COSLA

Parliamentary Briefing

National Care Service Bill

See pages 4-6 for a summary of our response to the Financial Memorandum

The National Care Service Bill fails to tackle the issue of underfunding

Since 2013/14, Local Government revenue budgets have reduced in real-terms by 4.2% (when Covid-19 funding is excluded) while the Scottish Government budget has increased by 2.3% over the same period.

Many of the issues within the current system are a result of underfunding. Ambitions to improve care services have been drastically hindered by budget cuts inflicted upon Local Government. The Bill and its financial memorandum fail to offer the investment needed to help make improvements and ease pressure on staff, services and improve the experience of service users.

The establishment of the National Care Service body alone will cost up to £250 million, with subsequent overall NCS running costs of up to £500 million per year spent solely on structural reform rather than directly on improvements.

COSLA has estimated the total costs of implementing the recommendations of the Independent Review of Adult Social Care (IRASC) as being over £1.5 billion – far in excess of the "more than £840 million" stated by the Scottish Government in the Resource Spending Review as the value of its commitment to increase investment in social care by 25% during this Parliament.

Communities benefit when services are locally delivered & locally accountable

Local democratic accountability is essential to ensuring local needs and circumstances are reflected in the care and support that is available. Diversity and difference are positive features of democracy.

What works for someone living in a large urban area often differs from someone who lives in a rural or remote area.

There is a distinct lack of detail in this Bill on what accountability and governance will look like in a National Care Service, as well as the membership and geographical spread of 'local care boards.' Furthermore, this Bill confers regulation-making powers onto Ministers and relies on secondary legislation, which may weaken effective scrutiny of future decision-making.

"Public responsibilities shall generally be exercised, in preference by those authorities which were closest to the citizen." Article 4 (3) of the European Charter for Local Self Government.

COSLA opposes the transfer of Local Government functions, staff, and assets

In communities across Scotland, councils ensure there are critical links between social care, social work, community health, children's services, justice services and wider teams, such as: education, housing, welfare, employment, leisure, environment, and social support.

There can be no underestimating the complexity of the local authority employment landscape and how challenging a process transferring staff would be. Such a move would involve deconstructing and navigating a large number of employers, a range of terms and conditions policies, local agreements, and the Local Government Job Evaluation Scheme.

The potential transfer of 75,000 Local Government employees as allowed by the Bill would be a remarkable undertaking, again with no information provided on how this may be logistically facilitated.

The provision to transfer staff out of Local Government has already caused uncertainty within the Local Government workforce, at a time where many staff are still recovering from the difficulties faced during the pandemic and where recruitment and retention challenges already exist.

The complete removal of this critical mass of council staff and assets will disrupt the entire financial structure of local authorities, their support services and may even have an impact on the viability of some councils' ability to perform necessary statutory functions and responsibilities.

As part of the transfer of functions, this Bill empowers Ministers to remove assets and liabilities from Local Government and transfer them to a National Care Service. In many instances, these will be assets which have been funded and financed through Local Government initiatives during a prolonged length of time. Local communities may have invested, through measures such as Council Tax, into such assets, for the benefit of their community.

Council properties are unlikely to be easily disaggregated, with years of integration between different Local Government services. Such a transfer will involve a serious disruptive unwinding of not just council services, but the Local Government estate.

Alongside assets, should plans proceed, the National Care Service would also have to inherit Local Government liabilities. No information or discussion has occurred with Local Government to date, but an example may include liabilities surrounding Local Government's £100m contribution to historic child abuse redress scheme should social work services be moved to a National Care Service. There is also a need for further clarity and discussion surrounding the impact of the potential transfer of staff on the Local Government Pension Scheme (LGPS).

Children’s services, justice services & public protection arrangements require careful consideration and further clarity

Children’s services and justice services should remain in Local Government, where they benefit from the critical integration with other council functions such as education, community mental health and welfare services.

The Bill as drafted enables Ministers to make regulations to transfer functions relating to children’s services and justice services, following public consultation. We would express concern at the significant power this confers to Ministers using statutory instruments with minimal parliamentary scrutiny and with no requirement that the results of the public consultation should inform the direction of travel.

