



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 19 December 2022  
SP Paper 274  
11th Report, 2022 (Session 6)

## Education, Children and Young People Committee

# National Care Service (Scotland) Bill - Stage 1 Report



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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# Education, Children and Young People Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Education and Skills and matters relating to the Historical Abuse Inquiry within the responsibility of the Deputy First Minister.



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# Introduction

## Purpose of the Bill

1. The National Care Service (Scotland) Bill was introduced to the Scottish Parliament on 20 June 2022.
2. The Scottish Government states that the purpose of the Bill is to "improve the quality and consistency of social services in Scotland" <sup>1</sup> by creating a duty on Scottish Ministers to "promote a comprehensive and integrated care service" and making provision for "the establishment of care boards to carry out Ministers' functions in relation to social care, social work and community health." <sup>2</sup>
3. The Scottish Government's vision for a new National Care Service sets out a number of key principles, including that it will:
  - ” • Enable people of all ages to access timely, consistent, equitable and fair, high-quality health and social care support across Scotland
  - Provide services that are co-designed with people who access and deliver care and support, respecting, protecting and fulfilling their human rights
  - Provide support for unpaid carers, recognising the value of what they do and supporting them to look after their health and wellbeing so they can continue to care, if they so wish, and have a life beyond caring
  - Support and value the workforce
  - Ensure that health, social work and social care support are integrated with other services, prioritising dignity and respect, and taking into account of individual circumstances to improve outcomes for individuals and communities
  - Ensure there is an emphasis on continuous improvement at the centre of everything
  - Provide opportunities for training and development, including the creation of a National Social Work Agency providing leadership, oversight and support
  - Recognise the value of the investment in social care support, contribute to the wellbeing economy, make the best use of public funds, and remove unnecessary duplication. <sup>3</sup>
4. In September 2020, the First Minister announced an Independent Review of Adult Social Care. The Review, also known as the Feeley Review, published its report in February 2021. The Bill seeks to implement many of the Feeley Review's recommendations.
5. This was followed by a Scottish Government consultation which sought views on a new National Care Service. The consultation also included four questions about

whether the remit of a new National Care Service should extend beyond adult health and social care to include children's services and justice services, including asking stakeholders whether they thought this would reduce complexity for children and young people accessing social work and social care services; whether this would improve alignment with community child health services; and whether stakeholders thought there were any risks associated with including children's services in the National Care Service. <sup>4</sup>

6. The analysis states that "overall, the majority of respondents (396 of 521 (76%)) agreed that children's services should be included in a National Care Service (NCS). Three quarters of individuals who responded to this question and a similar proportion of organisations were in agreement," noting that "a number of key stakeholders however did express concerns about the proposals with several suggesting that more evidence on the likely benefits of the proposals is required, including, as previously noted, some of the local authorities. There were a number of risks identified here by individuals and organisations, including the potential loss of a local dimension to responding to need and the potential loss of the link to education." <sup>5</sup>
7. Many stakeholders expressed concern at the way in which the questions had been presented in the consultation, with Social Work Scotland stating in their submission—  

” This is too complicated a question to simply provide a 'yes' or 'no' answer. The implications of either response are profound; not just for social work, but for children's services as a whole. We accept that there is no status quo option....change is guaranteed for every local authority in Scotland... The question is therefore whether these specific proposals represent reform likely to provide social work and its partners with an enabling context within which to affect meaningful, positive, sustainable change for children and families...." <sup>6</sup>
8. The Care Inspectorate suggested that more evidence was needed before change could be considered, noting that "We have not seen evidence that bringing children's services into a National Care Service developed in response to an adult social care review will address difficulties in the system. It is not clear that children and families experience better outcomes in areas of the country where children's services are the responsibility of an integration authority, rather than a local authority." <sup>7</sup>
9. Stakeholders in favour of children's social work and social care services being included in a new National Care Service, suggested that this would ensure 'an alignment with a 'cradle to grave' approach', 'help ease the transition between children's services and adult services - and create a more joined up approach' and ensure 'greater standardisation across Scotland'. <sup>8</sup>
10. The Promise also highlighted potential advantages to including children's services under the auspices of a National Care Service, noting that "shared governance and accountability arrangements that facilitate whole system governance with embedded improvement, and system and service redesign models, could be an advantage of incorporating children's services into a National Care Service, and provide an improved alternative to the status quo, with all the complexity highlighted in the Independent Care Review." <sup>9</sup> . However, it is important to view these

comments in the context of the Promise's wider evidence to the Committee, which did not suggest unqualified support for the proposals laid out in the Bill. <sup>10</sup>

11. Stakeholders identified a number of other risks in including children's services in the National Care Service, including—

- ” • The potential loss of a local dimension to needs
- The level of funding that will be required and the budget that is likely to be available
- The scope of the proposals being too broad
- The dilution of multi-agency responsibility
- Inappropriate data sharing
- The potential compromise of the role of education
- The need to reflect geographic difference, i.e. The different needs of urban and rural locations and the Island. <sup>11</sup>

12. The Committee subsequently wrote to the Cabinet Secretary for Health and Social Care in June 2022 to request further information on the work being undertaken to consider if children's services should transfer into a National Care Service.

13. It received a reply in August 2022 which stated that "no decision has been taken on whether children's services will be included in the NCS". <sup>12</sup>

14. In his letter, the Cabinet Secretary recognised that children's services had not been subject to comprehensive review in the way that adult services had, but stated that "a formal review, like the Feeley Review, is not planned for children's services - instead we intend to gather evidence to understand the best delivery model for children's services." <sup>13</sup>

15. The Cabinet Secretary sets out that this will involve—

- ” 1. A programme of engagement with children, young people, their families and organisations which represent them.
- 2. An independent research project to consider current approaches to services in Scotland and beyond." <sup>14</sup>

16. The Minister for Children and Young People [wrote](#) to the Committee on 1st November 2022 to say that CELCIS, the Centre for Excellence for Children's Care and Protection, had been commissioned to undertake an independent research project which would seek an answer to the question "How do we ensure that children, young people and families get the help they need, when they need it?" <sup>15</sup>

17. The Minister also provided details of an Independent Steering Group that had been established to "oversee the research project and provide guidance and support to the research team," noting that this group will be chaired by Professor Brigid Daniel, and comprise "11 further members from academic and practice backgrounds." <sup>16</sup>

18. In addition to commissioning independent research, the Scottish Government has also created a Lived Experience Experts Panel for individuals with experience of health and social care services and a National Care Service Stakeholder Register which will assist in seeking the views of the health and social care workforce.
19. The Committee welcomes the creation of both of these initiatives. However, it notes that the Lived Experience Experts Panel is currently only open to those over the age of 18, with the intention that "children, young people and their families, care experienced people, young carers and children with disabilities" will become involved in events and co-design projects in future.<sup>17</sup>
20. The Committee acknowledges the work of other Scottish Parliament Committees in scrutinising this Bill, including the Health, Social Care and Sport Committee in its role as lead committee. In addition, the Delegated Powers and Law Reform Committee, the Finance and Public Administration Committee, the Local Government, Housing and Planning Committee, the Criminal Justice Committee and the Social Justice and Social Security Committee all carried out their own scrutiny.
21. As such, whilst some small degree of overlap is inevitable, this report does not seek to replicate the work of other committees or comment on aspects of the Bill which are unlikely to impact on children and young people.
22. Full details of each committee's scrutiny of the Bill can be found on [the National Care Service \(Scotland\) Bill webpage](#).

## Provisions in the Bill

23. Whilst the Bill itself primarily relates to the creation of a National Care Service (NCS) for adults, section 27 of the Bill also makes provision for children's services to be brought under the NCS in future.
24. According to the Policy Memorandum accompanying the Bill, the type of children's services likely to be transferred to a National Care Service could include:
  - Social work services for children and families and related social care services such as residential child care provision;
  - Provision of services which support families in the community to prevent children being brought into care;
  - Provision of services and supports to care experienced children and young people and their children;
  - Any service which provides support to children and young people and where there may be a change to a support service during the transition period from child to adult services and the young person requires ongoing support in respect of wellbeing needs (e.g. Disability, mental health, alcohol/substance use)
  - Youth Justice services<sup>18</sup>

25. Section 30 of the Bill sets out a consultation process which must take place before such a transfer takes place, with the results of such a consultation being required to be laid before the Scottish Parliament.
26. In [correspondence](#) with the Delegated Powers and Law Reform Committee, dated 16 November 2022, the Scottish Government suggested that "this approach is being taken because children's and justice social work services were not considered as part of the Independent Review of Adult Social Care and it is important the potential implications for children and young people and people in the justice system are considered in depth before any decision on their inclusion is made." <sup>19</sup>
27. Section 46(3) of the Bill states that any regulations made under section 27 are subject to the affirmative procedure.
28. The Bill also makes specific reference to young carers under section 38 in relation to a right to sufficient breaks from caring.

## Scrutiny

29. The Committee focused its Stage 1 scrutiny on the impact of the proposed Bill on children and young people. It did so recognising that, regardless of whether children's services were included in a new National Care Service, should the Bill pass into law, then inevitably children's services would be impacted, with the accompanying need both for improvement of these services and the safeguarding of children's rights.
30. With this in mind, the Committee decided that it wished to:
  - reflect on previous experiences of health and social care integration;
  - explore the existing integration arrangements in place for children's services;
  - explore what a human rights-based approach towards health and social care would mean in the context of children's services; and
  - hear from those working directly with children and young people in services likely to be affected by a National Care Service.
31. The Committee held evidence sessions at its meetings on the [9th](#) and [16th of November](#) 2022, before hearing from the Minister for Children and Young People and the Minister for Wellbeing and Social Care jointly on [23rd November 2022](#).
32. The Committee also held an informal session with groups working directly with care-experienced children and young people, young carers, children and young people affected by domestic abuse, neurodivergent children and young people, children and young people in conflict with the law and those working with children and young people facing a range of other challenges, including mental health, familial substance misuse and poverty.
33. The decision to gather this evidence followed careful consideration by the Committee as to whether it should consult with children and young people on this

Bill. Whilst there was a desire to ensure that children and young people's voices were heard, on balance, the Committee decided against doing so directly at this time.

34. This was due to a number of factors, including:
  - a recognition that no firm decision has been taken to include children's services under a National Care Service;
  - as a Framework Bill the National Care Service (Scotland) Bill does not provide concrete proposals on which they could meaningfully comment; and
  - Significant consultation with a wide range of children and young people has already taken place (e.g. in the context of the Independent Care Review) which has identified areas for improvement.
35. In order to allow the organisations participating in the informal session to speak candidly, the Committee offered to produce an [anonymised note](#) of the session.
36. The Committee wishes to thank all of those organisations who took part in the session and to acknowledge the role that their views played in influencing the Committee's thinking on the Bill.

