

## Members' Library Service Request Form

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Authorised By	Lindsey Byrne
Designation	Head of Children's Services
Date	19.9.24

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**REPORT TO:** Members' Library Service

**MEETING DATE:**

**BY:** Head of Children's Services

**SUBJECT:** East Lothian Council response to Stage 2 consultation of the National Care Service Bill

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## **1 PURPOSE**

- 1.1 This report is to update Elected Members on the response submitted on behalf of East Lothian Council for stage 2 of the National Care Service (Scotland) Bill.

## **2 RECOMMENDATIONS**

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

## **3 BACKGROUND**

- 3.1 The National Care Service (Scotland) Bill allows Scottish Ministers to transfer social care responsibility from local authorities to a new, national service. This could include children's services which would be a significant change for East Lothian Council. Scottish Ministers will also be able to transfer healthcare functions from the NHS to the National Care Service.
- 3.2 At stage 2 of the Bill, the Scottish Government conducted a formal consultation on the updated content, asking for views about specific areas of the proposals.
- 3.3 At its meeting on 16th August 2022, East Lothian Council granted delegated authority to the Executive Director for Education and Children's Services to approve and submit any response to a consultation on the National Care Service (NCS) on behalf of the Council, after consultation with the Group Leaders and Councillor McIntosh. This was in recognition that it will not always be possible to bring a proposed response to a consultation exercise to a meeting of the Council for approval, given the likely short timescales involved. Copies of all consultation responses will

be shared with Members through lodging these in the Members Library Service.

- 3.4 The response on behalf of East Lothian Council was drafted by the Head of Children's Services and supported by Group Leaders and Councillor McIntosh on 19<sup>th</sup> September 2024 before submission to the Scottish Government on the same date.
- 3.5 East Lothian Council are committed to improving outcomes for people and whole system reform as recommended by Christie (2011), the Independent Care review (2020) and the Independent Review of Adult Social Care (2021).
- 3.6 While we recognise that the National Care Service Bill is focussed on improving the quality and consistency of social work and social care in Scotland, we remain concerned that a National Care Service is not the right approach for the change required.
- 3.7 As per our response to stage 1 of the Bill in August 2022, East Lothian Council remain concerned about the proposals and have been unable to endorse the Bill as the best way to improve vital public services.
- 3.8 It continues to be the Council's position that this structural change is unnecessary and that providing significant and urgent investment should be the priority.

#### **4 POLICY IMPLICATIONS**

- 4.1 There are no policy implications from this report. However, if the proposals contained in the National Care Service (Scotland) Bill are implemented they would constitute the biggest change to social work services since the 1968 Social Work (Scotland) Act and result in the largest re-organisation of Local Government since 1995. It is therefore essential that the views of the Council continue to be reflected in the ongoing consultation processes.

#### **5 RESOURCE IMPLICATIONS**

- 5.1 There will be significant disruption to the management and delivery of Council resources if the National Care Services progresses in its current proposed form. This is detailed further in the response content at Appendix 1.
- 5.2 Personnel - There will be significant structural change for staff in the Health and Social Care Partnership and East Lothian Council, particularly if Children's Services are mandated to join the new service. There will also be significant implications for other staff from support services across the Council. This is detailed further in the response content at Appendix 1

## 6 BACKGROUND PAPERS

6.1 None.

**Appendix 1** – East Lothian Council’s submitted response to stage 2 of the National Care Service Bill consultation.

<b>AUTHOR’S NAME</b>	Lindsey Byrne
<b>DESIGNATION</b>	Head of Children’s Services and Chief Social Work Officer
<b>CONTACT INFO</b>	lbyrne@eastlothian.gov.uk
<b>DATE</b>	19/9/24

## Appendix 1

### National Care Service (Scotland) Bill (Stage 2)

#### East Lothian Response

##### National Care Service strategy

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

As per our response in September 2022, East Lothian Council is committed to ensuring that every individual and community has access to high quality health and social care regardless of where they are in Scotland. We are firmly of the view that our effort needs to be on improvements that can and should be made now, rather than the focus being on potentially costly and disruptive structural change. The implementation of further improvements, service redesign and embedding a person centred, relationship-based and human rights approach will be quicker, less disruptive and more effective without further structural upheaval.

We are supportive of Scotland developing a strategy which highlights the challenges faced by social work and social care with a view to driving the necessary actions to improve outcomes for people.

