Finance and Public Administration Committee

26th Meeting, 2022 (Session 6), Tuesday 25 October 2022

National Care Service (Scotland) Bill - Financial Memorandum

Purpose

1. The Committee is invited to take evidence in relation to its scrutiny of the Financial Memorandum (FM) for the National Care Service (Scotland) Bill from Scottish Government officials and then from representatives of local government, as follows:

Panel 1
Donna Bell, Director of Social Care and National Care Service Development, Scottish Government; and
Fiona Bennett, Interim Deputy Director for NHS, Integration and Social Care Finance, Scottish Government

Panel 2
Paul Manning, Executive Director of Finance and Corporate Resources and Depute Chief Executive of South Lanarkshire Council, SOLACE Scotland;
Sarah Watters, Director for Membership and Resources, COSLA; and
Sharon Wearing, Chair, CIPFA Integrated Joint Board Chief Finance Officers Section.

2. This session will provide an opportunity to explore the potential costs associated with the measures introduced by the Bill, as set out in the Financial Memorandum (FM).

3. The written submissions provided by these witnesses in relation to the FM are attached at **Annexe A**.

4. This paper should be read alongside Paper 2, which is a SPICe briefing providing further background, analysis and a summary of the evidence received.

Background

5. The National Care Service (Scotland) Bill was introduced by the Scottish Government on 20 June 2022 and allows Scottish Ministers to transfer social care responsibility from local authorities to a new, national service.

6. The Bill is divided into the following parts, as stated in the explanatory notes:

- "Part 1 establishes the National Care Service. It makes the Scottish Ministers responsible for organising the National Care Service, enables them to establish new public institutions called care boards to comprise the National Care Service and gives the Ministers power to make regulations transferring health and social care functions to the institutions comprising the National Care Service.
- Part 2 gives the Scottish Ministers' powers to make records about people's health and social care more consistent and better integrated.
- Part 3 contains modifications to existing laws relating to the provision and regulation of care.
- Part 4 contains provisions usually found at the end of a Bill, namely the power to make ancillary regulations, further elaboration in relation to regulation-making powers elsewhere in the Bill and the sections dealing with commencement and short title."

7. Rule 9.3 of Standing Orders states in relation to Financial Memorandums that:

"2.A Bill must on introduction be accompanied by a Financial Memorandum which sets out best estimates of the costs, savings, and changes to revenues to which the provisions of the Bill would give rise, and an indication of the margins of uncertainty in such estimates. The Financial Memorandum must also include best estimates of the timescales over which such costs, savings, and changes to revenues would be expected to arise. The Financial Memorandum must distinguish separately such costs, savings, and changes to revenues that would fall upon—

(a) the Scottish Administration;
(b) local authorities; and
(c) other bodies, individuals and businesses.

8. The accompanying Guidance on Public Bills notes that:

"the Financial Memorandum should explain how these costs, savings, and changes to revenues arise, and what the implications are for the Scottish Consolidated Fund. For example, provision for a new or modified tax raising power could, assuming the power is used, significantly increase or reduce the amount of revenue paid into the Scottish Consolidated Fund. The discontinuation of a service or dissolution of an organisation could present potential savings to budgets and the Financial Memorandum should set out best estimates for these savings."

9. The National Care Service (Scotland) Bill is a framework bill. The 'framework' intends for the substantive detail to be co-designed later, chiefly with people who access support, those who deliver it and unpaid carers. As a result, the accompanying FM notes that "there are increased uncertainties surrounding the cost estimates, and the timing of those costs". Table 1 on page 6 of the FM provides a summary of the total estimated costs of provisions in the Bill.

10. On 30 June 2022, the Committee received a letter from the Minister for Mental Wellbeing and Social Care correcting an error in the Financial Memorandum submitted by the Scottish Government and providing updated figures for Table 1.

11. The Health, Social Care and Sport Committee has been designated as lead committee in relation to scrutiny of the Bill, although other committees are also involved in examining particular elements of the Bill. Given the wide impact of the Bill on various policy areas, a joint call for views, led by the Health, Social Care and Sport Committee, was launched on 8 July and closed on 2 September 2022.

12. The call for views included the following standard questions that the Finance and Public Administration Committee asks on all Financial Memorandums:

- Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?
- If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?
- Did you have sufficient time to contribute to the consultation exercise?
- If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.
- Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?
- If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?
- Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

13. The call for views received a total of 215 responses, which are available on the Parliament's Call for Views site. Of the 215 responses, approximately one third included comments on the FM.

14. Alongside the main consultation, the Committee received briefings from COSLA, CIPFA and Social Work Scotland. The Fraser of Allander Institute (FAI) has also undertaken research on the Bill, with funding from the Coalition of Care and Support Providers in Scotland. Annex C to the FAI report provides a detailed analysis of the Financial Memorandum.

