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The Information Centre
An t-Ionad Fiosrachaidh

Social Justice and Social Security Committee

**30th Meeting, 2022 (Session 6), Thursday,
17 November**

National Care Service (Scotland) Bill

Introduction

This is the second week of consideration of the [National Care Service \(Scotland\) Bill](#). The Committee will hear from third sector organisations before hearing from the Minister for Mental Well-being and Social Care.

Panel 1: Third sector and homelessness

[CCPS \(Coalition of Care and Support Providers in Scotland\)](#)

[Crisis](#)

[ENABLE Scotland](#)

[Glasgow Council for the Voluntary Sector \(GCVS\)](#)

[Leonard Cheshire in Scotland](#)

L'Arche Highland

Panel 2: Minister

- Kevin Stewart, MSP. Minister for Mental Wellbeing and Social Care

Background

Last week's paper gave background on the Bill and issues for carers and care users. A [SPICe briefing on the Bill as introduced is available](#).

The following provides some background on issues of particular relevance to the third sector and homelessness.

Third sector issues

Third sector organisations are providers of social care and also provide support to those who use social care and their carers. 122 third sector care providers responded to the [Scottish Government consultation](#).

The framework nature of the Bill means that much of its impact is uncertain, so it is difficult to assess the specific impact on the third sector. A different approach to social care, the emphasis on co-design, the requirement for strategic planning to include 'ethical commissioning' and a 'human rights' approach could all have an effect on the way the third sector supports carers/care users and delivers social care services. However, much depends on how the broad legal framework is implemented.

The BRIA states that

“the Bill sets out principles for the delivery of care through the NCS and enables the development of ethical commissioning and procurement which would change the framework within which care and support providers and advocacy organisations operate. Care and support providers and advocacy organisations will also be affected by the provisions on Anne's Law and the right to breaks from caring” (BRIA p.16).

The impact on providers will grow over time:

“When social care functions are transferred from local authorities to the local care boards, it is assumed that in the first instance, all contracts and arrangements with external organisations for the provision of social care support services will also transfer. Over time, changes to policies on ethical procurement and Fair Work may lead to changes in the requirements on potential providers. While the Bill will enable the Scottish Ministers to promote such policies more effectively, the detail is not set out in the Bill and will be subject to separate financial and regulatory impact assessment.” ([BRIA p.19](#))

Specific provisions in the Bill that will impact the third sector include:

- Section 13 gives powers to make regulations on independent advocacy.
- Section 25 would allow Scottish Minister to “financially assist anyone engaged in an activity connected to services that the National Care Service provides.”

- Section 41 would allow contracts to be reserved for voluntary organisations.

Homelessness

The Bill provides for certain local authority functions to be transferred to Care Boards. This does not include homelessness functions. The Policy Memorandum states:

“It is recognised, however, that the NCS will need to work closely with housing and homelessness services to ensure people’s needs are met. It is expected that the NCS will be involved in joined up planning to tackle homelessness, and will be subject to the shared prevention duty that the Scottish Government is committed to develop under the Ending Homelessness Together Action Plan.” (PM para 186)

In their submission, Crisis point out that in some local authorities, homelessness services are part of the Health and Social Care Partnership. They are concerned that it’s not clear how these will operate in future or how joint working will be ensured. They say:

“We hope that a further restructuring of health and social care services will not lead to even more reduced access to health and social care services for those facing homelessness” ([Crisis submission to health committee](#))

Suggested themes for discussion

As other Committees are also scrutinising this Bill, the suggested themes do not cover all aspects of the Bill. The overall focus for the first panel is how the Bill impacts on the third sector and homelessness. The focus for the Ministers also considers whether/how the Bill promotes human rights and social justice. The paper suggests ten themes – three for panel 1 and seven for panel 2.

