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DX Number: LOCHGILPHEAD DX599700
Our Ref: PM/JRB
Date: 16 January 2023
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Dear Ms Martin

FOLLOW-UP TO HEALTH, SOCIAL CARE AND SPORT COMMITTEE MEETING, 13 DECEMBER 2022

I'm very sorry that illness prevented me from attending the Health, Social Care and Sport (HSCS) Committee meeting on 13 December 2022.

I welcome the opportunity to provide written responses to the questions contained in your letter. As suggested, I have picked out those that are most relevant to my roles as local authority Chief Executive and Chair of a Public Protection Chief Officer Group.

For context to my answers it is also worth noting that in Argyll and Bute the Health and Social Care Partnership (HSCP) operates a fully integrated model, including children's services, justice, acute NHS services and hospitals, primary. Whilst the HSCP has NHS Highland as one of its partner bodies, all care pathways are into Greater Glasgow and Clyde.

My responses:

General hopes and fears

- **What do you regard as the benefits and risks of the structural changes proposed in the Bill? Do they reflect the kind of reform to social care that is needed and what impact do you think they will have on the process of integration of health and social care to date?**

Argyll and Bute Council recognises the ambition in the NCS Bill to improve care services in Scotland and fully support that principle. However we do not see the clear, evidence based argument that major structural change will result in that improvement. Investment in the current system of care, with locally based design and additional powers, such as Integration Joint Boards (IJBs) becoming employers, could deliver those improvements whilst retaining local accountability and locally based solutions. Such reforms to the structure of IJBs could be

delivered by amending provisions the Public Bodies (Joint Working) (Scotland) Act 2014 – as opposed to the major structural change that is proposed by the Bill.

There are, however, some areas where a national approach could result in improvements for example data, workforce planning and standards.

The Bill proposes a NCS with no reference to integrated service delivery in IJBs/HSCPs and does not recognise the varying models of delivery in place. Argyll and Bute Council has worked constructively as a core partner of the IJB to implement an integrated of health and social care suited to our area.

The Feeley Review and the Bill promote a rights based approach to providing care services but it should be noted that the statutory public protection duties placed on the agencies that make up the membership of Chief Officer Groups, on occasion, requires the removal of rights from an individual to protect them and those around them. It will not always be possible to allow every individual the ability to enjoy their rights without restriction. It is essential that the Scottish Government does not create an expectation that all persons will be able to enjoy all rights all the time.

Planning for Adult Support and Protection (ASP) is currently delegated to IJBs, and therefore the transfer of ASP to Care Boards instead of IJBs is likely to be neutral. There may be challenges where the strategic support arrangements for the delivery of Adult Protection Committees are hosted alongside other protecting people partnership capacities at the local level. This is most likely to impact in smaller local authority areas where officers lead on multiple strands of protecting people work. There is also a need to consider the specific practice governance requirements needed to competently oversee ASP practice and arrangements in Care Boards. Several areas, like Argyll and Bute, have the Chief Social Work Officer (CSWO) role aligned to a post holder who is not operationally responsible for adult services and (subject to the further evidence work ongoing in relation to children's and justice services) may not therefore transfer into Care Boards at defragmentation.

- **What lessons from the major reforms of the police and fire services could inform the development of this legislation and a national care service?**

Further learning can be drawn from the reform of police and fire service in Scotland. In that regard, it's worth referencing the Evaluation of Policy and Fire Reform reports. The year 4 report made several findings and consideration should be given to those findings and their context ahead of the implementation of an NCS. The findings included the following points:

- There was a sense of diminishing local resources due to resources being targeted to central costs.
- There was an awareness of community engagement and locally based joint initiatives being under pressure from other demands within the system.
- It was a challenge to maintain levels of performance when established structures and processes were being re-configured.
- The pressures to deliver short term financial savings and a focus on the immediate aims of reform made it challenging for the police and fire and rescue services in Scotland to develop clear, long-term strategies during the early phases of reform.
- Communication with local service users, partner organisations, communities and staff throughout reform was not adequate.
- Professional experience alone is not often enough to achieve programmes of reform. It is essential that the necessary skills and leadership required to implement the reform at local and national levels are identified and secured.
- Throughout the process, there is an ongoing requirement to balance localism and centralism.

- **What is required from the Scottish Government to support organisations and public bodies to implement the significant changes to current ways of working proposed by the Bill?**

Clarity around the geographic coverage of each Local Care Board, their membership and their core functions would provide more certainty. The clarity on geographical coverage is vital. Without this, transition planning cannot begin in earnest. This is hugely significant for enabling the safe transfer of the management of all public protection risks as they relate to children and adults.

A formal shadow period before an official go live is essential and should be stipulated within the Bill. This will enable clarity to be developed at a local level on the points raised by Claiborne etc. al. (2013).