## Framework Bill

### What is a Framework Bill?

37. The National Care Service (Scotland) Bill is a piece of framework legislation.
38. In his evidence to the Committee on 23 November 2022, the Minister for Wellbeing and Social Care stated that "the Bill sets out the framework for the changes that we want to make, and it gives scope for further decisions to be made later through a co-design process," noting that "that flexibility will enable the national care service to develop, adapt and respond to specific circumstances over time." <sup>20</sup>
39. The [SPICe briefing](#) accompanying the National Care Service (Scotland) Bill explains what a Framework Bill means in practice.
40. It states that "Framework legislation will typically provide powers to Ministers to make new laws by secondary legislation to fill in the detail of the Act as a later point," noting that the Cabinet Office's Guide to Legislation states that "a bill or provision that consists primarily of powers and leaves the substance of the policy, or significant aspects of it, to delegated legislation is sometimes called a framework (or 'skeleton') bill or provision." <sup>21</sup>
41. It goes on to note that "since framework bills do not include full details on how a policy will be implemented, legislatures are unable to scrutinise such details at the time of considering a bill," <sup>22</sup> whilst acknowledging that "there is no question that secondary legislation is a necessity," noting that "without it, legislatures would be swamped with needing to pass primary legislation for small changes and updates to existing law." <sup>23</sup>

42. Further, the briefing states that "secondary legislation can be passed more quickly than primary legislation, because it receives more limited parliamentary scrutiny," noting that "it cannot, for example, be amended - simply accepted or rejected" and that "this limits the extent to which a legislature can shape secondary legislation." <sup>24</sup>
43. The difficulties associated with scrutinising a Framework Bill were highlighted by Cameron-Wong McDermott of the Commissioner for Children and Young People Scotland (CYPCS) in his evidence to the Committee on 9 November 2022. He suggested that "it is a bit of a challenge at this stage to properly scrutinise the Bill when we do not know which services will actually be brought into any National Care Service....". He went on to recognise that "the Scottish Parliament has a role as a human rights guarantor and in fully scrutinising the proposals, which could be incredibly complex and varied," and highlighted his concern "that using secondary or delegated legislation will not provide the adequate scrutiny that is required for regulations that will potentially be extremely complex." <sup>25</sup>
44. From a Parliamentary perspective, there are some additional challenges to Framework Bills, specifically in relation to using secondary legislation to bring about significant policy change. These include:
- Secondary legislation can often appear many months or years after the primary legislation has been passed. This can mean that any knowledge of the Bill's original scrutiny process, and any concerns raised as part of this, may be lost;
  - In contrast to primary legislation, there is often less awareness of secondary legislation amongst stakeholder organisations, so any opportunities to provide a view as to how a piece of secondary legislation might operate in practice could be reduced and is therefore limited;
  - It is difficult for Parliamentarians to form a picture of a coherent whole if, for example, provisions relating to the transfer of one children's service are not considered in the context of another service which interacts with it.
45. In his evidence to the Committee on 9 November 2022, Iain Nisbet of Cairn Legal and My Rights, My Say recognised that whilst a framework approach does offer some benefits in terms of flexibility, "it is an approach that Governments tend to like, but Parliaments less so." <sup>26</sup>
46. Jude Currie of SASW, recognised the disparity between the approach taken towards adult and children's health and social care services, observing that "there has been extensive listening to the experiences of those who use adult services, but the question that is asked in Professor Brigid Daniel's research group is how we ensure that children, young people and families get the help that they need when they need it," noting that "we need to have due diligence and to be patient in hearing what the evidence from those who are key to delivering those services and those who are receiving them really tells us. We cannot make assumptions," and suggesting that "it can be quite frustrating when there is a framework that does not have the particular detail that we need." <sup>27</sup>
47. On 23 November 2022, the Minister for Children and Young People directly addressed the issue of an evidence base (or lack thereof) in respect of whether children's services should be brought under a new National Care Service, noting—

- ” "When the public consultation on the National Care Service was concluded, it was clear that there were mixed responses to our questions about the inclusion of children's services within the NCS, mostly because people felt that there was a lack of evidence in that respect, whereas there had already been a large inquiry into adult social care. Therefore, as part of an evidence-gathering exercise, we commissioned CELCIS to carry out independent research on how we ensure that children, young people and their families get the help they need when they need it." <sup>28</sup>
48. The Minister went on to note that the research will conclude in September 2023 and that "the timeline for the research has been developed to ensure that we can make those decisions on the inclusion of children's services in the NCS, and the two things will run in parallel prior to the operation of the NCS itself." <sup>29</sup>
49. The Minister for Children and Young People also highlighted that this research will take place at the same time as detailed consultation with children and young people and their families, noting that "we will look not only at what the research tells us but at what stakeholders and the people involved in the service will tell us," observing that "it is important that we do not look at things in isolation." <sup>30</sup>
50. In its written submission to the Health, Social Care and Sport Committee, Children in Scotland suggested that the evidence that already exists should not be overlooked, noting that "children and young people have already shared their views and needs extensively on a variety of topics, but this has not always led to action," suggesting that they would "like to see the evidence already available through previous consultation and the voices of children and young people acted upon before embarking on more consultation work." <sup>31</sup>
51. Whilst appreciating the flexibility offered to Scottish Ministers by secondary legislation, a key concern for the Committee was the sheer scale of children's services likely to be affected, and potentially restructured, as a result of the Bill.
52. As such, the Committee was keen to explore how scrutiny of this secondary legislation could be bolstered.
53. The Committee also heard that there was a risk that, in awaiting the results of any consultation with children and young people, children and young people's needs wouldn't be considered until proposals for a National Care Service were already at an advanced stage.
54. As Iain Nisbet of Cairn Legal and My Rights, My Say observed, had the process been reversed, then there would have been an opportunity to consult, co-produce and gather evidence in advance of legislation being introduced. <sup>32</sup>
55. Fraser McKinlay from the Promise also picked up on this point, highlighting that "one of our concerns from the get-go has been that the work on the co-design, the research and everything else is slightly decoupled from the legislative process," noting that "That is the approach with the framework bill." <sup>33</sup>

## Effect on Parliamentary Scrutiny

56. As set out earlier in this report, Section 46(3) of the National Care Service (Scotland) Bill provides that secondary legislation relating to the transfer of children's services to a National Care Service would be subject to the affirmative procedure. The two options available to Parliamentarians would be to accept or reject the legislation. There is no scope to amend it.<sup>34</sup>
57. In his evidence to the Committee on 9 November 2022, Iain Nisbet of Cairn Legal and My Rights, My Say recognised that the use of secondary legislation was particularly challenging in the context of this Bill, noting that "because of the interconnected nature of children's services, which fall under different pieces of legislation and dovetail with others, that is a particularly complex job to devolve to secondary legislation."<sup>35</sup>
58. Cameron-Wong McDermott of CYPSC noted further concerns from a rights perspective, suggesting that "we, as well as other organisations, have concerns that the process of proceeding by delegated legislation or regulations will not give the level of full legislative scrutiny that is required to take a human rights-based approach."<sup>36</sup>
59. The Committee is of the clear view that, given the Bill's potential to alter a wide range of existing health and social care services for children and young people, then any secondary legislation delivering such a change would require more detailed parliamentary scrutiny than that afforded by the affirmative procedure. The Committee noted the Minister for Wellbeing and Social Care's undertaking when giving evidence that he would reflect on this. The outcome of that reflection would clearly be welcome before any Stage 2 proceedings.

## Schedule 3

60. Section 27 of the National Care Service (Scotland) Bill allows Scottish Ministers to make regulations transferring functions from local authorities to themselves or to care boards.<sup>37</sup>
61. The legislation that can be amended by virtue of section 27 is set out in Schedule 3 to the Bill.

The list includes:

- The National Assistance Act 1948
- Matrimonial Proceedings (Children) Act 1958
- Social Work (Scotland) Act 1968
- Children Act 1975
- Local Government and Planning (Scotland) Act 1982, section 24 30

- Health and Social Services and Social Security Adjudications Act 1983, Part 7
- Foster Children (Scotland) Act 1984
- Children (Scotland) Act 1995
- Criminal Procedure (Scotland) Act 1995
- Adults with Incapacity (Scotland) Act 2000
- Mental Health (Care and Treatment) (Scotland) Act 2003
- Management of Offenders etc. (Scotland) Act 2005
- Adoption and Children (Scotland) Act 2007
- Adult Support and Protection (Scotland) Act 2007
- Children's Hearings (Scotland) Act 2011
- Social Care (Self-directed Support) (Scotland) Act 2013
- Children and Young People (Scotland) Act 2014
- Human Trafficking and Exploitation (Scotland) Act 2015
- Criminal Justice (Scotland) Act 2016
- Carers (Scotland) Act 2016
- Age of Criminal Responsibility (Scotland) Act 2019
- Management of Offenders (Scotland) Act 2019

62. In hearing from the Minister for Children and Young People and the Minister for Wellbeing and Social Care, the Committee expressed concern that these provisions provided the Scottish Government with extensive powers to amend legislation across a broad range of policy areas, with very limited scope for Parliamentary scrutiny.

63. When pressed as to whether the list could be reduced in some way, the Minister for Children and Young People stated that "all those acts contain social work-related local authority functions and duties - that is why they are included in schedule 3," whilst suggesting that "we will give on-going consideration to what is in and what is out based on the evidence, the consultation, the research that has been commissioned," noting "it is not set in stone" and "we will continue to consider those matters."<sup>38</sup>

64. The Committee notes the wide range of legislation relating to children and young people that could be amended by this Bill. Further, as currently drafted, these powers do not appear to be contingent on children's services being transferred to the National Care Service.

65. The Committee therefore recommends that the Scottish Government provides clarity as to the circumstances under which it envisages section 27 being used, should a decision be taken not to include children's services under a National Care Service.
66. Further, the Committee recommends that the Acts listed in schedule 3 should be kept under review to ensure that any changes to existing children and young people's health and social care policy are made only where strictly necessary and where it is in the best interests of children and young people.

# The Case for Improvement

## Why is improvement required?

67. In the course of its scrutiny of the National Care Service (Scotland) Bill, the Committee heard that the current model of children's services did not always work well for children and young people.
68. In an informal evidence session with stakeholders working with a wide variety of children and young people in receipt of health and social care support, there was a recognition that Scotland had "great legislation and great policy"<sup>39</sup> but there was often an implementation gap caused by a lack of resources, differing understandings regarding statutory duties, no shared language and structures varying from organisation to organisation. The Committee recognises that these are not issues unique to children's services.
69. This affected not only care experienced children and young people, but also children with additional support needs, those with complex needs, young carers and those living with domestic abuse.
70. Martin Crewe of Barnardo's Scotland echoed this point, noting that "we have had more than 20 years of pretty consistent policy. People feel that we have good policy in Scotland for children and young people - it has been consistent and we have had it for a long time.....however....there is frustration that we have all the right aspirations and good intentions but what happens is not always what was intended."<sup>40</sup>
71. The informal session with stakeholders also revealed that many felt that a rights-focused approach had not been adopted across the health and social care system, reporting that there was gate-keeping from organisations, who sought to protect their resources and areas of responsibility. Stakeholders suggested that families were often 'bounced' between different organisations and required to demonstrate high levels of need in order to qualify for support.
72. Stakeholders participating in the informal session also suggested that access to independent advocacy was inconsistent, with eligibility varying considerably across Scotland, allowing for example, a care-experienced child to access support in one area, a child of a certain age or a child with a disability to access support elsewhere. This results in many children and young people being unable to access the advocacy support they need.<sup>41</sup> Stakeholders also suggested there were particular issues around the point at which children were transitioning to adult services.<sup>42</sup>
73. Mike Burns of Social Work Scotland pointed to the fact that much work has already been undertaken to understand the difficulties with current systems and that the challenge now will be to translate that into action. He noted the wide range of evidence already in place, suggesting that "The Promise has done a magnificent job of profiling lived experience. Equally, the Scottish Child Abuse Inquiry has heard some strong testimony that has shown us the lessons that we need to learn. Therefore, we need some hard reality consensus on the problem that we are

collectively trying to fix; that is the complexity that we need to engage with." <sup>43</sup>

74. A number of these issues are addressed in the Policy Memorandum accompanying the Bill, which suggests transferring children's services into the NCS would—

- Address variation in access to and quality of services
- Move to a more consistent national approach
- Set standards of care and strategic planning
- Reduce variation in thresholds for services
- Improve accountability to Ministers and shift focus to early intervention
- Improve alignment with community health services
- Improve transitions between children's and adult services <sup>44</sup>

75. Fraser McKinlay from the Promise highlighted three additional issues which emerged from the independent care review, namely that "people felt stigmatised too often and that the help they got came too late" and that "help is fragmented," with people often having to engage with a high number of different services to get the help they needed. <sup>45</sup>

76. Cameron-Wong McDermott from CYPSC suggested that "there needs to be more evidence before we can make a judgement on whether children's social work and social care services are better delivered through a National Care Service than through local or third sector agencies." <sup>46</sup>

77. The Committee acknowledges that improvement is needed. It is clear that there is a significant gap between policy intention and how children and young people experience those services in practice. There are also specific issues in relation to transitions between children's and adult services. However, outwith this Bill, there are a number of approaches which could be taken to address this.