Panel 1: Third sector and homelessness

1. Impact on third sector care providers
2. Third sector supporting social care
3. Homelessness

Panel 2: Minister

4. Timing and phasing of reforms
5. Co-design
6. Human rights
7. Broader societal impact

- 8. Third sector
- 9. Homelessness
- 10. Carers

PANEL 1: THIRD SECTOR AND HOMELESSNESS

THEME 1: Impact on third sector care providers

The submission from L'Arche Highland noted the distinctive role of third sector provision in social care, saying:

“It is important that centralisation and standardisation do not extinguish the quality, value, innovation and choice that third-sector providers bring to social care.

[..]

It would be expected, therefore, that the long-standing inequality in funding of third-sector providers compared with that of local authorities and the NHS provision should be removed”

The following looks at four aspects of the Bill that could impact on third sector care providers:

- Implementing Fair Work
- Additional information requirements
- Reserving contracts to mutual organisations
- Potential for reform to destabilise services

Fair Work in the Bill

Fair Work is one of the statutory principles (the National Care Service is to be an exemplar in its approach to fair work). All the statutory principles must be reflected in Ministers' actions and in the strategic planning by the NCS and local Care Boards.

Strategic plans must include an 'ethical commissioning strategy', which is a strategy for “ensuring that the arrangements for providing the service best reflect the National Care Service principles” (section 10).

Care boards must consult with community planning partners on their draft strategic plans and with local residents on the final plan.

On Fair Work, ENABLE said in their submission to the Health Committee that:

“ENABLE believes there needs to be greater clarity and detail on how this commitment will be realised.”

L’Arche Highland’s submission discussed the disparity between third sector and NHS salaries, and also noted that the Bill:

“is an opportunity for the Scottish Government to regulate Personal Assistants employed under SDS and also for this work to be inspected”

Information requirements in the Bill

There are several sections of the Bill that could result in service providers having to provide information. These include:

- Ministers must put in place arrangements for monitoring and improving quality of services (section 3).
- Ministers can require information sharing “in order that services can be provided efficiently and effectively” (section 36)
- Ministers can publish an ‘information standard’ which sets out ‘how certain information is to be processed’. Complying with that standard can be included in any agreement for the provision of services (section 37).

On new information requirements, ENABLE say:

“The introduction of new responsibilities for managing patient records and compliance with the Information Standard will also create costs for providers which do not appear to have been taken account of in the Financial Memorandum.”

Reserving contracts to mutual organisations

Section 41 of the Bill would allow “the list of bidders for a contract to be limited to those who meet a particular description.” (PM para 227). That description currently specifies mutual organisations, although this could be changed by regulations. The Policy Memorandum states:

“Voluntary and third sector organisations are a significant part of the social care market and have a history and expertise in providing community health and social care services and support. The Scottish Government recognises the role this part of the social care market can offer alongside other sectors in supporting the NCS ambitions, and therefore see merits in providing the option to contracting authorities to reserve procurement processes to mutual organisations when contracting for social care provision.” (PM para 229)

“Social enterprise organisations are part of the social care market, and with expertise in providing community health and social care services and support,

the Scottish Government are keen to grow this and other sectors of the social care market” (PM para 232)

ENABLE welcomes this provision but notes that contracting authorities should also consider other innovative ways of commissioning, such as ‘consortia’ models.

The Bill would allow changes to procurement practice but does not mandate any specific change. The Policy Memorandum states:

“Over time, changes to policies on ethical procurement and Fair Work may lead to changes in the requirements on potential providers. While the Bill will enable the Scottish Ministers to promote such policies more effectively, the detail is not set out in the Bill and will be subject to separate financial and regulatory impact assessment.” (PM para 57).

Impact of reform process

GCVS submission to the Health Committee noted concerns about the process of reform and that focus on structural reform could distract from other issues so that: “already fragile services may deteriorate further”.