However, we do not believe that the proposed NCS strategy is going to achieve the necessary improvements. We are concerned that the focus is on government control of local services rather than truly addressing the fundamental issues raised in the Independent Review of Adult Social Care.

The NCS debate has avoided addressing key issues about funding and without this, there is a lack of acknowledgement of cause and barriers.

It is unclear why Ministers should hold sole responsibility for the NCS strategy when the NCS itself is to be founded on “shared accountability”. The relationship between local government and Scottish Government could be clearer and acknowledge SG’s role in ensuring suitable resources are available to allow local government to meet their statutory responsibilities. This would also be in keeping with the Verity House agreement.

We would also suggest that local authorities and health boards are added to the list at Section 1A(2)(b) (those whom the Scottish Ministers must elicit the views of in reviewing the NCS principles).

Scottish Ministers could easily direct a social work, social care and community health strategy under existing arrangements. Ministers decide what local priorities should be through legislation, guidance and funding. With the NCS, it appears the significant change would be to the extent of Minister’s leverage to direct local action. The focus of the NCS appears to be this mechanism for control which we strongly believe is not the way to drive improvements.

We would support an NCS strategy that focuses on increasing resources available to social work, social care and community health and believe that this is the only way to invest in society, communities and people. This must be based on a robust analysis of whole population needs and projections of demand.

We do not agree with SG’s proposal of naming health boards and local authorities as “NCS institutions” as the existing bodies are well established and understood as part of the public service landscape. The current proposals are

confusing, overly complicated and we do not believe this will improve public confidence or comprehension.

### **National Care Service Board**

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)?

It is clear from the proposal that there is still no agreement about the necessity of an NCS Board. It includes activity that will make little measurable difference to the availability or quality of services (e.g. representation on the NCS and the improvement framework) and too little in the areas that could make a difference (e.g resource modelling and budget setting).

The proposals appear to increase accountability of health board and local authorities without a similar increase in the accountability of Ministers to provide the resource required to deliver improvement. We would therefore suggest that roles and responsibilities should be balanced to effect appropriate change. It continues to be our position that legislative and structural change is not required and nor is it an alternative to providing the urgent investment required in social work and social care. This view is also supported by Audit Scotland ([National Care Service Bill - Call for views: Response \(audit.scot\)](#)).

We also have concerns about how cluttered the standards and guidance landscape will become by introducing a new public body. An NCS that sought to streamline and consolidate the current policy landscape would be more welcome.

### **Creation of local boards and removal of other integration models**

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)?

We believe that structural and governance arrangements do not and will not transform the quality of public services. But they do contribute to the delivery of public services and statutory functions and we believe local authorities are best placed to know which structure allows them to maximise local benefits.

The key issues, regardless of structure, are professional governance and management. Tensions exist between medical and social models of care, availability of resources and NHS drivers being a priority (relieving pressures on acute NHS settings). It must be acknowledged that the current integration model has not fully achieved a shift to preventative, community-based services. We do not have confidence that the proposed NCS will achieve what the current integration model could not.

There is a view that this is a rebranding exercise of a system that has not succeeded in improving outcomes.

Central to progression of an NCS in any form is the necessity for multi-year budgets to enable the strategic development and the service redesign required.

### **Monitoring and improvement and commissioning**

**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)?**

We believe that the Scottish Government need to provide much more detail about the ‘Support and Improvement Framework’ and how it would operate in practice.

With no additional investment, adjustment to eligibility criteria, reform of the care market or to workforce terms and conditions, the framework appears to be the sole mechanism for delivering change.

Scrutiny and performance management alone, are not an effective way to improve social services. If the NCS will not tackle the key barriers and challenges and provide additional resources in line with demographic change and demand, this framework will not have the desired impact.

**National Chief Social Work Adviser and the National Social Work Agency**

**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)?**

We recognise the importance of a positive working relationship between local authority Chief Social Work Officers and the Scottish Government Chief Social Work Adviser.

While we support the principles of a national structure for social work in Scotland, we are concerned about the creation of an additional public body to add to the cluttered regulatory, scrutiny and improvement landscape.

We acknowledge that it would be beneficial to address many of the challenges faced by local authority social work on a national scale. This could help mend the fragmentation of the social work profession and create an environment to drive change and improvement. However, this is also an opportunity to define the role and relationships between a NSWA, SSSC, the Care Inspectorate and Healthcare Improvement Scotland to actively streamline and simplify (and reduce costs) of the multitude of functions required at a national level.

