# A NATIONAL CARE SERVICE FOR SCOTLAND – CONSULTATION

## About CCPS

CCPS welcomes the opportunity to comment on this consultation published in August 2021. The proposed establishment of a National Care Service in Scotland is the most significant piece of public sector reform in Scotland since devolution and goes to the heart of what our members do every day.

CCPS is the Coalition of Care & Support Providers in Scotland. We are a membership organisation for social care organisations in Scotland's third sector. Our membership comprises more than 80 of the most substantial third sector providers in Scotland, and our extended network includes smaller providers, fellow third sector umbrella groups and public sector partners.

Our members provide social care support to children, young people & families; adults and older people with care & support needs; people in contact with the criminal justice system; and homeless people.

Our members support over 200,000 people and their families, employ a combined total of over 43,000 staff and work with approximately 5000 volunteers in providing services. They work with all Scotland's councils and are active in all Health & Social Care Partnerships.

## Background and approach to this consultation

For CCPS this consultation represents a significant and long overdue milestone on the road to reform of adult social care. Earlier this year, the Independent Review of Adult Social Care (IRASC) set out the need for a paradigm shift in thinking about social care.

We applaud the Scottish Government's efforts to set out detailed proposals for how the framework set out by the independent review team could operate in practice. The scale of the change proposed makes that a particularly challenging undertaking.

At CCPS our starting point is that of third sector providers working not just in the adult social care arena but in children's services, housing, and community justice.

In providing a response to the consultation, we are mindful that the IRASC team's extensive and commendable engagement did not extend to all those in the scope of these proposals.

We applauded the efforts of the IRASC to listen carefully, in particular to people who rely on adult social care support, and to be bold in their response to what they heard.

A key principle underpinning our response is something that was articulated strongly by the IRASC team, namely that we have a duty to co-produce our new system with the people who it is designed to support, both individually and collectively.

With this and our earlier responses in mind we have endeavoured to provide a comprehensive response to the consultation which reflects the diverse experiences and perspectives of our members, the people who work for them, and the people they support.

Our response focuses particularly but not exclusively on a number of key aspects of the proposals. In formulating it, we have drawn on CCPS thinking and policy positions adopted over time, and on both our submission to the IRASC and our response to it.

This initial part of our response offers a narrative in which we set out some overarching comments about the proposals. We have done this because we found the binary nature of some of the consultation questions (Yes/No) very challenging in a number of respects; we might have preferred to have an option of "It depends".

We have nevertheless completed the proforma, which is attached below as an Appendix. We have, in a number of sections, preceded our questionnaire answers with a narrative headed "General comments from CCPS", in order to give full expression to our views.

We have not answered all the questions, as some of them are clearly directed at people who rely on social care, and their unpaid carers; these, and some other sections, relate to matters on which we, as a membership body for third sector social care providers, have no credentials on which to base any comments.

Finally, we would note that many third sector organisations have expressed significant concern that the role of housing, and housing support, was not properly addressed nor taken into account either in the IRASC or in the consultation proposals for a National Care Service, although they are integrally linked to a successful social care system that enables people to achieve positive outcomes.

Our members have given a great deal of thought as to how the NCS might best be aligned with the vision and route map for Housing to 2040 and with the Ending Homelessness Together strategy.

There are no questions in the questionnaire relating to housing, and so we append a more detailed paper that covers this area in detail.

## Overview: observations on the proposals outlined in the consultation

### The proposals as a response to the IRASC

At CCPS we welcomed the Scottish Government's establishment of the IRASC. It was a bold move during a period of unprecedented challenge for the government – and indeed governments around the globe. It was clear that the Covid-19 pandemic had exposed long existing fault lines in the social care system.

The part of the sector which received media – and arguably as a result political – attention was care homes for older people. However away from the spotlight the effects of the pandemic were also acutely felt by providers of support to disabled people, people with long term conditions, and other groups that rely on social care support.

The IRASC team understood this and set out a vision for a paradigm shift in social care provision for all those supported by it. We strongly endorsed that vision and the ambitious thinking about the future of social care in Scotland which accompanied it. We were particularly encouraged by the breadth and depth of engagement by the IRASC team during a short period of time, especially given that the ability to engage by means other than online was almost completely curtailed.

We appreciate that the Scottish Government's consultation necessarily focuses on the technical aspects of change to structures and systems which would need to be included in enabling legislation. However, in our view the ambition set out by the IRASC team is not wholly reflected in the proposals. In particular the fundamental importance of culture change within the social care system which underpinned the IRASC findings and recommendations is, from our perspective, missing.

**The need for a coherent model of change**

Transforming social care in Scotland requires a coherent change model. Given the scale of ambition inherent in the proposals, we are concerned that such a model is not explicit in the consultation.

As they are currently articulated, the changes proposed by the Scottish Government appear to rely on two key drivers – more control from the centre and greater enforcement of standards. However, the emphasis on structures and practices is not matched by an equally explicit focus on culture, relationships, and behaviours.

The consequence is that, whether by design or omission, the proposals do not sufficiently articulate how a National Care Service will put people at the centre, give expression to the principles of self directed support, and empower and enable the social care workforce, especially those on the frontline.

Related to this, the strong emphasis on structural change in the proposals – in particular redirection of responsibilities and resources between integrated joint boards and local authorities, to which we are not opposed in principle – does not adequately address the long overdue redirection of resource to early intervention and prevention called for by the Christie Commission more than a decade ago.

**Balancing national and local accountability**

While it is clear that the proposed redirection of responsibilities and resources between integrated joint boards and local authorities is far from uncontroversial, the CCPS view is that there is merit to the proposals – as far as they go.

However, our view is that without more attention to governance arrangements and the operational capacity of the proposed Community Health & Social Care Boards

(CHSCB), the proposals risk a default to command & control and a system which is at the same time overly centralised, and disjointed and fragmented.

At national level, the absence of an inclusive National Care Service board, involving a range of stakeholders and service user representatives, as recommended by the IRASC leaves a significant gap in accountability. Our view is that such a board should be established and that its chair should be accountable to Scottish ministers while the chief executive of the National Care Service should be accountable to the board.