15. In addition to its role in considering Financial Memorandums, each year the Committee is required to consider the budget proposal from the Scottish Parliamentary Corporate Body (SPCB). The SPCB budget provides for the operating costs of the Parliament along with the costs of the Ombudsman and Commissioners (termed 'Officeholders') which fall within the definition of SPCB supported bodies. The Presiding Officer on behalf of the SPCB has provided a submission on the financial impact of the Bill on the SPCB.

Next steps

16. The Committee will continue taking evidence on the Financial Memorandum on 1 November, when it will hear from Audit Scotland, NHS Scotland, the Health and Social Care ALLIANCE and the Fraser of Allander Institute. This will be followed by an evidence session with the Minister for Mental Wellbeing and Social Care on 8 November.

Committee Clerking Team
October 2022

ANNEXE A

Written Submissions

Submission from COSLA

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Yes, we responded to the consultation in Autumn 2021. However, no information was provided in the consultation document about the finances of the National Care Service, so it was not possible to comment on the financial assumptions made. In our response, we highlighted the many areas where there was significant uncertainty or lack of clarity regarding finances, such as: the long-term resourcing of the National Care Service; matters in relation to borrowing, holding of reserves, pensions, audit and VAT; and shared services. Disappointingly, the draft Bill and memoranda do not address these points explicitly and there is an unacceptable lack of clarity.

We also expressed concern about the likely cost of the National Care Service in the context of the total costs of implementing the recommendations of the Independent Review of Adult Social Care (IRASC). While the review costed some of those recommendations at £660m (in 2018-19 prices), COSLA has estimated the total costs of the IRASC recommendations as being over £1.5 billion – far in excess of the "more than £840 million" stated by the Scottish Government in the Resource Spending Review as the value of its commitment to increase investment in social care by 25% during this Parliament.

The Financial Memorandum shows that the establishment of the National Care Service national body alone will cost up to £250 million with subsequent overall NCS running costs of up to £500 million per year – equivalent to a significant proportion of the above increase in investment, but which would be spent solely on structural reform rather than directly on the improvements in service delivery or meeting of unmet need recommended by the IRASC, for which there is a high risk of insufficient funding being available as a result.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

No – the areas that we highlighted as requiring greater clarity have not been addressed in the FM, with the cost of existing policy commitments excluded from figures that purport to represent the "costs of services that may be transferred". These exclusions are in spite of the fact that increased investment in social work services and in early intervention and prevention, in Fair Work improvement to social care pay and conditions, in reforming residential care charges while abolishing those for non-residential care, and investing in data and digital solutions, were all covered in the 2021 consultation. It is possible that this omission may, at least in part, have arisen from a lack of time to adequately estimate these costs within the compressed timescale for producing and publishing the Bill and its accompanying documents, which is extremely concerning given the nature of the proposed reform.

A number of significant questions and risk remain, such as in relation to VAT as well as pensions and assets, each of which has major financial implications for the National Care Service itself and for local authorities; these are all acknowledged in the FM as requiring further work, but this work should have been done before the Bill and the FM were published to enable Parliament and the public to adequately scrutinise the implications of the Bill. There should also have been a Business Case produced before the draft Bill setting out the rationale, costs, benefits and risks of the National Care Service to facilitate meaningful scrutiny by Parliament, the public and affected organisations as to whether the proposals represent Best Value.

In relation to Fair Work, the costs of pay and terms and conditions in the FM are said to be based on "current assumptions", but it's not clear what this means – for example whether it includes the uplift to £10.50 per hour and/or any estimated future uplifts (bearing in mind that the "costs of services" for future years are – as explained below – based on 2019/20 costs plus inflation plus 3%). It is also unclear how or if the FM accounts for any of the much-needed growth in the baseline supply of workforce, given the National Care Service will both deliver and commission services. We must actively seek to improve the recruitment and retention of our social care workforce and the FM does not recognise this.

Overall, the failure to reasonably and realistically estimate the cost of social care and social work services compounds the fact that many of the issues facing the current system today are the product of under-resourcing. As acknowledged in the IRASC, Local Government has protected social care spend as much as possible during the past decade, despite a 15.2% reduction in the core revenue settlement since 2013/14:

- Adult social care revenue expenditure increased by 22%, and children's services spend by 19%, in real terms between 2010/11 and 2020/21.

- With the exception of education (14% increase), spending on all other service areas fell in real terms, some (such as culture and leisure, roads, and planning) by more than 25% in real-terms.

However, what increases there have been in funding for social care have not been sufficient to keep pace with increased demand as a result of demographic pressures, the increasing complexity of care and the additional investment required to keep and care for people in their own homes for longer. This is the financial backdrop against which this costly and disruptive structural reform is due to be carried out, and it is not acknowledged or dealt with in the Bill or the FM.