78. There is an urgent need to improve the delivery of children's services. There should be no delay to ongoing or planned improvements, regardless of the decision on whether children's services should be included under a National Care Service.

79. There is already a clear evidence base setting out children and young people's views, particularly in relation to care-experienced children and young people, and this should be used as a starting point for improvements.

80. However, it is vital that consultation takes place with a much broader range of children and young people, accessing the full range of children's health and social care services. This should include, but not be limited to, those with learning disabilities, mental health needs, children living with domestic abuse, young carers and neurodivergent children and young people.

## Improving Consistency

81. A desire for consistency, and to bring about an end to perceived "postcode lotteries" in relation to children's services, is another key consideration in deciding whether or not children's services should be brought under a National Care Service.
82. Jude Currie of SASW acknowledged that "National investment can be really helpful in bringing about consistency, but this is also about accessibility and people having that right across the country. That also means that we need to be in and connected with communities and forming relationships." <sup>47</sup>
83. However, Fraser McKinlay from the Promise challenged the assumption that such consistency could be achieved simply by creating a national service, noting that "if we say that a national service of any kind produces more consistency, we need to ask ourselves how it does that. It does not do that on its own. I do not think that one could argue at the moment that the National Health Service provides an entirely consistent service in the 14 health board areas across Scotland on its own. Other things need to happen to ensure consistency." <sup>48</sup>
84. In his evidence to the Committee on 23 November 2022, the Minister for Wellbeing and Social Care suggested that "the important element is that they [*new care boards created under a National Care Service*] will have to work to the national high-quality standards" and that this will "prevent postcode lotteries," acknowledging that "those lotteries most definitely exist, sometimes not only between but within areas, and we need to resolve those elements." <sup>49</sup>
85. Iona Colvin, Chief Social Work Officer with the Scottish Government reinforced this point, suggesting that "there needs to be a minimum standard for what people can expect to get at a local level, so that there is not a postcode lottery," recognising that "those services need to flex around local need, for example in island communities". <sup>50</sup>
86. Cllr Tony Buchanan of COSLA suggested that the concept of "postcode lottery" is itself a misnomer and that local variation should be recognised as a response to a specific need, noting that "what someone needs in a rural area might be different from what someone requires in a very urban area." <sup>51</sup>
87. Fiona Duncan, Executive Chief Officer for Health and Social Care and Chief Social Work Officer at Highland Council, suggested that consistency could also be achieved without children's services being brought under a National Care Service. Citing the example of kinship care, she noted that "for many years, chief social work officers have asked for a national agreement on fees and allowances for kinship care, fostering and adoption...." and going on to say "personally, I do not think that you need a National Care Service to come to that agreement. If you asked across the board whether we want nationally agreed fees and allowances, the answer would be yes. The question is whether we could achieve that in another way." <sup>52</sup>

## Interfaces between services

88. A key point raised by many witnesses was that, in relation to health and social care

support, this is often provided in the context of wider family support.

89. In the Policy Memorandum accompanying the National Care Service (Scotland) Bill there is recognition that "the interface with services for adults is a critical consideration in relation to the provision of children's services," noting that "it can be particularly difficult to separate out social work support for adults and the social care needs of children who live with them." It goes on to note that "of children who are in the child protection system, the majority are there as a result of parental factors, including drug and/or alcohol use, mental health and involvement in the justice system." <sup>53</sup>
90. Mike Burns of Social Work Scotland also emphasised the breadth of services potentially covered by the term 'children's services', and the perception that this usually relates to child protection, noting that "at times, in local government social work, we get frustrated that we are defined by child protection and by risk and removal in relation to looked-after children," noting that "social work moves us more into considering kinship care and children with disability and providing early help and support. We want to step in at a moment of change for a parent or family. That, critically, leads us into a position of integration." <sup>54</sup>
91. Jackie Irvine from the Care Inspectorate built on this point, noting that "there can be several practitioners going into a family because of a range of different needs and support requirements," suggesting that "it is important to meet the needs of the family and....it is about working together with that family and doing that in a consistent, family-focused way." <sup>55</sup>
92. In her evidence to the Committee on 23 November 2022, the Minister for Children and Young People recognised the interface between children's and adult services and highlighted it as a key driver for the approach taken in the Bill—
- ” "Given the change that the National Care Service (Scotland) Bill will bring, if it is passed, it would be too risky not to consider the inclusion of children in the National Care Service. None of us would want to think of children as an afterthought. The interface between services for adults and children has been a critical consideration regarding the impact that the NCS could have on children's services." <sup>56</sup>
93. This was reinforced by the Minister for Wellbeing and Social Care who suggested that "no matter what is out of or in the National Care Service, we must ensure that the linkages are there between the NCS and the services that remain outwith the NCS." <sup>57</sup>
94. Ross McGuffie, Chief Officer of North Lanarkshire Health and Social Care Partnership, suggested that "the key to success around children's services is collaboration and integrated working across a range of different organisations and sectors," noting however that "no matter where we draw the boundaries...not all of them will be included...we will always have to continue to work in the way that we currently do and go beyond boundaries to support people, whether that involves housing, education, the third sector, the police or universal and specialist health services." He goes on to note that "no matter where we draw the boundaries, we will still need to focus in local settings on bringing our local partners together to work as intensively and coherently as they possibly can." <sup>58</sup>

95. Cllr Tony Buchanan of COSLA suggested that "...it is not about social work saying 'we're here for one aspect only'. It is about the whole process of working with a family and ensuring that the child is safe and loved and brought up in an environment that helps them to grow," before going on to suggest that "in my view, the best way to do that is not just locally, but via local government which is best placed to deliver those services." <sup>59</sup>
96. The Committee heard that many examples of good practice in cross-organisational working could be attributed to positive relationships between staff, with Claire Burns of CELCIS suggesting that "...where there is co-working between education and social work - people tell us that it builds relationships and information sharing.....". However, she cautioned that "there is potential for that to be severed unless we put all the structures, practice and capacity in place in the NCS," noting that "at the moment, the sector is not reassured that that will happen." <sup>60</sup>
97. Mike Burns of Social Work Scotland reinforced the point about good integration being critical to success, noting "the issue is about culture, ethics, values, principles and the way we work collectively together." <sup>61</sup> He goes on to note that "the points that we are making about what is critical in relation to practice are equally critical in relation to leadership and the strategic direction of travel....Integration and people working together as a multi-disciplinary team become key to achieving good outcomes for children. The areas of work are very rarely done singularly." <sup>62</sup>

## Transitions

98. Whilst interfaces between children's and adult services are important in the context of wrap-around family care, they are also vital for young people making the transition between children's and adult services.
99. In his evidence to the Committee, the Minister for Wellbeing and Social Care suggested that transitions for children into adult services were currently particularly problematic, stating that "the movement from children's services to adult services is not smooth for a lot of people in our country at the moment." <sup>63</sup> He then went on to acknowledge that "where it works best is in the areas where greater integration has occurred - where the scenario is that integration joint boards have delegation of various things, including children's social work, social care services and children's health services." <sup>64</sup>
100. The models of current integration are explored in more detail later in this report.
101. Nicky Connor, Chief Officer of Fife Integration Joint Board and Director of Fife Health and Social Care Partnership, agreed that further integration could pay dividends in terms of transitions between child and adult services, noting "the more we can integrate services, the better, and the more joined up things are for children and families, the better." <sup>65</sup>
102. Louise Bussell, Chief Officer for Highland Community at NHS Highland reinforced this point, stating "it would be better to have the opportunity to transition within a single system instead of being handed off, which often happens in service lines

unless the pathway is right." <sup>66</sup>

103. Jackie Irvine of the Care Inspectorate suggested that budgetary considerations may play a role in children and young people's experiences of transitions, stating—

” "I cannot say this for certain, but I think that, if the budget for adult services sits in one place and the children and families in another, it can, though not always - create a barrier to transition. It is not necessarily a matter of structure but of how things are organised. It also comes back to the issue of leadership with regard to ensuring that there is collective responsibility for children moving into young adulthood and that no barriers are put in the way." <sup>67</sup>

104. Fraser McKinlay of the Promise also observed that "whichever way we cut it, there needs to be good integration in either model," noting that "one of the arguments for a National Care Service that includes children and families..is that it helps the transition between childhood and adulthood, because it is all in one place," but that "the downside...is that we potentially risk breaking the link between other council services...particularly education." <sup>68</sup>

105. The Committee recognises that there is a significant opportunity for improvements to be made in relation to transitions between children's and adult services.

106. The debate around a National Care Service has brought a welcome focus on this issue. However, irrespective of the inclusion (or otherwise) of children's services, there is already a significant evidence base supporting the need for improvement, both in relation to transitions and across children's services more generally.

107. The Committee notes the work that is already underway to improve young people's experiences of transition, including the work being piloted by ARC Scotland on Principles into Practice, which the Committee understands is due to be rolled out across Scotland in Spring 2023. It also acknowledges the Scottish Government's intention to produce a National Transitions to Adulthood Strategy.

108. The Committee recognises that there is a risk that the National Care Service (Scotland) Bill could potentially distract from this work. It is therefore critical that this work continues, regardless of when a decision about whether or not to include children's services will be taken.

## Accountability

109. A desire for improved accountability was another key theme which regularly appeared in the evidence heard by the Committee. This was defined in terms of children and young people having a clear understanding of who should deliver a service, the standards that the service should uphold and how to complain when things go wrong.

110. The Minister for Wellbeing and Social Care suggested that a lack of responsibility can lead to people being told 'That is the responsibility of the health and social care

partnership' or 'That is the responsibility of local government' or 'That is the responsibility of the health board,' and noting that this "is frustrating for people when they are trying to get the care and support they need." <sup>69</sup>

111. The Minister for Wellbeing and Social Care goes on to state—

” "No matter whether children's services will be in or out of the National Care Service, the work that we are doing now means that we can look at where things are not working and see how we can improve them. That will be easier with the national standards in the NCS, but that does not mean to say that we should not be aspiring to bring up standards across the board for all services, whether they be in or out." <sup>70</sup>

112. In the informal session the Committee undertook with stakeholders working with children and young people accessing health and social care support, one organisation echoed this point around shifting responsibilities. <sup>71</sup>

113. An example of this was given when a young person with mental health needs urgently required support from CAMHS. However, CAMHS said that it wouldn't work with the young person until their housing situation improved. In trying to resolve that issue, there was then concern raised about overcrowding for the young person's two younger siblings, which meant that the family was drawn deeper into the system, but the core issue still wasn't addressed. <sup>72</sup>

114. The informal evidence session suggested that there could also be difficulties with the circumstances of families not being fully understood and workers sometimes missing the wider context behind the choices families made. One example was given of a low income family criticised by social workers for having a poor broadband service. The suggestion was that this was negatively impacting on the child's education. However, the third sector organisation working with the family said that the family couldn't make any improvements to the broadband as they had been forced to prioritise food over everything else. <sup>73</sup>

115. The Minister for Wellbeing and Social Care suggested that national accountability "could mean that Ministers could set national, high-quality standards, which would apply across the board and end the postcode lottery," noting that this "does not mean to say that it would be a centralisation, because local care boards would continue to shape and deliver services in their own locales, but they would have to abide by those national standards." <sup>74</sup>

116. Martin Crewe of Barnardo's Scotland noted that current data collection methods can lead organisations to focus "on the things that are relatively easy to measure in figures," which can mean the experiences of those receiving the services can be missed—

” "There is a specific waiting time target for CAMHS [*Child and Adolescent Mental Health Services*] against which we report; if the waiting time goes down, we say that CAMHS are doing better and so on. However, as we have seen the experience on the ground is not so much to do with waiting times; in some areas of Scotland, the majority of families who do get to the front of the CAMHS queue do not meet the criteria. They sit on the waiting list for a substantial period of time, and that is what is measured; for those families, however, the experience is much more devastating, because when they get to the front of the queue, they do not, for various reasons, get any service at all."  
75