At local level there is insufficient focus on enabling local flexibility. This is related to the absence of more radical proposals regarding commissioning, most notably a shift from competition to collaboration. It is also important that more consideration is given to the level of decision making within CHSCBs and their relationship with providers. Under the current arrangements, the relationship of larger providers to CHSBs remains inconsistent and largely distant.

As they stand the proposals have given rise to a concern among social care providers that social care is at risk of being subsumed into a health delivery model. Whatever the merits of health delivery at present and the desirability of continuing to ensure integration is embedded, such a model is not appropriate to the model of social care we have previously advocated or was advanced by the IRASC.

**The central importance of co-production**

The IRASC asserted unambiguously a duty to coproduce any new National Care Service with the people who it is designed to support. We have repeatedly said this is of central importance – not a nice-to-have, but an essential ingredient to creating a service which is fit for purpose.

We welcome the commitment to hear the voices of lived experience which accompanied the consultation. We were also delighted to see the establishment of the Social Covenant Group with its focus on embedding those voices in the reforms to come.

However, we are concerned at the absence of an explicit focus on coproduction in the ongoing design and delivery of a National Care Service in these proposals. Before taking the process any further, it is vital that the Scottish Approach to Service Design is integrated into planning and implementation – both prior to and post legislation.

**Extending the scope of the proposed National Care Service**

The extensive engagement undertaken by the IRASC which we have already referred to was focused solely on adult social care. These proposals seek to extend the scope of a National Care Service far beyond, including children's services, criminal justice and prison social work.

It is important to acknowledge upfront that whatever the merits of doing so, extending the scope has not been the subject of rigorous prior consultation. This has made responding to the proposals challenging.

So far as children's services are concerned, there is (not yet) a consensus about the efficacy or otherwise of extending the scope. While it is clear that there are benefits – for example, joining up services through transitions across the life course – there are also considerable risks, most notably to the momentum of The Promise change programme already underway.

CCPS is mindful that from the perspective of The Promise, the proposals risk distraction, and a dilution of focus on that change programme. By the same token we are concerned that they risk a dilution of focus on reforming adult social care at the very moment it appeared at last to have gained momentum. This creates the potential for a double whammy which would be detrimental to care & support for both children and adults.

In weighing up our response to the proposed extension of scope to children's services in particular, we are aware that to do so is one answer to a question posed by the IRASC.

However, what is proposed is only one – and arguably the most far reaching – structural option. We would have found it helpful to have been provided with a more detailed and transparent rationale, including consideration of other options.

Whether it is decided that structural reform is necessary or not, there is a strong consensus that reform is needed and that it must be built on a number of fundamental principles, outlined in the Promise and through the incorporation of the UNCRC, the practical impact of which is that children and families experience preventive, consistent rights-led and relationship-based support, which they have choice, control and agency over.

Within our CCPS membership, there is (perhaps unsurprisingly) a range of views on the proposals. We would urge the Scottish Government to pay close attention to the consultation responses submitted by those third sector organisations that are at the forefront of providing innovative, high quality support to children & families, and to take full account of the experience and expertise of these organisations.

**The scale of proposed reform**

The proposed extension of the scope of a National Care Service from that envisaged by the IRASC has in part given rise to and accelerated four other concerns.

The first of these relates to the capacity and capability of the system at large to delivery the scale of the reform proposed in a timely and efficient manner. We are mindful here, as elsewhere in our thinking, of the parallels with the creation of Scotland's new social security system.

The second relates to the lack of clarity to date about funding mechanisms and the scale of the investment required to deliver effective change. Form may follow function, and both need to be properly scoped before making decisions about funding mechanisms (recent debate in England has been problematic in this regard).

However, it is neither desirable nor practical to bolt decision making about funding on to solutions arrived at. There is therefore a pressing need for robust concomitant thinking about the economic costs of reform and what funding mechanisms are likely to be needed to ensure reform is not just realisable, but sustainable.

The third concern is that despite the proposed extension of scope there is a marked lack of clarity about the alignment of reform to existing and ongoing policy, strategy and delivery across other areas including, as has been mentioned The Promise but also Housing 2040.

Finally, the scale – and therefore the timescale required for planning and implementing reform has created concerns about how to ensure the delivery of ongoing priorities and continuous improvement, particularly to commissioning and procurement and Fair Work.

Our answers to the proforma questionnaire are appended below.

## APPENDIX: CONSULTATION PROFORMA QUESTIONNAIRE

### Improving care for people

**Q1 What would be the benefits of the National Care Service taking responsibility for improvement across community health and care services? (Please tick all that apply)**

Better co-ordination of work across different improvement organisations

More consistent outcomes for people accessing care and support across Scotland

**Q2 Are there any risks from the National Care Service taking responsibility for improvement across community health and care services?**

YES

We note the proposal that the Care Inspectorate (CI) remain separate as a regulator, with the National Care Service (NCS) taking on the role of improvement. We note that this differs from the structure suggested in the IRASC.

We are concerned that the valuable work done by the CI and providers on quality improvement frameworks may be lost if care is not taken to plan how the Care Inspectorate and the NCS work together to share intelligence, building on existing improvement methodologies.

Whilst recognising the need for the CI to act more quickly in some cases where services are failing, CCPS would like to see enforcement and intervention combined with a focus on improvement, and an avoidance of withdrawal of service for supported people.

### Using data to support care

**General commentary from CCPS**

We welcomed the recommendations relating to digital and data infrastructure to support social care outlined in the IRASC and we are keen to engage with ongoing work on digital and data within health and social care.

The development of a National Care Service provides significant opportunity to embed digital within social care, and to understand – and maximise - the role of data in supporting change, learning and improvement in the way we do things to ensure our social care system is collaborative, flexible, and person-led. We welcome the proposal, outlined in the consultation paper, for a common set of data standards to drive joined up ways of working between services.

Data is a complicated issue; we know that our systems are not compatible with each other and we therefore have numerous sets of data for supported people. We need better, more person-centred data sets to show types of services and the impact they have on people's lives. By making our data more meaningful – to support people and the whole health and social care sector – we can begin to move away from the simplistic input/output data so often required by contracting authorities.

