

Response ID ANON-G48G-9PVN-7

Submitted to National Care Service (Scotland) Bill (Stage 2) - Your views on draft amendments
Submitted on 2024-09-20 14:07:40

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Organisation

Organisation details

1 Name of organisation

Name of organisation:
Scottish Care

2 Information about your organisation

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Scottish Care is a membership body, thinktank and social care futures designer. Our goal is social care that works for the people of Scotland. Driven by social values, we aim to ensure that social care in Scotland is not only sustainable but also exemplary, reflecting the high standards and compassionate care that our communities deserve.

As a representative trade body and the voice of the independent social care sector, Scottish Care counts over 350 private, not for profit and charitable provider organisations as members, totalling almost 900 individual services that deliver residential care, nursing care, day care, care at home and housing support services.

These organisations deliver a wide range of registered services for adults and older people including those with long-term conditions, learning disabilities, physical disabilities, dementia, frailty or mental health challenges.

The independent sector provides most social care in Scotland, supporting 53% of people who access care at home services and 90% of care home residents, which totals nearly 102,000 individuals. In 2023, the independent sector employed approximately 77% of the total adult care workforce, including 86.9% of the 'care home for adults' workforce and 72% of the 'housing support/care at home' workforce. This amounts to over 101,600 individuals employed in independent sector adult social care services across Scotland.

Through its diversity of provision and ability to innovate, the independent sector offers real choice and value for money. This enables the sector to deliver the truly diverse, person-led, high-quality care that communities require and deserve.

The social care sector's economic impact, of which the independent sector comprises 75.6%, amounts to £3.3bn directly, as well as an Estimated Gross Value Added of £2.2bn. These figures place the sector higher than the agriculture, forestry and fishing, arts, entertainment and recreation and water supply; sewerage and waste management sectors.

However, the societal and fiscal undervaluation of the care the independent sector provides is at stark contrast to its foundational importance to Scotland's economy and wellbeing, which has created significant workforce, delivery and sustainability challenges.

In summary, the independent sector:

- Provides the most social care in Scotland, with a significant economic contribution, yet;
- Receives insufficient funding to sustain this provision, and subsequently;
- Faces a crisis of sustainability, which;
- Impacts the delivery of rights-based, person led care and support.

Supplementary Information

National Care Service strategy

1 What is your view of the proposed National Care Service strategy (see proposed new sections 1A to 1E)?

Partly support and partly oppose

Please use the text box below to expand on your answer :

In answering, Scottish Care intends to address both the revised principles and proposed strategy. Our comments on the principles are included in Question 9 due to character limits.

A clear strategy will be important in delivering the NCS but needs to be suitably informed by sector expertise (including independent sector care providers) and maintain a person-led approach rather than be systems-focused. We therefore support the need for a strategy with the following caveats:

The Regulation of Care (Scotland) Act 2001 determined that social care and support would be individualised and not delivered by institutions. This word in the NCS Bill could cause confusion, so language under 1C should be updated.

There needs to be recognition that the vast majority of social care provision is delivered by the independent sector in Scotland. This means that any strategy to deliver the NCS should be developed with the sector to take full advantage of expertise and capabilities. This is not currently covered under section 1D 1 (b) and subsection (2).

This applies equally to reviewing a strategy as outlined in section 1E.

Previous legislative change in Scotland, such as the Self-Directed Support Act 2013, has suffered from an implementation gap. To reduce implications, any strategy must be underpinned by relevant assessments such as Equalities, Human Rights and Business and Regulatory Impact Assessments. There must also be comprehensive evaluation mechanisms and an implementation framework to support embedding and to evidence the impact of any strategy.

National Care Service Board

2 What is your view of the proposal to create a National Care Service Board, and the provisions about the role and functions of the Board (see in particular new Chapter 1B of Part 1, and new schedule 2C)?

Partly support and partly oppose

Please use the text box below to expand on your answer :

Scottish Care is broadly supportive of the creation of a national NCS Board to support clear lines of accountability and governance.

