Public Bodies (Joint Working) (Scotland) Bill

Royal College of Nursing Scotland

Key points

1. The RCN supports the general principle of a Bill intended to improve provision of swift, seamless access to safe, quality care.

2. However, for the Public Bodies (Joint Working) (Scotland) Bill to meet its aims as set out in the policy memorandum, the RCN believes a key amendment is required to embed the quality and safety of care clearly in the core principles of both planning and delivering integrated services. In the wake of the Francis Report, the Scottish Government and Parliament now have the opportunity to take a clear lead in embedding a legacy of effective, safe, dignified care in the heart of this legislative reform.

3. The current absence of this key principle has resulted in the assurance of quality and safety being excluded from core planning, governance and reporting functions on the face of the Bill. The RCN believes this is a serious omission.

4. We had expected to see the co-production of future care services written more clearly into the Bill. We anticipated minimum requirements to involve and engage named professionals, staff representatives, non-statutory partners, patients/service users and carers in primary legislation, with additional flexibility available through regulation. However, this is not reflected in the published Bill.

5. We would note a general concern that, throughout, significant issues on the future governance and operation of integrated care are being left to secondary legislation, leaving many questions which have been raised during the development of this Bill as yet unanswered.

6. We welcome this Bill opening the door to a wider range of ages and services than were proposed in the original consultation. However, we question whether frontline staff will be well supported to integrate services across families and communities when two different planning processes are proposed in this Bill and in the Children and Young People (Scotland) Bill.

The RCN represents around 400,000 nurses, nursing students and health care assistants across the UK, as both a professional body and trade union. Over 39,000 of these members are in Scotland. We are delighted to have the opportunity to provide written evidence on the Public Bodies (Joint Working) (Scotland) Bill. The RCN is a member of the Scottish Government’s Bill Advisory Group, as well as a number of key working groups, and we continue to use these fora to raise issues and constructive solutions to this agenda. We do not underestimate the scale of reform focused through this Bill.

As noted above, the RCN supports the general principle of legislation intended to improve provision of swift, seamless access to safe, quality care. With this in mind, we have focused our short initial response to this complex legislation on two of the committee’s areas of interest:
To what extent do you believe that the approach being proposed in the Bill will achieve its stated policy objectives?

Please provide details of any areas in which you feel the Bill’s provisions could be strengthened.

Assurance of safe and high-quality integrated care

The RCN has been clear in its support for integrating care where, within a clear shared vision, processes are designed to promote respectful relationships; local plans are designed in partnership to improve outcomes; the quality and safety of integrated care is secured; and national bodies set coherent foundations for reform.

The Public Bodies (Joint Working) (Scotland) Bill is now our chance to get the core legislative framework right for a wide-scale programme of health and care reform.

Clearly, the public should expect to be able navigate care services seamlessly when they need them. No-one should have to face the stress, frustration and poor, inefficient care that can arise from fragmented service design between, and within, agencies. The RCN agrees that reforms to our health and care sector must address these issues. However, ensuring that an individual’s journey through services is smooth should be only part of our aspiration for the future of care.

When anyone is in need of formal care they, and their family and friends, should also be assured that they are easily accessing high quality services offering safe and appropriate care, delivered by people with the right expertise, with compassion, dignity and genuine involvement. The more our population changes, particularly with more people ageing with multiple needs and complex clinical conditions, the more important it is that we focus on both parts of the equation: swift, seamless access on the one hand; safe, quality care on the other.

The Scottish Government opens the Bill’s policy memorandum by reflecting this balance:

The policy ambition for integrating health and social care services is to improve the quality and consistency of services for patients, carers, services users and their families; to provide seamless, joined up quality health and social care services in order to care for people in their homes or a homely setting where it is safe to do so; and to ensure resources are used effectively and efficiently to delivery services that meet the increasing number of people with longer term and often complex needs, many of whom are older.

Nevertheless the RCN is concerned that, despite this welcomed emphasis in the accompanying narrative, the actual Bill itself is focused too heavily towards resolving difficulties in delivering seamless care, and too lightly towards ensuring robust assurances of care quality and safety in this new landscape. Primary legislation should set the core foundations of reform.

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1 See: The RCN in Scotland: Principles for Delivering the Integration of Care at [www.rcn.org.uk/scotlandintegration](http://www.rcn.org.uk/scotlandintegration)
which secondary legislation, guidance and practice can build upon. However, quality in care services is not included in the key principles of integration in the published Bill.

The RCN believes that this omission may well set the Bill, and future integrated partnerships, off on the wrong track. The Bill provides us all with the opportunity to ensure that we focus firmly on improving services and dealing coherently with the instances of poor care that have hit the headlines repeatedly in recent times. In the wake of the Francis Report, the Scottish Government and Parliament now have the opportunity to take a clear lead in embedding a legacy of effective, safe, dignified care in the heart of this legislative reform.

Including a commitment to service quality and safety within the core principles of integrated service planning and delivery would, for example:

- Ensure that the primary policy intention and aspirations of the Scottish Government and - if the Bill is passed – the Scottish Parliament, are totally clear to the public, service users, carers, staff and to the partnerships responsible for planning, delivering and overseeing services. Quality and safety should be paramount, and deserve to be embedded in the heart of the primary legislation, not left to regulation or guidance alone.