However, we have some concerns about the lack of detail in relation to some of the proposals outlined in the paper and the next steps required to achieve the longer-term ambitions set out within the consultation document. Change of this scale will require significant preparation if organisations working across the sector are to truly embrace it and we would support (and want to contribute to) the development of a more detailed action plan to ensure the necessary steps are taken to reach a workable approach to data within the NCS.

Much social care data is collected in a fragmented manner and there is a need to streamline data sharing. Providers working across multiple local authority areas are required to collect and share different versions of the same data and/or input this information into a wide range of systems. A shared data set will help to minimize these issues and we would be interested in working collaboratively with public sector colleagues to define what this could look like in practice.

There is a lack of clarity on how local and national government uses the data currently collected to improve services and outcomes for supported people. Some CCPS members are already doing this through outcomes-based tools to support reporting on an individual, service and organizational level and we can include examples of where this is working well. But we need greater insight on *why* particular data is collected and what purpose it serves.

A wider cultural shift is required to fully embrace improved use of digital and data – how do we shift towards being more proactive? How will the NCS support buy-in for the process of change around data and digital investment?

One of the biggest expenditures is time spent inputting information into different systems and we need to reconsider how data can be used to drive efficiencies in relation to this. We need to make it easy for people to input data, and understand the purpose of it to identify patterns that can deliver better services and improvements longer-term. We need involve frontline staff and organisations in these conversations as plans develop to ensure the NCS is workable – particularly for organisations working across multiple local authority areas.

What is the incentive for frontline staff and management who will be using systems to collect data? The NCS needs to find a way for frontline staff to experience the benefits of new systems ie. avoiding duplication

We can and should make better use of our data to understand how positive outcomes are reached to improve and inform service delivery. An approach that correlates data across different parts of an organisation (collecting information about

training, outcomes, sickness absence to explore causation) can help to support change required elsewhere ie. to evidence budgets needed to nurture a workforce that drives improvement.

How will the sector be supported to use data to contribute to a bigger picture piece – currently often limited to thinking about impact as an organization but less understanding of wider societal impact – there is no model to express this in a uniform way.

There are mixed views on how trustworthy data is and we need to shift the perception of data quality. Some suggestion a defined data set for social care (learning from the housing sector) may support this, or a drive away from manually generated data towards data generated by system processes.

Skills development and experience is a huge issue for the sector, as well as time, resource, motivation and lack of clarity on who will be driving this forward/leading the way.

**Q11. To what extent do you agree or disagree with the following statements?**

**There should be a nationally-consistent, integrated and accessible electronic social care and health record.**

STRONGLY AGREE

However, for it to be effective it would need to gather social care provider data and not just that from HSCPs. Significant investment has already been made by providers to improve organisational systems and processes. It is essential there is access to early architecture on how this would work and interface with existing systems to provide a solution that allows for system integration and builds upon, rather than diminishes, progress and investment already made.

Involving provider organisations in early work to map data sets and formats will help to facilitate and understanding of the implications for existing data collection processes.

**Information about your health and care needs should be shared across the services that support you.**

AGREE

It would improve referral processes and build a clearer story of an individual's health and social care needs, outcomes, and history. There may be an opportunity to go further and develop citizen held data records to be shared by individuals when accessing services.

**Q12. Should legislation be used to require all care services and other relevant parties to provide data as specified by a National Care Service,**

**and include the requirement to meet common data standards and definitions for that data collection?**

This depends on the type and level of data; it could become an issue for provider organisations to maintain if it becomes too onerous. Providers are currently obliged to share data with local authorities as part of their contractual arrangements – could this approach be standardised as part of the National Care Service rather than legislated for? This would help to achieve the consistency and uptake that legislating would likely drive, without moving far from current approaches.

If a legislative approach is applied, it should apply to the entire sector and not just providers. More information is needed, e.g., clarity on type of data, how it would feed into bigger picture, who it applies to, how it will be shared etc.

**Q13. Are there alternative approaches that would address current gaps in social care data and information, and ensure a consistent approach for the flow of data and information across the National Care Service?**

There are already a number of national data sets within health, housing, and the Care Inspectorate that bring together a lot of information and could be better utilised. The creation of the National Care Service provides an opportunity to assess what is already available, explore what type of data is required and how reliable this is before developing a new national data set.

**National Care Service**

**Q20. Do you agree that Scottish Ministers should be accountable for the delivery of social care, through a National Care Service?**

YES

However, there should be an inclusive National Care Service board, composed of a range of stakeholders and service user representatives, as recommended by the IRASC. The chair of the board should be accountable to Scottish ministers while the chief executive of the National Care Service should be accountable to the board.

**Q21. Are there any other services or functions the National Care Service should be responsible for, in addition to those set out in the chapter?**

NO

**Q22. Are there any services or functions listed in the chapter that the National Care Service should not be responsible for?**

NO

## Scope of the National Care Service

### Children's Services

### Q23. Should the National Care Service include both adults and children's social work and social care services?

We are not currently in a position to provide a Yes or No answer to this question. Please refer to our narrative paper above (section on Extending the scope of the National care Service).

### Q24. Do you think that locating children's social work and social care services within the National Care Service will reduce complexity for children and their families in accessing services?

We are not currently in a position to provide a Yes or No answer to this question. Please refer to our narrative paper above (section on Extending the scope of the National care Service).

### Q25. Do you think that locating children's social work services within the National Care Service will improve alignment with community child health services including primary care, and paediatric health services?

We are not currently in a position to provide a Yes or No answer to this question. Please refer to our narrative paper above (section on Etending the scope of the National care Service).

### Q26. Do you think there are any risks in including children's services in the National Care Service?

YES

The most notable risk is to the momentum of The Promise change programme already underway and the potential detrimental impact of structural changes on delivery during any transition.

There is a related concern on the part of some children's services providers that the process of establishing a National Care Service may be driven by adult social care priorities and resource considerations.