117. This point was echoed in the informal session with stakeholders working with children and young people, with one participant saying that "we ask people to count the wrong things and this is what drives behaviour, rather than focusing on the difference that a service makes to an individual's life".<sup>76</sup>

## Early Intervention and Preventative Work

118. The timing of support was also highlighted in evidence to the Committee, specifically in relation to intervention currently taking place once a crisis point has been reached, rather than via early intervention and preventative work.
119. The Committee heard that families often struggle to prove need in order to access services and there remains significant stigma in accessing health and social care support, in a way that isn't true for healthcare services provided via the NHS.
120. The Policy Memorandum accompanying the Bill states that it aims to move towards an early intervention model, stating that "the NCS will aim to improve people's experiences of accessing social care support, increase prevention and early intervention, and to ensure that social care support...is human rights-based and outcomes-focused."<sup>77</sup>
121. Martin Crewe of Barnardo's Scotland noted that "over the years...we have seen thresholds [*for accessing services*] get higher and higher," noting that "we are working not only with families who are at more risk than before but with families who are more mired in their troubles and who will take a lot of help to get out of them."<sup>78</sup>
122. Claire Burns also identified some opportunities offered by a National Care Service to help children and families access support sooner, suggesting that "families tell us that they get to a crisis before services step in to help them," and stating that "we want wellbeing concerns to be recognised and managed at an earlier stage, and through universal services if that is possible." She goes on to note that "families find a lot of the services that we have at the moment to be quite stigmatising," and that "help should be given where it is safe to do so, and we need social work to come in at times, but we must ask how we can build on universal services so that we notice wellbeing concerns, assess them and put services in at a really early stage."<sup>79</sup>
123. Jude Currie of SASW suggested that "social work practitioners are often perceived as crisis interventionists...but I would like to think that we do early intervention too."

124. In his evidence to the Committee on 23 November 2022, the Minister for Wellbeing and Social Care suggested that early intervention would pay dividends, not just financially, but also in relation to the quality of services people would receive, noting "what we have seen is far too much resource being put in at points of crisis and not enough being put into prevention," and observing that "where people have concentrated on things in a more preventative way and have these linked-up services, they are spending much less on crisis," suggesting that "that costs a lot of money, and we also need to consider the human cost of not getting those preventative services right." <sup>81</sup>
125. Fiona Duncan, Executive Chief Officer for Health and Social Care and Chief Social Work Officer at Highland Council suggested that there were key areas we should be tackling via early intervention and prevention to improve outcomes for children and families, observing that "we know that poverty, discrimination and disadvantage are at the heart of some of the problems that we have, so we need to target those areas," noting that this "is where early intervention and prevention comes in with education, welfare, housing and access to employment" and that "these are all crucial elements in working with children and families moving forward." <sup>82</sup>
126. Martin Crewe of Barnardo's Scotland also suggested that care should be defined in its widest sense and guided by what makes a difference to an individual child or children, noting that "the danger is that, if you work in public service in its broadest definition, which would include voluntary sector delivery, you exist in service delivery land, and that is not where children and families are," noting that "what makes a huge difference to a child might be a club or an activity, but that will not feature as a care need," suggesting that this "is where early intervention comes in - it lets us actively try to have fewer children and young people coming into the system." <sup>83</sup>
127. He went on to note that "a quarter of children across Scotland are in poverty, and many families who were previously just about coping are now being pushed over the edge into a cost of living crisis. Existing services are stretched, and the thresholds of support for families are far higher than the early intervention that we would all like to see. We face the prospect of further austerity and public service cuts, and we have a retention and recruitment crisis among social care staff. On top of all that, we are trying to introduce the Promise." <sup>84</sup>

## Structural Change

128. A strong theme to emerge early in the Committee's consideration of the Bill was whether the National Care Service (Scotland) Bill was the only way to address the issues that children, young people and families currently face in attempting to access health and social care support.
129. Most witnesses suggested that structural change alone was unlikely to bring about the transformational change many were seeking. The Committee also heard that whilst the creation of a National Care Service had the potential to drive forward change, improvements could equally be made through other means.

130. Claire Burns from CELCIS was a case in point noting that "one of the things that concerns us - it certainly concerns the sector - is that there seems to be some underlying assumption that structural change, in and of itself, will bring about those changes, and I think that it will not." <sup>85</sup>
131. Nicky Connor, Chief Officer of Fife Integration Joint Board and Director of Fife Health and Social Care Partnership suggested that it is relationships, rather than structures that will be critical to successful, stating that "what matters is the ability to have a partnership, regardless of whether structural change takes place or not," noting that "it is crucial that we are able to work in partnership now, and it would be crucial, following the establishment of the National Care Service, to be able to work in partnership again." <sup>86</sup>
132. Louise Bussell, Chief Officer for Highland Community at NHS Highland, observed that reaching agreement on what a Lead Agency model might look like in Highland was an extremely lengthy process and that in relation to the challenges they faced, "I would say that, for a long period, we did not necessarily have the governance to sufficiently support the model, and it is only in the past 18 months that we have had an integration agreement that we have signed up to and are committed to. We are therefore a little bit on the back foot as far as getting to the right place is concerned." <sup>87</sup>
133. Ross McGuffie, Chief Officer of North Lanarkshire's Health and Social Care Partnership acknowledged that "...this is not necessarily about structures; instead, what really makes a difference is the leadership, culture and ethos that we have built up locally." <sup>88</sup>
134. Jude Currie of SASW also highlighted the importance of relationships, suggesting "I do not believe that structure in and of itself creates the conditions of what we need; relationships, which are at the heart of what we do, should be safeguarded in a National Care Service, but that will not happen through structures alone," and stating that "we need defensible incorporation of what we know works, and there should not be additional barriers." <sup>89</sup>
135. Mike Burns, representing Social Work Scotland talked about how increased resources could improve results, without the need for structural change, providing the example of successful family nurse partnerships and how an increase in health visitor numbers in Glasgow had positively impacted on the number of children being brought into care, stating that "we have gone from having 150 health visitors to having 274 and I have seen a significant reduction in children coming into care," noting that "five years ago, 105 children came into care. That figure was down to 40 last year and this year is 19." <sup>90</sup>
136. The Committee notes that in discussing what structural change might look like, there was also some understandable disquiet expressed by stakeholders about the fact that, at this stage, they did not have a clear understanding of what that change might mean in practice.
137. Claire Burns from CELCIS suggested that this posed particular difficulties for staff currently working in children's health and social care services when trying to gauge whether the Bill will bring about the desired change. She acknowledged that staff know "that what we are doing for families at the moment is not good enough and

that there needs to be some kind of change," whilst at the same time noting that staff "are concerned about going into the unknown and the idea of unpicking everything." <sup>91</sup> She goes on to say "we do not have enough detail to say that the level of disruption will be worth it in terms of where we get to. Why not strengthen what we are doing at the moment?" <sup>92</sup>

138. Jackie Irvine of the Care Inspectorate argued that for her, this was less about structures and more about impact, suggesting that "what we look at is not whether we think that the structure is right, but the impact on the family - the child and the parents -and whether its position is improving....regardless of where we sit and what might come out of the proposal for a National Care Service, there will still be an absolute requirement that social work holds dear, which is to work alongside our colleagues." <sup>93</sup>

## Resources

139. In her evidence to the Committee on 16 November 2022, Jude Currie of SASW recognised that resources were key to the success of the structural change envisaged in the Bill. She suggested that "we can put all the structures in place, but they will not work if we do not have the resources," <sup>94</sup> and "we can agree a multi-agency child's plan, for example, but if we do not have the accessibility and readiness of those supports, regardless of where we might sit, that plan will not work for families and it will not answer the key question of whether families and children will get the support when they need it."
140. This point is echoed by Cllr Tony Buchanan of COSLA, who suggested that improvement cannot be look at in isolation, noting that "all staff members want to do their job and to do it better....the big difficulty that they have is that they know what works well and what they would like to improve on, but they need the resource and, indeed, the staffing to do that - not just the finance," <sup>95</sup> suggesting "that is critical.....that does not necessarily mean that it has to be centralised or anything else; it means that there is a need there." <sup>96</sup>
141. Martin Crewe of Barnardo's Scotland suggested that lessons can be learned in relation to how the Promise has approached the issue of resources, noting that in relation to a National Care Service "if you treat this as a capital investment, rather than a question of how you can add a bit more money into the system, then you will get a return on that investment." <sup>97</sup>
142. The Financial Memorandum accompanying the National Care Service (Scotland) Bill sets out a number of key costs associated with implementing the Bill. Information relating to the potential transfer of children's services in the new National Care Service is, however, very limited and does not include any detailed costings relating to children's services.
143. In his evidence to the Committee on 23 November 2022, the Minister for Wellbeing and Social Care outlined that the value of children's services in 2026-27 would be £1.5 billion. <sup>98</sup>

144. However, when pressed by the Committee about the costs associated with transferring individual services to the National Care Service and why these were not broken down in the Financial Memorandum, the Minister suggested that "as we propose and seek to make changes, we will bring all the elements of the business cases for those changes to committees and to Parliament so that they can be scrutinised."<sup>99</sup>

145. The Committee recognises that this is a Framework Bill, and that much of the policy detail associated with a new National Care Service is still to be established. As such, it is not possible to form a view on the financial robustness (or otherwise) of the Bill's proposals as they relate to children and young people, based on the information currently supplied in the Bill's Financial Memorandum.

146. Should the Bill proceed, and should children's services be brought under a National Care Service, it is essential that greater financial information is provided when any secondary legislation is proposed, in line with the enhanced scrutiny sought by the Committee earlier in this report.

147. At present there is insufficient information and a lack of detail in the Financial Memorandum to reassure the Committee that the implications of the Bill for children's services, regardless of whether they are in or out of the National Care Service, have been properly costed. The suggestion that these costings will be provided only at the point that secondary legislation is laid is a point of particular concern.

148. In advance of any Stage 2 considerations, the Committee urges the Scottish Government to provide detail of the financial modelling undertaken to date in relation to children's services. This modelling should include consideration of a range of scenarios, including the costs associated with a) children's services being brought under a National Care Service, b) children's services remaining outwith the National Care Service and c) reconstituting current integration arrangements for children's services across Scotland.