In response to the next question, we also do not feel we have had sufficient time to contribute to the consultation exercise. As we stated in our response – and we know from the official analysis of consultation responses was echoed by many other contributors – the timescale given for the consideration of the proposals in the consultation was too short given the scale of the proposed changes. This would have been true in normal times but was especially pertinent given the ongoing challenges faced across health and social care services in recovering after the pandemic. The tight time period allotted for the whole consultation process simply did not provide sufficient time to consider in full the implications for social work/care service users, carers, staff, provider organisations and Local Government as a whole.

We also expressed concern about the likely timelines for the progression of the proposals being in close proximity to the Local Government elections in 2022 and the impact this would potentially have on local democratic engagement and scrutiny of legislative proposals that may have significant implications for current local democratic arrangements. We are aware that some engagement events have been held either side of those elections, the timing of which has served to preclude elected members in particular from meaningfully participating in that process.

The timing of this stage of the legislative process – with the call for views held almost entirely during the summer holiday and recess period – has also caused difficulties in terms of carrying out thorough analysis and consideration of the FM (and the Bill as a whole), especially considering its significant lack of clarity and detail, which we address in this response. With crucial details about the scope, structure, operation and costs of the National Care Service including its impact on services, the workforce, the public and local authorities reserved to secondary legislation, it is disappointing that there has been so little transparency and engagement around the Bill.

Did you have sufficient time to contribute to the consultation exercise?

No.

If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

No. There is a real lack of clarity regarding the impact of the National Care Service proposals on local authority budgets – especially given the different treatment of the NHS and Local Government in relation to the transfer of functions and in particular staff. As a result, it is extremely challenging to evaluate or make decisions on the basis of the FM.

This lack of clarity is exemplified by the inaccurate and incomplete figures provided for the "costs of services that may be transferred" (Table 2 in the FM). These figures are misleadingly uprated each year, from a 2019/20 baseline, by inflation plus 3%. This uprating does not reflect subsequent Local Government settlements and is completely at odds with the reality presented by the Scottish Government's own Resource Spending Review, of a 'flat cash' settlement (a 7% real-terms cut) for Local Government and 2.6% real terms increase in Health and Social Care budgets over the next four years.

Additionally, these costs use as a starting point current expenditure, not the actual cost of delivery of social care as envisioned by the National Care Service. The IRASC itself identified unmet need in the existing adult social care system to the value of £436 million in 2018-19, despite Local Government having protected social care spending as much as possible. At the same time, the estimates specifically exclude the cost of several other social care policy commitments (listed in the FM) which substantially alter how much it will cost to deliver social care services in the period covered by the FM.

Though the rationale for this is to reflect the cost of the changes proposed by the Bill compared to the counterfactual scenario in which those other costs would still occur, the figures in Table 2 are explicitly intended to reflect the cost of the services that may be transferred, but with these omissions fail to do so. Put another way: those reforms are necessary for the future sustainability of a National Care Service, however delivered, so it is not credible to present the costs of the services to be delivered by the National Care Service without factoring those reforms in, and the expected costs of delivering them merit Parliamentary scrutiny as well as wider public discussion.

The unavoidable implication of the inclusion of these figures, albeit described as “illustrative”, is that they are the first draft of the budgets associated with the services that may be transferred and therefore the portion of Local Government funding that may be removed as a consequence, can be quantified – despite being based on 2019/20 actual spend rather than funding allocations, and thus including funds from other sources, including direct income, used to fulfil commitments.

This means the figures in Table 2 simultaneously:

- overstate the funding being made available to Local Government for these services in the Resource Spending Review period, and

- understate the actual costs of providing the services,

rendering the figures wholly unreliable. And as the Institute for Fiscal Studies has pointed out, there are a number of difficulties that would need to be overcome in transferring budgets, owing in part to the local autonomy and degree of discretion over spending that is a strength, not a weakness, of the current social care system.

It is essential that the Scottish Government undertakes further work jointly with

COSLA and other stakeholders on the quantum of funding that would be transferred from Local Government to the National Care Service. The financial transfers cannot be based on the total actual expenditure of local authorities on social care, as this is funded from several income sources and not just Scottish Government grants. It would also disadvantage councils which have sought to protect social work and care budgets, compared to others.

Various other significant financial implications for Local Government are not addressed in the FM – these include VAT, assets and pensions.

The proposed structure and governance of the National Care Service is such that it is likely to be liable for VAT, at least unless and until arrangements can be made to exempt it. Clearly – as the FM itself acknowledges – this would significantly increase its costs of operating and consequently reduce the funds available to spend directly on social care support. Under HM Treasury rules, local authorities and certain other bodies are able to recover the VAT incurred on certain purchases – in order that VAT costs are not funded through local taxation – whereas other public sector organisations including the NHS cannot reclaim VAT incurred on many goods and services, which is therefore a cost that must be covered by departmental budgets.