The Bill needs to reflect collaboration and partnership with independent sector care providers at national board level, who bring expertise in both the system and delivery of care and support. This practical provision experience must be better integrated into co-design of the NCS Board to close existing knowledge and practice gaps.

This must include the specification of both independent care sector providers and workforce as part of NCS Board membership, with full voting rights, in line with Health & Social Care Integration Progress Review and IRASC recommendations.

The Bill Schedule 2, specifically section (17)(8) is unsatisfactory in detailing minimum board membership through its ambiguous specification of individuals with care provision experience, professional care experience and caring experience. Consideration needs to be given to how to balance individual experience with representation of a stakeholder group and what insight is required to contribute to the NCS Board most effectively.

The terminology, particularly in 17(8)(e) is very unclear as to who it applies to. It covers a wide and vague remit, does not explain what constitutes direct contact and doesn't reflect the reality of care provision as a vast array of supports to individuals in all conditions and circumstances.

Minimum Board membership needs to include mechanisms for social care workforce and care provider representation, and these must be clearly stated within primary legislation.

Before specifying qualifications and experience for Board appointments, the Bill should incorporate requirements for skills mapping and analysis so that gaps in expertise can be identified.

Similar terminology needs to be rectified within section 12I (2)(b)(ii) and as above, must clearly specify the social care workforce and care providers as key

in decision making. The NCS Board must also consider how it intends to share its corporate plan with those involved in its development but not listed under 12J (2)(d), such as care provider organisations.

Within the Memorandum, Scottish Care notes the power of the National Care Board to engage in national commissioning and procurement by agreement for complex and specialist social care services. Scottish Care seeks further clarification on the parameters of “complex and specialist” services.

Further clarification is also required on the envisaged activities of the Board, particularly ‘market shaping & financial oversight of social care providers’ as per the Memorandum. This should be directed towards system level given existing mechanisms to monitor providers. Any measures in this regard such as data collection and reporting requirements must be supportive in nature with a clear, transparent, unduplicated and actionable purpose.

Creation of local boards and removal of other integration models

3 What is your view of the proposal to establish National Care Service local boards and to remove other integration models (see in particular Chapter 1A of Part 1, and new schedules 2A and 2B)?

Tend to oppose

Please use the text box below to expand on your answer :

Scottish Care is not satisfied that decisions taken through the Shared Accountability Agreement will provide the conditions to deliver the level of radical social care reform required.

Changes to the Bill reflect the removal of Care Board legislation rather than incorporating necessary detail as to how reformed Integration Authorities will represent a new way of working. Scottish Care members are concerned that instead of genuine reform, the revisions indicate a changing of name as opposed to practice.

We recognise the constrained fiscal context in which reform is planned and the Memorandum’s predicted savings through utilising existing structures but this is not sufficient rationale alone. Extremely limited financial resources make it more imperative that any planned expenditure is evidence-based and clear how it will deliver reform.

There are instances in which the IJB model has been effective and should be built on, but it is also important that areas for improvement are not reinforced in a new iteration. In reviews of integration, it is consistently recommended that independent care providers are fully integrated into all levels of strategic planning as a critical component of success, yet this is not reflected in Bill amendments.

IJB-related case studies which evidence innovative and effective ways of commissioning and procuring services include the Granite Care Consortium and the Fife Care Collaborative. What these have in common are an emphasis on trust-built relationships and all stakeholders actively involved in sharing mutual priorities, resulting in improved delivery of support, reduced duplication and maximised resource. Mechanisms to better incorporate best practices and lessons learned into a unified framework that can be applied consistently across Scotland are welcomed to guide a more universally effective IJB model.

However widespread implementation challenges exist in terms of coordination, communication, resource allocation, workforce development, and governance, many of which are again outlined in Audit Scotland’s Integration Joint Boards’ Finance and performance report 2024. In responding, Scottish Care noted:

‘Our experience of constricted budgets, the demand to make savings and the consequential impact this has had on the ability of citizens to access necessary care and support are all mirrored in the report’s findings.’