Further down the line other risks may arise. For example, inclusion could result in fragmentation of the help and support available for children and families, insufficient focus on child protection and create difficulties in the interrelationship between the National Care Service and education.

However, it is also acknowledged that there are potential benefits to including children's services including a greater focus on social care across the life course and the opportunity to redesign a relationship-based system for children and adults.

As noted in our narrative paper (above), we would urge the Scottish Government to pay close attention to the responses from experienced & expert third sector organisations at the forefront of delivering high quality support to children & families.

## Justice Social Work

**NOTE:** Answers to questions 37 to 44 have been provided by the Criminal Justice Voluntary Sector Forum (CJVSF) which is hosted by CCPS.

### Q37. Do you think justice social work services should become part of the National Care Service (along with social work more broadly)?

At present, the CJVSF does not believe the proposals contain a sufficient level of detail to allow us to say whether or not Justice Social Work (JSW) services should be included in the National Care Service. We would be keen to see further work done to explore the advantages and disadvantages of JSW becoming part of the National Care Service before any final decision is made.

Significant changes were introduced to the community justice system in 2016 through the Community Justice (Scotland) Act 2016. While the IRASC did consider the overlap in adult social care and justice services to a degree, there was no specific consideration of what the proposals would mean for individuals and families within the justice system.

The changes in the Community Justice (Scotland) Act 2016 were introduced following a lengthy consultation and development process and evidence is only now beginning to emerge and to be analysed as to whether or not the changes have been effective. CJVSF has concerns about introducing substantive changes to how Justice Social Work or community justice services are planned, designed, structured, and delivered before we have a better understanding of how the current system is working or have assessed the current needs of people in the justice system.

CJVSF would therefore suggest that a similar process to the IRASC needs to be undertaken for JSW services to ensure they are being considered on a par with adult social care. We welcome the rapid review that has recently been announced of the services that are required to support people who experience mental health and substance use problems.

### Q38. If yes, should this happen at the same time as all other social work services or should justice social work be incorporated into the National Care Service at a later stage?

If they are to be included, CJVSF would contend that this should be done at a later stage to allow sufficient time for a review of current JSW services and the current community justice model to be conducted in order to identify what is working well, where improvements are needed and what lessons can be learned. This review should also consider other possible delivery models.

Scottish Government is currently working with partners to review the national Justice Strategy and the national Community Justice strategy. This will set the overarching vision and priorities for justice and community justice which all partners, including Justice Social Work, will contributing towards delivering. The strategy development process offers an opportunity to explore the role of different partners in delivering better outcomes for people in Scotland and how they can best work alongside each other to support people in the justice system.

**Q39. What opportunities and benefits do you think could come from justice social work being part of the National Care Service? (Tick all that apply)**

Including JSW in the National Care Service could, for example, promote consistency and increase the availability of services. At present there is significant geographic variation in the availability of services and disposals and poor implementation of the new model of community justice means that little consistency of practice has emerged. The proposed model for the National Care Service would not necessarily solve this, however, as the proposed CHSCB structure could still encourage diverging approaches to commissioning of services. In this context emerging learning from the recent changes to community justice may be particularly relevant given their attempt to match up local delivery and planning with national support and oversight.

In addition, including JSW in the National Care Service could refocus justice activity on improving outcomes rather than merely delivering activities. We would welcome CHSCBs adopting a strategic approach to planning and design of justice services, with all partners demonstrating their contribution to successful outcomes and the quality of the services that they provide.

Including JSW in the National Care Service could also support a holistic and integrated approach to justice work – if the proposals for the National Care Service relating to addictions services and mental health are adopted then a new national agency could be well placed to help people to deal with the complex and interlinking needs that often drive offending behaviour. It is important that careful consideration is given to how the third sector will be engaged in the model and there are useful lessons to be learned from existing arrangements for multi-agency working, such as Community Justice Partnerships, Health and Social Care Partnerships and Alcohol and Drug Partnerships.

Including JSW in the National Care Service would also potentially allow them to benefit from the resources and structures that will be developed to support the social work workforce.

**Q40. What risks or challenges do you think could come from justice social work being part of the National Care Service? (Tick all that apply)**

JSW have a number of specific statutory duties that relate to the application and supervision of punishment in the community. There may be some challenges in reconciling this with the person centred, rights-based model proposed by the Review. They will therefore be a somewhat anomalous aspect of the National Care Service if included.

Inclusion of JSW in the National Care Service will also necessitate changes to how community justice operates at a local level in Scotland. Integration Joint Boards are listed as statutory partners under the Community Justice (Scotland) Act 2016. The National Care Service and CHSCBs would need to be introduced to the list of statutory partners for community justice through legislation and their role would need to be clearly defined through guidance and policies.

Moreover, given the current centrality of local JSW budgets to delivering community justice activity, the National Care Service and CHSCBs would be the *de facto* lead organisations for undertaking community justice activity in local areas. It would be helpful to better understand where the third sector and other community justice partners will fit within any new structures.

Inclusion of JSW in the National Care Service would also have a significant impact on the third sector working in justice. A significant number of third sector organisations currently receive funding from local JSW departments to deliver community justice activity. This activity is a key component of achieving successful outcomes for people in the justice system. The new National Care Service and CHSCBs would therefore need to be actively engaged in commissioning and supporting third sector services locally.

JSW inclusion in the National Care Service may also have implications for the role and function of Community Justice Scotland, the lead national agency for community justice. This is especially the case in relation to their role as the lead agency for providing training to JSW staff.

CJVSF considers all of the above to be especially challenging given that the new model for community justice was only adopted in 2016 and came into force in April 2017. More structural change at a time of significant pressure caused by COVID and tightening budgets could lead to major disruption if not managed carefully. As highlighted above, we would be keen to ensure that we are building on the learning

of what has and has not worked with the new model of community justice before introducing further changes.

CJVSF members also identified some challenges potentially caused by the proposal for a national care record that follows the individual. One member, who works with people leaving prison, raised the issue of privacy. Part of their work relies upon the person leaving prison disclosing certain elements that are helpful in addressing their offending behaviour. If it was thought that this might be recorded and passed on to other services, then there would be a hesitancy and reluctance to share in the first instance. This could disrupt some people's desistance journey. We would also be keen to see lessons being learned from other examples of national systems migration, for example Police Scotland, NHS in health in SPS, Drug and alcohol information system (DAISY).