Across the Bill, there is also a need for greater detail on the incorporation on public and child protection duties and arrangements.

By changing public protection structures without any apparent strong evidence base that has been rigorously consulted on and reviewed, this Bill is introducing significant risks to our current public protection arrangements.

We should make changes to care now, not wait for structural change

Scottish local government has been working on the key areas identified in the jointly agreed COSLA/ Scottish Government Statement of Intent. This includes a focus on securing a Real Living Wage for all care workers; developing minimum standards; terms and conditions; improving the workforce voice; working to remove charging for non-residential care services; applying ethical commissioning principles; designing new criteria for and entitlements based model of care; improving the voice of lived experience in care services; and improving the support to unpaid carers.

Areas of improvement will progress faster and with more impact if properly resourced and without the distraction of an unnecessary structural change.

COSLA believes care should be kept local but recognises that a National Care Service designed to complement, not disrupt, local service delivery could help drive improvements. Whilst retaining local democratic accountability, a NCS could provide national leadership on matters such as workforce planning, training, terms and conditions, national standards, ethical procurement, registration, inspection, and improvement.

Summary of COSLA response to the Financial Memorandum

Investment is needed now to improve services and tackle challenges such as staff recruitment and retention, in order to deal with the growing pressures and ever-increasing demands facing social care – which are also having real and significant knock-on effects for health services too. It is greater capacity, rather than consistency, that is most urgently needed across health and social care.

The National Care Service is said to be "the most ambitious reform of public services since the creation of the NHS". In that context, it is deeply concerning how much is still unclear and how many questions remain unanswered about its finances - in terms of:

- aspects of how the National Care Service will be funded, whether it is affordable and the severe financial impact it is likely to have on Local Government; and
- the transparency, reliability and robustness of the figures presented, including underlying assumptions and treatment of factors such as demand and inflation.

We have significant reservations about the rationale for directing such substantial sums at this disruptive and time-consuming medium-term structural reform.

We would like to see much more clarity and transparency around how the costs of the National Care Service will be managed and met, with detailed and costed options being developed and appraised at every stage as the design and implementation of the National Care Service progresses. This is essential to enabling effective Parliamentary scrutiny of the financial and policy detail of the Bill.

The mass transfer of functions, staff and assets out of Local Government poses a risk to the sustainability of services that play a vital role in reducing demand for health and social care by addressing social determinants of health and wellbeing.

There is a lack of detail and clarity about finances

There are a number of major issues with how the costs of the National Care Service are accounted for and presented in the Financial Memorandum (FM). For example:

- **The figures for the "costs of services to be transferred" are misleadingly uprated by inflation plus 3% for each year from 2019/20.**
  This uprating fails to reflect subsequent Local Government settlements and is at odds with the reality of the Resource Spending Review: a 'flat cash' settlement (a 7% real-terms cut) for Local Government and 2.6% real terms increase in Health and Social Care budgets over the next four years. In addition, the figures are based on current expenditure – including other funding sources like direct income – rather than either budget allocations or the actual cost of delivering social care, including unmet need (valued at £436 million at 2018/19 prices by the Independent Review of Adult Social Care).

- **Excluding the future cost of existing policy commitments undermines the stated purpose of the "costs of services" figures.**
  These commitments substantially alter how much it will cost to deliver social care services in the period covered by the FM, so their exclusion means the figures presented fail to accurately reflect the cost of delivering the services, as

they are specifically intended to do. The reforms are necessary for the future sustainability of a National Care Service so it is not credible to present the costs of the services that it would deliver without factoring those reforms in.

- **It is extremely difficult to make meaningful calculations or conclusions about the affordability of the National Care Service itself.**
  For example, it is not apparent whether the expected costs of care boards and the national establishment are in cash terms or real terms, or at what year's prices. Especially in the current context of high inflation, this has a substantial impact on the actual costs that will be incurred. In addition, cost figures throughout the FM are presented in very large ranges, likely due to extreme uncertainty about what costs will arise and when, as well as key aspects such as the number of care boards.

