CCPS response to the Call for Views on the National Care Service (Scotland) Bill – September 2022

Introduction

CCPS welcomes the opportunity to respond to the call for views on the National Care Service Bill. The proposed establishment of a National Care Service 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.

To understand our comments on the principles of the Bill, and its specific provisions, this submission sets out our responses to the evolving context of reform in which the sector's aspirations for much-needed change is situated.

About CCPS

CCPS is the Coalition of Care and Support Providers in Scotland. Our membership comprises 90 of the most substantial care and support providers in Scotland's third sector, and our extended network includes smaller providers, fellow third sector umbrella groups and public sector partners. CCPS also hosts the Criminal Justice Voluntary Sector Forum and the Housing Support Enablement Unit (in collaboration with the Scottish Federation of Housing Associations).

Our members provide high quality support in the areas of community care for adults with disabilities and for older people, youth and criminal justice, addictions, homelessness, and children's services and family support. The combined membership of CCPS:

- Supports over 220,000 people and their families
- Managed a total annual income in 2020-21 of £1.4 billion, of which an average of 70% per organisation relates to publicly funded service provision.
- Employs approximately 40,000 staff and mobilises the support of approximately 5,000 volunteers in providing services
- Works in all 32 of Scotland's council areas, and are active in all Health and Social Care Partnerships, with many members also providing services elsewhere in the UK and internationally

Our interest in the creation of the National Care Service is predicated on our members' significant and wide-ranging experience of the delivery of social care, the employment of a substantial proportion of the social care workforce and understanding of the perspectives of people who receive social care support and their families and carers.

Our recent commentary on social care reform

Response to The Independent Review of Adult Social Care in Scotland

In February 2021, we welcomed the report of the Independent Review of Adult Social Care in Scotland (IRASC). We strongly supported the commitment to a new narrative which replaces crisis with prevention and wellbeing, burden with investment, competition with collaboration and variation with fairness and equity.

We also strongly endorsed the call to put people front and centre of social care delivery – people who are supported by social care, their families and carers, and people who work in social care services. With this in mind, we wholeheartedly backed the Review's assertion of 'a duty to co-produce a new system with people who it is designed to support both individually and collectively.'

We agreed with the IRASC assertion that Scotland already has strong foundations on which to build a National Care Service. We indicated a commitment to working with the Scottish Government and national and local stakeholders – including those who support people and people who are supported – to redesign the system to make the ambitions set out in the Review happen.

Response to the Scottish Government's consultation

In November 2021, we applauded the Scottish Government's efforts to set out detailed proposals on how the framework set out by the independent review team could work in practice. We recognised that the scale of the change proposed made that a particularly challenging undertaking. We were, however, mindful of the fact that the IRASC team's extensive and commendable engagement did not extend to all of those in the scope of the Scottish Government's proposals.

Our detailed response included a number of key overarching observations:

- We stressed that transforming social care in Scotland requires a coherent change model. We noted that the changes proposed appeared to rely on just two key change drivers – more control from the centre and greater enforcement of standards. We were concerned that the emphasis on structures and practices was not matched by an explicit focus on culture, relationships, and behaviours.

- We expressed concern that the consequence of this, whether by design or omission, was that the proposals did not sufficiently articulate how a national care service would 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.

- We pointed out that the strong emphasis on structural change in the proposals – in particular the redirection of responsibilities and resources between integrated joint boards and local authorities, to which we were not opposed in principle – did 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.

- We argued for greater attention to governance arrangements including the need for an inclusive National Care Service Board, as well as to the operational capacity of the proposed Community Health and Social Care Boards. We emphasised the importance of enabling flexibility and collaboration at local level.

- We underlined the central importance of co-production which had been unambiguously asserted by the IRASC. We expressed concern at the absence of an explicit focus on co-production in the ongoing design and delivery of a National Care Service in the proposals and stressed the importance of integrating the Scottish Approach to Service Design into planning and implementation – both prior to and post legislation.