The Policy Memorandum sets out a commitment to continuity of service provision:

“The priority throughout the implementation of the NCS programme will be the continuity of support for individuals. Phasing of the transfer of functions from 2025-26 will need to be based on delivery readiness assessments. Clear, transparent local transition plans will be developed with partners so that everyone affected is comfortable with what is happening, where and when.” (PM para 13)

Members may wish to discuss:

- 1. How best to ensure that the process of reform doesn’t destabilise services.**
- 2. L’Arche Highland proposed adding regulation of Personal Assistants to the Bill. Can they expand on why this is needed and the impact it could have?**
- 3. What kinds of costs might be created for third sector organisations by the provisions on monitoring and information sharing?**
- 4. The Bill would allow contracts to be reserved to voluntary and third sector organisations. What are your views on this? What are the advantages and disadvantages?**

THEME 2: Third sector organisations supporting carers and care users

The GCVS submission to the Health, Social Care and Sport Committee discussed how voluntary sector organisations “support effective involvement of disabled and older people and unpaid carers”, saying:

“It’s vital then that the sector is not excluded from strategic planning, setting up Care Boards and in the wider work linked to the NCS.”

The statutory principles include:

“services provided by the National Care Service are to be designed collaboratively with the people to whom they are provided and their carers” (section 1 (d)).

Part 5 of Schedule 1 to the Bill sets out the basics for care board membership. Further detail will be in regulations including setting out that members:

- Have certain qualifications or experience, or
- Are representative of certain interests.

Provisions in the Bill of particular relevance to organisations which support carers and care users include:

- Regulation making power on independent advocacy (section 13)
- Principle of collaborative design (section 1(d))
- Carers right to breaks (section 38)
- Requirement on Ministers to create a complaints service (section 14)

More generally, a wide range of organisations may be involved in helping care users and carers access care and assistance under the new framework.

Members may wish to discuss:

- 5. How might the Bill affect organisations that support carer users and carers – particularly given the strong emphasis on a ‘human rights based approach’?**
- 6. How are the organisations you represent helping care users and carers engage with social care reform? Are you involved in supporting any aspect of co-design? What further assistance do you need to support this?**

THEME 3: Homelessness

There are two areas of the Bill that might be particularly relevant to homelessness:

- Homelessness services will not be transferred to the NCS (they are not listed in Schedule 3)
- The principle that care services must “be centred around early interventions” may be relevant (section 1(c))

Currently, joint boards have a choice whether to include homelessness support in their shared functions. Very few have done so.

Crisis are concerned that it is not clear what will happen in those few areas where homelessness services have become part of the joint boards.

The Policy Memorandum states that:

“It is expected that the NCS will be involved in joined up planning to tackle homelessness, and will be subject to the shared prevention duty that the Scottish Government is committed to develop under the Ending Homelessness Together Action Plan” (PM para 186).

The Local Government, Housing and Planning Committee discussed housing issues in the Bill on 8 November. Ashley Campbell (Chartered Institute of Housing Scotland) discussed how local relationships between different services were crucial to taking forward a range of housing and social care policies. She noted that the National Care Service:

“provides an opportunity to change the way that that partnership works, but we’ve also heard concerns [...] about the risks of breaking down the relationships that have been built since 2014.” (LGHP Committee, 8 November, 12:15pm)

As the Bill stands, she didn’t think that the role of housing and homelessness was adequately reflected and would like to see “at the very least” a strong message about the importance of the role of housing.

Eileen McMullen (Scottish Federation of Housing Associations) thought that:

“the focus on prevention can’t be delivered if housing isn’t involved and recognised as a key strategic partner” (LGHP Committee 8 November 12.22pm)

Members may wish to discuss:

- 7. What is the impact of not including homelessness in the functions that can be transferred to the National Care Service?**
- 8. The Policy Memorandum states that: “the NCS will be involved in joined up planning to tackle homelessness and will be subject to the shared prevention duty”. Does that provide sufficient reassurance that services will be ‘joined up’? If not, what more is required?**

PANEL 2: Minister

The Minister gave evidence to the Finance and Administration Committee on 9 November and the Local Government, Housing and Planning Committee on 15 November. He is due to appear at the Education, Children and Young People Committee on 23 November.