Given the fiscal context is placing additional pressure on integration authorities and constricting partnership working and innovation, we do not feel reassured that the contents of the NCS Bill at present outline an approach which looks markedly different or comprehensively incorporates lessons from the integration experience to date.

There remain unanswered questions regarding what a reformed integration authority will look like and what mechanisms, processes and policy enablers will be developed to support changes and implementation in practice.

Monitoring and improvement and commissioning

4 What is your view of the proposed new provisions on monitoring and improvement (see new sections 12K and 12L) and on commissioning (see new section 12M)?

Partly support and partly oppose

Please use the text box below to expand on your answer :

Scottish Care is supportive of measures which improve consistency, provide clear lines of accountability and genuinely support positive, partnership-based change in the monitoring, improvement and regulatory space. Continuous improvement must be informed by a strong evidence base and therefore a robust research and evaluation infrastructure should be part of the NCS.

The remit of a NCS Board needs to be premised on addressing issues such as fragmented oversight & regulatory practices, bureaucracy, ineffective communication, gaps in information sharing, resource allocation, timely intervention, and the delivery of integrated care. Its role in monitoring and

supporting improvement in this space therefore must be focused on the macro level system, rather than at micro level provision given that routes already exist for service monitoring and improvement. In the Memorandum's setting out of the need to complement rather than duplicate the work of other public and regulatory authorities, this is the space that the NCS Board should occupy.

Otherwise, it is unclear how these different bodies and processes would operate simultaneously in practice without creating confusion or duplication. There needs to be a rationalisation exercise undertaken to remove complexity from the improvement space and ensure that mechanisms are reflective of the unique nature and complexities of social care which is diverse and person-led. This should include data requests across the health and social care system.

More detail is required, based on collaborative engagement with these existing bodies and those who engage with them including care providers, in order that the following areas can be better explored:

- How the nature of monitoring and improvement through the NCS Board would ensure objective expertise and proportionality.
- How improvement needs would be identified and routed through the NCS Board as opposed to being managed locally or directed through existing improvement mechanisms or organisations.
- How disparate support, improvement and monitoring needs related to, for instance, decision making, local Boards' operation and commissioning processes would be addressed, not least because the provision of quality care is highly dependent on quality commissioning and associated processes.
- How the monitoring and improvement function of the NCS Board would be communicated and reported on, including publicly, in order to evidence positive outcomes and provide clarity on appropriate routing of, for instance, stakeholder concerns at either national or local level.
- How the NCS Board through its monitoring and improvement function would account for factors such as local variation with different contexts and starting points, issues of affordability, the impact of existing arrangements and reducing finances on service delivery, or the reality of care not being free at the point of access with different funding models for individuals.

Partly support and partly oppose

Please use the text box below to expand on your answer :

Scottish Care welcomes section 12M (Procuring Good and Services) as a means of supporting implementation of the NCS and the delivery of person-led, high-quality care within it. Given ongoing financial pressures across multiple integration authorities under the current system, any efforts that support new local boards (fiscally or otherwise) will be welcome to independent sector social care providers who deliver a multitude of commissioned care through these authorities. Streamlining necessary localised funding into the commissioning sector is an essential first step to ensuring local care boards are able to meet the true cost of commissioned care services. We do have concerns that this is the sole section under 'Commissioning' within the Bill.

In broader terms, Scottish Care supports the introduction of ethical commissioning, as outlined within the Independent Review of Adult Social Care:

"An end to this emphasis on price and competition and to see the establishment of a more collaborative, participative and ethical commissioning framework for adult social care services and supports, squarely focused on achieving better outcomes for people using these services and improving the experience of the staff delivering them".

We note the removal of ethical commissioning from the face of the Bill and the intention to separately develop tools and guidance. We are clear that ethical commissioning will be key to achieving the equitable delivery of high quality, rights-based, person-led social care and its importance needs to be adequately reflected. Priority should be placed on ensuring that the process and detail involved in defining, developing and implementing this approach is comprehensive and undertaken effectively, informed by key stakeholders including independent sector social care providers.