We would welcome further clarity in relation to the impact of children and young people in the justice system. Moving JSW into a national care service may have impacts on how children's rights are upheld, how they are processed through the CJ system, those who are subject to compulsory measures (who is the corporate parent) and how that is aligned to children and family social work teams.

**Q41. Do you think any of the following alternative reforms should be explored to improve the delivery of community justice services in Scotland?**

**Another reform – please explain:**

Each of the proposals presented would represent a seismic shift in the community justice landscape and should be the subject of extensive analysis, evaluation, and consultation before a choice between them can be made.

This is not to say that CJVSF think that community justice should stay as it is and we have consistently highlighted the shortcomings of the current model to the Scottish Government and the Scottish Parliament

In line with the comments above, CJVSF would argue a better starting point would be to review the current model, to identify what is working well, what is not working well and where improvements could be made. Once this review is completed then we would be in a much better position to consider the various options outlined above.

**Q42. Should community justice partnerships be aligned under Community Health and Social Care Boards (as reformed by the National Care Service) on a consistent basis?**

Again, CJVSF believes it would be useful to first identify the lessons that can be learned from the recent community justice model reforms and to use these to inform future structures and partnership working arrangements.

## Prisons

### Q43. Do you think that giving the National Care Service responsibility for social care services in prisons would improve outcomes for people in custody and those being released?

YES

CJVSF would support the proposal to include prison social care within the National Care Service.

At present social care is the responsibility of the Scottish Prison Service and current provision for people in prison has been consistently shown to be lacking and, in some instances, even in breach of the right not to be held in degrading and inhuman conditions.

Including prison social care in the new model, as it is currently envisaged, would support continuity of care, and would make reintegration easier for those with care needs when they leave prison.

Moreover, a significant amount of work and research has been undertaken by the Health and Social Care in Prisons workstream of the Scottish Government to review and suggest changes for social care in prison and to explore social and healthcare needs of people in prison. This could also be helpful for informing the development of the National Care Service proposals, alongside learning from the transition to NHS provision of health care services within prisons.[1]

CJVSF are of the view that more detail will need to be provided on how social care in prisons will be defined. What will count as social care services in prisons? Will it include both adult and young people's services? At a minimum, those services which are included in the National Care Service in a community setting need to be included in National Care Service provision in prisons.

Finally, at present the Scottish Prison Service frequently incurs the costs of social care as it can be problematic trying to identify who should fund the care. This proposal could relieve some of this fiscal pressure on the Scottish Prison Service.

[1] https://socialworkscotland.org/wp-content/uploads/2019/03/A-New-Vision-for-Social-Care-in-Prison-Report-.pdf

**Q44. Do you think that access to care and support in prisons should focus on an outcomes-based model as we propose for people in the community, while taking account of the complexities of providing support in prison?**

YES

CJVSF members were keen to emphasise that the withdrawal of a person's liberty is the punishment. There is a still a need to provide social care to people in prisons and this needs to have parity with social care provision in the wider community to support an integrated pathway of support.

Members also noted that there is a lack of acknowledgement in both the Review and the National Care Service proposals of the difference between individual prisons. This needs to be considered when developing the proposals for social care provision in prison. There is a recognition that our 15 prisons have their own regimes, their own prisoner profile, their own specific issues regarding the physical accommodation and that adopting a one size fits all approach may be problematic.

**Reformed Integration Joint Boards: Community Health and Social Care Boards**

**Governance model**

**Q58. "One model of integration… should be used throughout the country." (Independent Review of Adult Social Care, p43). Do you agree that the Community Health and Social Care Boards should be the sole model for local delivery of community health and social care in Scotland?**

YES

**Q59. Do you agree that the Community Health and Social Care Boards should be aligned with local authority boundaries unless agreed otherwise at local level?**

YES

**Membership of Community Health and Social Care Boards**

**Q62. The Community Health and Social Care Boards will have members that will represent the local population, including people with lived and living experience and carers, and will include professional group representatives as well as local elected members. Who else should be represented on the Community Health and Social Care Boards?**

Third sector providers.

**Q63. "Every member of the Integration Joint Board should have a vote" (Independent Review of Adult Social Care, p52). Should all Community Health and Social Care Boards members have voting rights?**

YES

**Community Health & Social Care Boards as employers**

**Q65. Should Community Health and Social Care Boards employ Chief Officers and their strategic planning staff directly?**

YES

**Q66. Are there any other staff the Community Health and Social Care Boards should employ directly? Please explain your reasons.**

They should have sufficient staffing capacity and capability to ensure effective operational delivery.

**Commissioning of services**

**General commentary from CCPS**

Whilst we welcome the recognition that reform of commissioning & procurement, as part of the National Care Service operating model, is required, the current proposals are not, in our view, radical enough, nor will they bring about the transformational change needed in the way care and support is planned, bought and contracted.

Ethical commissioning is an admirable concept but will make little difference unless there are major and fundamental changes made to current procurement approaches. Unless public authorities move away from price-based competitive tendering, there will be an ongoing detrimental impact on sustainability of providers, quality of support and choice for individuals.

With regard to Fair Work, which CCPS and its members fully support, there is often too much emphasis on the provider's responsibilities in this regard, and not enough on the equally important role of commissioning & funding authorities to support providers to deliver these through appropriately risk-sharing contract conditions and clauses, in particular those relating to contract value and competent rates for care & support services.

Setting up national standards & processes for commissioning and procurement will only be effective if it is accompanied by real changes in behaviour, culture and practice of commissioning and procurement bodies and indeed officials. The IRASC recommended a National Improvement Programme for commissioning &

procurement, and this remains an urgent requirement unaddressed by the current proposals.