## Previous Integration

149. As part of its scrutiny of the National Care Service (Scotland) Bill, the Committee wanted to gain a clear understanding of the impact previous health and social care integration had had both on service delivery and practitioners.
150. The Policy Memorandum accompanying the Bill sets out the current legislative basis on which children's health, social work and social care services are constituted, noting that "The Public Bodies (Joint Working) (Scotland) Act 2014 allows local authorities the choice in the integration of children's social work and social care services with other services, by delegating those services to Integration Authorities." <sup>100</sup> It goes on to state that "As a result, some local authorities have chosen to do so and others have not." <sup>101</sup> .
151. In relation to children's services, there have been a range of approaches and "...some health boards have delegated all of their community health services for children and Child and Adolescent Mental Health Services, others have delegated some services for children, whilst other health boards have not delegated any." The Policy Memorandum goes on to note that "this has resulted in a complex landscape across Scotland for delivering children's services and health services." <sup>102</sup>
152. The Policy Memorandum also states that "Nineteen IAs [*Integrated Authorities*] have at least some health services from children delegated to them by health boards and then have children's social work and social care services delegated to them by local authorities," <sup>103</sup> noting that the establishment of the NCS will therefore affect children's services." <sup>104</sup>
153. Mike Burns from Social Work Scotland explained the ethos behind previous integration—
- ” "At its very heart, integration was always about addressing inequalities. The point of integration was to make sure that the people who are the most vulnerable and most in need get a much better and more co-ordinated service than they received in the past. From that point of view there is a much greater shift towards strength-based and trauma-informed relationship practice, which we have seen with family nurse partnerships and health visitors in terms of the universal pathway." <sup>105</sup>
154. In her evidence to the Committee on 16 November, Vicky Irons, Chief Officer of Dundee Health and Social Care Partnership reflected that "many of us have been in similar roles for a good couple of decades and have lived through reforms in Scotland in this area twice before," suggesting "we have learned from that that there tends to be a huge focus on structures and organisational change, and, usually, the process in itself can detract from the outcomes that we are trying to achieve...." <sup>106</sup>
155. Ross McGuffie, Chief Officer of North Lanarkshire Health and Social Care partnership stressed the requirement to allow sufficient time for new structures to bed-in, noting that "when you go through a major system change, it is inevitable that it takes considerable time to get everything in place," and observing that in relation

to the legislative change brought about by the 2014 Act "the governance arrangements for integration have been particularly complex to get our heads around and to get in place effectively." <sup>107</sup> He went on to say that "I suppose any reticence and concern [about further change] is about unintended consequences of change impacting on that." <sup>108</sup>

156. Martin Crewe of Barnardo's Scotland reflected on work to implement the Scottish Government's GIRFEC - Getting It Right for Every Child - policy. He suggested that at the time this change was being rolled out "we did not particularly look at structures and we were not particularly bothered about getting a consistent picture across Scotland," and that "we got reports back from each of the 32 areas, but we tended to share good practice and encourage people to learn from one another." <sup>109</sup>

157. Vicky Irons of Dundee Health and Social Care Partnership highlighted that "many of us are cautious when it comes to further change, and we are mindful that, if there is an opportunity to reform and develop further, we would like that to recognise the constraints that restrict our progress at the moment," noting that "...for many of us, the fact that we have to deal with and integrate our teams in two employing authorities with two very different cultures and structures can often get in the way." <sup>110</sup>

## Current models of integration

158. Recognising the different models of integration currently in place, the Committee was also interested to explore what was working well and what changes would be required, regardless of whether children's services were brought under a National Care Service. This included examining the breadth of children's services potentially covered by the Bill, the impact any change might have on the current workforce and the context in which change is being proposed.

159. Martin Crewe of Barnardo's Scotland suggested that there were four things that made the current health and social care system work well for children and young people—

” First, a genuine determination to make things better and deliver change where it is needed; secondly, embracing the whole system complexity; thirdly, putting children and young people at the centre of all our considerations; and fourthly, building mutual trust and respect. We can look at structures but, in my experience, when that approach works, it is not the agency you come from but what you bring to the table that makes the difference." <sup>111</sup>

160. Jude Currie of SASW also talked of the importance of "agency" for both social workers and families themselves. She said that "it is not just about financial resource...we need to feel that we have a functioning statutory role to access or seek information so that we know that, when we sit in a living room, having these conversations, we have the permission to do so; that we have the confidence to go to our managers and leaders, too; that those people have influence with regard to advocacy; and that all of that is not lost in the system." <sup>112</sup>

161. In her evidence to the Committee on 23 November 2022, the Minister for Children

and Young People picked up on this point, noting that "at present, in many parts of the country, we find that, where front-line staff have more autonomy and independence, that means better delivery for people." <sup>113</sup>

162. Cllr Tony Buchanan of COSLA suggested that the current health and social care integration arrangements generally work well, with some caveats—
- ” "On the whole, integration has been very successful.....Sometimes it might need to be pulled together a bit better than it has been, but the reality is that there is a huge amount of good work that is designed to protect families at source - that is, in their communities - with the services that they require to get them through any period of difficulty. That has been vital. Whether in relation to dealing with addiction problems or simply helping families to budget in the current crisis, all those aspects play a part in the everyday services we provide." <sup>114</sup>
163. According to Fiona Duncan, Executive Chief Officer for Health and Social Care and Chief Social Work Officer at Highland Council. "it is a real advantage to have children's social work and child health together," noting that this "allows us to target things such as parenting classes for mums-to-be, which are linked up with social workers in the families team," and suggesting that "the whole point of that is to move more towards the early intervention and prevention side, rather than wait until people enter the statutory side, such as child protection services." <sup>115</sup>
164. Iain Nisbet of Cairn Legal and My Rights, My Say suggested that for children and young people with additional support needs, the main considerations were "multi-agency working and different agencies working together," noting that "...at the moment, education and social work come under the same local authority, so there is, at least in theory, an ease to getting those bodies to work together...for example, we see things such as social workers being based in schools and local authorities having joint children's services departments and so on", expressing concern that should they be moved under a National Care Service that "some of that would be lost, and that there would be unintended consequences." <sup>116</sup>
165. Jude Currie of the Scottish Association of Social Work, when asked whether integration had led to more collaborative working across different sectors, suggested that "the picture is very mixed," before going on to say "regardless of the structures, we will always try to work in productive, multi-agency ways," suggesting "children and family social workers, in particular, will try to harness a multi-agency group around a child and a family." She went on to note that "we can be better social workers and offer better social work if we have the enabling conditions and the environment to help us do that work." <sup>117</sup>
166. However CELCIS, the Centre for Excellence in Children's Care and Protection, in its written submission to the Health, Social Care and Sport Committee noted that "although the needs of children, and adults who care for them, are interconnected, the needs of children, and therefore the services which support these needs, are distinct from adult services." <sup>118</sup>

## Workforce Issues

167. Over the course of its scrutiny of the Bill, the Committee heard that staff working in

children's health and social care recognised the potential of further reform. However, they were uncertain what this might mean for them and the services they deliver.

168. The Committee was concerned by the wide range of evidence it heard regarding current integration models, including that these vary significantly across Scotland, with integration going much further in some areas than in others. This suggested that, in order for integration to function well, there is a cultural element that needs to be addressed beyond what is enshrined in legislation.
169. In his evidence to the Committee on 23 November 2022, the Minister for Wellbeing and Social Care stated, "I recognise that legislation and regulation do not necessarily change cultures. Indeed, we have examples of that in some of the very good legislation that has previously come before the Parliament. Perhaps the best example is self-directed support, in respect of which we put forward—and agreed on a cross-party basis—the ability for folk to have more independence and autonomy over their care, with four different options that they could access to best suit their needs. That approach has worked immensely well in some parts of the country but not in others because, instead of sticking with the spirit of the legislation, some people in some places have looked for and found the flaws in it and have given reasons for certain things not applying to certain folks." <sup>119</sup>
170. Louise Bussell, Chief Officer for Highland Community at NHS Highland recognised that "selling people a good reason for change is always tricky," noting that "the messaging around why we are doing something must be really clear for our staff, communities and others, so that we can have a successful transition to wherever we go." <sup>120</sup>
171. Jude Currie of SASW also suggested that "the overarching message we have received from members is that there are opportunities, but there are also fears about terms and conditions and pensions," whilst acknowledging that the Bill offers "opportunities to improve conditions for the profession". <sup>121</sup>
172. In her evidence to the Committee on 9 November 2022, Claire Burns from CELCIS was asked about whether moving Children's Services into a National Care Service could offer increased opportunities for preventative work. She suggested that "we have a workforce that is absolutely motivated to do that, but we are not good at putting in the structures, training and coaching capacity to allow them to do that." <sup>122</sup> She goes on to note that "the legislation that we have at the moment is layering on task after task. We should simplify that and give our workforce the support that the evidence tells us will make a difference for families." <sup>123</sup>
173. Claire Burns of CELCIS suggested it was important to consider the workforce in the context of wider transformational change, suggesting "I would like to know the alignment between the financial memorandum and the implementation of the Promise, the United Nations Convention on the Rights of the Child and the new child protection guidance, because we need to look at the cost not just of restructuring but of our aspirations for the workforce and capacity building. What is the cost of that?" <sup>124</sup>
174. Fraser McKinlay from the Promise emphasised that if the decision was taken to include children's services in a National Care Service, that efforts should be made

to simplify a "very complex governance and delivery landscape," noting that "if we are doing something on this scale, it needs to be clear that it is going to make things clearer and simpler." <sup>125</sup>

175. In her evidence to the Committee on 23 November 2022, the Minister for Children and Young People, recognised there were currently "difficulties with recruitment in adult social care services and, indeed children's services," whilst noting that "those difficulties are not unique to Scotland". <sup>126</sup>
176. Iona Colvin, Chief Social Work Officer with the Scottish Government echoed this point, stating that "across social work and social care, the issue of recruitment and retention needs a national solution," suggesting that "it has gone beyond local solutions" and that "there is an opportunity for the national social work agency in particular...in producing some national approaches to help resolve our current issues and difficulties." <sup>127</sup>
177. Issues around recruitment were also highlighted by Jackie Irvine from the Care Inspectorate, who noted that "we have a history of rural and island communities struggling to recruit," but that she had more recently "heard that providers are struggling even more to recruit in the big cities and the central belt." <sup>128</sup>
178. Mike Burns of Social Work Scotland went on to note some additional challenges across Scotland, noting that "there is a need to recognise that not all the enabling conditions are the same," <sup>129</sup> and that whilst "...there is a recognition that scale is important...capacity is critically important, and consistency and leadership are important too. The workforce issue varies significantly across the country." <sup>130</sup>
179. Cllr Tony Buchanan of COSLA queried whether the costs of setting up a National Care Service could be put to better use, noting that "...workforce planning is a significant issue and trying to recruit people into the various services that require that support is critical. I suppose there is an argument that if we are looking at the costs of setting up a national service, that money could perhaps be spent on services on the ground and in the front line, and we would be in a better position than we are now." <sup>131</sup>
180. Vicky Irons of Dundee Health and Social Care Partnership highlighted the opportunity offered by the National Care Service to align workers' terms and conditions, noting—
  - ” "If the national care service framework that is created can provide a completely integrated organisation that has all the people who work within it on the same terms and conditions as part of one public body, it will stand a great chance of achieving something really significant. If it does not - if it has a hybrid model of existing arrangements, for example - I think that we will suffer some of the same constraints in making things work." <sup>132</sup>
181. It was not possible for the Committee to assess how much aligning workforce terms and conditions across children's services might cost, given the Financial Memorandum accompanying this Bill does not currently include any detailed financial information about this.
182. Mike Burns of Social Work Scotland identified a range of other potential benefits

offered by the creation of a National Care Service, including in relation to lifting "recruitment, training, coaching, quality, supervision and consistency".<sup>133</sup>

183. Vicky Irons, Chief Officer of Dundee Health and Social Care Partnership, recognised that some local authorities were uncertain about how children's services might be integrated in a National Care Service on the basis of information available at the moment, but noted that "irrespective of what ends up in the Bill and of the new organisational structure, I am confident that, with regard to our relationships - we all sit around the same corporate team - we would still make the arrangements work, and work well, for the people who need it most."<sup>134</sup>

184. The Committee heard the anxiety the children's services' workforce is experiencing in relation to service delivery under current arrangements.
185. With specific reference to a potential National Care Service, the Committee urges the Scottish Government to engage with the workforce as soon as possible to provide staff with the opportunity to discuss areas of particular concern, including in relation to terms and conditions and pensions. In doing so, the Scottish Government should also take the opportunity to seek out ideas from those with current frontline experience as to how improvements can best be made to the quality of children's services.
186. The Scottish Government should also consider providing targeted information to staff to ensure that they are aware of key milestones in the potential roll out of a National Care Service.