There is no clarity or detail about the financial treatment of assets, particularly whether they would simply be transferred to new ownership or whether they would be purchased. This causes great uncertainty and a risk of disincentives for local authorities to invest in assets they believe they are unlikely to have possession of in the coming years and where there is no assurance that they will be recompensed at market value; there is also no acknowledgement of the associated maintenance costs or clarity on how the National Care Service would continue to finance any assets it does take on.

The FM also fails to acknowledge the long-term trend of increasing co-location of Local Government services over the past 15 years, meaning assets may not be easily separated from other functions. In addition, these are community assets which have been financed by Local Government through a number of routes including borrowing which have been funded by Local Government budgets including Council Tax; there are legal considerations were the Scottish Government to remove these assets from communities without reasonable recompense.

The FM states that there is the potential for 75,000 staff to be transferred from Local Government to the National Care Service; this would have considerable implications for pension funds both for those that may no longer be able to remain members of the scheme and any impacts on the scheme for remaining members, which also do not appear to have been quantified. This is a very complex issue which will require significant expert consideration to enable accurate assessments and decisions to be made. For example, detailed assessment is required on whether and how this will impact on existing pension schemes, including viability given the Local Government Pension Scheme is a fully funded scheme, and whether or not the National Care Service would be able to be an admitted member of that Scheme.

It is also unclear what the costs to Local Government will be of the introduction of rights to breaks for unpaid carers. The FM assigns costs to "local authorities" from 2025/26, but that is also the year from which Care Boards are expected to be established. Other costs of the provision of breaks are provided for years prior to 2025/26, but these are assigned only to Scottish Ministers, even though Local Government will ultimately be responsible for providing the necessary support – including replacement care, which is costed but only for adult carers (and possibly underestimated, as we explain elsewhere), and for which there is currently no specific funding under the existing Carers Act.

Finally, the FM anticipates savings or efficiencies through shared services across the National Care Service if significant numbers of staff and services are transferred. However, it fails to acknowledge the corresponding loss of economies of scale in Local Government arising from the loss of such a sizeable portion of its workforce, and the broader impact that that is likely to have. Local Government has been driving efficiencies for over a decade, particularly in central services, and there is a risk that a necessary critical mass will be lost for some services, such as audit and other professional services which are often provided by the same individuals or teams for the council and the integration authority.

The mass transfer of functions, staff, assets and liabilities out of Local Government poses a risk to the effective delivery of services – or in some cases the sustainability of core statutory activities – that have a vital role to play in reducing demand for health and social care by addressing social determinants of health and wellbeing such as education, housing and employment.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

No. As explained above, there are a number of major issues with the way that the costs of the National Care Service have been accounted for and presented in the FM; for example:

- The uprating of the costs of services by inflation plus 3% significantly diverges not only from the 'flat cash' reality for Local Government, but also from the 0.6% real terms annual increases for health and social care, both of which are indicated by the Scottish Government's own Resource Spending Review.

- The exclusion of the future cost of existing policy commitments, while based on a sound rationale, undermine the stated purpose of the figures.

- The use of gross costs fails to reflect the role of income received and other resources used to meet spending commitments.

- The FM does not include or account for VAT, or the impact of pensions, and does not provide clarity about the treatment of assets or acknowledge the financial or investment implications for the local authorities that currently own them.

Staffing costs is another area that requires further clarity and consideration, and where the figures presented are likely to be underestimates. As described above, it is not at all clear what assumptions and calculations have been made regarding pay and terms and conditions, and the intended harmonisation of those is likely to be costly.

Meanwhile, it is likely that the gradual uptake of the new entitlement to breaks from caring assumed by the FM also represents an underestimation of the costs associated with this new provision. The FM assumes that in the future steady state, the proportion of carers receiving personalised Adult Carers Support Plans or Young Carers Statements will be the same as the proportion assumed in the Financial Memorandum for the Carers (Scotland) Act 2016 – but the National Care Service Bill serves to remove eligibility criteria for short breaks, which is likely to result in a significant increase in demand for assessments. The calculations thus assume that assessment costs are already met by Carers Act funding, but that was based on lower numbers of carers and on unit costs at 2013-14 prices.

In addition, while the inclusion of replacement care costs this time is welcome, it is unclear why this is only provided in relation to adult carers and not to young carers – many of whom (contrary to the assumptions implicit in the FM) do fulfil the primary caring role, or undertake intensive caring duties, and therefore will require replacement care in order to take breaks. There is nothing in the Bill that leads us to expect access to replacement care to be limited to adult carers, however this should be clarified and should be part of the cost considerations of the National Care Service Bill.

The FM itself acknowledges that the transfer of functions from local authorities may have other financial implications depending on the nature and timing of those transfers. It also offsets the costs of establishing and running care boards by a figure of £25-40 million that is estimated to be the existing running costs of Integrated Joint Boards plus related health board and local authority support services – but there is no explanation of how this figure is calculated or what it does and does not include.