**Structure of Standards and Processes**

**Q67. Do you agree that the National Care Service should be responsible for the development of a Structure of Standards and Processes?**

YES

However, CCPS is of the view that national standards for commissioning and procurement will only be effective if they are fully implemented and followed by public authorities. The proposals as they stand are not clear on a number of key questions:

- How will new standards and processes make a difference?
- How will the national standards be inspected and upheld?
- Who will monitor their implementation at local level to ensure they are making a difference?'

CCPS, supported by the Scottish Government, is running a programme of work that seeks to encourage, explore and develop alternatives to competitive tendering. We have long taken the view that if authorities insist on competitive tendering as a way of putting care & support services in place, then there should certainly be clear standards that they should follow and for which they should be held to account.

Our preference – and that of IRASC – is that we should move away from tendering altogether, and develop more collegiate, collaborative approaches to commissioning that are founded on the principles of self directed support.

**Q68. Do you think this Structure of Standards and Processes will help to provide services that support people to meet their individual outcomes?**

YES

However, as noted above, CCPS is concerned that a set of Standards and Processes may make no difference to commissioning or procurement of services or support for individuals to meet their outcomes. It is not yet clear how these Standards and Processes will make a difference or a change to commissioning and procurement of social care or change the practice and behaviour of commissioners, contract officers or procurement officers to move away from price-based tenders to focusing on individual outcomes. In our view any standards should be about individualised support for people and Self Directed Support should be the default.

We can choose either to make incremental (and limited) improvements to existing approaches; or we can choose to develop new approaches. Our preference is the latter.

**Q69. Do you think this Structure of Standards and Processes will contribute to better outcomes for social care staff?**

YES

This will depend upon how the standards and processes are implemented in practice at local level by commissioners and procurement officers. CCPS is concerned that the proposals for implementing Fair Work policies will fall solely on providers who are already underfunded and facing sustainability issues due to low hourly rates paid by public authorities. Fair Work and better outcomes for staff is fully dependent on public authorities funding and investing in basic workforce costs like support and supervision, staff well-being, training, travel time and not just for direct hours of support delivered.

**Q70. Would you remove or include anything else in the Structure of Standards and Processes?**

Yes

CCPS would add more detailed guidance and statutory guidance for reform of procurement and competitive tendering of social care contracts to be based on quality, collaboration and involvement of providers and individuals. In our view, reform needs to embrace more radical changes than those set out in this consultation. The IRASC recommended that:

'A shift from competitive to collaborative commissioning must take place and alternatives to competitive tendering developed and implemented at pace across Scotland. Commissioning and procurement decisions must focus on the person's needs, not solely be driven by budget limitations.'

We do not see, in these proposals, any such reform of procurement practice or processes or alternatives to competitive tendering being developed.

**Market research and analysis**

**Q71. Do you agree that the National Care Service should be responsible for market research and analysis?**

YES

We understand the importance of market analysis and understanding and transparency of spend on social care at national level. However, it is not clear how would this relate to measurement of outcomes for people.

Self directed support provides the opportunity to shift power to individuals and for them to become the commissioners of their own support, and to have full choice and

control over their support and their provider. This would lead to a real market with many buyers.

## National commissioning and procurement services

### Q72. Do you agree that there will be direct benefits for people in moving the complex and specialist services as set out to national contracts managed by the National Care Service?

NO

We do not agree with the proposals to set up national contracts for social care. Our experience of national contracts (like Scotland Excel's national framework contract for care at home, and the National Care Home Contract) is that they end up being both generic and over-specified. They are not flexible, personalised or focused on individual outcomes. Social care contracts, whilst constructed in accordance with national standards (as above) should be negotiated locally with the full involvement of the families, individuals and providers involved for bespoke, outcomes-based support. With self directed support now the mainstream/default approach to social care (as legislated for in 2013) national contracts and commissioning of support should be moving to more individualised support and outcomes. In our view national frameworks do not take account of local factors, local choices and human rights approaches, which are lost through one-size-fits-all frameworks.

## Regulation

### General commentary from CCPS

Regulation is a key issue for third sector providers. We have a number of detailed points to make in relation to this section of the consultation.

More detail is required on the market oversight role. It is not clear whether the CI would simply provide intelligence which could be acted on by other bodies, or whether it would intervene in the market itself. We would welcome more detailed discussion and input into how the role might work prior to scope and intervention powers being finalised.

The NCS consultation does not appear to consider the long-standing challenge of the limiting nature of service registration categories and the challenges of assessment and improvement when the service does not fit the category definitions. Consideration of registration categories will be essential to how improvement works within the NCS, and we would welcome further input on these matters.

There is no specific mention of the power of the CI strategic powers with respect to scrutiny of commissioning and procurement arrangements, nor consideration of

whether the CI would have such a role in assessing the impact of commissioning and procurement by Community Health and Social Care Boards. CCPS has long argued that scrutiny and regulation of service provision cannot ignore this, and we would welcome further detail on how this might be achieved under the new structures.

Finally, mention of the current Health and Care standards appears to be absent from the proposals. Given their central role to both scrutiny and improvement, they should be included and referenced throughout as the standard that both the CI and NCS work to. Nor is it clear who would be responsible for updating those standards (as is being considered currently by Scottish Government).

Our overall sense is that the proposed changes risk pushing the CI back into a strict scrutiny and enforcement role focused on providers, overlooking how it might scrutinise the actions of the wider system (including the NCS itself) whilst not giving sufficient thought as to how the NCS, the CI and providers might work collaboratively on service improvement.

**Core principles for regulation and scrutiny**

**Q73. Is there anything you would add to the proposed core principles for regulation and scrutiny?**

We are in general in agreement with the core principles listed, and feel they are a good fit to the current standards and approach of the Care Inspectorate and its recent draft assessment and scrutiny plan.

There is concern that service provision will be assessed against two separate sets of standards – those of the Care Inspectorate (as derived from the Health and Care Standards) and those of the National Care Service. Clarity over incorporation of the Heath and Care Standards might avoid this.

Given the fundamental importance of the Health and Social Care standards to inspection and the quality improvement frameworks used by the Care Inspectorate and providers to evaluate services, we would want to see them included and referenced throughout the core principles.

