



Law Society
of Scotland

Consultation Response

A National Care Service for Scotland

November 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and respond to the Scottish Government consultation: *A National Care Service for Scotland*.¹ We have the following comments to put forward for consideration.

General Comments

Social care in Scotland operates within a complex landscape. There is a multiplicity of services and organisations fulfilling roles within the social care system. The social care sector is governed by a complex and overlapping legislative framework. Any proposed new approach to social care must be based on a clear, evidence-based review of existing provision, identification and analysis of current deficiencies, and must include detailed proposals to specifically address the deficiencies identified. There must be careful consideration of issues of local decision-making, accountability and proportionately. Any case for change must be linked to a demonstrable public interest justification and must improve outcomes for the end users of social care services. It must also be based on details costings.

The Independent Review of Adult Social Care (IRASC)² called for a shift in the paradigm of social care support to one underpinned by a human rights based approach. Any new legislation relating to social care must contain clear and attributable rights and duties, and effective mechanisms for redress including legal redress. It must sit alongside and be integrated with work to incorporate human rights conventions. New legislation in this area must be based on and fully embed human rights principles, including the right to live independently and be included in the community as set out in Article 19 of the UN Convention on the Rights of Persons with Disabilities (UN CRPD), and must promote real and affective access to justice for service users and their families. It must be supported by transparent decision-making and robust complaints processes, and must promote accountability to service users. Accountability to Parliament is also a necessary component in creating a National Care Service.

The experiences of those receiving care and support, their families and carers should be central in evaluating and improving services at all levels within a properly resourced social care system.

¹ <https://www.gov.scot/publications/national-care-service-scotland-consultation/>

² <https://www.gov.scot/publications/independent-review-adult-social-care-scotland/>

Any new approach to care and support must also be supported by adequate resourcing for the statutory, private and third sector organisations involved in delivery to ensure that the ambitions of the “Getting it Right for Everyone” approach can be achieved in practice.

Whilst the proposals for a National Care Service may provide a timely opportunity to revisit Scotland’s approach to care and support, the consultation proposals lack detail. It is not clear from the consultation proposals how a nationally-led approach will accommodate regional variations including geography, availability of services and population demographics, and be responsive to local needs. It is not clear how the consultation proposals will deliver improved outcomes for service users and their families. We would welcome the opportunity to engage further with the detail of the consultation proposals and any proposed implementing legislation.

Consultation Questions

Improving care for people

Improvement

Q1. What would be the benefits of the National Care Service taking responsibility for improvement across community health and care services? (Please tick all that apply)

- Better co-ordination of work across different improvement organisations
- Effective sharing of learning across Scotland
- Intelligence from regulatory work fed back into a cycle of continuous improvement
- More consistent outcomes for people accessing care and support across Scotland
- Other – please explain below

Any approach to improvement and innovation in social care requires to be supported by a clear evidence base demonstrating the benefits and efficiency of such an approach. Further evidence is required to support the consultation proposals.

Q2. Are there any risks from the National Care Service taking responsibility for improvement across community health and care services?

As above, further evidence is required to support the consultation proposals. Improvements in national standards and guidance may be achievable without the need for legislation, and within current organisational structures.

If responsibility for improvement were to transfer to a National Care Service, further clarity would be required as to how models developed on a national level could accommodate regional variations including geography, availability of services and population demographics.

Access to Care and Support

We have no comments in relations to questions 3 – 10.

Using data to support care

Q11. To what extent do you agree or disagree with the following statements?

There should be a nationally-consistent, integrated and accessible electronic social care and health record.

Strongly Agree	Agree	Neither Agree/Disagree	Disagree	Strongly Disagree

Information about your health and care needs should be shared across the services that support you.

Strongly Agree	Agree	Neither Agree/Disagree	Disagree	Strongly Disagree

Q12. Should legislation be used to require all care services and other relevant parties to provide data as specified by a National Care Service, and include the requirement to meet common data standards and definitions for that data collection?

Yes

No

Please say why.