Key themes heard last week echo what has been heard in other committees. In particular, while there is support for some aspects – including the broad principles and agreement that reform is required, there is considerable uncertainty created by lack of detail and concern that the process of reform will destabilise services.

THEME 4: Timing and phasing of reforms

Last week the Committee heard about the urgent need for improvements in social care. Witnesses thought there were improvements that should happen now, rather than having to wait for the NCS to be established. For example Alison White (Social Work Scotland) discussed some of the challenges facing social care and social work, saying there was:

“nothing to stop some greater collaboration, better ways of working, looking at terms and conditions of staff [...] there are mechanisms without the Bill [...] there’s nothing to stop us doing some of those things while we’re doing the co-design process” (SJSS Committee, 8 November 2022 9.48am)

On Anne’s Law, Adam Stachura (Age Scotland) described frustration amongst campaigners saying:

“the timeframe for this is just so long. People don’t have time to lose and wait on this.” (SJSS Committee, 8 November 2022, 9.23am)

Carer Stevenson (GMB) described how:

“right now social care workers are living on a poverty pay” [...] “we want a minimum of £15 per hour now” (SJSS Committee, 8 November 2022, 10.05am)

Witnesses discussed the destabilising nature of large scale reform. For example, Alison White (Social Work Scotland) asked for the Bill to be paused for design work to take place. She said:

“The biggest risk is probably destabilisation while change happens. We need to do the design process before we make the significant changes.” SJSS Committee 8 November 2022, 10.02am.

Members may wish to discuss

9. Witnesses have told this Committee that urgent reforms can't and don't need to wait for the NCS to be established. To what extent is establishing the NCS a pre-condition to improving social care?

10. How will the Scottish Government ensure that the process of creating the NCS doesn't destabilise existing services?

THEME 5: Co-design

Co-design is fundamental to the approach of the National Care Service. The Scottish Government has said that:

“The initial focus of this work will be on the Charter of Rights, national complaints process, and electronic social care and health records. As these investigations are held, the Scottish Government will take stock of how they contribute to the design of the NCS and seek to expand them onto other aspects of the NCS as it is developed.” ([Scottish Government, National Care Service and co-design](#))

At the Finance and Administration Committee on 7 November, Ross Greer, MSP asked the Minister:

“why didn't we do the co-design process before reaching this stage of the parliamentary process?” (FPA Committee, 6 November 2022, 10.40am).

In reply the Minister said:

“if we'd done it the other way round then quite probably this committee and others would have said why didn't you do it the other way round because the primary legislation is obviously the most important in all of this [...] it's a bit of a no win situation for anyone.” (FPA Committee, 6 November 2022, 10.41am)

Daniel Johnson and Douglas Lumsden both asked the same question (11.20) and the Minister gave a similar reply.

At this Committee last week, Pauline Nolan (Inclusion Scotland) described how in addition to initial co-design:

“There needs to be consistent co-production at every stage, at every level.” (SJSS Committee 8 November 2022 8.21am)

She noted how the principle of co-design had 'been around for ages'. Reflecting on previous efforts at co-design, she said:

“These things are in policy already but they're not happening because they're brought in at a time of cuts - and we're in a time of cuts again. [...] I fear its going to impact the delivery of this service” (SJSS Committee 8 November 2022 8.22am).

The Promise and Ending Homelessness Together were mentioned as positive examples of co-design. On the other hand, witnesses also discussed previous commitments to co-design in social care integration which were described as ‘tick-box’ exercises.