More fundamentally in terms of the contents of the FM itself, it is not apparent whether the figures for expected costs of the various elements of the National Care Service are in cash terms or real terms (or at what year's prices they are stated) – especially in the current context of high inflation, this has a substantial impact on the actual costs that will be incurred. Following contact with Scottish Government officials, we understand that varying uplifts, generally of 2-3%, have been applied to different elements of the costs shown in the FM, based on a degree of intuition about each of those costs. Given the nature and scale of the financial implications of what is being proposed, the lack of transparency around this process is disappointing.

In addition, cost figures throughout the FM are presented in such large ranges – on the basis of extreme uncertainty about what costs will arise and when, as well as key aspects such as the number of care boards – that it is almost impossible to make meaningful calculations or conclusions about the additional costs or affordability of the National Care Service.

There is also no clarity of the impact on health budgets nor how they will be treated and transferred to support the National Care Service and care boards. Additionally, there is no rationale as to why services currently delegated to Integrated Joint Boards from health should be treated differently to those from Local Government, for example through the guarantee that health staff will not be transferred.

In terms of savings, the FM rather vaguely claims that the creation of the National Care Service – at an additional cost in itself of up to £250m in the establishment phase plus a similar sum across the first two years of its operation – will deliver savings across the public sector, but these are not specified or quantified in any way, even within health and social care itself. It is not unreasonable to expect the Scottish Government to be able to demonstrate the anticipated return on such a significant investment in structural reform, especially in the context of the savings expected to be delivered across the public sector, including through similar reform, following the Resource Spending Review.

Overall, it is deeply concerning how much is still unclear and how many questions remain unanswered by the FM and by the Bill itself - both in terms of:

- aspects of how the National Care Service will be funded, whether it is affordable and the severe financial impact it is likely to have on Local Government; and

- the transparency, reliability and robustness of the figures presented, including underlying assumptions and treatment of factors such as demand and inflation.

Consequently, we have significant reservations about the rationale for directing such substantial sums at a disruptive and time-consuming medium-term structural reform at this time. Investment is needed now to improve services and tackle challenges such as staff recruitment and retention, in order to deal with the growing pressures and ever-increasing demands facing social care – which are also having real and significant knock-on effects for health services too. It is greater capacity, rather than consistency, that is most urgently needed across the health and social care system.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

As explained above, while there is a lack of clarity about the impact of the National Care Service proposals on local authority budgets, it is clear that the mass transfer of functions and activities risks having a significant broader impact on Local Government services. Focus should instead be placed on ongoing reform in social care that delivers improved outcomes for service users and supports staff – but those reforms need to be properly funded.

We have highlighted previously an apparent shortage of funding for implementing all of the IRASC recommendations – many of which are excluded from the calculations used in the FM – and the disparity between the 3% above-inflation annual increase in funding for social care that the FM states is required to deal with increased demand and other cost pressures, and the flat-cash settlement for Local Government and 0.6% real terms annual increases for health and social care afforded by the Resource Spending Review.

We have also highlighted previously the protection that Local Government has put in place over the years for social care budgets, at the cost of other services. And as we have set out, there are also considerable concerns about the financial costs that Local Government will incur as a result of the Bill, including in relation to the loss of economies of scale and efficiencies, pensions, assets, impact on support services and so on.

In this context it is very difficult to see how the costs of the National Care Service can be met without significant additional funding being provided – or at all. To deliver on the IRASC recommendations and to achieve the stated aim of ensuring parity between health and social care, it is essential that fair funding is provided to Local Government in a way that allows councils to make decisions about the best use of resources based on local needs and priorities – something that COSLA has been calling for since before the pandemic.

Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

Overall, no, due to the many un-costed elements of the Bill. Regarding those figures which have been presented, yes – the figures throughout the FM being presented in such large ranges reflects the significant uncertainty about what costs will arise and when. In fact, it is not clear what the basis is for that uncertainty, although we believe that at least in some cases it is likely to relate to how many care boards there will be and/or when services will be brought within the remit of and transferred to the National Care Service. It is also not clear what financial powers the National Care Service may have going forward and how that may help or hinder a National Care Service budget and any impacts on the wider public sector.

It is deeply concerning that so many questions remain unanswered regarding both the fundamental and practical aspects of the National Care Service, and that so little detail is available regarding its finances, despite the Bill having been published and with the relatively short timescale expected for the implementation of what has been described as "the most ambitious reform of public services since the creation of the NHS". We would like to see much more clarity and transparency around how the costs of the National Care Service will be managed and met, with detailed and costed options being developed and appraised at every stage as the design and implementation of the National Care Service progresses. This is essential to enabling effective Parliamentary scrutiny of the financial and policy detail of the Bill.