## Opportunities offered by change

187. The Committee wanted to gain an understanding of the potential opportunities and risks posed by including children's services in a National Care Service.
188. Vicky Irons, Chief Officer of Dundee Health and Social Care Partnership suggested that there was an opportunity offered by the Bill in exploring "the full potential of a completely integrated national care service," noting that—
- ” "...we would love it if we had a landscape that enabled us to overcome some of the barriers that were articulated in the Feeley report and to have accountability and responsibility for planning and deploying the resources for entire families and the populations that we represent....but for me the proof will be in the detail. We do not want to create something that makes the landscape even more complex with regard to accountabilities, employment rights and everything else."<sup>135</sup>
189. Martin Crewe of Barnardo's Scotland suggested that there was an opportunity to look beyond current approaches, suggesting that "what we really need is a national family support service that is delivered by different agencies but that actually provides early family support in every community across Scotland."<sup>136</sup> He went on to note that—

” "At the moment, we tend to atomise problems and say 'Okay, we've got a problem with educational attainment, so we need to do this in schools,' 'We've got a problem around mental health, so we need to do this to support CAMHS,' 'We've got problems with poverty, so we need to do this,' 'We've got problems with drug addiction, so we need to do this,' and so on. With so many of those services, it comes back to the fact that it would have made a huge difference if better, early support to families had been in place. There is no single answer here, but it would make a huge difference if we put in place that national family support." <sup>137</sup>

190. Louise Bussell, Chief Officer for Highland Community at NHS Highland, suggested that "the simpler we can make all of this, the better," noting that "that will apply whichever way we go...whether we go with having children's services in the national care service or not, we will have to simplify the way in which organisations can and do work together, in order to streamline and facilitate things working well rather than putting up additional barriers." <sup>138</sup>
191. Jude Currie of SASW suggested that "at times, there are advantages to having national oversight and investment in training, understanding and awareness and governance of certain aspects," <sup>139</sup> but noting "that cannot come at the expense of local connection and accountability being lost." She goes on to note that "having both national and local accountability provides a sense of checks and balances being in place." <sup>140</sup>
192. In her evidence to the Committee on 23 November 2022, the Minister for Children and Young People suggested that the National Care Service (Scotland) Bill provided an opportunity to progress "national standards and to drive that good practice in areas where it perhaps is not as good as it is in some areas that we can cite." <sup>141</sup>
193. Vicky Irons, Chief Officer of Dundee Health and Social Care Partnership, suggested that "the best infrastructure that we can create is one where we have a completely integrated health and social care service across the entire life spectrum," noting that "even if we provide care that is focused on adults, as we do in the Dundee partnership, we cannot provide the care for an adult without being aware of their wider family circumstances and the needs of their children and other relatives. The same goes for people who are trying to provide adequate care for children. They really benefit from a working knowledge of the dynamics and needs of the wider family and parents." <sup>142</sup>
194. Includem, a Scottish youth support charity working with young people and families, suggested in its written evidence that the Bill could help improve consistency of approach across Scotland, noting that—

” "The children, young people and families we support have faced major challenges in accessing support that is consistent and meets their needs - leading to greater hardship, relationship breakdown and experiences of stigmatisation. Ambitious systematic reform proposed in the bill could achieve the change needed and rebuild trust in the system. Through a national service, there is the potential to deliver greater consistency across local authorities and combat the postcode lottery in current access to support. However, unknowns particularly around poverty, the third sector and children's services prevent us from taking a more confident stance." <sup>143</sup>

## Rights-based Approach

195. Cameron-Wong McDermott of CYPSC stated that "the proposals present an opportunity to create a rights-respecting system that better integrates children's services," and that "at the moment, children's care in its broadest sense encompasses a wide range of different services. Statutory social work services protect the most vulnerable children in Scotland, we have social care for disabled children, and there is support for care-experienced children. All of that is provided by statutory agencies and the third sector. In their lifetime, children will most likely engage with a range of different services. The landscape is complex and varied. Therefore, we agree that better integration of services and an holistic approach have the potential to benefit a significant number of children." <sup>144</sup>
196. This is a point echoed by Martin Crewe from Barnardo's Scotland, who suggested that "the key point for me is that we want to be able to say to families 'you have a right to the support that you need', rather than 'you might get a service or you might not'. If we are serious about a rights-based approach, we have to anticipate that more need will surface. An awful lot of families out there at the moment do not get the support that they need.....The best way to do that is to have community support across the country that is without stigma and very easily accessible, with services coming to families rather than families having to go and get their specialist support from different parts of the system." <sup>145</sup>
197. Ross McGuffie, Chief Officer of North Lanarkshire Health and Social Care Partnership, stated that "I think we are on a journey here; we need much more individualised care, whether for children or adults , and much more of an ability to have conversations with individuals, more trauma-informed practice, much more personalised, self-directed care and more proactive support for individuals." <sup>146</sup>
198. Vicky Irons, Chief Officer of Dundee Health and Social Care Partnership suggested that "bringing in people with lived experience and co-producing and co-ordinating the care that is provided presents a huge opportunity in terms of any reform." <sup>147</sup>
199. Martin Crewe of Barnardo's Scotland also highlighted potential opportunities in relation to accountability, suggesting "there could be more consistency in complaints procedures and so on", whilst recognising that for someone attempting to secure a service, accountability may be of lesser importance, than securing the service itself. <sup>148</sup>

## Risks associated with change

### Children's services as an "add-on"

200. Alongside a number of opportunities offered by the National Care Service (Scotland) Bill to improve children's services, the Committee considered a number of potential risks.
201. Ross McGuffie, Chief Officer of North Lanarkshire Health and Social Care Partnership, highlighted the risk that the Bill's implications for children's services will be considered only after a National Care Service for adults is in place, suggesting that "there are worries at the back of my head that, if a National Care Service were to be formed and children's services came in as an add-on, we would end up with a governance structure that had been created specifically around adult services, and we would then have to try our best to shoehorn in something different," noting that "in my mind, there is an element of needing to finalise the decision on exactly how we are to take the matter forward." He went on to state "I would rather that was done once - instead of in separate bites - because there is a risk that we will end up creating something that is based absolutely around adult services." <sup>149</sup>
202. Vicky Irons, Chief Officer of Dundee Health and Social Care Partnership agreed with that sentiment, suggesting that "one of the most important jobs for people who hold our role as Chief Officers is enabling people to change and taking people with us when it comes to moving forward and developing," noting that "adopting a staged approach would potentially present issues....if we are going for quite radical reform that is in the interests of the people for whom we want to provide sustainable care, it would be better to do that just once." <sup>150</sup>
203. Fraser McKinlay from the Promise further developed this point, by highlighting his concern "about children and families being a bolt-on...with the Government designing a new adult national care system and only then figuring out how children and families plug into it," noting that "there is no no-risk option here; either way that it is done, there will be risks" and recognising "setting up a review of the adult care system that suggested one thing and then introducing - kind of unexpectedly - children and families at the consultation stage meant that the next bit of the process was always going to be challenging." <sup>151</sup>
204. In its written submission to the Health, Social Care and Sport Committee, CELCIS, the Centre for Excellence in Children's Care and Protection acknowledged that "advancing plans for services for adults now, while plans for children's services are developed later, may have a detrimental impact on children's services, including the funding of services for children, planning and governance of services based on children's need, as well as transition planning." <sup>152</sup>
205. CELCIS also noted that "adult social care expenditure dwarfs that of children's social care, with adult services costing close to £3.8bn per year, in comparison to an estimated £680 million for children's services," noting that "the design, staffing of and funding for services for children and families must not be put at risk of being deprioritised in comparison to adult services, which by nature of its size and scale takes up more resources and capacity." <sup>153</sup>

206. Martin Crewe of Barnardo's Scotland suggested that there were risks regardless of whether children's services are included in a National Care Service—
- ” "There is a danger in being either in or out of the system. The fact that we are included as part of a framework bill illustrates the position of children's services. They did not come under the Feeley report. We currently spend around five times more on adult social care than we spend on children's social care. The reality is that children's services are the Cinderella in this situation. Given the framework and the uncertainty, we are not sure whether we are going to be invited to the ball. To stretch the analogy a bit, if we do get a ticket, the music will probably already be playing, and it might be waltz, whereas we would rather have a disco." <sup>154</sup>
207. In its written submission to the Health, Social Care and Sport Committee, CELCIS, the Centre for Excellence in Children's Care and Protection - makes the case that even if there are close interfaces between children's and adult services, there is a need to ensure that children's needs do not become lost, noting that "many children come into contact with children's services because of difficulties and support needs that their parents experience such as poverty, mental health needs or substance misuse, for example," acknowledging that "a child's needs cannot be fully met without supporting their parents or carers," but noting that "while the needs of children and adult are interconnected in this way, the needs of children are distinct from those of adults." <sup>155</sup>
208. Ross McGuffie, Chief Officer of North Lanarkshire Health and Social Care Partnership, also suggested that "in the early days of integration, there was certainly a feeling that integration was absolutely focused on adult services; all the outcome indicators were adult focused, and the children and families teams felt a little overshadowed in that landscape...doing this in two stages might lead to such a feeling again." <sup>156</sup>
209. Jackie Irvine of the Care Inspectorate suggested that regardless of whether children's services were brought under a National Care Service, there would be a need for any new service to operate in a way that worked both for adults and the children and young people close to them—
- ” "The Promise asks us to deliver by working in a different way to support those children, and to take some risks to keep them in their communities with support wrapped around the family. From that point of view, it is essential that adult services and children's services work together, including those in the third sector and universal services such as health visitors and family support workers." <sup>157</sup>
210. She went on to note that change to children's services will come about, regardless of whether they are included in a National Care Service—

- ” "I do not see any of this dividing children's services. Either those services will go into the National Care Service or they will be outside it. However, both alternatives will mean a change for most local authorities. If an authority is currently integrated...pulling children's services out of that and keeping them with the local authority will cause disruption. Where children's services are not integrated in the local authority and they are taken into the national care service, that will also cause disruption. There will be change no matter what."  
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## Transformational work underway

211. In written evidence, NSPCC Scotland suggested that "it is not clear how the Bill...will interact with the wider agenda of incorporating human rights instruments into Scots law including the UNCRC" as well as "how the Bill will interact with other legislative reform likely to impact on the future landscape of social care, including the Children's Care and Justice Bill and anticipated enabling legislation intended to accelerate implementation of the Promise." <sup>159</sup>
212. Fraser McKinlay from the Promise also observed that there was a risk that "we spend the next 12, 18 or 24 months figuring out what the new national care system looks like and people are distracted from the important work of keeping the Promise". <sup>160</sup>
213. In her evidence to the Committee, the Minister for Children and Young People made a strong commitment to progressing transformational work already underway, including the Promise, suggesting "...that work will not pause because of the National Care Service...Meanwhile, we will make sure that the needs of children and young people are a key consideration in the development of the national care service." <sup>161</sup>

## Pressure on existing services

214. Jude Currie of SASW noted that "some of our members will have fears about a potential loss of connection with key council services, whether education, housing or our third sector commissioned colleagues, but we see opportunities too," noting "that is where it is difficult, because we need assurances." <sup>162</sup>
215. In written evidence, Children in Scotland suggested that "we are concerned that potentially including children's services within the National Care Service could make the relationship with education services more complex," noting that "the link with education requires to be explored further." <sup>163</sup>
216. NSPCC Scotland also acknowledged that urgent reform was required to address a lack of support to families, "we remain concerned that the significant structural reform proposed within the Bill will place additional pressure on budget holders and service providers at a time when many families are in acute crisis," expressing concern that "much of the detail relating to delivering improvement in the quality and

extent of social care" will be worked out at a later date and suggesting that the work of the National Care Service steering group "must conclude before we can take a view on whether structural and legislative change is required to improve the quality and consistency of social work and social care in Scotland".<sup>164</sup>

217. Mike Burns of Social Work Scotland also raised the potential for further reform to derail service improvements already being made "at the moment, we think that some elements of children's services are on a good path.... We say that the bill will disrupt that. It is already disrupting it, because it is taking time and attention away from all the preparation and planning that we should do."<sup>165</sup>

218. Martin Crewe of Barnardo's Scotland provided examples of the different interfaces currently in place—

” I will take three examples. First, for most children, the key interface is in education. For children who have been abused, the key interfaces involve the Police and the Children's Reporter system. For care leavers, the key interfaces involve housing, colleges and employment support. For large numbers of the children, families and young people we work with, I cannot see that the National Care Service would have a big positive impact."<sup>166</sup>

219. He went on to note "the issue is whether the proposals will make the interfaces between different parts of the system easier," noting that "the National Care Service could potentially be good for older children with learning disabilities, for whom the transition into adult care is really difficult." He went on to point out that "there are an awful lot of other children and young people".<sup>167</sup>