Given the proposals include the transfer of all public protection services, it would be appropriate for the Care Inspectorate to be given a role in verifying that local areas are appropriately prepared to transfer these services over to the new local care board. And that the newly formed care board is ready to accept the transfer of the management of significant risks. The Bill rather than secondary legislation should place this duty on the Care Inspectorate to confirm the readiness for the transfer of public protection arrangements. This is particularly case when neither the use of the affirmative or negative procedure for secondary legislation allows proposed wording to be amended. If there is a continuing preference to use secondary legislation it would be more appropriate, although still not the preferred option, for the secondary legislation to follow what is known as the Super-affirmative procedure. We would also ask that Scottish Government consult and liaise with local authorities and appropriate agencies (such as Social Work Scotland and SOLAR) as well as specialist practitioners, on the detail of such secondary legislation in advance of its publication so that their knowledge and expertise can inform the detail.

It is also submitted that Scottish Ministers should ensure proportionality in the refreshed 3-year inspection programme put in place before the go live date for the NCS in recognition of the need to balance the inspection of the current public protection systems, processes and practices versus the local capacity required to manage the transfer to the NCS.

Argyll and Bute Council is of the opinion that the financial implications set out in the Financial Memorandum are substantially inaccurate and fail to provide a true and fair view of the likely financial impact of the Bill on a NCS and Councils. Sufficient financial provision should be made in relation to the work associated with the transfer of staff, assets and support service arrangements. Ongoing provision also needs to be made to support the lost efficiencies economies of scale that will be felt by local councils.

- **Does the Bill as introduced take appropriate account of and appropriately support the changing demographic picture and the considerable and growing need for palliative care?**

Argyll and Bute has a declining population and ageing demographic which presents systemic challenges in terms of service demands and the ability to respond to those demands. As the Bill lacks detail on how the proposed NCS will operate it is difficult to accurately assess how those changes in demographics will be addressed. The Financial Memorandum is silent on how funding will be distributed to the local care boards and if/how local demography, geography and workforce challenges will be accounted. There is no reference to capital funding, which is a concern in Argyll and Bute due to the age of many of our older people care homes and the changing needs and preferences of clients and their families.

Argyll and Bute's unique geography also poses challenges. This area includes remote/rural communities, 23 inhabited islands and peninsulas with many of the same challenges. Current integration is enabling community based, locality designed partnership approaches to delivering care. There is no evidence of analysis presented in the Bill that the proposed structural change, with a focus on consistency, will deliver improved outcomes. Any loss of the ability to design local solutions would run the risk of undermining the positive progress made to date.

Mental health support

- **Does the Bill provide sufficient clarity on how the commissioning and delivery of mental health services will be affected by the creation of a national care service? If not, what changes are needed to provide greater clarity?**

A clear distinction needs to be made between Adult Care and Adult Support and Protection; and between Children's Services and Children's Social Work. The Feeley review was an assessment of adult social care – it was not an assessment of adult support and protection – these are distinct and different and yet the distinction and understanding of the distinction is not clear in the Bill.

More clarity between these services is required in the draft Bill and the accompanying supporting documentation to justify the transfer of the public protection services into an NCS. In the context of this Bill, it is not only a question of whether consistency and quality of services will improve, but whether people are more likely to be safer under this proposed legislation. Significant risk is being introduced to the system of public protection because these proposals will change the public protection structures without any apparent evidence base to support a case for change.

An important aspect of protection includes clear integration and partnership across the wider preventative and universal service landscape. In the context of the Bill, there is no reference to how the risk of disaggregation of critical protecting people services from the wider preventative and universal service landscape will be managed. It is this whole system thinking, alongside a clear focus on the protecting people specific services and processes that will keep people safe as the governance and delivery landscape changes.

Journey mapping and service has demonstrated the interdependency of various systems and agencies. It has demonstrated the emphasis on strong leadership at all levels, the importance of relationships, capacity, and capability far more than structural change. It has also provided an oversight of the crossover of different legislation and guidance that applies to any one scenario. This mapping and blueprinting have also exposed the sensitivities of the system to change. Should one element of the public protection system fail the consequences to an individual or individuals can be severe. It would be useful to establish what journey mapping and service blueprinting work the government has undertaken on the journeys of those being subject to public protection arrangements as distinct from an adult social care journey.

- **Could any issues arise for social workers with adult and child protection responsibilities if certain staff or functions were moved to care boards but not others?**

If services are to transfer to a NCS, as a result of Regulations made under Section 30, it is understood from the documentation accompanying the Bill that this is proposed to happen on a phased basis. However, the Bill is absolutely silent on the important question of what would happen in relation to the delivery of these essential services in the meantime. This/.....

This is particularly relevant to Argyll and Bute in relation to children and families social work – a function which the Council fully delegated to its IJB. It is the Council's understanding that IJBs are to be abolished should the Bill be enacted. As such the important question arises as to who would be responsible for children and families social work during the transitional period. One could imagine a scenario where these services have to be disaggregated and then reintegrated.