Submission from CIPFA Integrated Joint Board Chief Finance Officers Section

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

Yes, the CIPFA IJB Chief Finance Officer section submitted a two-part response. Part one included answers to the set questions however as these questions left very little scope to comment on the financial assumptions an additional response was submitted which provided commentary on the limited financial information available and highlighted areas where additional work was required to understand the financial opportunities and risks.

The response centred around finance, data, charging, commissioning, workforce and financial risks during the interim period. Key finance related points raised include -

Finance

- Chief finance officers welcomed the proposal to directly fund Care Boards but highlighted the lack of acknowledgement of a Section 95 Officer to ensure Boards would have adequate financial accountability. The importance of strong financial leadership cannot be understated if we are to deliver integrated services which meet the needs of the people of Scotland. This has not been fully recognised in the NCS Consultation, FM or Bill.

- Lack of clarity on the nature of the legal body Boards would be. CFOs believe they should be established as Section 106 public bodies so as not to lose current financial flexibility of be exposed to the risk of adverse VAT implications.

Data

- The challenges faced with having more than one care and finance system, with IJBs using two financial ledger systems to access information from partner organisations and the impact this has on preventing funding from losing its identity.

- The need for best value to be considered in any approach.

Charging

- Concern that the recommendation to increase Free Personal and Nursing Care for self-funders will not necessarily deliver a reduction to the amount paid by self-funders. An alternative approach to offer a degree of protection was suggested which is for placements to be contracted through Boards.

Commissioning

- While Chief Finance Officers welcome additional investment this must be sufficient to adequately resource commissioning teams and to direct more funding to the services we commission, without sufficient investment the outcomes desired will not be met. Best value remans a core principle within legislation to ensure the best use of the public pound.

Workforce

- It is the view of the section that the staff who support the strategic and operational delivery of the Care Boards should be aligned to the Board. Having the responsibility for the workforce directly will protect the identity of the staff, encourage a sense of pride and allow Boards more control and flexibility in the delivery of strategic priorities. The budget as such would need to sit with the Boards.

- Improved terms and conditions sought under the Fair Work agenda are likely to elevate the status of social care workers, this should apply to staff employed by private and third sector providers as well as those currently employed by Local Authorities and Health Boards. Changes to terms and conditions will result in significant financial consequences which must be fully costed and funded.

Financial Risks in the Interim Period

- The nature of funding arrangements currently for Health and Social Care Partnerships differ from that of NHS Boards and Councils and as such there are additional complications which may present in a more acute manner in the interim period. Steps must be taken to maintain financial stability for Integrated Joint Boards in this period.

- Structural changes are likely to require significant resource and stretch existing capacity. It is essential change is done at a pace which will not risk the continued improvements of the support we provide. Adequate additional resource must be provided to ensure any change is fully funded.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

No, one of our key concerns with the financial memorandum is the lack of robust information to allow for any reasonable professional opinion to be given about the adequacy of the resource to ensure services are effective. This echoes our concern with the lack of financial information included in the consultation paper. The importance of providing estimated costs alongside details of the assumptions used to make calculations cannot be understated. This is particularly important given the range of stakeholders who will be reviewing this with interest, the variability of professional and personal finance experience and the likelihood of the Bill raising public expectation with resultant cost implications.

Other concerns raised in our earlier comments include; the lack of recognition of the importance of strong financial leadership, treatment of existing and future assets, control over revenue and capital, borrowing and debt repayments on assets and the fundamental question of the type of legal body Boards are likely to be. These issues will have a significant impact and the financial memorandum gave an opportunity to provide additional information which was sadly missed. While there is acknowledgement in the FM of additional work being required it is the view of the CFO network this work should have been significantly progressed as due diligence prior to publication of the FM to ensure the public and Parliament can provide informed opinions.

Had the FM been informed by a Business Case on implementing the NCS this would likely have given a more informed and robust financial assessment of estimated cost implications. Additionally, this would have then complied with the relevant Audit Scotland guidance.

The Chief Finance Officer network is happy to work with Government colleagues as things progress to assist with the various improvements needed in the evaluation and costing exercises.

Did you have sufficient time to contribute to the consultation exercise?

No.

If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

No. To date insufficient information has been provided to determine if the financial implications have been accurately reflected. Where figures have been provided there is a lack of clarity of information for robust assessment, there are also inaccuracies in some of the statements and gaps.

The FM is not aligned with the Resource Spending Review, for example figures have been projected using inflation when that is not reflective of the flat cash settlement. While we recognise the Spending Review is a separate exercise it is important to acknowledge its impact on the financial landscape and the reality of the available funding when the NCS is implemented. Figures used are also based on current service provision and not the desired service provision of the NCS. Changes to meet unmet need, change/remove eligibility criteria and the removal of non-residential charging will all have an impact on the size and scale of service delivery and therefor the cost of service delivery and workforce required.