Scottish Care continues to support the ongoing implementation of this key piece of reform through our 'Ethical Commissioning and Procurement' project. This project will soon publish a report providing detailed insight into best practice, ongoing implementation challenges and key recommendations as to how this work should be progressed.

We reiterate the importance of engaging with independent sector social care providers, responsible for delivering a significant amount and range of commissioned adult social care services, throughout resource development and through NCS board membership to ensure the effective implementation of ethical commissioning. As the work is placed within a living systems theory, methodologies should be applied to enable the most effective outcomes to be met.

This work needs to continue at pace with meaningful involvement of key stakeholders in its development, before ensuring that it is integrated effectively into associated codesign and Bill-related processes.

National Chief Social Work Adviser and the National Social Work Agency

5 What is your view of the proposed new provisions to designate a National Chief Social Work Adviser and for the creation of a National Social Work Agency (see new section 26A)?

Undecided / no opinion

Please use the text box below to expand on your answer :

Scottish Care does not take a particular position on the creation of a National Social Work Agency or designation of a National Chief Social Work Advisor.

We do however wish to note that the Policy Memorandum indicates these proposals stem from the Independent Review of Adult Social Care's recommendation:

'As part of the National Care Service... the Scottish Government should establish a national organisation for training and development, recruitment and retention for adult social care support, including a specific Social Work Agency for oversight of professional development...'

Whilst the Bill proposals address the second half of this recommendation, the first remains unresolved. Given the complexity and diversity of provision and associated workforce within the social care sector there remains a need for distinct, coordinated and resourced workforce planning led by a body or organisation with specific social care expertise. Scottish Care therefore highlights the need for inclusion within the Bill of a distinct social care body, advisor or other mechanism (with regard to the existing functions of the Scottish Social Services Council and NHS National Education Services) to provide equivalence in the workforce planning and leadership space. We are unsatisfied with the Policy Memorandum's anticipation that complex integrated workforce planning can be subsumed into the remit of the NCS Board without detail and assurance as to how the required skills, expertise and mechanisms will be in place to support this. The Memorandum itself recognises that challenges around data, evidence, responsibility and inconsistency need to be addressed as a priority and that current approaches are not working.

Scottish Care therefore believes that a more direct and radical approach is required, which is best progressed through the creation of distinct supports. It is our view that the distinctive contribution, expertise and requirements of the social care sector, its providers, workforce and those who access care and support would be best served by a designated individual serving in the Government as a Professional Advisor or Chief Social Care Officer. This would ensure that there was a greater likelihood of the consideration of social care issues at a senior strategic level within the Scottish Government.

Amendments to the Public Bodies (Joint Working) (Scotland) Act 2014

6 What is your view of the proposed amendments to the Public Bodies (Joint Working) (Scotland) Act 2014, as set out in the marked up version of the Act?

Tend to oppose

Please use the text box below to expand on your answer :

Scottish Care's reasons for concern about the scale of reform deemed possible through the proposed amendments, as outlined in question 3, are reiterated here. As previously stated, much of the amendments are focused on changing terminology. They do not providing sufficient detail or direction for meaningful change, incorporate lessons from the implementation of the Public Bodies Act thus far, or serve to strengthen the legislation.

This is reinforced by the fact that the proposed changes do not include clear improvements such as the prescribing of additional minimum board or strategic planning group members.

The creation of NCS Local Boards and related changes to the Public Bodies (Joint Working) (Scotland) Bill need to reflect lessons of the integration experience to date and incorporate recommendations from both the Independent Review of Adult Social Care (IRASC) and Audit Scotland's 'Integration Joint Boards' Finance and Performance 2024' report. Importantly, both reviews clearly state the need for social care providers to be represented at all board and strategy levels in a way that promotes equal partnership and allows different voices and experiences to be heard.

Given that the independent sector comprises 75.6% of all registered care services, it is essential that this sector is explicitly included as essential minimum members on the face of both the NCS Bill and in amendments to the Public Bodies 2014 Act, and resourced to participate, drawing upon the learnings of the current membership of the third sector interface of IJBs.

