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The Scottish Parliament  
Edinburgh

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14 October 2024

Dear Convener

**National Care Service (Scotland) Bill**  
**Structural landscape**

Thank you for inviting the Law Society of Scotland to give evidence on the above Bill on 1 October 2024.

During the evidence session, the Deputy Convener Paul Sweeney MPS noted that:

*“The Law Society’s written evidence mentions an “already crowded legislative and organisational landscape” in this space. Can you develop that point around the current structures for how strategic planning and ethical commissioning are supported? Do you have an understanding of how the bill as currently drafted would move that on and create the circumstances for better organisational improvement?”*

I undertook to write following the evidence session to provide further information on this point. The following has been drafted with the assistance of our National Care Service Working Group.

We are aware of several existing resources which attempt to summarise the current legislative landscape relating to adult social care and integration, for example:

- [COVID-19 Public Inquiry: Research Report for Portfolio 3 The Provision of Health and Social Care Services Adult Social Care, McKay et al, Edinburgh Napier University \(1 March 2024\)](#), at pages 35-46
- [A Guide to Glasgow City Council’s Statutory Duties and Powers, Glasgow City Council \(May 2021\)](#), at Chapter 6 (pages 155-187)
- For data control purposes, the ECLIPSE model of data control, available at [NHS Greater Glasgow and Clyde Protocol for sharing information](#) (December 2019), at page 3

In addition to compliance with this structural legislation, public sector bodies procuring the delivery of social care services need to comply with public procurement law (itself a complex area of law) and are subject to market conditions which may not give procuring bodies much choice as to who to award contracts to.



We also note that delivery of social care is by a mixture of public, private and third sector organisations as well as by individuals acting as carers, with this mixed landscape creating additional complexity for planning and commissioning.

Our understanding is that, at present, **strategic planning** is undertaken at the Integrated Joint Board (IJB) level (see Section 29 of Public Bodies (Joint Working) (Scotland) Act 2014). Ministers currently have extensive powers of guidance and direction, and have issued guidance on a range of issues, for example, eligibility criteria, self-directed support, health and social care standards, national health and wellbeing outcomes, and integration itself. Whilst that guidance and direction should feed into IJB's planning processes, strategic planning is ultimately a matter for the IJBs. In contrast to NHS Boards, there is no performance management by Ministers. Rather, bodies such as Audit Scotland and the Care Inspectorate scrutinise issues such as quality, outcomes and value for money.

We further understand that, at present, there is limited structural support for **ethical commissioning**- although Ministers could use existing powers of guidance and direction to guide IJB thinking in this area, if they chose to do so.

As we understand it, the revised Bill (as amended by the Scottish Government's proposed Stage 2 amendments) would create a National Care Service Board which would sit above these local arrangements and seek to provide an element of national oversight and shaping of the strategic direction of care services. This is a broad policy intent.

However, as we have highlighted in our [written evidence](#) (at page 3), it is not clear to us at this stage how these proposed powers will differ from Ministers' existing powers in real terms and we are not therefore able to take a view on how the Bill may create the circumstances for better organisational improvement. Crucial aspects of how this may work in practice are not provided for in the Bill itself, and we understand that much of the detail of the proposed approach is not yet available. We also note that arguably one of the most complex features of the current structural landscape- the relationship between Local Authorities, local NHS Boards and the IJBs- will be largely unamended by the revised Bill.

As we have stated in our written evidence (pages 5 and 10), it is important that any new legislation within this complex organisational landscape is linked to a demonstrable public interest justification and leads to improved outcomes for the end users of social care services. New legislation must not simply add a further layer of complexity to an already complex operational environment but must improve clarity and accountability for all parties, and in particular the end users of social care services.

I hope that the above is helpful. If we can be of further assistance to the committee, please do not hesitate to contact me.

Yours sincerely



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