We have concerns about a National Social Work Agency being located within Scottish Government and remain unconvinced that this model would allow local authorities to feel connected to the social work agenda. To fully support more consistent and effective social work practice we must collectively address recruitment and training of the workforce now and in the future.

We would prefer to see a NSWA as a formal partnership of distinct organisations – the Office of the Chief Social Work Advisor, Social Work Scotland (on behalf of local authority Chief Social Work Officers) and COSLA. The proposals to rebrand the OCSWA in the form of an Executive Agency undermines the possibility of a NSWA based on equal partnership with the level of autonomy and flexibility required to respond to local need.

**Amendments to the Public Bodies (Joint Working) (Scotland) Act 2014**

**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?**

There are many issues with the operations of health and social care integration and the current legislation is not fully implemented. We would prefer to focus on

implementing the original legislation rather than create more confusion by further complicating the legislative landscape.

We do not believe that proposals meet the recommendations and expectations of the Feely report.

It is not possible to comment further due to the limited details available at this stage.

### **Areas of further work**

**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:**

We are broadly supportive of the idea of nationally commissioned services but remain unclear why Scottish Government requires the ability to directly fund local care boards. We agree with Minister's proposed approach to continue exploring this area.

#### **Inclusion of children's and justice services:**

As has been articulated by COSLA, it continues to be the Council's view that it should be for local elected members' processes to decide upon the inclusion of children's social work services at a local level. We believe this should be removed from the bill and could be achieved with primary legislation if necessary in the future.

East Lothian senior officers continue to have significant concerns about changes that could result in children's services being delegated to a national care service.

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

We are firmly of the view that there is no guarantee that a National Care Service in of itself will resolve any of the complex issues and there is a risk that structural change will result in poorer outcomes overall. We do not agree that taking a centralised approach will improve the delivery of services at a local level.

We believe that removing local democratic accountability and transferring responsibility to Scottish Ministers is contrary to the principles of the Christie Commission and the European Charter of Local Self-Government, which the Scottish Parliament wishes to incorporate into Scottish law. {Article 4 (3) – Public

responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen.

**Anne's Law:** We are supportive of the Government's approach to progressing this agenda, particularly the option of finding an alternative route for the policy (separate to the NCS Bill).

### **Draft National Care Service Charter**

As part of the package shared with the Committee, the Scottish Government has provided an update on co-design of the NCS Charter and an initial draft of the National Care Service Charter.

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

We would question the value of a National Care Service Charter in addition to existing care standards. The charter and the NCS itself will not create any new rights and we believe developing a guide to people's rights within the existing landscape would be more critical.

There needs to be better distinction between legal 'rights' and legal 'duties' as this is extremely important in the context of social work and social care.

The creation of such a charter does not require wholesale structural upheaval and could be established under the existing operational arrangements.

A document that is enforceable and improves delivery of public services needs to be carefully drafted to ensure that it is meaningful.

### **Other comments**

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

We appreciate that the NCS Bill is focussed on improving the quality and consistency of social work and social care in Scotland. But the focus is on governance, structures and process which we do not believe are key levers for improvement. Like others, East Lothian Council has lost confidence that an NCS is the right vehicle for the change required.

There is disappointment about the lack of information about the rights to carers breaks, how this will work in practice and how it will be funded. There is a view that this could be considered out with the NCS.

There is a risk to the delivery of Allied health Professions and we must understand the impact for individual areas

We remain committed to whole system reform as recommended by Christie (2011), the Independent Care Review (2020) and Independent Review of Adult Social Care (2021).

The focus should be on the eradication of poverty, disadvantage and discrimination while creating services that provide early support and prevent trauma and harm.

We believe that monies set aside for the NCS should be reallocated into services now, minimising the impact of service reductions that are inevitable over the coming years.

East Lothian continue to be of the view that children's services should remain within a joint Directorate with Education and that we can evidence the benefits that this is bringing. We do not agree with the move to force delegation of children's services to a National Care Service and do not agree that centralisation of services will lead to the improvements required.

The Bill does not represent shared accountability and is not in line with the Verity House agreement.

We remain concerned about the direction of travel and are unable to endorse this Bill as the best way to improve vital public services.

It continues to be the Council's position that this structural change is unnecessary and that providing significant and urgent investment should be the priority.

**Lindsey Byrne**

**Head of Children's Services**

**In consultation with East Lothian Council officers and group leaders**