220. Jude Currie of SASW suggested that "the question is not so much where exactly we sit, but what that looks like for our functions," noting that "it is vital for the end result of the services that seek to provide, which we seek to harness around a family holistically, that those functions go together and that social work sits where those functions are." She went on to note "when we are fractured and at a distance from those things, there is a consequence for the people who we work with day in, day out."<sup>168</sup>

221. In her evidence to the Committee on 16 November 2022, Fiona Duncan, Executive Chief Officer for Health and Social Care and Chief Social Work Officer at Highland Council, observed that "the National Care Service proposal is not a panacea," noting that "we would very much prefer not to bring children's services in [*to a National Care Service*]," suggesting that "one of the reasons for that is that, working with children and families, we already have well-established and informed systems within children's services."<sup>169</sup>

222. Jude Currie of SASW also suggested that when social workers are working in a family setting "we try to understand those needs holistically, but our systems and processes ask us to unpick them and direct them down different paths," noting that "as social workers, we try to draw those strands together again," and that "if we are not given the assurance that what happens next will make that easier, the natural fear is that it will make it more difficult."<sup>170</sup>

223. She went on to explore the current complex interfaces between services, noting that social workers may be engaging with "criminal justice social work, health services,

education and housing all in one meeting," noting that "every ounce of depleted energy that we spend in trying to navigate perhaps even more complicated structures - because we might be outside or distant from what we need - takes away from the relational energy that we need to help children and families benefit, and realise their rights, from those services." <sup>171</sup>

224. Fiona Duncan went on to note that "our biggest link is probably with education and early years provision," suggesting "it has taken many years to get to where we are and, for example, attainment is starting to improve." Fiona Duncan suggested that "Children's services may be pulled into a National Care Service, but education would not be pulled in, so it will be outside the organisation." <sup>172</sup>

## Timescales for Change

225. A key concern raised in evidence was the fact that any new arrangements brought about by the National Care Service (Scotland) Bill would take time to establish themselves.
226. Mike Burns of Social Work Scotland suggested that "It takes time to evolve integrated arrangements," noting that "at times, there is an eagerness for a quick fix or a quick win, but you have to look at things over a 10-year period.....We must work for five, 10 or 15 years....but that is where real change comes about." <sup>173</sup>
227. Ross McGuffie from North Lanarkshire Health Social Care Partnership also reflected on this point, observing that "there is something around the fact that it takes time to make significant change," noting that "when we consider our journey around self-directed support in North Lanarkshire, we talk about the fact that it has taken 10 or 15 years to get to where we are now. Transformative change takes a bit of time; it cannot be done quickly. Sometimes we can end up reaching the next restructure before the current one has had a chance to get to where it needs to be." <sup>174</sup>

# Human Rights-based Approach

## Key rights considerations

228. In the Policy Memorandum accompanying the Bill, the Scottish Government stated that it was "determined that social care and social work services should deliver consistent, high quality support to every person who needs it, across Scotland" and that "those services must have human rights at the heart of the system, enabling people to take their full part in society and live their lives as they want to, while keeping individuals and communities safe." <sup>175</sup>
229. The Committee was keen to explore what a 'human rights-based approach' would look like in practice, particularly from the perspective of children and young people, and took evidence from a range of human rights and legal professionals to inform its view.
230. In doing so, the Committee was conscious that many children and young people across Scotland currently struggle to enjoy their rights.
231. Cameron-Wong McDermott from CYPSC suggested that in the context of this Bill "what we would expect from a human rights-based approach is that special consideration would be given to specific groups of children who will be most impacted by the proposals, including disabled children, care-experienced children, victims and children in conflict with the law" <sup>176</sup>. A human rights-based approach should have children's best interests at heart and should safeguard the right to "meaningful participation" in the context of planning, delivering and evaluating services. <sup>177</sup>
232. With regard to section 30 of the Bill, which would require Ministers to consult before moving any children's service or justice service to sit within a National Care Service, Cameron-Wong McDermott noted that "what we would expect in a human rights-based approach is that any consultation would be based on concrete proposals." <sup>178</sup>
233. In considering the Scottish Government's commitment to a human rights-based approach, the Committee also considered the Children's Rights and Wellbeing Assessment (CRWIA) accompanying the Bill.
234. The Committee notes that only a partial children's rights and wellbeing impact assessment has been carried out to date. Whilst appreciating that the detailed policy associated with this Bill will not be available for some time, the Committee believes that an opportunity has been missed to carry out a more comprehensive assessment of the impact of the Bill on different groups of children and young people at an early stage in service development.
235. This could include assessing how best to ensure any consultation, co-design and complaints processes could be made more accessible to children and young people accessing health and social care services across Scotland. This could also include consideration of how best to embed age-appropriate communication in the National Care Service and/or where advocacy support could most usefully be provided.

236. According to the Bill's Policy Memorandum, "a fundamental tenet of the human rights-based approach to the NCS is providing accountability to those accessing support and empowering them to claim their care-specific rights." It also suggests that "central to facilitating this is the development of an NCS Charter of Rights and Responsibilities co-designed with those with lived or living experience." <sup>179</sup>
237. In her evidence to the Committee on 23 November, the Minister for Children and Young People explained that whilst consultation work was still ongoing in relation to the Charter of Rights and Responsibilities' content, its general purpose was to set out "the rights and responsibilities in relation to the NCS so people who are accessing support have information on the complaints and redress system, which will provide recourse if rights in the charter are not met, and information on how to access information, advice and advocacy services." <sup>180</sup>
238. In his evidence to the Committee on 9 November 2022, Iain Nisbet of Cairn Legal and My Rights, My Say explained the benefits a Charter can bring from a human rights perspective—
- ” "Having a charter helps people to understand easily what their rights are. It sets them out more readably than in the legislation, and that is a good thing. As a lawyer representing children and families, I always ask what we do with those rights. I would want to see an explanation of where people should go and who they should speak to if their charter rights are not being delivered. Will there be an easy system for resolving those disputes and for enforcing those rights and making them real?" <sup>181</sup>
239. Cameron-Wong McDermott of CYPSC suggested that "any charter has to be enforceable" in order for it to be considered an "effective remedy" in relation to the UN Convention on the Rights of the Child (UNCRC). He noted that when UNCRC rights are incorporated into domestic law in Scotland that "children will have the full range of UNCRC rights, in addition to those in any charter, and will be able to enforce those in our courts." <sup>182</sup>
240. The Committee supports the Scottish Government's aspirations to place human rights at the heart of the National Care Service (Scotland) Bill. However, it notes the evidence from Cameron-Wong McDermott of CYPSC (explored in more detail above and in the Co-design section of this report), that co-design requires intense participation and that participation should take place early in the design process. <sup>183</sup> As such, the Committee believes it would have been preferable for the co-design process to have been much more advanced, prior to this legislation being introduced.
241. The Committee recognises that no decision has yet been made on whether to include children's services under the National Care Service. However, the evidence is clear that, regardless of which scenario is pursued, children and young people will be affected by the changes this Bill proposes. As such, their needs should be considered, and taken into account, from the earliest stages of planning and consultation.
242. The Committee also welcomes the creation of the Charter of Rights and

Responsibilities as a means of helping people understand and enjoy their rights. The Committee recognises that some children find it harder to enforce their rights than others. It is therefore crucial that work to create this Charter allows for the meaningful participation of the wide range of children and young people potentially affected by the Bill.

# Next steps

## Co-design

243. In addition to taking a human rights-based approach, the Scottish Government has committed to embedding a co-design process in the National Care Service. This is designed to ensure that services provided meet the needs of those using them.
244. In her evidence to the Committee on 23 November 2022, the Minister for Children and Young People suggested that children and young people will have a vital role to play, noting that they ".....we have been hearing from...disability organisations, children's disability representatives and so on to ensure that those voices are right at the heart of the co-design," and that this "is important, no matter whether children's services are included in the national care service, and the voices of the parents and carers of those children need to be heard too." <sup>184</sup>
245. Whilst the Committee welcomed this commitment, it recognised that there were a number of concerns as to the timing of co-design with children and young people, given that some co-design with adults was already underway.
246. In written evidence, NSPCC Scotland suggested that sufficient time should be taken to carry out meaningful co-design with children and young people, noting that "building evidence on what structures best meet children's needs will take time, yet the current timeline of the set-up of the National Care Service necessitates decision-making on children's services prior to any service design work being carried out...". NSPCC Scotland also highlighted that "as the Bill currently stands, our concern is that there is a potential disconnect between the legislative process now underway and the developing evidence for making a decision on whether to include children's services as part of the National Care Service." <sup>185</sup>
247. This is a point echoed by CELCIS, the Centre for Excellence in Children's Care and Protection, in its written evidence to the Committee. CELCIS expressed concern that "delays in adequate planning for children's services, should these become part of the National Care Service, will not enable effective participation to take place in the planning of any changes," suggesting that "whilst we note the principles of co-design stated in parts of the Bill, we ask that children's views and needs are taken into account at this juncture, rather than when a decision has been made on the inclusion or non-inclusion of children's services." <sup>186</sup>
248. Cameron-Wong McDermott of CYPSC said it was important to recognise exactly what was being proposed, observing that co-design "is the most intense form of participation when it comes to children and young people" and that "it involves participation at a very early stage, even before a consultation takes place." He went on to suggest that "...I have concerns, and the Commissioner would have concerns, about whether that level of participation can be achieved within the timeframes that are being discussed." <sup>187</sup>
249. In written evidence, Includem noted that "due to the tight timescales of making a decision on the inclusion of children's services before the NCS is operational in 2026, it is unlikely there will be co-design work focused on children and young

people," noting that "we know from our participative work that their needs are unique and different to those of adults," and that "to improve their experiences of services, it is crucial that children and young people are seen as rights holders in their own right, and not simply passive recipients of support." <sup>188</sup>

250. Cameron-Wong McDermott of CYPCS emphasised the importance of valuing children and young people's views in any co-design process, noting that "one of the key requirements is that it is meaningful." <sup>189</sup> He went on to explain, "if children's views in the co-design process lead to the conclusion being arrived at that children's services are better delivered at the local level and by third sector agencies, that must have an impact on what the Scottish Government does in relation to whether children's services are brought into a national care service." <sup>190</sup>
251. Fraser McKinlay of the Promise suggested that the way in which co-design is framed will make a difference to children's ability to participate, noting "it is not a case of asking a group of children and young people 'Do you think that children's services should be in or out of the care service?'....it is about finding out what matters to them." <sup>191</sup> He suggested that the information gained from this co-design process should be used to help adults "figure out what that means in terms of structures, governance, accountability," acknowledging that 'it is a massive challenge to do that in 12 months.' <sup>192</sup>
252. This is a point echoed by Martin Crewe of Barnardo's Scotland, who suggested that "the problem in this process is that we have almost jumped to a solution. No matter how well the co-design work is done, we cannot go to children and families and ask 'Do you think a national care service is a good idea or not?'. This is not their lived reality." <sup>193</sup>
253. Fraser McKinlay of the Promise also suggested that whilst phrases such as co-production and co-design are now used "quite freely" in relation to public services, not everyone understands what good co-design means in practice. <sup>194</sup> He also urged the Scottish Government to avoid asking "the same children and young people and families to tell us their stories all over again," noting previous work such as the Promise, and suggesting that what matters most is "to be clear about what the approach is....what do we really need to understand and know about in the next stage of the process in relation to the National Care Service and whether services for children and families are in or out?" <sup>195</sup>
254. Iain Nisbet of Cairn Legal and My Rights, My Say echoed that point, suggesting that for meaningful co-design "the net needs to be cast more widely to include those children who are not receiving services but may benefit from them." <sup>196</sup>
255. Cameron-Wong McDermott of CYPCS highlighted the need for additional support to be put in place to ensure that all children and young people were able to participate, noting that "...it is important to recognise that the children who will be affected most disproportionately by the proposals will be disabled children and care-experienced children in conflict with the law," before going on to say that "we know that some of those groups face significant barriers to being able to participate. Therefore, it is important to ensure that they can participate properly and fully in any co-design process. That could be through advocacy services, for example." <sup>197</sup>