The NCS Policy Memorandum notes:

'It is also the Scottish Government's intention to utilise existing regulation making powers in the 2014 Act to bring forward further regulations on:

- The role of localities, including their remit & regulation of localities
- Chairing arrangements for the NCS local board
- Voting rights & wider arrangements to facilitate full inclusion of voices of lived experience in local decision making
- Local board committee structure & governance

These planned changes are welcome but more detail is sought at this stage to understand what will be changed, where, how and in what timescale given the importance of both membership and voting arrangements. We are clear that changes in this regard need to be on the face of the Public Bodies 2014 Act and reflected accordingly in the NCS Bill.

Areas of further work

7 What is your view of the Scottish Government's proposed approach to addressing the areas of further work outlined in the Minister's covering letter?

Tend to support

Undecided / no opinion

Undecided / no opinion

Tend to support

Please use the text box below to expand on your answer referring to the specific areas of further work that you are commenting on:

Direct funding

We welcome Scottish Government intentions to introduce legislation giving Ministers the power to directly fund reformed integration authorities (new National and Local NCS Boards) for the commissioning of services.

Scottish Care highlights the insufficiency of the current Direct Funding Model, where the budget for integration authorities is determined by local authorities and health boards in accordance with the method for determining payments set out in the local integration scheme. As noted in Maree Todd's letter to the Committee, this has led to variance across the country in how services in the system are funded and, and delays in getting funding to providers for the purpose of delivering care.

To meet demand and deliver commissioned care in a manner that maintains business sustainability, independent providers require transparency over the funds available in their localities. Proposed reform would therefore support the implementation of Ethical Commissioning, notably the principle of Shared Accountability, if introduced alongside effective structures between Ministers, NCS Boards (National and Local), commissioners and providers. These must be transparent, comprehensive and joined up, with clarity surrounding roles and responsibilities over available monies as part of partnership working to enable shared accountability and risk.

Anne's Law

Scottish Care continues to support the need to find a means to ensure consistent contact between care home residents, and their friends and families, including at times of pandemic response. Care homes are a person's home, and there needs to be a balanced and human rights-based approach applied which considers the social as much as the health impacts of any intervention, including the cessation of any open visiting rights.

Relatives of care home residents, and individuals supported across all health and social care settings, are extremely important contributors to an individual's wellbeing and support in unique and personal ways. Consideration must be made of how they can be enabled to continue this role in ways which are safe for them, and for those living and working in social care settings. Essential visiting must be maintained and supported in all circumstances including at the end of an individual's life.

Scottish Care notes in the Minister's letter to the Committee the intention to explore alternative routes to implement Anne's Law and we believe it is important to carefully consider the most effective and appropriate route to deliver this. However, this has led to a degree of confusion with regards to where, and whether, it fits within the Bill. The detail under section 40 arguably contributes to this in its conferring of powers to Scottish Ministers to enforce visiting directions. We note objections, including by Care Home Relatives Scotland, that Ministerial powers do not meet the calls of 'Anne's Law' for strengthening of the rights of residents and families in this area. In our stage 1 response, Scottish Care reflected the need for this to be human rights-driven and based on strengthened partnership and support, rather than on top-down compliance measures. Clarity is therefore required expediently as to what decisions are to be taken regarding how Anne's Law is to be delivered and how this impacts details of the Bill as presented at Stage 2. Alongside this, clarity is sought on how the recommendations of Scottish Care, the Committee and others are to progress in terms of guidance frameworks to support decision making and redress mechanisms if rights are not fulfilled.

Scottish Care will continue to work with appropriate organisations, and care providers, to implement existing guidance to ensure safe visiting as it currently stands. Scottish Care considers that the Scottish COVID-19 Inquiry may produce learnings which will be helpful to this work however raises concern about expediency should a second pandemic occur before that intelligence is released.

Draft National Care Service Charter

8 What is your view of the initial draft of the National Care Service Charter?

Partly support and partly oppose

Please use the text box below to expand on your answer :

Scottish Care is broadly supportive of a Charter as part of setting shared expectations, and empowering citizens to claim their rights. This should be part of a suite of measures to make social care system information and support more accessible.

