workforce plans which in turn inform national initiatives and priorities. Centralising workforce plans risks losing connection with local labour market information and situations, particularly in remote areas like Argyll and Bute.

8. Reformed IJBs – Community Health and Social Care Boards (CHSCBs)

The Council are opposed to the suggestion that CHSCBs should be the sole model for local delivery of community health and social care. The formation of the National Care Service, as it is currently outlined, would have considerable implications for local decision making. The proposals appear to stand contrary to the outcomes of the Local Governance Review, the four pillars set out by the

Christie Commission and the recent legislation on the European Charter of Local Self Government. Argyll and Bute benefits from positive partnership working between the Council, IJB, NHS Board and other relevant CPP partners. Building on the positive work delivered through the current model would deliver improved results with less disruptions, providing local accountability and a strong partnership approach.

A viable alternative to implement a sole model for local delivery of community health and social care services is through amending Section 1(4) of the Public Bodies (Joint Working) (Scotland) Act 2014 to limit the possible integration models to one (i.e. the IJB/body corporate model). This particular aim can therefore be achieved by reviewing existing legislative regimes, rather than creating a NCS.

The proposals as they stand are not sufficiently detailed to allow a fully informed response. However, there are a number of points that the Council wish to make in respect of reformed IJBs. Moving forward it would be important to take cognisance of the unique character and needs of each local authority as a one size fits all approach is not appropriate. There needs to be a degree of flexibility to ensure that local context and service requirements are given due regard.

If CHSCBs are to be set up, currently patient pathways within our local area require patients to utilise other HSCP services for community health services and acute services that cannot be delivered within our local area. This has resulted in constant and lengthy discussions between HSCTPs to agree service specifications, Service Level Agreements and funding. Patient pathways should be taken into account and a decision taken at policy/strategic level to determine any new CHSCB boundaries for community/acute health services to be delivered to the maximum benefit of our service users.

Reviewing patient pathways to determine the best alignment for service users is important for health services. For care services however, local knowledge, community partnership working and good relationships mean that it is essential that the commissioning and procurement element remains with the local area. The alignment opted for should also be adequately representative of all local communities falling within it (possibly through membership of the CHSCB).

In respect of membership of the proposed CHSCBs, we agree that this should be representative of the local population, including people with lived and living experience and carers, and should include professional group representatives as well as local elected members. In addition, there needs to be representation from Social Work (such as the Chief Social Work Officer for the local authority), nursing, third sector, partner providers, GPs and trade unions. The Council would also recommend that Boards need to hear from service users to determine the quality of services being delivered to them. This could be reported via contract management if contracted partner providers are delivering it and via service user questionnaire feedback from in-house/nursing services – but it is key to hear from our service users as to how services are actually delivering their outcomes. A token service user representative will not be appropriate.

The IRASC report advocated the extension of voting rights to all CHSCB members. It is unclear from the consultation document whether this is the intention here or whether an alternative local governance model is proposed. If it

is the intension to extend voting rights to all members of CHSCBs, the Council have some reservations about this could be managed on a practical level. It would be beneficial to obtain further clarity on this, together with details on the proposed process and duration of appointment of CHSCB chairs and vice chairs.

One of the areas that the Council would welcome greater detail on is the role of CHSCBs as employers. The move from 2 to 3 sets of employers with greater number of terms and conditions would add to the existing complexity without any clear benefit. The potential TUPE implications would also be significant and increase the risk of equal pay claims.

There is no reference within the proposals for the contracting of support services that are currently provided by one or both of the parent bodies (Councils and NHS Boards) e.g. Legal teams, governance staff, data protection/FOI team, complaints handlers, procurement teams, finance staff, member services, HR teams, payroll, and other related staff/teams. Given the assumption that the parent bodies would no longer be delivery partners, it would not be appropriate for the CHSCB to use their staff/resources as per current arrangements unless the CHSCB contract with them for these essential services. This would have a detrimental impact on the cost of services and represent a backward step in terms of integrated partnership working and shared services.