- And we expressed four other concerns with the scale of proposed reform: the capacity and capability of the system at large to deliver reform in a timely and efficient manner; the lack of clarity about funding mechanisms and the scale of investment required to deliver effective change; the lack of clarity about the alignment of reform to policy, strategy and delivery in other areas (e.g. The Promise; Housing 2040); and the need to ensure the delivery of ongoing priorities and continuous improvement, particularly to commissioning and procurement and Fair Work.

The wider social and economic context

In our earlier commentary we noted that the Covid-19 pandemic had exposed long existing fault lines in the social care system. We also commented that 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, children and other groups that rely on social care support.

It is important to recognise that the pandemic and its effects are far from over. Many disabled people who rely on social care are still not able to access the support and opportunities they did before the arrival of Covid-19. Some disabled people with compromised immune systems remain especially adversely affected, and in some cases confined to their homes.

As autumn and winter loom, the possibility that infection rates may rise again poses significant challenges for a health and social care system already under huge strain. Add to this rapidly increasing inflation, high levels of food poverty and the impact of surging energy costs for people being supported by social care. Then factor in a significant recruitment gap and the absence of an energy price cap for social care providers, and it is clear that the pressures facing them to respond to unmet need - and remain sustainable - are unprecedented.

Policy and legislative context

The Scottish Government's stated ambition is to address the historic gap between legislative intent and the delivery of social care. Its commitment to do so builds on commentary in the IRASC report.

The IRASC also underlined that, notwithstanding that challenge, we are not starting from scratch; Scotland does have strong policy and legislative foundations on which to build. At the core of these foundations are the Social Care (Self-directed Support) (Scotland) Act 2013 and the Public Bodies (Joint working) (Scotland) Act 2014 - both ground-breaking pieces of legislation.

This is the context in which the National Care Service (Scotland) Bill arrives. It is vital that the design and implementation of further large-scale reform is cognizant of that context and is approached in a way that seeks not to reinvent the wheel or create needless instability in the system which will be felt most acutely at the frontline.

An alternative approach to reform

We are acutely aware that it is not sufficient to merely critique the Scottish Government's legislative approach without offering an alternative. However, we are concerned that the approach taken in the Bill relies too heavily on structural reform. It is with this in mind that we have spent time developing our own change model for social care and support in Scotland.

Our underlying contention is that form should follow function. Following the logic built into our model would not preclude significant elements of the Bill; some structural change, and by extension primary legislation, would still be required. However, it starts with the premise that if the purpose of reform is to shift the delivery of support from the transactional to the relational, the primary change drivers will be cultural in the form of the relationships and behaviours embodied in the system.

Taking that as its starting point, our model then explores the key requirements, operating principles, resources, and behaviours which are needed to deliver the outcomes which we believe there is shared support for – and which are indeed threaded through the Statement of Benefits.

We do believe that the ultimate intent set out by our outcomes and impacts are shared by ministers and many of those who support reform; our question now is whether this Bill, as introduced, will aid us to get there. This is the primary lens which CCPS will bring to its detailed interrogation of the Bill over the coming months.

Our approach to this call for views

Our response to this call for views is made up of four parts:

- Our overall perspective on the Bill
- A response to the general questions
- A response on specific provisions
- Our reflections on what we think should happen next

Our commentary is based on:

- analysis of the Bill and supporting documents
- engagement with our members in the time available including three themed engagement events and extensive discussion among our Board
- consideration of previous responses to the IRASC and the subsequent Scottish Government consultation
- our own change model for reform as discussed above
- consideration of analysis on costs which we funded the Fraser of Allander Institute to undertake

Our overall perspective on the Bill

The Bill as a response to IRASC

An opportunity lost?

For CCPS, the publication of the IRASC report provided a moment of considerable optimism. As indicated above, we warmly welcomed the review's conclusions and its call for a renewed purpose for social care with human rights at its heart. Our optimism was buoyed by the Scottish Government's acceptance of its recommendations and subsequent endorsement in the Scottish Parliament.

We recognised that there remained significant challenges to be overcome, not least evident differences of opinion on the structural proposals advocated by the IRASC between national and local government. We believed there were significant merits to the proposals while recognising the need to balance national and local accountability. We were clear, however, that the status quo was not an option.