It is difficult to provide detailed comment when so many elements of the NCS, through what is contained in the Bill, lack detail or are subject to further development work.

We have identified several areas that require revision:

Under 'involvement, participation and choice' the right of citizens to choose the type and/or provider of supports that best meet their needs should be explicitly included, in line with Self-directed Support.

The Self-directed Support section under this same heading should be more fully outlined, with particular attention paid to language to ensure that

balanced information is provided. The description of leaving 'most of the... work' to a local authority should be reviewed.

More clarity is required on who comprises the NCS workforce and how this is communicated. The Charter makes reference to 'our staff' without this being clear.

The complaints and redress elements of the Charter need further clarification as to how they differ from existing complaints mechanisms without duplicating. It is unclear how an individual would identify the most appropriate route and how they would understand care provision accountabilities of an individual care organisation involved in their support versus it being part of a wider National Care Service.

Any complaints and feedback about the NCS functions, including NCS Local Boards, needs to be part of continuous improvement for Boards as well as care providers and the mechanisms for ensuring this require further exploration.

Data on complaints needs to be included in Local Board Annual Strategies, so that the National Board can identify any common issues and take necessary action.

The Charter should function as social contract forged through stakeholder development and buy-in and language throughout should reflect this. There remain questions about implementation and accountability, including how conditions for the realisation of the Charter in practice will be facilitated within the system and who will be responsible and accountable for this.

With delays to the Human Rights Bill, human rights need to be embedded meaningfully in NCS legislation starting from foundations such as the principles and Charter. A human-rights-based approach must be embedded throughout decision-making processes, and the Charter should set clear expectations on duty bearers and clarify how implementation will be monitored.

Revision is required to Section 12(1)(b) of the Bill to explicitly include social care providers. Care organisations have a central role in supporting workforce culture to uphold the Charter and ensuring that individuals' rights under the Charter can be realised in care provision.

Other comments

9 Do you have any other comments on the Scottish Government's proposed draft Stage 2 amendments to the National Care Service Bill?

Please use this text box to provide your answer:

General Comments

Scottish Care supports in principle the creation of a National Care Service as a means of providing systemic change to the social care sector. Reform of how services are funded and delivered represents an opportunity to address the issues impacting the independent sector and support its long-term future as part of a mixed-market model for the delivery of adult social care. Scottish Care welcomes the Minister for Social Care, Mental Wellbeing and Sport, Maree Todd MSP's comments on the need for a "whole system" focus when designing and implementing a National Care Service.

Scottish Care welcomes the opportunity to respond to the Committee's Call for Views on the NCS Bill at Stage 2. We hope to provide detailed and constructive responses to the questions and are happy to provide clarification and supplementary information if requested. Our overall position is that the Stage 2 Bill continues to have considerable unsatisfactory gaps which impede our ability to respond to the questions as fully as we would hope to. Insufficient detail limits our confidence that foundational NCS plans will deliver the pace and scale of reform essential for the survival and future of social care in Scotland. So much remains unclear that Scottish Care cannot sufficiently support implementation at this stage. Clarification of detail and finalising of key components is of urgent priority to provide substance and direction to the National Care Service's progress.

Principles

The Stage 2 Bill does not go far enough in addressing Stage 1 recommendations to strengthen and clarify the National Care Service principles. It also lacks detail around accountability and support to ensure relevant bodies and services can meaningfully uphold the principles in practice.

We welcome the retained focus on recognising social care services as an investment in society, as well as the need for financially stable supports, given the sustainability crisis facing the social care sector and the lack of fiscal resource. Further clarification of what financial stability means in practice, how it relates to service quality and how the NCS will be accountable for achieving this, particularly for commissioned services, will be required.

We retain some reservations about (1)(c)(i) in its continued direct linking of early intervention to reducing care needs, particularly given the fiscal and practice context which is experienced by independent sector services as one of cutting supports. Additionally, there is a risk that by providing examples on the face of the Bill under (1)(c), these will be taken as definitive rather than accounting for wider factors which impact on supporting individual needs. It also does not sufficiently recognise end of life care needs.