**Q74. Are there any principles you would remove?**

NO

**Q75. Are there any other changes you would make to these principles?**

We would like more detail on how risk is being assessed in Principle 2. Existing Care Inspectorate tools used to assess risk are not transparent, leaving a provider unsure as to how a particular risk rating has been arrived at.

Principle 3 states that the National Care Service should seek to review, update, and improve standards and practices. Will this involve incorporating existing improvement structures that members and the Care Inspectorate have been working with since the establishment of the Health and Care Standards? Would this also mean the National Care Service is responsible for any revisions to the Health and Care Standards?

## Strengthening regulation and scrutiny of care services

### Q76. Do you agree with the proposals outlined above for additional powers for the regulator in respect of condition notices, improvement notices and cancellation of social care services?

We recognise the need for the Care Inspectorate to act more quickly when evidence showed care standards might harm people, but feel the proposals push the regulator into strict enforcement, without any acknowledgment of the importance of improvement.

More detail would be welcome on how providers could improve services before being suspended, and what arrangements would be in place to ensure that the supported people were subsequently left with no service.

As noted above in our general comments, if improvement becomes the responsibility of the National Care Service, there will need to be a close working relationship between the National Care Service and the Care Inspectorate to ensure that the intelligence from Care Inspectorate scrutiny can be used appropriately in the improvement methodology of the National Care Service.

Significant training and investment have been put into the existing improvement and self-evaluation frameworks used by providers and the Care Inspectorate. There is a risk that this investment and expertise will be lost. Will the proposed National Care Service adopt the CI's methodology, frameworks, and the staff involved in this work?

The proposals say that themes from improvement will be fed back into commissioning and procurement. More detail is required on how to judge the effectiveness of this relationship between the improvement function of the National Care Service and commission and procurement. Could the Care Inspectorate's current function of strategic inspection play a role here?

### Q77. Are there any additional enforcement powers that the regulator requires to effectively enforce standards in social care?

As noted above, there is no mention of the Care Inspectorate's strategic inspection powers in relation to commissioning and procurement arrangements. CCPS has long argued that there should be powers of enforcement, as well as scrutiny, in relation

to shortcomings in these arrangements. This would seem to be even more important if we are to introduce national standards for commissioning and procurement.

**Market oversight function**

**Q78. Do you agree that the regulator should develop a market oversight function?**

More detail of how this would work is required. If it were to be introduced, we would want to see this function limited to the care home market. However, on the basis of the proposals set out we cannot see how they would aid the delivery of continuity of good care within that market.

Given that the Care Inspectorate does not currently have the capacity to analyse this market data and recommend appropriate interventions, where would this expertise come from?

Given the lack of expertise regarding market intervention within the Care Inspectorate, would another body be empowered to intervene in the market?

Would such a market oversight function would include assessment of commissioning and procurement standards by the National Care Service and procurement by the Community Health and Social Care boards?

Would this be comparable to the current strategic inspection function of the Care Inspectorate which allows them to inspect commissioning in a given area?

**Q80. Should social care service providers have a legal duty to provide certain information to the regulator to support the market oversight function?**

We are concerned about extra levels of financial reporting and how such sensitive data would be managed. The Care Inspectorate has acknowledged that procurement of such financial intelligence could be challenging, and care must be taken.

**Q82. Should the regulator be empowered to inspect providers of social care as a whole, as well as specific social care services?**

It is our understanding that the CI is already empowered in this regard, but has not pursued those powers. We have frequently discussed the merits and demerits of introducing a 'licensing' system for providers that might obviate the need for individual service-by-service scrutiny as is currently conducted. We believe that this is worth further investigation under a National Care Service model.

**Enhancing powers for regulating care workers and professional standards**

**Q83. Would the regulator's role be improved by strengthening the codes of practice to compel employers to adhere to the codes of practice, and to implement sanctions resulting from fitness to practise hearings?**

In general, third sector providers strive to be good employers and meet all legislative and regulatory requirements. There is no benefit to be had from compelling employers to adhere to the codes of practice if this is not supported by a robust improvement framework. The workforce and service regulators could more effectively and efficiently work together in this area ensuring that the focus remains on improvement support rather than punitive actions. Implementation of sanctions goes beyond the role of the regulator to the wider working environment that is linked to commissioning that allows no additionality for learning, development, or training. Compelling employers without changing the system they are operating in will not lead to better outcomes for the workforce or people using services.

**Q84. Do you agree that stakeholders should legally be required to provide information to the regulator to support their fitness to practise investigations?**

It is not clear who will be included as 'stakeholders' as not all Fitness to Practise investigations will be confined to social care employers. Employers often hear from CCPS that cases take so long to investigate due to police involvement.

CCPS regularly hears from members of the volume of information they are asked to submit as part of a referral to Fitness to Practice and currently, employers can be asked for information up to four years after an incident as part of a fitness to practise investigation, a situation that is time consuming and often stressful. Any change in the current legal requirements should be for the sole purpose of reducing the burden that these investigations place on employers and shorten the process to reduce the anxiety and uncertainty for the worker.

**Q85. How could regulatory bodies work better together to share information and work jointly to raise standards in services and the workforce?**

Regulatory bodies could work better together through co-production and collaboration with the sector. A clear, joint sense of their shared responsibilities is also much needed. A focus on consistent information sharing and avoidance of duplication or lack of clarity in their regulation and scrutiny would support improvement and high standards across the sector. For example, when a worker's SSSC registration lapses, the employer experience is that the SSSC ask them to raise it with the Care Inspectorate, and the Care Inspectorate refer them back to the SSSC as an individual registration issue.

The bodies could also significantly improve the quality of data available by sharing information and data from inspection visits, annual returns, and registrations. The Joint Vacancy Report is a good example of streamlined reporting. We have seen the importance of having data sets that can speak to one another throughout the pandemic; improvements in data collection are essential if the regulators are to support workforce planning, workforce development, service planning etc. as part of the National Care Service.

## Valuing people who work in social care

### General comments from CCPS

Our messages on workforce issues are a matter of public record and they remain at the forefront of our concerns. Our views are straightforward.