We agree that the principle of nationally-consistent, integrated and accessible electronic social care and health record may address some of the current difficulties experienced by those accessing social care and the professionals supporting them. There are clear benefits in storing data in such a way as to allow it to move easily between services, where that is appropriate. However, the gathering and sharing of data, and specifically sensitive personal data, is already highly regulated. The rights of individual data subjects must be respected. Any new approach must be implemented in a way that ensures compliance with existing data protection and information governance legislation. Any new approach must have a clear purpose and must add value. Arrangements for sharing data must recognise that there may be circumstances where an individual may not wish information to be shared with other services, and where such sharing is not appropriate. Any new approach must be adequately resourced to avoid creating unnecessary additional administrative burdens.

Q13. Are there alternative approaches that would address current gaps in social care data and information, and ensure a consistent approach for the flow of data and information across the National Care Service?

Whilst the proposals for a National Care Service may provide a timely opportunity to propose a new approach to social care data and information, it is not clear from the consultation proposals that such a new approach could not be achieved in a more proportionate manner within the existing organisational structures. Further detail is required.

Complaints and putting things right

Q14. What elements would be most important in a new system for complaints about social care services? (Please select 3 options)

- Charter of rights and responsibilities, so people know what they can expect
- Single point of access for feedback and complaints about all parts of the system
- Clear information about advocacy services and the right to a voice
- Consistent model for handling complaints for all bodies
- Addressing complaints initially with the body the complaint is about
- Clear information about next steps if a complainant is not happy with the initial response
- Other – please explain:

The consultation proposals are lacking in clarity and detail. It is not clear how the proposal would meet the IRACS recommendations, specifically recommendation 9 regarding rapid recourse to an effective complaints system and redress. It is not clear if structural changes to existing complaints mechanisms are proposed, or if the proposals are limited to improved guidance and signposting to existing complaints routes. It is not clear what legal status any charter for rights and responsibilities will have. It is not clear how the proposals will empower service users. It is not clear whether the proposed changes will be supported by legislation. Any new legislative approach to social care must contain clear and attributable rights and duties, and real and effective mechanisms for redress including legal redress. It must be supported by transparent decision-making, clear communication and robust complaints processes, and must promote accountability to service users.

Q15. Should a model of complaints handling be underpinned by a commissioner for community health and care?

- Yes

No

Please say why.

A commissioner for community health and care may play an important role in championing the rights of those who receive care and support, and their families, and carers and ensure that they are protected by law. However, there must be a clear public interest justification for introducing a further role in an already complex complaints landscape. In order to be effective, any commissioner must have clearly defined powers set out in legislation, including powers to obtain relevant information from other organisations. These powers must be accompanied by effective sanctions available to any commissioner to enable them to fulfil their role and ensure accountability. It is also essential that any commissioner is properly resourced, and that other organisations are properly resourced to respond to issues raised by a commissioner.

Consideration should be given to strengthening the existing accountability framework, including the Mental Welfare Commission, Care Inspectorate, Scottish Public Services Ombudsman and Audit Scotland. Any new role must be carefully thought through in the context of the wider accountability framework and accountability to Parliament. Consideration must be given to how organisations will relate to each other within any new system.

Q16. Should a National Care Service use a measure of experience of those receiving care and support, their families and carers as a key outcome measure?

Yes

No

Please say why.

The experiences of those receiving care and support, their families and carers should be central in evaluating and improving services at all levels within a properly resourced social care system. Staff experience is also crucial.

Residential Care Charges

Q17. Most people have to pay for the costs of where they live such as mortgage payments or rent, property maintenance, food and utility bills. To ensure fairness between those who live in residential care and those who do not, should self-funding care home residents have to contribute towards accommodation-based costs such as (please tick all that apply):

Rent

Maintenance

Furnishings

- Utilities
- Food costs
- Food preparation
- Equipment
- Leisure and entertainment
- Transport
- Laundry
- Cleaning
- Other – what would that be

Any reform of the structure of how care is delivered should take the opportunity to look at the detail of how it is funded, and to ensure this is applied proportionally and appropriately across the whole population. Any reforms must be evidence-based and guided by the principles of fairness and transparency. The consultation proposals lack detail at this stage.