The lack of mention of Self-directed Support is a significant oversight, given the intention of the principles making clear the Scottish Government's commitment to delivery. The Committee's Phase 2 Post-legislative scrutiny of SDS highlights the real implementation challenges that remain, not least due to the numerous pressures within the sector which evidence a failure to create the conditions for embedding legislation in practice. The NCS has been positioned as a route for addressing both sector pressures and implementation gaps, yet SDS as a key policy and route of change is absent.

Principle 1(d) should be extended to reflect the importance of broader co-design with people who work in social care and those who provide services, including those in the independent sector. This omission reflects codesign work so far as experienced by Scottish Care members, where insufficient

opportunities to be engaged as key partners leads to knowledge and experience gaps and opportunities for collaboration and innovation missed.

1(f) and 1(h) require clarification. They reference the 'NCS workforce' yet the Bill and accompaniments do not define who this comprises. Whilst integration and workforce equity are long-held ambitions, it is essential that this workforce is defined more clearly in the Bill given the employer and workforce diversity within social care. It is unclear what being defined as the 'NCS workforce' will mean in practice, for example for care staff employed in independent and third sector organisations.

In 1(f), we are concerned with implications of a shift from the NCS as 'an exemplar for fair work' to 'the persons who employ or otherwise professionally engage them' assuming this responsibility. The ability of independent sector care providers to deliver fair work in the context of delivering commissioned services is dependent on a fair rate. How accountability will work in this regard, not least for commissioned and procured services, needs further detail. There also needs to be clarity and consistency in what is defined as 'the NCS', as outlined above, in terms of both the workforce and the provision of services.

Scottish Care believes that transparency needs to be included as a founding principle of the NCS. In its recommendations on redesigning the system, the IRASC recognised the importance of this alongside accountability in national systems and partnerships. To build trust and accountability in the system at all levels, this should be a core component for all strategic bodies, commissioners and providers.

Section 1A (2)(b)(iii) should be applicable to social care providers, who are critical for informing principles reviews. As stated throughout our response, the language used in the Bill to define and identify key stakeholders needs to be unambiguous and consistent. Current terminology such as that used in this section does not achieve this.

Reserved Procurement (Section 41)

Scottish Care must re-emphasise the position of the Health, Social Care and Support Committee, who stressed the "inherent contradiction between reserving the right to participate in procurement by type of organisation, and the principles of ethical commissioning" (NCS Bill Stage 1 Recommendation Report – Paragraphs 89 - 92). Such a contradiction impedes any efforts to implement ethical commissioning and our strong opposition to section 41 of the Bill is outlined here, as well in more detail in the policy brief shared with the Committee in August 2024.

To ensure the efficacy of the NCS Bill, and the proper implementation of an NCS, Section 41 must be removed from the Bill at Stage 2 and in future iterations. There are grave unintended consequences of any legislation that serves to limit contracts to certain businesses or suppliers, and the subsequent choice of social care provision. These are detailed below:

- Adhering to the Social Care (Self-directed Support) (Scotland) Act 2013

x Every person who requires social care and support has the right to choose a provider for their care. Statutory provisions that give precedence to commissioners' choice of procured service over the expressly desired service of the individual, would be a denial of this legal right.

- Exacerbating market failure

x Given an already imbalanced and monopsonic social care market, a proper mixed market model is essential. Legislative efforts to further limit procurement options and subsequent funding will worsen provider sustainability and their ability to deliver person-led, human rights-based care. This will particularly be felt in rural communities without access to an economy of scale or sufficient local workforce supply. Compounding this, the amendment will limit other sources of funding through disincentivising much needed investment in the independent sector's existing provision.

Furthermore, our opposition to the inclusion of Section 41 is premised on the lack of rationale, evidence base or assessment of impact provided by the Scottish Government. These are detailed here:

Section 41 conflicts with the Scottish Government's own Procurement of Care and Support Services: Best Practice Guidance (June 2021). (Page 34, paragraph 8.21) as it would serve to bypass necessary checks to procurement procedures, by providing the ability to discount eligible providers based on arbitrary categorisation of their business model.