There is an urgent need for a coherent and equitable pay policy for all social care workers, regardless of their employer.

There is a significant and worsening problem in relation to recruitment and retention. The key issues for providers are improved pay; improved terms and conditions; better access to training and development and linked progression; and greater recognition of value social care workers add to society.

The starting point for workforce priorities and collective bargaining should be better workforce representation.

There is no benefit to be gained by compelling employers to adhere to codes of practice if this is not supported by a robust improvement framework.

National planning approaches and frameworks must enable links between national picture and local need, and support flexibility based on local demographics.

There is a pressing need to recognise the significant role (and excellence) of the third sector workforce in local delivery, rather than defaulting to the statutory workforce.

The National Care Service should use workforce planning data to identify training and development needs and allocate funding accordingly.

Training and development should be delivered by an independent function within or affiliated to the NCS and must be separate and independent from any regulatory functions.

## Fair Work

### Q87. Do you think a 'Fair Work Accreditation Scheme" would encourage providers to improve social care workforce terms and conditions?

NEITHER YES NOR NO

If this Scheme were to be put in place, its purpose should be to reduce poor employment practices rather than to set an unachievable and overly aspirational bar. Accreditation should be accessible to organisations who do what they are reasonably able to provide Fair Work. Significant consideration would need to be given to the requirements for accreditation, the fairness of any benefits, and the incentives these create within the system.

**Q88. What do you think would make social care workers feel more valued in their role? (Please rank as many as you want of the following in order of importance, e.g., 1, 2, 3…)**

1 Improved Pay

2 Improved terms and conditions, including issues such as improvement to sick pay, annual leave, maternity/paternity pay, pensions, and development/learning time.

3 Better access to training and development opportunities

4 Progression linked to training and development

5 More publicity/visibility about the value social care workers add to society.

OTHER

In challenge to the simplicity of the wording of the points ranked 3 and 4, "better access to training and development opportunities" must sit alongside improved support for protected time at work to complete these – both for employees and for the employer who is required to cover the staff time. "Progression linked to training and development" must also be linked to a commensurate increase in salary that acknowledges increased expertise.

A further suggestion is collective bargaining. The lack of a collective voice has become very apparent during the pandemic. However, this is not a highly unionised workforce, and this is generally by choice. Union membership has remained relatively low. There is an appetite for further discussion about how to effectively strengthen the voice of the workforce for the future.

We are not aware of any interest in minimum entry level qualifications. This would also have an impact on employers' ability to recruit in a context in which recruitment is already a longstanding challenge. In response to the suggestion around consistent job roles and expectations, we would caution against underestimating the variety of roles across the sector. All employees should be able to expect a clear and consistent job role, but this is a responsibility of the employing organisation.

**Q89. How could additional responsibility at senior/managerial levels be better recognised?**

1 Improved pay

2 Improved terms and conditions

3 Improved access to training and development opportunities to support people in this role (for example time, to complete these) these differences and meet the needs of this workforce

OTHER

Improved terms and conditions should guarantee the maintenance of the pay differentials relative to the rest of the workforce, ensuring ongoing financial recognition of the additional responsibility. Unless this is provided for, the differentials are likely to be eroded over time. Experience shows a lack of will to raise pay for everyone equally within an organisation when frontline pay is increased (e.g., due to the annual uplift in the Scottish Living Wage).

We would also like to see recognition of the different leadership roles taken on by senior leaders and managers in the third sector, which differ from similar roles within statutory services due to the flatter structures and the wider remits of senior leaders in the third sector.

**Q90. Should the National Care Service establish a national forum with workforce representation, employers, Community Health and Social Care Boards to advise it on workforce priorities, terms and conditions and collective bargaining?**

The starting point on workforce priorities and collective bargaining should be better workforce representation. This could be a professional body who would be involved in these conversations at a national level and could be represented locally. The national forum suggestion is a good one for the general direction of the National Care Service, but without a professional body, it is not clear where workforce representation for it would be drawn from or whether these forum members could be considered truly representative.

There are further risks that such a forum such becomes either ineffective or overly exclusive. For example, if the forum's recommendations were advisory, Community Health and Social Care Boards could choose to ignore them without any consequence. This would be likely to happen if recommendations on workforce pay and terms and conditions presented challenges for local budgets. On the other hand, if the forum had significant power, there is a risk that only its members would be influencing decision-making with an impact on the whole sector. It is not clear how a representative role could be created among members of the workforce or among providers.

Finally, if this forum were to be created, it would be important that representatives from the NHS were also included to ensure parity with health services and integration across health and social care.

## Workforce Planning

### Q91. What would make it easier to plan for workforce across the social care sector? (Please tick all that apply.)

A national approach to workforce planning
An agreed national data set
A national workforce planning framework
Workforce planning skills development for relevant staff in social are

The national planning approach and framework must enable links between the national picture and local need. It must support local flexibility and enable local areas to plan for need based on their demographics and local data.

It must also recognise the third sector workforce and their significant numbers and role in the delivery of local services. Focusing by default on the statutory workforce is not a complete picture. The previous extension of the three-year workforce plans was partly to enable wider engagement with the third sector, yet this did not take place in any meaningful sense. Any national approach to workforce planning must recognise non-statutory service delivery, engage third sector organisations in national work and support them to do their own workforce planning, with awareness of the fact that many are large organisations working across multiple local authority areas.

We would welcome skills development opportunities for staff. However, any training or resources would need to be co-produced to ensure they meet the needs of the whole sector.

## Training and Development

### Q92. Do you agree that the National Care Service should set training and development requirements for the social care workforce?

YES

There should be requirements for training and development for the social care workforce and the National Care Service has a role to play in this. The National Care Service should be using workforce planning data on an ongoing basis to identify training and development needs and to ensure that there is sufficient funding available to deliver training to the numbers of staff who need to access it.

**Q93. Do you agree that the National Care Service should be able to provide and/or secure the provision of training and development for the social care workforce?**

YES

We would like to see training and development delivered by an independent function within or affiliated to the National Care Service, just as we have in place with NES within the NHS model. This function must be separate and independent from any regulatory functions within the National Care Service.