Witnesses also discussed the investment and support that was needed to enable everyone to participate ‘on a level playing field’. For example, Suzanne Munday, (MECOPP) said:

“there are communities of people that are historically distant and continue to be distant from the whole process and I think we need to actively consider how we can support and encourage these communities to be involved in the process.” (SJSS Committee 8 November 2022 8.24am)

Members may wish to discuss:

11. Last week the Minister told the Finance and Public Administration Committee that he would have been criticised whether he introduced the Bill before doing co-design or the other way round. Does he therefore consider the advantages and disadvantages to be fairly equally balanced? If so, what was the deciding factor?

12. What is the Scottish Government doing to ensure that the full diversity of ‘lived experience’ is included in the co-design process and that everyone is able to participate in an effective way? How will the co-design process deal with situations where those involved cannot reach a consensus view?

13. How will individuals continue to be involved in designing the services they receive or deliver? i.e., is the ‘co-design approach’ only happening at the start of the process or will it become embedded into the way the National Care Service works?

THEME 6: Human rights

The NCS will take a human rights based approach. The PANEL principles provide a general guide to taking a ‘human rights based approach’. They are: participation, accountability, non-discrimination, empowerment and legality.

A Charter of rights and responsibilities will be created by ‘co-design’ which will set out what people’s rights are but not create any new ones. Last week witnesses agreed with the suggestion that the Charter should be ‘legally binding’.

People already have rights under the European Convention of Human Rights which can be enforced through the courts. Currently international human rights conventions can’t be enforced in the same way, although the Scottish Government has [plans for incorporation](#). In relation to ‘Anne’s law’, Frank Jarvis (Scottish Human Rights Commission) told the Health, Social Care and Sport Committee on 1 November that:

“What if the problem is not lack of rights, but that the rights that people already hold have not been respected and protected? [...] The production of legislation, in and of itself, will not necessarily change the situation in which some of the prohibitions on visiting were already breaches of human rights. We need to understand how those breaches were permitted, and why they were neither challenged nor addressed. It is not clear that legislation, in and of itself, can address that problem. It is about mechanisms.” ([Cttee OR col 17](#))

The Bill includes a requirement for Ministers to provide a complaints service. Witnesses to this Committee last week also discussed the importance of redress and the difficulties of making complaints in the current system. For example, Adam Stachura (Age Scotland) said:

“people are very worried about making complaints in the current routes for fear of recrimination” (SJSS Committee 8 November 2022, 9.05am)

He said there should be:

“a strong independent body that can properly scrutinise complaints and actually take action” (SJSS Committee 8 November 2022, 9.06am)

A theme running through the evidence has been the overall need for investment in social care. Witnesses last week discussed the link to human rights. For example, Suzanne Munday, MEECOP said:

“rights are only meaningful if you are able to realise those rights and entitlements [...] You may have a right to a service, but if that service isn't there [...] then you're not able to realise that right.” (SJSS Committee 8 November 2022, 8.54am)

Members may wish to discuss:

- 14. Last week the Committee heard how people's rights were removed during COVID. How will this Bill prevent that happening again? Is this Bill necessary to prevent that happening again?**
- 15. For rights to be effective, services have to be available. Has the Scottish Government estimated the level of investment needed to ensure people's human rights in social care are not compromised?**
- 16. Last week witnesses agreed that the Charter should be 'legally binding'. What legal status should the Charter have?**
- 17. The Committee has heard that some care users are fearful of making complaints at the moment. How will things be different under a National Care Service? Will there be a 'strong independent body' to consider complaints?**

THEME 7: Broader societal impact

The Financial Memorandum discusses economic benefits of establishing the NCS saying it could have:

“benefits for people and for Scotland’s wider society and economy through improved community health and social care support for people who need it and their families, with people being able to access services when they are needed. It is also expected to lead to improved experiences for those who work in social services through strengthening fair work in the sector and improved support and recognition for social work and social care. This will help with workforce retention and recruitment.”

Noting that most social care jobs are done by women, the FM notes that:

“Investment in social care can therefore help to reduce the gender pay gap. The large reach of the sector also has an important contribution to make to tackling inequalities, including child poverty, and meeting Scotland’s climate change and sustainability goals through more efficient use of estates, travel, and waste.”