Many unknowns remain which have not been detailed within the FM and significantly impact the potential financial implications for our organisations include the type of public bodies Care Boards will be and the effect that will have on reserves, VAT etc. The treatment of assets and liabilities. The impact on employees in integrated roles, which are likely to be unable to be transferred to Care Boards under TUPE arrangements leading to potential redundancy costs and the treatment/funding of such costs.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

No, unfortunately the level of uncertainty and remaining unknowns do not allow for any certainty around the reasonableness and accuracy of the costs and savings included.

Additional investigation into each of the suggested changes is required to ensure there has been due diligence, all potential risks have been fully considered and this is meeting best value requirements. If we are to consider the removal of eligibility criteria as an example there will be a significant increase in demand and while eligibility criteria are in place due to insufficient funding an increase in funding alone is unlikely to meet the desired outcome. There should still be a role for professional assessment of need, as we see currently in social care and in the NHS, this will require financial investment in the professional workforce but is dependent on the workforce being available. Social care services will need to grow or be established to meet this demand, and while this will not be possible without adequate financial resource, is again reliant on growth in the workforce to deliver this care. To fully understand if estimated costs are reasonable more information is required on the scale of the anticipated increase in demand, any potential changes required to ensure the roles required are attractive to the potential workforce and any changes to the type of service provision that will be required for people who currently do not meet the eligibility criteria for current service provision all of which are likely to come with new costs.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Without additional information which provides much more certainty of the potential costs and how these would be met it is not possible to determine if the financial costs can be met. Financial implications for partner organisations have a high likelihood of impacting on the budgets made available to integration authorities in the coming years while we go through this period of transition.

Answers are required for the outstanding questions and current unknowns which will then allow for accurate costings including the impact of any double running costs. These costs must be adequately funded and this cannot be done from existing budget resources given the scale of change required to meet the desired outcomes of the NCS while extending services to meet growing demand and demographic pressures. Additional funding will require to be raised and provided by the Government for this bill to be successful for the people of Scotland.

Risks may also arise as we transition to the NCS over the coming years, for example support service budgets and planned investments (both revenue and capital), such as replacement social care recording systems, may be reduced. To mitigate this risk the Government should agree and enforce mechanisms that prevent reallocating budgets from delegated services.

Does the FM accurately reflect the margins of uncertainty associated with the Bill’s estimated costs and with the timescales over which they would be expected to arise?

The use of large ranges in costing do demonstrate the uncertainty within the FM. It is clear the costs included are estimates however the lack of information available on the basis of the costings does not give a clear foundation to understand if the margins used reflect the true level of uncertainty.

Given the level of uncertainty and lack of information the FM is of very limited use at this point in time. It is essential that much more robust costings and timeframes are provided as the bill progresses to give confidence that the NCS is best value and the most effective way of delivering care for service users.

Submission from SOLACE Scotland

Did you take part in any consultation exercise preceding the Bill and, if so, did you comment on the financial assumptions made?

SOLACE Scotland responded to the Scottish Government's consultation undertaken between August and November 2021. We highlighted the absence of any detailed costing of the proposed service offer to indicate the quantum of additional investment required and absence of any detail on how the finance to meet this investment would be raised. We also highlighted the lack of detail on a medium to longer term financial strategy to ensure that the required budgetary provision maintains pace with demand for the new service offers.

The response also noted that there was no detail in relation to the relationship with the local government grant settlement, noting that social care is not fully funded through the settlement indicators and that local authorities, reflecting local prioritisation decisions, have taken spend decisions to subsidise this area of services. We also noted that there was no reference to modelling the scale of this subsidy or clarity on how the subsidy is incorporated into the financial modelling.

We also expressed concern that there was no reference to VAT status or indication of discussions with HMRC and that there was no detail on proposed financial arrangements for the National Care Service relating to borrowing, ability to hold reserves, audit or financial regulations.

Points made in relation to the ownership of assets, their potential transfer and compensation to local authorities whose assets these are, the treatment of remaining debts and liabilities and a wide range of other financial and accounting issues remain unclear in the lack of detail in the draft Bill and associated memoranda.

If applicable, do you believe your comments on the financial assumptions have been accurately reflected in the financial memorandum (FM)?

Areas that were highlighted as requiring further detail have not been fully addressed by the Financial Memorandum. Whilst the Financial Memorandum acknowledges that further work is required, this should have been undertaken prior to the publication of the Bill, to support adequate scrutiny.

It is the view of SOLACE Scotland that the period of consultation was unnecessarily short given the scale of implications for social work and social care users, carers, staff in the sector, provider organisations and for local government as a whole. It was also carried out at a time of unprecedented pressure on social care and social work services which limited the available capacity to consider and fully respond to such significant proposals, especially when attention needed to be focused on rebuilding the capacity of social care and social work services and on recovery from the impact of the pandemic.