The proposals potentially have significant implications for large parts of the Local Government workforce as detailed in the above paragraphs. The consultation document is not explicit regarding the future employer status of staff working in the referenced service areas and whether they would be transferred to a National Care Service or the proposed Community Health and Social Care Boards. Further clarity is required to avoid any unnecessary uncertainty. Covid-19 has placed unprecedented pressures on our social work and social care staff. Prolonged uncertainty over their future employment will have a detrimental impact on employee health and wellbeing and on recruitment and retention in care services.

Furthermore, there is a lack of information within the consultation proposals as framed on specific statutory roles, such as the Local Authority's Chief Social Work Officer. More clarity is required on how the transfer of accountabilities will impact on the professional leadership, independent challenge and assurance of this function.

9. Commissioning of Services

The Council are of the view that the development of a structure of Standards and Processes could help to provide services that support people to meet their individual outcomes, however significant financial investment will be required to deliver the necessary support. The structure of standards and processes are only a small part of what would be needed to deliver the proposals. It should not be necessary for a NCS to take on the role of providing guidance and documentation to support local commissioning. This should be undertaken at a local level, working collaboratively with those organisations, such as Scotland Excel, who have the direct skills and experience in undertaking social care commissioning and procurement, to identify appropriate standards and processes that will help to drive improvements and support local decision making.

Any standards and processes developed must also be in keeping with Care Inspectorate requirements, and flexibility of the light touch regime, linking ethical commissioned care services with improved assessment tools to clearly identify outcomes for our service users, and by allowing appropriate budgets to be allocated to them/the partner provider to deliver these outcomes. Best Value is essential to delivery, so processes must therefore be reflective of this to manage the expectations of all. The standards must adhere to the Scottish Procurement Policy Notes 03 (SPPN) to be consistent across all procurement activity and clarification should be provided as to how this is evidenced e.g. will it be included within the Annual Procurement Report requirements as indicated in the SPPN or will there be an additional assessment by the NCS on progress of this delivery of this model – this would be an additional burden on public bodies that would not be appropriate.

In respect of the expectations and benchmarking of people standards (skills, capabilities and capacity) required to commission and procure quality services - What will this look like? There have been social care commissioning type development programmes which have failed, nationally many “commissioning” teams are moving over to “procurement” teams who have the necessary skills to deliver procurement and commissioning albeit there may be Continuing Professional Development (CPD) required for “ethical commissioning”.

With regard to the management of complex and specialist services, the Council would reiterate the comments made above, that such activity should not be transferred to a NCS, but should continue to be carried out by Scotland Excel, who have specific frameworks for complex and specialist residential services. There are only a small number of specialist suppliers in the market and there have been years of negotiation and partnership working to get to this point. These arrangements work well and ensure appropriate rates/outcomes/conditions are agreed nationally for these types of service users to ensure Best Value and good outcomes are delivered nationally for a consistent approach.

10. Regulation and scrutiny

The Council would support the core principles set out within the consultation document in principle. Some minor, but important, changes we would suggest are that scrutiny and assurance **must**, rather than “should”, take account of legislative requirements, Scottish Government policy, national standards and codes of practice. There should also be clear guidelines/standards that providers of care should be working to and scrutinised against. The principles should also set out the improvement process. What would be required for care providers? How would the scrutiny take place? Would there be a scoring matrix based on policy, standards and the relevant code(s) of practice?

It would be appropriate for any market oversight function to apply only to large providers of care. Within Argyll and Bute there are only two large care home providers. All care homes are contract managed via the Council’s Procurement and Commercial Contract Team who identify financial issues is undertaken through a robust system of financial checks and engagement with homes to find solutions – whether that be assisting with funding for agency nursing staff, etc.

In respect of enhanced powers for regulating care workers and professional standards the Council agree that it would be beneficial for the codes of practice to compel employers to adhere to the code and to implement sanctions. However, the code requires to go further and support “employers” who are service users employing a personal assistant. Personal assistants should be required to adhere to the code of practice and professional standards especially since they are individuals who are employed by the service user who may need reassurance that the personal assistant is complying with the regulations and professional standards.