- **Significant questions and risks remain, such as in relation to VAT and pensions, each of which has major financial implications.**
  The proposed structure and governance of the National Care Service is such that it is likely to be liable for VAT. As the FM itself acknowledges, this would significantly increase its costs of operating and consequently reduce the funds available to spend directly on social care support. Meanwhile, the possible transfer of up to 75,000 staff out of Local Government could have considerable implications for pension schemes and their current and future members.

- **There are several potential issues regarding the proposed transfer of Local Government assets and liabilities.**
  With no clarity or detail about the financial treatment of assets – particularly whether they would transferred to new ownership or purchased – there may be disincentives for local authorities to invest in them in the meantime. In addition, Council assets may not be easily disaggregated due to increasing co-location and integration of Local Government services, and there are also questions as to how the acquisition, financing and maintenance of the assets will be funded.

- **There is a real lack of clarity about the impact of the proposals on Local Government budgets, causing uncertainty for authorities and staff.**
  As explained above, financial transfers cannot be based on actual expenditure on social care, as this is funded from several income sources; it would also disadvantage councils that have sought to protect social work and care budgets compared to others. And while the FM anticipates savings or efficiencies via shared services across the National Care Service, it fails to acknowledge the corresponding loss of economies of scale in Local Government arising from the loss of so much of its workforce, and the broader impact that is likely to have.

- **The costs of the new rights to breaks for unpaid carers are also unclear and likely to be underestimated.**
  The FM assigns costs to "local authorities" from 2025/26, but that is also the year from which Care Boards are expected to be established. Other costs are provided for years prior to then, but are assigned only to Scottish Ministers, even though Local Government will ultimately be responsible for providing the

necessary support. Meanwhile, assumptions regarding the uptake of the new entitlement do not take into account the removal of eligibility criteria for short breaks, which is likely to result in much greater demand for assessments.

Given the nature and scale of the financial implications of what is being proposed, the apparent lack of clarity, transparency and due diligence is disappointing.

Some of the areas described above are acknowledged in the FM as requiring further work, but this work should have been done before the Bill was published. A Business Case should also have been produced, setting out the rationale, costs, benefits and risks of the National Care Service. This would have enabled Parliament and the public to adequately scrutinise the proposals and assess whether they represent Best Value.

Underfunding remains unresolved and may be exacerbated

The failure to reasonably and realistically estimate the costs of the National Care Service compounds the fact that many of the issues facing the current social care and social work system today are the product of under-resourcing from central Government - not how the current system is structured. COSLA has been calling for appropriate funding for social care since before the pandemic, and significant investment is now urgently needed to support meaningful change across a range of service improvement recommendations set out by the Independent Review of Adult Social Care (IRASC).

The Scottish Government has committed to increasing investment in social care by 25% during this Parliament – valued at £840 million in the Resource Spending Review (RSR). According to the FM, the running costs of the National Care Service will be up to £500 million per year – equivalent to a large proportion of the planned increase in investment, but which would be spent on structural reform rather than directly on the improvements in service delivery or meeting of unmet need recommended by the IRASC.

However, as well as it being difficult to see how the costs of the National Care Service can be met without significant additional funding being provided (or at all), the proposals fail to offer the investment in service delivery needed to help improve the experience of service users and ease pressure on staff.

The Bill and its accompanying FM do not address the underfunding of social care and Local Government, which places pressure on services, impacting both those who receive support and those who deliver it.

Since 2013/14, Local Government revenue budgets (excluding Covid-19 funding) have reduced in real terms by 4.2%, despite the Scottish Government budget growing by 2.3% over the same period. This broad underfunding of Local Government also has an impact on social care, reducing investment and support in the wider determinants of health which ultimately impact demand.

Despite this reduction, Local Government has protected social care as much as possible with a 13% real-terms increase in adult social care spending. However, even this has not been enough to keep pace with increased demand arising from demographic pressures, growing complexity of care needs and efforts to keep and care for people in their own homes for longer. Meanwhile, the Resource Spending Review puts further pressure on Local Government, delivering a 7% real-terms cut over the next four years.