Any proposed changes to the legislation and guidance relating to residential care charges should be considered carefully and in light of the wider context of benefits and tax legislation, recognising the interplay between reserved and devolved matters. Careful consideration should also be given to clarifying the delineation between social care and medical/nursing care. The current system is complex.

To ensure fairness amongst those who are self funding and those who are reliant on state funding, consideration should be given to improving mechanisms for implementation and enforcement. Any changes should be designed to ensure consistency and fairness.

Q18. Free personal and nursing care payment for self-funders are paid directly to the care provider on their behalf. What would be the impact of increasing personal and nursing care payments to National Care Home Contract rates on:

Self-funders

We have no further comments.

Care home operators

We have no further comments.

Local authorities

We have no further comments.

Other

We have no further comments.

Q19. Should we consider revising the current means testing arrangements?

- Yes
 No

If yes, what potential alternatives or changes should be considered?

See our answer to question 17, above.

National Care Service

Q20. Do you agree that Scottish Ministers should be accountable for the delivery of social care, through a National Care Service?

- Yes
 No, current arrangements should stay in place
 No, another approach should be taken (please give details)

We welcome the aim of ensuring national minimum standards, improving consistency and raising the quality of services across the country.

Any proposed new approach to social care must be based on a clear, evidence-based review of existing provision, identification and analysis of current deficiencies, and must include detailed proposals to specifically address the deficiencies identified. There must be careful consideration of issues of local decision-making, accountability and proportionately. Any case for change must be linked to a demonstrable public interest justification. It must also be based on detailed costings.

The consultation proposal lacks clarity and detail as to how the National Care Service will address current difficulties with integration and deliver measurable improvement for people accessing care, their families and carers. The proposals do not address how largescale organisational change will be resourced, or whether additional resources will be made available to address current resourcing issues. They do not set out how any new body may be empowered to effectively drive change, or to ensure effective implementation of individuals rights in a social care context. There is already a multiplicity of services and organisations involved in social care, and the consultation proposals lack detail as to how the proposed National Care Service will interact with existing organisations. There is a risk that current difficulties with social care may simply be replicated on a national level. There is also a risk of conflicts of interest arising where too many functions are concentrated with one nationalised body, and consideration should be given to how those actual and perceived conflicts of interest could be mitigated. Full impact assessments are required.

Further detail is required as to how the proposals can accommodate regional variations including geography, availability of services and population demographics, and support the needs of local communities.

Q21. Are there any other services or functions the National Care Service should be responsible for, in addition to those set out in the chapter?

See our answer to question 20, above. We have no further comments.

Q22. Are there any services or functions listed in the chapter that the National Care Service should not be responsible for?

See our answer to question 20, above. We have no further comments.

Scope of the National Care Service

Children's services

Q23. Should the National Care Service include both adults and children's social work and social care services?

Yes

No

Please say why.

The IRASC did not consider issues relating to children and family services. Extending the scope of the proposed National Care Service to include both adults and children's social work and social care services must be supported by a clear evidence base demonstrating the benefits and efficiency of such an approach. Further evidence is required to support the consultation proposals.

Q24. Do you think that locating children's social work and social care services within the National Care Service will reduce complexity for children and their families in accessing services?

For children with disabilities,

Yes

No

Please say why.

As above, we believe that further evidence is required to support the consultation proposals.

For transitions to adulthood

Yes

No

Please say why.

As above, we believe that further evidence is required to support the consultation proposals.

For children with family members needing support

Yes

No

Please say why.

As above, we believe that further evidence is required to support the consultation proposals.

Q25. Do you think that locating children's social work services within the National Care Service will improve alignment with community child health services including primary care, and paediatric health services?

Yes

No

Please say why.

As above, we believe that further evidence is required to support the consultation proposals.

Q26. Do you think there are any risks in including children's services in the National Care Service?

Yes

No

If yes, please give examples

As above, we believe that further evidence is required to support the consultation proposals. Children's services operate in a complex legislative environment, and are closely linked to education and other areas of service provision. Work is currently underway to incorporate the United Nations Convention on the Rights of the Child (UNCRC). If wholesale change is made without clear and demonstrable supporting evidence, there is a risk on unintended consequences.