We also highlighted our concerns regarding the format of the consultation template, which we viewed as too limited and simplistic to be answered in a largely tick box format. Effectively many of the question sets presented respondents solely with a choice of retaining the current system with all of its negative elements or the positive outcomes that could be delivered by a significant investment in social work/social care services but only through the one option of a National Care Service, as outlined in the consultation document. Self evidently, respondents provided support for the improved outcomes, but this should not be taken as preference for the National Care Service model presented.

Given the current statutory duties held by local authorities in all aspects of the proposed National Care Service and the significance of the emerging proposals in the consultation paper it is very concerning that Local Government was not involved in the development of the proposals prior to the publication of the paper. The proposal to include Children’s social work Services, Community Justice, Alcohol and Drug services and social work within the scope of the National Care Service, came as a complete surprise to COSLA and national agencies such as Community Justice Scotland.

There are concerns about the consultation itself. Many of the 95 questions asked provided only a choice of retaining the current system or the one option of a National Care Service as outlined in the consultation paper. The questions introduced bias and directed respondents to support the proposed National Care Service. For example, while several questions listed potential benefits from the service respondents were asked to provide dis-benefits or risks without prompted suggestions.

The consultation paper provided very little information about what the proposal would mean for vulnerable adults, children and families who rely on social work and social care services. It is therefore very difficult to see how the service users and their carers could respond in a meaningful way to the 95 questions in the consultation.

Did you have sufficient time to contribute to the consultation exercise?

No.

If the Bill has any financial implications for you or your organisation, do you believe that they have been accurately reflected in the FM? If not, please provide details.

There is a lack of detail and clarity regarding the impact of the National Care Service proposals on local authority budgets.

The Independent Review of Adult Social Care identified an indicative £0.66bn requirement per annum, but acknowledged that this did not cover all elements of the 53 recommendations and was based on a rudimentary uprating of historic service volume data as a proxy for the costs of unmet need.

COSLA suggested a figure well in excess of £1.2bn per annum, albeit with a clear acknowledgement that considerable detailed work will be needed to confirm the adequacy of this sum and what level of entitlements would be needed. The potential investment is not only a game changer, but a necessity. The Fraser of Allander Institute commented that “an underfunded national care service is unlikely to be any better than the system it seeks to replace”.

We would also highlight our concerns that the figures provided in Table 2 of the Financial Memorandum assume an annual uprating by inflation plus 3%. This is at odds with reality, whereby the Scottish Government Spending Review included a ‘flat cash’ settlement for local government – a real terms 7% cut – and 0.6% annual real terms increases in health and social care budgets.

The Financial Memorandum anticipates savings or efficiencies through shared services across the National Care Service, however, it does not acknowledge the corresponding loss of economies of scale for local government.

Do you consider that the estimated costs and savings set out in the FM are reasonable and accurate?

There are a number of significant issues with the presentation of costs for the National Care Service, as outlined already. We would add that the information given in the Financial Memorandum is not sufficient to fully support Parliamentary Scrutiny, particularly as almost all of the cost estimates provided are for the organisational expenses in setting up the National Care Service.

This expenditure would not expand the volume of services and support available to people, or deal with the current crises in social care, except insofar as it might influence some staff retention in three or four years’ time. Organisational changes appear likely to consume much of the total funding available for the NCS, which is stated to be over £840 million by 2026-27. This is about half of the total investment in adult social care alone that COSLA, Social Work Scotland and others consider is needed. In addition, this would not include the investment in justice and children’s social work and social care services that is desperately needed.

The Independent Review of Adult Social Care recommended robust annual demography funding uplifts for adult social care. In 2018, the Scottish Government's Health and Social Care Medium Term Financial Framework estimated these at 3.5% per year: but this has never been implemented.

If applicable, are you content that your organisation can meet any financial costs that it might incur as a result of the Bill? If not, how do you think these costs should be met?

Local authorities cannot absorb any additional costs that arise because of the introduction of the Bill. If Scottish Ministers wish to progress this policy, they need to resource it adequately, if they are to succeed in their intentions.

We would take this opportunity to question whether the new Care Boards would be able to meet the costs associated with the disaggregation of historical debt and potential contingent liabilities which are sitting on Council's balance sheets as a result of past investment in all the services proposed to be transferred to the National Care Service.

The immediate task should be to fix the problems as they are today, including care staff recruitment and retention, alongside developing the increased investment in early intervention and prevention work that is necessary for the future sustainability of a National Care Service, however delivered.

If a new National Care Service cannot be fully funded, then the Scottish Government should agree to the last recommendation in the Independent Review of Adult Social Care, to consider and consult on options for raising new revenues to increase investment in social care.

Does the FM accurately reflect the margins of uncertainty associated with the Bill's estimated costs and with the timescales over which they would be expected to arise?

It is noted that many of the figures presented are based on estimated ranges, with lower figures covering only the transfer of adult social care and the upper figure including the transfer of all social work and social care functions and community health functions.

We would also take the opportunity to note the submission made by CIPFA Directors of Finance and would endorse this to the Committee.