The Scottish Government is yet to evidence support of reserved procurement across public consultation. The previous consultation mentioned in Section 280 of the Policy Memorandum is outdated, did not relate to the particular complexities of social care and resulted in only 20% of respondents indicating a form of support. Stage 1 of the NCS Bill did not ask any questions relating to reserved procurement that would help to ascertain updated views on the specifics of this Section's inclusion.

The Business & Resilience Impact Assessment undertaken on the NCS Bill by the Scottish Government recognises that further consultation and assessments need to be undertaken in relation to Section 41 to better understand its implications but these have not taken place.

Independent Advocacy (Section 13)

Scottish Care welcomes extension of Section 13 to include independent advice, information, and advocacy in connection with services provided by the National Care Service. Efforts to ensure the development of a "coherent, consolidated and consistent approach to independent advocacy services across the range of NCS services" is a welcome development to ensuring access to a range of person-led, human rights-based care services across Scotland. We concur with the recommendations of other stakeholders, such as the ALLIANCE, that a definition of independent advocacy should be on the face of the Bill as part of ensuring that it truly independent. This section should also be strengthened to give people a clear right to access high quality independent advice, information, and advocacy services.

Care Records (Section 36)

There needs to be further exploration of what is meant by the word 'scheme'. There is a need to explore this area further but it should be citizen-led and take into account the findings of Scottish Care's Seeing the Diamond in Social Care Data report. This includes setting data standards and creating a mechanism to 'pull' data from many care systems, thus enabling innovation in the development of software and the application of AI within ethical boundaries, enabling people to tell their story once, reducing burden on them and those who they access care and support from. This should apply across health and social care.

Sanctions will be necessary in the circumstance of criminal proceedings but in all other circumstances, unintended consequences must be considered. The majority of care providers are not funded enough to adopt digital practices. Funding and resource for training and backfill for staffing needs to follow any recommendation.

New workforce roles supporting the adoption of digital practices in care and support have been trialled by Scottish Care and partners, and an independent evaluation by HACT has measured the social value impact of the role to be close to £5 for every £1 spent, with the potential to achieve an 8:1 return when scaled up. We would recommend that the implementation of these Care Technologist, Navigator and Connector roles is prioritised to support the sector to adopt digital practices.

Information Standard (Section 37)

Scottish Care welcomes the inclusion of Health and Social Care information in Part 2 of the Bill, as a means to create a nationally consistent, integrated and accessible electronic social care and health record. As the Memorandum notes, this will allow service providers to support individuals in a more co-ordinated way, with a shared approach to national and local planning, reporting and commissioning.

We stress that such standards must be commensurate with the support given to providers when engaging in data collection. The public availability of as much data as is possible, is also essential to empowering social care providers and people who access support across commissioning and procurement processes.

The current dearth of data, research, and the necessary IT infrastructure has thwarted service planning, whilst piecemeal and ad-hoc data collection efforts that vary across authorities have placed significant burden on the capacity of independent sector care providers. This in turn takes time away from the provision of care. Digital infrastructure should therefore seek to streamline data collection process and reduce the duplication of efforts seen by independent providers.

Research (Section 23)

Scottish Care echoes the position of organisations such as ENRICH in emphasising that both Section 23 and the role of research at all levels of NCS planning and implementation needs to be strengthened within the Bill. This is important to ensure that decision making is comprehensively informed and evidence-based as well as that innovation is fostered and good practice built upon in supporting high quality care provision. We believe that a robust research infrastructure is required to support this, and includes the need for:

- clear governance arrangements, including a focus on social care research ethics. This would include the establishment of ethics committees or the development of frameworks to ensure that appropriate person-led engagement is undertaken, and research is conducted responsibly, sensitive to the distinctive needs of social care settings and individuals
- dedicated research funding provision which identifies and supports priority areas, informed by stakeholder engagement. This would support a longer-term shared vision for research activities and outcomes.