Healthcare

Q27. Do you agree that the National Care Service and at a local level, Community Health and Social Care Boards should commission, procure and manage community health care services which are currently delegated to Integration Joint Boards and provided through Health Boards?

Yes

No

Please say why.

The IRASC did not make recommendations in relation to the range of health services covered by the consultation proposals. Extending the scope of the proposed National Care Service to include healthcare must be supported by a clear evidence base demonstrating the benefits and efficiency of such an approach. Further evidence is required to support the consultation proposals. If wholesale change is made without clear and demonstrable supporting evidence, there is a risk on unintended consequences.

Q28. If the National Care Service and Community Health and Social Care Boards take responsibility for planning, commissioning and procurement of community health services, how could they support better integration with hospital-based care services?

As above, we believe that further evidence is required to support the consultation proposals.

Q29. What would be the benefits of Community Health and Social Care Boards managing GPs' contractual arrangements? (Please tick all that apply)

- Better integration of health and social care
- Better outcomes for people using health and care services
- Clearer leadership and accountability arrangements
- Improved **multidisciplinary team** working
- Improved professional and clinical care governance arrangements
- Other (please explain below)

As above, we believe that further evidence is required to support the consultation proposals.

Q30. What would be the risks of Community Health and Social Care Boards managing GPs' contractual arrangements? (Please tick all that apply)

- Fragmentation of health services
- Poorer outcomes for people using health and care services
- Unclear leadership and accountability arrangements
- Poorer professional and clinical care governance arrangements
- Other (please explain below)

As above, we believe that further evidence is required to support the consultation proposals.

Q31. Are there any other ways of managing community health services that would provide better integration with social care?

As above, we believe that further evidence is required to support the consultation proposals.

Social Work and Social Care

Q32. What do you see as the main benefits in having social work planning, assessment, commissioning and accountability located within the National Care Service? (Please tick all that apply.)

- Better outcomes for service users and their families.
- More consistent delivery of services.
- Stronger leadership.
- More effective use of resources to carry out statutory duties.
- More effective use of resources to carry out therapeutic interventions and preventative services.
- Access to learning and development and career progression.
- Other benefits or opportunities, please explain below:

The IRASC did not make recommendations in relation to social work. Extending the scope of the proposed National Care Service to include social work must be supported by a clear evidence base demonstrating the benefits and efficiency of such an approach. Further evidence is required to support the consultation proposals.

Q33. Do you see any risks in having social work planning, assessment, commissioning and accountability located within the National Care Service?

As above, we believe that further evidence is required to support the consultation proposals. If wholesale change is made without clear and demonstrable supporting evidence, there is a risk on unintended consequences.

We have particular concerns about the risk to independent security where social work planning, assessment, commissioning and accountability rest with one body. It is not clear how actual and perceived conflicts of interest could be mitigated.

Nursing

Q34. Should Executive Directors of Nursing have a leadership role for assuring that the safety and quality of care provided in social care is consistent and to the appropriate standard? Please select one.

- Yes
- No
- Yes, but only in care homes
- Yes, in adult care homes and care at home

Please say why

It is not clear whether a full evaluation of the Executive Director role has been carried out. Structural changes must be supported by a clear evidence base.

Q35. Should the National Care Service be responsible for overseeing and ensuring consistency of access to education and professional development of social care nursing staff, standards of care and governance of nursing? Please select one.

- Yes
- No, it should be the responsibility of the NHS
- No, it should be the responsibility of the care provider

Please say why

As above, we believe that further evidence is required to support the consultation proposals. If wholesale change is made without clear and demonstrable supporting evidence, there is a risk of unintended consequences.

Q36. If Community Health and Social Care Boards are created to include community health care, should Executive Nurse Directors have a role within the Community Health and Social Care Boards with accountability to the National Care Service for health and social care nursing?

Yes

No

If no, please suggest alternatives

As above, we believe that further evidence is required to support the consultation proposals. If wholesale change is made without clear and demonstrable supporting evidence, there is a risk on unintended consequences.