- Provide an essential benchmark to ensure that governance structures and decision-making processes established through the Bill focus as much on the robust assurance of safe, high quality care as they do, for example, on strong financial management.

- Support those with responsibility for the governance of service planning and delivery – which we understand is likely to be local councillors and non-executive NHS board directors in the ‘body corporate’ model, for example – with clear authority to take expert advice on issues of care quality and safety. This will help them to make difficult decisions with regard to service provision or plans where quality and safety cannot be robustly assured - even when those decisions may be unpopular.

- Emphasise the importance of establishing clear lines of professional accountability to support frontline practitioners to speak up when concerns arise, giving them confidence that the delivery of safe, high quality services has been prioritised by those in power, locally and nationally.

- Provide a safeguard for the third and independent sectors - given the likelihood of increased procurement of services from these sectors - by supporting non-statutory agencies to negotiate terms which contract care on quality and not just on price. Quality care should be guaranteed to the public, whoever is commissioned to deliver it.

We acknowledge that the draft integrated health and wellbeing outcomes, which will be set through secondary legislation, do include an outcome around
safety. However, these outcomes have rightly been designed to be flexible and easily amended as integration matures. Quality should be a constant at the heart of care and on the face of the Bill.

We also note that the draft outcomes were developed with partners before the integration principles were set out in the published Bill. This has led to some inconsistency. Whilst the safety outcome is not mirrored in a core principle of quality, the draft outcome on effective resource use, for example, is reflected in a “best use” principle. Now that the Government has taken the welcome step to set core principles for integration in the draft Bill, it may be necessary to undertake a wider review of the relationship between these and the improvement outcomes.

For the Bill to meet its aims as set out in the policy memorandum, the RCN believes an amendment should be tabled at Stage 2 to embed quality of care as a core principle of both planning and delivering integrated services. There is legislative precedent for this in Scotland. For example, the general principles at section 59 of the Regulation of Care (Scotland) Act 2001 include the “safety and welfare” of persons using services being “protected and enhanced”.

In light of such an amendment being agreed, we believe that other additions to the primary legislation may be necessary for quality assurance to be a core function of the planning, decision-making, commissioning and reporting undertaken by future partnerships. The RCN is currently discussing how this could be framed within primary legislation with partners and we would be happy to share our early thinking in this area with members of the Health and Sport Committee.

The co-production of plans and services

The RCN supports the Scottish Government’s commitment to ensuring that care services are co-produced in genuine partnership between service users, carers and staff, bringing together the assets of both traditional services and the wider community to improve wellbeing.

Locality planning has been explained to us as one of the key ways for staff and the public to get involved in setting the agenda of local integration. We accept that the finer details of locality planning will be contained in secondary legislation and guidance, but far too little is set out in the primary legislation for such a central facet of the actual delivery of integrated care. Detail is limited to: a) the establishment of localities and their delivery arrangements in the preparation of strategic plans (section 23); and b) a high-threshold consultation and involvement trigger for changes which “might significantly affect the provision in a locality…” (section 32). We are also concerned that the minimum membership of those to be involved in locality processes is also not set out in primary legislation. Furthermore, we would expect local people and professionals to be engaged fully and proactively in the development and delivery of the strategic plan and any amendments to that plan. We note that section 5(4) does set precedent for including reference to key groups on the
face of the Bill and we are unclear why this is not replicated throughout where advice, consultation and involvement is required by integration authorities.

We had anticipated that the Bill would set out far more clearly how locality planning will dovetail with the development of the all-important strategic commissioning process for the entire integration authority. It is essential that there is a clear line of sight in service planning decisions, and the assurance of those decisions, from the very frontline to the governance bodies within an integration authority area. We believe amendments could usefully be brought forward at stage 2 to address these issues.

Within the NHS, the right of staff to be involved in key decision-making is long-established in both statute and clear guidance to NHS boards. This was recently evaluated as “the most ambitious and important contemporary innovation in British public sector industrial relations”\(^2\). Scotland has much to be proud of in its approach to partnership working between employers, employees and the Scottish Government in the health service. However, this is not clearly reflected in the legislation at this time. Indeed, section 11 of the Bill risks undermining current arrangements by permitting Integration Joint Boards to employ staff directly, through future secondary legislation, on varying terms and conditions. This addition was a surprise to the RCN, despite our membership of key groups involved in developing the Bill and our membership of the Scottish Partnership Forum. There is a far greater, open discussion required to understand the consequences of this section on the sustainability and the principles of the NHS in Scotland.

**The risks of fragmented planning across families and communities**

Quite rightly, we all expect frontline practitioners to ensure that those using public services experience seamless, quality care and support - whatever their age, wherever they live and however complex their needs. We should, therefore, expect that the laws and systems staff must work within to plan and deliver those services are joined-up too. Anything else sets up nurses, social workers, doctors and care staff to fail the people they serve.

Audit Scotland recently noted the “clutter” of partnership arrangements in Scotland\(^3\). With this in mind, the RCN continues to question why two Bills going through Parliament at the same time set out two parallel, but different, systems of planning services for adults and children who live in the same families and communities. We ask the Convenors of all the Parliamentary Committees considering the *Children and Young People* and the *Public Bodies (Joint Working)* Bills to consider together whether Scotland will indeed be best served by separate legislation on the planning of joint services.

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**Royal College of Nursing Scotland**

2 August 2013