Our optimism was dented by the detail set out in the Scottish Government's subsequent consultation, notwithstanding an appreciation of the scale of the challenge. We were concerned by the apparent gap between the vision set out by the IRASC and the increasingly centralised approach being taken. As mentioned above, perhaps our biggest concern was the absence of a coherent change model. Other emerging concerns centred on the absence of radical thinking about commissioning and emerging inconsistencies in the approach to co-design, despite the IRASC's strong steer.

We remain committed to engaging constructively with the Scottish Government's mission to reform social care and we are strongly supportive of much of what is set out in the National Care Service Statement of Benefits. We agree that establishing a National Care Service is a huge undertaking and that getting it right is paramount, most importantly for those who need social care support.

However, we have to be clear at this point in the process that our earlier optimism is ebbing away. Our primary concern is the top down and centralising approach embodied in the Bill. We see a significant drift away from the approach advocated by IRASC and towards an NHS model of delivery, which we do not believe to be appropriate to the effective delivery of social care.

Approach to governance

Emblematic of the drift away from the IRASC approach is the underlying assumption of creating NHS style governance arrangements for the National Care Service. The IRASC advocated 'a board of governance with a Chair appointed by, and accountable

to, Ministers (and including) representation of the workforce, people experiencing social care support, unpaid carers and providers' – in other words an inclusive national board, populated by a full range of stakeholders and representatives of people supported by services which would take on the strategic oversight and support of local boards. In this respect and others, threaded through the IRASC report was the review team's own unambiguous assertion that there should be a duty to co-produce systems and services with the people they are designed to support.

By contrast what appears to be contained in the Bill is a structure which has directly controlled boards, performance managed by civil servants who report to ministers. This represents a major omission and departure from the approach advocated by the IRASC. It raises significant questions about the commitment to collaboration and co-design and whether the Bill as currently drafted provides a sound mechanism for driving the paradigm shift so clearly expressed by the IRASC.

We note that the Bill and accompanying documents do not provide clarity on future repeal of all or parts of the Public Bodies Act. This is destabilising in the present for many, many staff doing their utmost to provide integrated services to meet need in increasingly difficult circumstances.

Approach to ethical commissioning

A further example of divergence between the IRASC and the Bill is in its articulation of ethical commissioning. The IRASC advocated 'a transformation of the way in which we plan, commission and procure social care support, an approach that builds trusting relationships rather than competition and the need to build partnerships not market-places.'

With this in mind it recommended 'a shift from competitive to collaborative commissioning' and that 'alternatives to competitive tendering (should be) developed and implemented at pace across Scotland' (Recommendation 33).

The IRASC went on to recommend that 'the establishment of core requirements for ethical commissioning to support the standardisation and implementation of fair work requirements and practices must be agreed and set at a national level by the new National Care Service, and delivered locally across the country' (Recommendation 34).

By contrast the Bill merely states that an ethical commissioning strategy is one which ensures that the service being provided best reflects the National Care Service principles.

There appears to be no serious attempt to review existing procurement law and even less focus on understanding the cultural change that needs to happen to shift from transactional commissioning (where providers compete for public contracts on best value) to collaborative commissioning (where providers are partners, collaborate with each other, coproduce with people who use services, and are active contributors to developing solutions that help to meet need).

Delivering on the IRASC principles

We have set out just two examples of the divergence from IRASC. It is with these and others in mind that we have major concerns as to whether the Bill in its current form will provide the means to deliver the paradigm shift that the IRASC advocated, and which garnered such widespread support. Neither is it clear how the Bill will strengthen the foundations of our existing system of social care support. Despite the Scottish Government's acceptance of the IRASC recommendations in full, they have not been followed through in the design of the legislation. There is no clear rationale or justification offered for the divergent approach.

Notwithstanding that this is a framework Bill and that the Scottish Government may wish the detail to be co-designed (which we wholeheartedly support), in its current form the Bill is a curious mix of specificity in relation to the powers it gives to ministers and permissiveness in relation to the interpretation of the delivery of key principles. From the perspective of providers this risks the continuation of a political turf war between central and local government at precisely the moment when the transformation of social care requires shared ownership and collective leadership.