There is insufficient detail within the Bill in relation to the definition of "children's services". This should be further clarified and defined within the Bill to ensure clarity about the range of services which could be transferred to a NCS in the future.

Crucially, the Bill fails to mention or recognise the fundamental relationship between children's services and education – which will remain under local authority control. The separation of children's services from education will have an impact on ongoing work to protect children and close the poverty related attainment gap. There is a need for a multi-disciplinary approach. Entirely separating children's services and education risks undermining the progress made to date.

The ongoing role (if any) for the Council's Chief Social Work Officer is unclear and more clarity should be provided in relation to this given the importance of that role. This is especially important if certain functions were moved to care boards but not others. Assuming the role is still mandated this scenario could require this role to be duplicated in both organisations. There is no mention of the role at all within the Bill.

Similarly, the Bill appears to be silent on a number of other areas, including the arrangements for public protection responsibilities that sit with Councils (CSWO and Chief Executive), and the relationship between care boards and Community Planning Partnerships moving forward. The separation of functions would further complicate this issue.

- **What impact, if any, does or could the Mental Health Law Review have on implementation of the Bill as introduced? Given the Review reported after the Bill was laid, are any specific changes required to reflect the Review's key recommendations?**

And the Government, within the policy memorandum has committed itself to reviewing Child and Adolescent Mental Health Services (CAMHS) and criminal justice review. The Government's response to these reviews could lead to significant changes to the Bill or to the secondary legislation.

There is no clarity on when the above reviews (with the exception of the Scott Review) are scheduled to be complete, the schedule for the subsequent public consultation and when any proposed transfer will be proposed to take effect from. Given the inter-connectedness of many of these services, its inadvisable to approach these services as standalone and to assume that they can be transferred at different stages

Self-directed support and co-design

- **What involvement have you had so far with co-designing elements of the National Care Service?**
- **How should the people you support be involved with co-designing the services they need? What are the key opportunities and challenges with taking the co-design approach?**

The supporting documentation to the Bill mentions the extensive programme of co-design that the Scottish Government intends to follow when formulating the NCS and local care boards, but lacks many of the important details in relation to this programme. So far, the Council understands that such a programme is being carried out on a national basis. Such an approach does not deal with the geographical complexities, remote/rural/island communities' issues, and other challenges that are particular to Argyll and Bute's unique position.

Evaluation and sequencing

- **What would be a realistic timescale for the key provisions in the NCS Bill to be implemented and what should be the order of priority in implementing those provisions?**
- **Are there any provisions in the Bill you think need to be preceded by the conclusion of a co-design process before they can be implemented?**
- **What should a successful national care service look like and how should that success be measured?**
- **Do you think that the National Performance Framework (NPF) might be an effective way to monitor the success of the National Care Service, and that the NPF should include a specific outcome, and indicators to measure its progress? (such as that proposed by the 'A Scotland that Cares' campaign)?**

Section 30 of the bill makes it a pre-condition to transferring children services or justice services under section 27 that ministers first carry out a public consultation on the proposed transfer. Following publication of the Bill, the Scottish Government announced the appointment of Professor Daniel to lead a review on children's services. Whilst this is welcome, the review of adult social care and the review of children's services ought to have been concluded before the creation of the NCS Bill.

The Bill does not provide a solution to the current challenge of various employers and an integrated workforce. There should be the option of a local HSCP to become an employing body, fully able to employ and manage the resource from both NHS and Councils/care providers to deliver locally based solutions, co-designed with communities.

More generally I would like to conclude with the following observations:

The lack of reference to integration creates the risk that a NCS will operate in isolation from acute care services operated by NHS Boards. This would result in losing the opportunity to transfer resource from acute medical services to community and care services, and so would undermine the policy objective of keeping people safe in their own homes.

There is no clear articulation of what consistency of social work and social care would look like. In Argyll and Bute, delivery of services is currently designed in response to local need. Our diverse, remote and island communities all have different needs and given the geographical challenges, the services need to be bespoke to get the best outcomes for people.

The quality and consistency of service is dependent on workforce recruitment, retention and training/learning. A sustainable workforce in remote rural and island areas is even more challenging than in urban areas. The Bill does not make provision for improvements to the workforce challenges and does not recognise the systemic issues that impact on the workforce supply – population decline, lack of affordable housing, higher than average costs of living in remote rural and island areas.

The Bill should include options for locally based arrangements that include, for example, a Single Public Body based on the principles of health and social care integration. That could be effected by amending the current legislative framework (the Public Bodies (Joint Working) (Scotland) Act 2014) as opposed to creating a brand new system.

Thank you for the opportunity to submit written evidence. I hope the Committee find this useful.

Yours sincerely



Pippa Milne
Chief Executive