Members may wish to discuss:

18. Given the scale of the social care in terms of care users, carers and workforce to what extent will these reforms impact on equalities throughout society? What needs to be in place to ensure that potential is realised?

THEME 8: Third sector

The third sector is an important provider of both care services and support to care users and carers. This includes support provided by volunteers.

Last week Sarah Latto (Volunteer Scotland) said there needed for: “recognition that volunteers are a key part of the social care workforce.” She was unclear how the voluntary sector would be meaningfully engaged in care boards, saying:

“Potentially there’s a key role for third sector interfaces in supporting this work” [...] In various areas they’re involved in IJBs but its not clear how the voluntary sector [...] would be involved in decision making” (SJSS Committee, 8 November 2022, 10.11am).

The Health, Social Care and Sport Committee are due to hear evidence on the third sector on 5 December.

Members may wish to discuss:

19. How is the Scottish Government seeking to involve the third sector in both the initial development of the National Care Service and the ongoing delivery once established? Do you expect them to be represented on Care Boards?

20. Does the Scottish Government expect that procurement of social care from third sector organisations will change as a result of this Bill? If so, how will it be different?

THEME 9: Homelessness

The Bill sets out which local authority functions could be transferred to Care boards by listing the relevant legislation. It does not include homelessness services.

Witnesses to the Local Government, Housing and Planning Committee have highlighted their concerns that the NCS might weaken local arrangements for joint working. For example, Carole Calder (Audit Scotland) said:

“There are joint services that will need to be disaggregated. How will the National Care Service link in with housing services, with education, employability, other services around youth work and addiction, mental health and leisure?” (LGHP Committee 8th November 2022 10:34am)

That Committee also heard from Shea Moran (All in for Change), who contrasted the message from the consultation on the prevention of homelessness duty which recognises that ‘homelessness isn’t just a housing issue’ with the approach to the National Care Service.

“The overall message that that is sending seems to be a divergence from the message that we’ve previously put out with the prevention duty consultation.” (LGHP Committee 8th November 2022, 12.24 pm).

He said that, amongst those with lived experience:

“there is a lot of confusion or doubt as to how or if the Bill is actually going to affect them in their daily lives” [...] “they feel that the support they currently receive [...] is going to be minimised” (LGHP Committee 8th November 2022, 12.25pm)

As noted above, the NCS “will be subject to the shared prevention duty that the Scottish Government is committed to developing under the Ending Homelessness Together Action Plan.” (PM para 186)

Members may wish to discuss:

21. What will be put in place to ensure that there is effective joint working between homelessness services and the National Care Service?

22. How will the introduction of the National Care Service impact on the ability to deliver on a shared duty to prevent homelessness?

THEME 10: Breaks for Carers

The Bill would amend [section 24 of the Carers \(Scotland\) Act 2016](#) to add:

“(4A) The responsible local authority must also provide support to the carer to meet any need for support to enable the carer to take sufficient breaks from providing care for the cared-for person that is identified by virtue of section 8(4) or 14(4)”

The Explanatory Notes state that the provisions:

“ensure that carers get the support that they need to take sufficient breaks from providing care to cared-for persons.”

In order to qualify for breaks under this provision, adult carers will need to have an adult support plans and young carers will need a ‘young carer statement’ for young carers. Only around 20,000 of the estimated c.839,000 unpaid carers are currently recorded as having a plan.¹ The Financial Memorandum estimates that it will take ten years before 34% of adult carers and 64% of young carers have plans/statements.

Members may wish to discuss:

23. To what extent does this Bill create a ‘demand led’ entitlement to breaks for carers? (i.e. budget must be found to meet the level of demand)

24. What is being done to ensure that carers get a support plan and that young carers get a young carers statement?

Camilla Kidner
SPICe
11 November 2022

¹ [Carer Census](#) notes that some data providers were unable to return data.