And fundamentally, the development of the primary legislation in relation to ministerial control does not appear to have been subject to the commitment to the co-design advocated for the extensive raft of secondary legislation to come.

The Scottish Government's approach to change

The Bill embodies an approach to change which focuses on legislative and structural levers at the expense of other key change drivers. It fails to understand the central role of culture and what this means for redesigning the system. As we indicated earlier, our perception is that the change model implicit in this approach appears to rely on two core drivers – centralise and enforce.

The underlying suggestion here appears to be that integrated joint boards have not succeeded merely because they do not have direct lines of accountability to ministers. Our view would be that integration has worked where cultures and relationships have changed and that there is no clear evidence that centralising to ministers will provide a means of closing the implementation gap.

There is considerable potential dissonance here between the vision articulated in the Statement of Benefits and the impact of enacting the Bill in its current form. A related issue is the potential detrimental impact that focusing on the Bill will have on the need for ongoing change and improvement which either cannot wait for or does not require, primary legislative change.

While accepting that the status quo is not an option, we are genuinely concerned about the amount of time and energy which is likely to be absorbed by arguments about structural change and its subsequent implementation. Any legislation focused on structural reform should be no more than a means to deliver a wider goal for the people it is intended to benefit. We are concerned that this is becoming obscured. This is why, at CCPS, we will continue to focus our response to this legislation, and the wider reform agenda, through the lens of the model of change we referred to earlier.

The Scottish Government's legislative approach

Notwithstanding our view that it may be helpful to take a different approach to the legislation, we do have some specific observations on the current provisions. These are partly about the process and partly about the overall direction and scope of the Bill.

First, while we acknowledge that it is intended as a framework Bill, we are concerned that it is simply too light on detail. Combined with the fact that we know there is a significant divergence of opinion about its structural intent, we think this creates a major risk of inconsistency and impasse during the detailed scrutiny phase. There is a parallel risk that the volume of amendments laid to fill the vacuum created by the lack of detail in the Bill, and the trade-offs this may give rise to, will result in a Bill that becomes incoherent and unworkable in practice.

Second, we are concerned about the approach to codesign in the process. The Scottish Government appears to have taken the view that aspects of the detailed implementation of the Bill should be subject to codesign but that the overall approach to system redesign and structural reform should not. Neither is the commitment to codesign consistently threaded through the Bill. So, for example, it is understandably explicit in relation to the provision for a charter, but less so elsewhere.

Third, the outstanding issues associated with extending the scope of the National Care Service to children's services and justice services give rise to a question about the sequencing of the legislative process. The timetable means that detailed scrutiny of the Bill will be taking place before the implications of whether to extend the scope have been fully thought through and consulted upon. Introducing legislation before

issues of scope have been properly resolved further compromises the commitment to codesign.

Fourth, the shape and focus of the Bill are significantly weighted towards extending ministerial powers, the necessity and efficacy of which is not sufficiently evidenced. With considerable detail left to secondary legislation, this will impose significant constraints on creating a system which appropriately balances national and local accountabilities.

The Bill principles

We support the general thrust of the principles as far as they go. However, given our earlier concerns about the structural changes embedded in the Bill, we are left wondering whether the Scottish Government has applied these principles to those changes in order to test out and demonstrate that they will support them.

From our perspective there are a number of key principles missing. These include transferability across geographic areas and life transitions, and consistency in access and quality, both of which will be critical to the efficacy of the National Care Service for those receiving support and their families and carers.

With our change model in mind, we would go further. The principles of subsidiarity to the level of the individual (crucial to enabling choice and control) and parity among system partners (crucial to collaboration) would not be realisable in the context of the Bill as it stands.

A further key operating principle in our change model is sustainability. With that in mind, and given outstanding questions of cost and affordability which we will come to, we are concerned about the financial implications of delivering on the principles of financial stability and early intervention.

The focus of the principles appears to be on service provision alone. However, services are the end point of delivery. Not everything about the way the National Care Service will operate falls into the definition of a service. Where does this leave the responsibility of everyone involved in the structure, from ministers down, to deliver against the principles?