256. The Committee heard from Iain Nisbet of Cairn Legal and My Rights, My Say that if the Scottish Government is committed to meaningful co-design then "one of the key principles of that [*meaningful participation*] is that there needs to be a reporting back about what was done with the children's views," noting that "there will be a variety of views - not every child's expressed view will end up being exactly mirrored in the legislation - so there needs to be a meaningful reporting back about what the Government has done with their views and why it has taken the decisions it has."  
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257. This point was echoed by Fraser McKinlay from the Promise, who stated that "as a principle, if you do a co-design process, you absolutely need to honour the things that people told you and the time and commitment that they gave to that process," noting that "if you cannot deliver on all of it, you need to be honest and clear about that. You need to report back. Therefore, the co-design must go beyond coming up with a good plan. It has to be about implementation and beyond."<sup>199</sup>
258. In written evidence, Children in Scotland suggested that whilst it broadly welcomed the use of co-design, it was concerned that "children's services will be co-designed through an adult lens in order to fit"<sup>200</sup> and that "developing a clearer understanding of the forecasted timeline of proposing the integration [*of children's services into a National Care Service*] would be beneficial".<sup>201</sup>

259. The Committee notes the Scottish Government's assertion that, should the National Care Service go ahead, that co-design will ensure that services meet the needs of those who use them. However, the Scottish Parliament has not had the opportunity to scrutinise what a co-design approach will mean in the context of this Bill. As such, it remains unclear exactly how this will work in practice.
260. The Committee would welcome clarity from the Scottish Government as to how it plans to meaningfully engage with the broad range of children and young people who access health and social care services across Scotland.
261. The Committee draws the Scottish Government's attention to the comments made by stakeholders in relation to effective co-design. It asks the Scottish Government to carefully consider how it can ensure children's needs and requirements are at the heart of this process by a) making sure co-design with children and young people commences as soon as possible; b) using co-design methods that are age appropriate, accessible and relevant to children's life experience and c) that mechanisms are built in to provide feedback to children and young people so they can know how their views have made a difference.
262. The Scottish Government should incorporate learning from co-design with children and young people to improve service delivery, irrespective of whether children's services are included under a National Care Service.

## Conclusion

263. The Committee notes that the decision whether or not to include children's services in a new National Care Service has not yet been taken.
264. However, it is clear that, regardless of where children's services sit in future, there is a clear need for improvement.
265. The Committee heard that, whilst there may be sound policy and legislation governing children's health and social care in place, in practice, children and young people are not always getting the services that they need. The Committee acknowledges that the current experience for children and young people, and some groups of children and young people in particular, is not good.
266. At the same time, the Committee acknowledges that there are areas where the current models of integration have brought improvements in terms of consistency, communication and co-operation between children's services and other services at a local level. Such good practice should be at the core of what comes next.
267. However, that is not true of all areas, given the integration of children's services remains mixed across Scotland. The Committee notes that some Integrated Joint Boards currently have children and families social work delegated to them, some have children's health delegated, some have both elements delegated and others have no delegation of children's services at all, meaning they remain with the Local Authority.<sup>202</sup>
268. Should the Bill proceed and a National Care Service be created, it is clear that children and young people will be impacted by the changes this Bill brings, regardless of whether children's services themselves are brought under a National Care Service.
269. If, for example, the decision is taken to transfer only adult services to a new National Care Service, then those areas where children's services are currently fully integrated will be required to disentangle children's services from adult ones. Similarly, should a decision be taken to bring children's services under a National Care Service, then those areas with the lowest levels of integration, will be required to make significant changes to ensure that those services become fully integrated.
270. The Committee therefore believes that the Scottish Government should model a range of scenarios to assess what the impact would be on children and young people, and the services they rely on (e.g. no change to current arrangements, children's services outwith a National Care Service or children's services within a National Care Service). This modelling should also include consideration of what might happen, should the Scottish Parliament reject any secondary legislation seeking to bring a children's service or services under a National Care Service. The key focus of this modelling, should be how best to bring about transformational change and remove barriers between children's and adult services.

271. The Committee did not hear strong support for children's services being included under a National Care Service. Given that the policy detail of any changes will only become apparent when secondary legislation appears, stakeholders were only able to talk in theoretical terms of what change might mean. Where opportunities arising from change were identified, these were often heavily caveated and any support was dependent on the eventual model chosen.
272. Whilst the Committee welcomes the independent research commissioned from CELCIS and the Scottish Government's commitment to children and young people being involved in service co-design, this work will take time and its results will not become apparent until September 2023 at the earliest. The Committee believes that, in hindsight, it would have been preferable if the Feeley Review's remit could have been expanded to include consideration of children's services.
273. The Committee also notes the risks associated with this research not appearing until autumn 2023, including that any National Care Service created would be primarily designed to meet the needs of adults.
274. The Committee therefore urges the Scottish Government to ensure that children and young people are included and involved from the earliest stages of service design, noting that there are elements of the Bill already in place which could be adapted to ensure they are accessible and age appropriate, for example the Charter of Rights and Responsibilities and the associated complaints process.
275. The Framework nature of this Bill means that much of the detail of any future transfer of children's services to a National Care Service will be left to secondary legislation. This is concerning. The Committee is strongly of the view that the process set out in the Bill is insufficient to allow for appropriate Parliamentary scrutiny.
276. The Committee recognises that there are both opportunities and risks associated with transferring children's services to a new National Care Service. As such, measures should be put in place to allow for more robust scrutiny prior to secondary legislation being laid before the Scottish Parliament.
277. Children's services should have a human rights-based approach, regardless of whether children and young people are included in a National Care Service.
278. Whilst a partial Children's Rights and Wellbeing Assessment has been drafted on this Bill, on the understanding that further assessments will be produced once the way ahead is clearer, the Committee believes there is scope to do more now to ensure that children and young people's rights are protected.
279. In the course of scrutinising the Bill at Stage 1, the Committee spoke to organisations representing disabled children and young people, neurodivergent children and young people, children affected by domestic abuse, young carers, children and young people affected by poverty, children and young people in conflict with the law, children and young people with mental health needs and care-experienced children and young people. The National Care Service has the potential to impact on these groups in very different ways, so there is potential now to produce an impact assessment which will ensure that their needs are fully

considered as plans to implement the National Care Service are progressed. This assessment should explore the potential impacts of children's services sitting both within and external to a National Care Service.

280. The Committee also considered the potential financial impact of bringing children's services under a National Care Service.
281. The Committee was extremely concerned by the lack of detail provided either in the Financial Memorandum on this subject or in the evidence provided by the Minister for Wellbeing and Social Care and the Minister for Children and Young People. As previously stated, it is inevitable that change to children's services will occur as a result of this Bill and therefore there should be a clear understanding from the outset of what this might cost, regardless of the final approach taken.
282. The Committee shares concerns over the robustness of the overall costs of the Bill as outlined in the Financial Memorandum and would not be content to wait until any secondary legislation was laid for further detail. The Committee recommends that ahead of any Stage 2, detailed financial modelling should be undertaken and shared with the Scottish Parliament to allow for greater financial scrutiny.
283. The Committee notes that the National Care Service is to be co-designed by children and young people. However, as previously highlighted, the Committee also recognises the risks associated with awaiting the results of such co-design before any planning for the future of children's services takes place. The Committee strongly believes that co-design work with children and young people should have commenced before this Bill was introduced.
284. The Committee urges the Scottish Government to commit to implementing the improvements suggested via co-design with children and young people, regardless of any decision whether to include, or exclude, children's services from a National Care Service.
285. The Committee also acknowledges the evidence it heard regarding meaningful co-design. Again it encourages the Scottish Government to fully involve the wide range of children and young people potentially affected by this Bill in this process, and reflect upon how changes brought about by the Bill might impact differently across age ranges, ethnic minority groups and social backgrounds.
286. This co-design should be designed with clear parameters, to ensure that children and young people are clear about exactly what they can and can't influence. This will ensure that the conclusions they reach are both realistic and lead to noticeable change. Key to this will be building in clear and timely feedback mechanisms, so children and young people can understand how their views have made a difference.
287. The Committee believes that this Bill could provide a significant opportunity to improve children and young people's experiences of transitions between children's and adult services. This should form a key element of any co-design process. However, such co-design should also take into account the potential for unintended consequences.

288. The Committee heard evidence which identified risks that in moving children's services to a new National Care Service, this might break existing operational links between education, social work and other local services and impact on the preventative and early intervention work which they currently deliver together.
289. The Committee acknowledges that Scottish Government stated that ongoing improvement work would not be delayed due to the potential passage of the National Care Service (Scotland) Bill. Where difficulties are identified and improvements suggested via this co-design process, they should also be actioned without delay, where it is feasible to do so.
290. Current inconsistencies across Scotland in relation to kinship care allowances for children and young people are an example of something that could be addressed now, without the requirement to await the results of the CELCIS research or co-design processes.
291. The Committee recognised that there was significant uncertainty for the health and social care workforce. This should be addressed without delay. Staff need to have reassurance both in relation to their terms, conditions and pensions - and any additional resource that a National Care Service might bring to help ease workloads. The Committee notes that in many services existing staff are over-stretched amidst an ongoing recruitment crisis.
292. The Committee acknowledges that this Bill could have the potential to provide improvement to a wide range of children's health and social care services. However, there is currently too little detail to say with any certainty what this might mean in practice for children and young people across Scotland.
293. The Committee notes the evidence it heard from stakeholders that structural change in and of itself will not guarantee the improvements sought to children's services. The Committee heard strong evidence that leadership, culture and strong relationships between teams are crucial to delivering effective integration. Should the Bill proceed, careful thought will need to be given as to how to ensure those elements are captured when designing services for children and young people in future so that the policy intention is delivered.
294. Whilst the Committee welcomes the Bill's commitment to human rights and co-design it is, however, deeply dissatisfying that critical research and detailed financial information was not available for scrutiny prior to the end of Stage 1. The Committee believes that much of this groundwork could - and should - have been taken before the Bill was brought forward, to provide the same clear steer as has been provided for adult services by the Feeley Review.
295. The Committee therefore cannot form a clear view on whether children and young people's services should be included under any future National Care Service.

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- 5 National Care Service Consultation: Analysis of responses, Scottish Government, February 2022, p76 accessed via [this link](#).
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- 8 National Care Service: consultation analysis, Scottish Government, 10 February 2022, p.78
- 9 National Care Service: consultation analysis, Scottish Government, 10 February 2022, p.83
- 10 Education, Children and Young People, Official Report, 9 November 2022
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- 17 Scottish Government website, accessed via [this link](#).
- 18 Policy Memorandum, National Care Service (Scotland) Bill, para 162

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- 22 [SPICe briefing](#), National Care Service (Scotland) Bill, published 10 October 2022, p.12
- 23 [SPICe briefing](#), National Care Service (Scotland) Bill, published 10 October 2022, p.13
- 24 [SPICe briefing](#), National Care Service (Scotland) Bill, published 10 October 2022, p.13
- 25 Education, Children and Young People Committee, Official Report, 9 November 2022, Col 53
- 26 Education, Children and Young People Committee, Official Report, 9 November 2022, Cols 52 & 53
- 27 Education, Children and Young People Committee, Official Report, 23 November 2022, Col 38
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- 33 Education, Children and Young People Committee, Official Report, 9 November 2022, Col 39
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- 36 Education, Children and Young People Committee, Official Report, 9 November 2022, Col 35
- 37 Explanatory Notes, National Care Service (Scotland) Bill, para 55

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- 46 Education, Children and Young People Committee, Official Report, 9 November 2022, Cols 37 & 38
- 47 Education, Children and Young People Committee, Official Report, 16 November 2022, Col 50
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- 58 Education, Children and Young People Committee, Official Report, 16 November 2022, Col 20
- 59 Education, Children and Young People Committee, Official Report, 9 November 2022, Cols 10 & 11
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