11. Valuing people who work in social care

The Council firmly support the Fair Work commitment and believe that the development of Fair Work Accreditation Scheme is a positive move, however it is unlikely to improve Terms and Conditions (T&Cs) unless it is enforceable with some form of monitoring. To make a difference to T&Cs, there would need to be a requirement providers to achieve accreditation, including a minimum set of T&Cs to be in place, before a provider is able to access contracts/work. All of the factors detailed within the consultation document are likely to make social care workers feel more valued and are important if Fair Work is to be achieved. The application of Fair Work standards may also minimise the movement of care workers between employers. The Council would note that local government is considered to be a fair work employer.

The Council are in favour of a national forum with workforce representation, but would propose that it should have the purpose of sharing best practice, sharing information, cross sector support and benchmarking would be of benefit – this would enable sharing of good standards across multiple providers and employers.

A forum for the purposes suggested by the proposals would be difficult to manage given the range of stakeholders, providers and the context in which they work. It would be a significant size and it is difficult to see how employees and providers could be properly represented. It would also duplicate the work already undertaken within existing forums which deal with matters such as terms and conditions, collective bargaining, etc.

There are many challenges associated with workforce planning in the health and social care sector. The Council feel there would be particular merit in the development and introduction of specific workforce planning capacity and skills development for relevant staff. There is however a requirement to provide additional funding to realise the proposals. It is unclear how a national approach to workforce planning will be beneficial as workforce planning within the front line social care workforce is very much influenced by local requirements and demands. However, work could be done to support common issues and themes arising from local workforce plans. This could be around areas such as promotion of social care as a profession, support for recruitment, support to grow the capacity of the workforce in social care, support to ensure sufficient access to university and college courses, and a coordinated approach to training and development. In terms of the current workforce planning requirements for HSCPs, it is not clear what data sets are required, what Scottish Government would wish to be recorded and reported, etc. Any future requirements for this (including those currently being developed) would benefit from being in a standard format.

As stated in section 10 above, the Council are supportive of the proposal for personal assistants to be registered moving forward, in line with other social care staff and agree with the range of additional supports for personal assistants detailed within the consultation document, including access to a range of training and development opportunities.

CONCLUDING REMARKS

The Council welcomes the opportunity to provide comments on the proposals, as far as is possible within the limited detail and evidence that has been made available to respondents. This is disappointing, given the significance of the proposed changes, which would result in major reform and require substantial financial investment. Again, the documentation does not provide any detail in relation to the medium/long term financial strategy required to implement the new service and the resulting implications of this.

Furthermore, there are many unanswered questions in respect of the employment status of local government social work and social care employees, as well as the contracting of the raft of support services currently in place. There is no detail in respect of the application of TUPE, pension liabilities, terms and conditions or other contractual matters.

The Council recognise that there are issues which require to be addressed in respect of Social Care Services, but do not support the view that the creation of a National Care Service is the only solution to addressing these challenges. On this basis, the Council have outlined a number of alternative measures above that could be taken to implement the desired changes across the key themes within the consultation paper.

We have raised concerns that the proposals appear to be in conflict with the Local Governance Review, where the driver was ensuring that communities were empowered to have greater control and influence over decisions that affect them most. It can be argued that the proposals run counter to the localism agenda and that there has been a lack of consideration of the impact of the proposals across different local authorities and communities – in our case the challenge of delivering services within a remote/rural setting. The proposals are likely to compound existing issues in terms of capacity, meeting demands and managing expectations.

To date there has been no involvement from local government in respect of developing the proposals, therefore the Council would very much welcome further engagement and dialogue as the consultation process progresses.

Given the significant size of the services that are proposed to be removed from local government responsibility their implementation will have wider implications for the provision of services to our communities and individuals. COVID-19 has demonstrated to positive and essential contribution that local government make through its local delivery structures and should be a positive to be exploited not undermined.

This Council calls on Scottish Government to urgently engage with COSLA to work collaboratively on proposals that deliver the improvements that we all want, quickly and efficiently, making best use of the strengths within the existing structures.