We are not clear how people supported by social care, and their families and carers, will be able to use these principles to hold the National Care Service to account. What will be the role of the Charter in that regard? We are also not clear how the National Care Service itself will be able to ensure these principles are upheld without powers beyond those currently proposed.

Call for views - General questions

1.   The Policy Memorandum accompanying the Bill describes its purpose as being "to improve the quality and consistency of social work and social care services in Scotland". Will the Bill, as introduced, be successful in achieving this purpose? If not, why not?

While we accept that change is necessary, it is not clear to us that the structural reforms being proposed will facilitate a system which will lead to improved quality and consistency. Given the centralised approach as set out, it is important to ask whether this can achieve what integration has not leveraged consistently to date.

This means taking a step back and considering what is and is not working about the current system (both Audit Scotland and various committee inquiries have explored this) before embarking on a wholesale dismantling of it. The IRASC recommended reformed integrated joint boards and a redirection of responsibilities and resources. The proposals in the Bill go a significant step further, but we have not seen a full and convincing options appraisal of the IRASC approach which has led to it being rejected.

One of the key concerns we have picked up in our conversations with stakeholders across the sector relates to the potential consequences of pulling apart integrated management structures which appear to be implicit in the Bill. This is exacerbated by the uncertainty about the location of children's and justice services.

A further factor here relates to the challenges of a changed financial landscape. It is clear that greater investment in frontline delivery is needed if quality and consistency are to be improved. Yet despite the Bill's principles, there is a real risk of expectations being raised without sufficiently factoring in hard questions about affordability and the consequences for commissioners and providers.

2.   Is the Bill the best way to improve the quality and consistency of social work and social care services? If not, what alternative approach should be taken?

As it stands, we do not believe it is. We do not think that reform centred on structural change is sufficient, particularly in the absence of greater clarity about sustained investment. We would refer again to the need for a more sophisticated change model predicated on cultural rather than structural change in the first instance and system features which flow from that.

Change needs to be based on greater clarity about what social care looks and feels like as well as its intended benefits. If there is a disconnect between the two,

outcomes will be compromised. We are concerned that the Bill appears to conceive of social care as a series of task-based transactions between the person providing support and the person being supported.

In our experience, social care at its best is relational rather than transactional, consisting of a blend of practical and social support which maximises independence and autonomy for the person being supported. It is this asset-based approach which fosters contribution, the achievement of potential and the sense of security and belonging within their communities which enables people to flourish.

One of the system operating principles in our change model is an integrated whole system approach beyond social care and support. However, the Bill in its current form appears to be based on a rather narrow and rudimentary conception of social care. As a result, the role of other services, notably housing, does not feature in the proposed reform.

Social care support does not exist in a vacuum. Yet consideration of the integration of health and social care – which has been the keystone of reform for a decade – hardly appears to feature, which is a real concern in those areas where it has started to gain traction with positive effects.

Moreover, the structural approach to change advanced by the Bill underplays, and even potentially undermines, the wider role of local authorities, community groups and third sector organisations in place making – developing communities that are inclusive and support people's citizenship.

3.   Are there any specific aspects of the Bill which you disagree with or that you would like to see amended?

See answer below on specific provisions.

4.   Is there anything additional you would like to see included in the Bill and is anything missing?

Again, see below on specific provisions. One additional point we would reemphasise here is the need for far greater clarity and consistency throughout the Bill regarding the application of co-design principles.

5. The Scottish Government proposes that the details of many aspects of the proposed National Care Service will be outlined in future secondary legislation rather than being included in the Bill itself. Do you have any comments on this approach? Are there any aspects of the Bill where you would like to have seen more detail in the Bill itself?

In our view there are significant risks given the scale of the reform proposed and the lower standard of scrutiny applicable to secondary legislation. We are being asked to take a considerable leap of faith given the lack of detail in critical areas of the Bill e.g. national governance arrangements, ethical commissioning arrangements, the charter.

As the Bill is currently drafted what will be required of statutory instruments goes beyond the technical details or administrative matters they would normally cover. If the Scottish Government remains minded to pursue this approach, the use of affirmative statutory instruments will be vital to optimise the opportunity for scrutiny. While such an approach may be possible, we still believe it would be far from ideal.

We would reemphasise our earlier point about the challenge of maintaining consistency and co-ordination through an almost certainly complex and contested legislative passage – and the concomitant risk of political trade-offs which are about vested interests rather than end users and outcomes.

This gives rise to a further key question: notwithstanding our concern that the approach taken in the primary legislation has not been subject to rigorous codesign, how is it proposed to build codesign into the secondary phase?

6. The Bill proposes to give Scottish Ministers powers to transfer a broad range of social care, social work and community health functions to the National Care Service using future secondary legislation. Do you have any views about the services that may or may not be included in the National Care Service, either now or in the future?

Our primary concern here relates to our earlier point about sequencing and the parallel process of legislative scrutiny and further consultation. A further question which this gives rise to is the need for contingency planning.

If there is a decision to include children's and/or justice services, how does the Scottish Government propose to mitigate the risk that the implications of doing so have not received legislative scrutiny on an equal footing.

On the other hand, if there is a decision not to include them, what is the Scottish Government's plan B to ensure that key areas of intra-sectoral equity and effectiveness are not lost. For example, how would the Fair Work commitment be applied across the full sector? What mechanism would do this in a coherent way if not the National Care Service?

7.   Do you have any general comments on financial implications of the Bill and the proposed creation of a National Care Service for the long-term funding of social care, social work and community healthcare?

We have already alluded to some of our concerns about the financial implications of the Bill, particularly given the principle of financial stability – namely the affordability and sustainability of the reforms proposed. There is a considerable amount of detail about the cost of implementation which it appears is as yet unknown.

Earlier this year, CCPS funded the Fraser of Allander Institute at the University of Strathclyde to undertake analysis relating to the cost implications of the Scottish Government's reforms. The Institute recently published a detailed briefing, *Social Care Reform in Scotland: context, costs and questions.* This includes an analysis of the assumptions included in the IRASC report which have been reassessed in the light of the Bill and the Financial Memorandum.

The principles set out in the Bill clearly have significant cost implications which are not set out in the Financial Memorandum. As the Institute notes, the Scottish Government has stated that it will put further financial detail in front of parliament as plans develop. We would agree with the Institute that this is welcome. However, as we have already said, and as reinforced by the Institute, the scrutiny function of the Parliament outwith primary legislation will be more limited. This gives CCPS significant cause for concern.

The Institute's briefing also explores the cost implications of the structural reforms in the Bill. Given our earlier concern about the opportunity costs of structural change and our view that it should be no more than a means to deliver a wider goal for the people it is intended to benefit, we would add a concern about the extent of resource allocation required to pursue the approach set out.

Given the significant role of our members have as employers of the social care workforce, we have a particular concern that the Scottish Government's aspirations to Fair Work will not be capable of being properly resourced within a financial climate that has deteriorated significantly since the idea of a National Care Service was first proposed. The Bill does not allay those concerns.

In order to realise the Scottish Government's stated commitment to Fair Work, a pathway to equal pay for work of equal value will need to be identified, where rates of pay are determined by the function and responsibilities of the role rather than the sector within which the role is undertaken.

The Bill does not provide a clear indication that the Scottish Government has fully committed to this, raising genuine concerns about unintended consequences for third sector providers. What would it mean for the application of the best-value test that oversees the provision of contracts? Could it result in significant numbers of local authority staff transferring via TUPE to third sector providers, who would then struggle with a higher, potentially unsustainable, cost-base?

Call for views – specific provisions

There is also the option to give your views on specific provisions in the Bill. There is no obligation to complete this section of the call for views and respondents can choose to restrict their comments to certain sections of the Bill.

In providing comments on specific sections of the Bill, please consider:
- **Whether you agree with provisions being proposed?**
- **Whether there is anything important missing from these sections of the Bill?**
- **Whether there is anything you would disagree with or there are amendments you would wish to propose to these sections of the Bill?**
- **Whether an alternative approach would be preferable?**

During the coming weeks, we will continue to scrutinise the Bill carefully. As we have already indicated, we will use our own change model as a lens for doing so, keeping our eye always on the ultimate goal of reform which enables people to meet their aspirations with the support of a sustainable social care sector.

In offering a critique, and engaging with the Bill at Stage 2, we are mindful of the scale of the challenge involved for the Scottish Government. We do not profess to have all the answers and will continue to refine and adapt our thinking in discussion with our members and other stakeholders. We will continue to offer to share sector perspectives and ideas for improvement to the Scottish Government and wider partners. That said, if the Bill is to proceed, in our view there are a number of key areas where we think it may need considerable revision.

We have already commented that we think the Bill is light on detail in places and that this could pose a significant challenge at Stage 2. Another overarching observation is that in its current form it is inconsistent in its level of specificity. In some areas the Bill is highly specific (e.g., the powers it grants to ministers), in others far less so (e.g., ethical commissioning).

This means that from our perspective there are aspects of the Bill which require:
- A major rethink (e.g., the balance between national and local accountabilities; ethical commissioning, and the principle of subsidiarity)
- Increased checks and balances (e.g., a review of which SSIs should be laid as affirmative or negative instruments)
- More work than appears to have taken place to date (e.g., the application of an underpinning of the principles of integrated care and support; the

relationship of this Bill to the Public Bodies (Scotland) Act 2014; the potential consequences of the Bill as laid on future additions to scope).
- Greater clarity (e.g., the implications for third party providers of the scope of powers being taken by Ministers; the application of the Fair Work provision)
- Greater consistency (e.g., the application of co-design)
- More detail (e.g., responsibility for improvement, the National Care Service charter)

The examples given are not exhaustive. We are also starting work to assess where additional provisions could usefully support the delivery of our model of change. However, we are mindful of the likely tension between proposing the wide-ranging improvements to the Bill we suspect are required and the need to stay within the legislative scope of the Bill as introduced.

What should happen next?

CCPS remains committed to the ambition of creating a National Care Service in Scotland and to working with the Scottish Government and other key stakeholders to realising it. But the optimism we felt following the ground-breaking work of the IRASC has significantly diminished.

There is much in the Scottish Government's Statement of Benefits for the National Care Service which resonates strongly with CCPS. But having explored the principles of the Bill being proposed, we have a genuine concern that the Scottish Government will not be able to meet its own policy intent without a significant rethink. We are, nevertheless, committed to working collaboratively and constructively with the Scottish Government, and others, to explore how to create a legislative vehicle that supports achieving our ultimate, shared commitment: enabling people to meet their aspirations with the support of a sustainable social care sector.

For our members, the Bill in its current form leaves many questions unanswered. How will ethical commissioning be delivered in practice? How will the Scottish Government's commitment to Fair Work be realised? However, beyond these and many other pressing issues, our reservations about the Bill centre on eight key considerations:

- The framework approach being taken, which risks lack of adequate scrutiny
- Its divergence from the ground-breaking approach proposed by the IRASC
- Its centralising, enforcement approach, taken at the expense of partnership, collaboration and subsidiarity
- An inconsistency in the application of the principles of codesign and coproduction
- Lack of clarity about the affordability and sustainability of the proposals

- Its focus on structural change at the expense of culture, relationships and behaviours
- Its relationship to existing legislation, in particular the Self-directed Support Act 2013 and the Public Bodies Act 2014
- And, given the spiralling nature of the cost-of-living crisis on the sector, the de-stabilising nature of this centralising reform package on current delivery.

Our concerns reflect the experiences of our members in delivering social care support on the frontline, extensive engagement with other stakeholders over many years, including people who receive social care support, and careful analysis of the Bill provisions and accompanying documents.

The need for change and investment has never been more urgent. Our members remain committed to reform: we emphasise, we do not believe the status quo is an option. But we cannot forget that people, not systems, must be at the heart of social care. We have set out a model of change, rooted in relationship and culture change, which we hope will provide a beacon to guide us – and we hope others – through the complexities of change. And in the spirit of the change we wish to see, we remain committed to working in partnership and parity, with integrity and respect, to support transformation of the current system in Scotland – through legislative change and beyond.

2 September 2022