Justice Social Work

Q37. Do you think justice social work services should become part of the National Care Service (along with social work more broadly)?

Yes

No

Please say why.

The IRASC did not make recommendations in relation to justice social work services. Extending the scope of the proposed National Care Service to include justice social work must be supported by a clear evidence base demonstrating the benefits and efficiency of such an approach. Further evidence is required to support the consultation proposals. Further clarity is required to avoid any ambiguity regarding interaction with the criminal justice sector.

Q38. If yes, should this happen at the same time as all other social work services or should justice social work be incorporated into the National Care Service at a later stage?

At the same time

- At a later stage

Please say why.

See our answer to question 37, above. Justice social work should not become part of any National Care Service unless and until there is a clear evidence base supporting such change.

Q39. What opportunities and benefits do you think could come from justice social work being part of the National Care Service? (Tick all that apply)

- More consistent delivery of justice social work services
- Stronger leadership of justice social work
- Better outcomes for service users
- More efficient use of resources
- Other opportunities or benefits - please explain

See our answer to question 37, above. Further evidence is required to clearly establish any opportunities and benefits which may come from justice social work being part of any National Care Service.

Q40. What risks or challenges do you think could come from justice social work being part of the National Care Service? (Tick all that apply)

- Poorer delivery of justice social work services.
- Weaker leadership of justice social work.
- Worse outcomes for service users.
- Less efficient use of resources.
- Other risks or challenges - please explain:

See our answer to question 37, above. Further evidence is required to clearly establish any risks of challenges which may come from justice social work being part of any National Care Service.

Q41. Do you think any of the following alternative reforms should be explored to improve the delivery of community justice services in Scotland? (Tick all that apply)

- Maintaining the current structure (with local authorities having responsibility for delivery of community justice services) but improving the availability and consistency of services across Scotland.

- Establishing a national justice social work service/agency with responsibility for delivery of community justice services.
- Adopting a hybrid model comprising a national justice social work service with regional/local offices having some delegated responsibility for delivery.
- Retaining local authority responsibility for the delivery of community justice services, but establishing a body under local authority control to ensure consistency of approach and availability across Scotland.
- Establishing a national body that focuses on prevention of offending (including through exploring the adoption of a public health approach).
- No reforms at all.
- Another reform – please explain:

All alternative options should be fully explored and evaluated.

Q42. Should community justice partnerships be aligned under Community Health and Social Care Boards (as reformed by the National Care Service) on a consistent basis?

- Yes
- No

Please say why.

See our answer to question 37, above. Further evidence is required to support the consultation proposals.

Prisons

Q43. Do you think that giving the National Care Service responsibility for social care services in prisons would improve outcomes for people in custody and those being released?

- Yes
- No

Please say why.

We recognise that there are issues and problems with the current approach to social care in prisons, and welcome steps to improve outcomes for people in custody and those being released. However, it is not clear that more proportionate mechanism for delivering improvement within existing organisational structures have been fully considered.

Q44. Do you think that access to care and support in prisons should focus on an outcomes-based model as we propose for people in the community, while taking account of the complexities of providing support in prison?

Yes

No

Please say why.

We are generally supportive of an outcomes-based model.

Alcohol and Drug Services

Q45. What are the benefits of planning services through Alcohol and Drug Partnerships? (Tick all that apply)

Better co-ordination of Alcohol and Drug services

Stronger leadership of Alcohol and Drug services

Better outcomes for service users

More efficient use of resources

Other opportunities or benefits - please explain

We have no comments.

Q46. What are the drawbacks of Alcohol and Drug Partnerships? (Tick all that apply)

Confused leadership and accountability

Poor outcomes for service users

Less efficient use of resources

Other drawbacks - please explain

We have no comments.

Q47. Should the responsibilities of Alcohol and Drug Partnerships be integrated into the work of Community Health and Social Care Boards?

Yes

No

Please say why.

Moves to integrate the responsibilities of Alcohol and Drugs Partnerships into the work of proposed Community Health and Social Care Boards must be supported by a clear evidence base demonstrating the benefits and efficiency of such an approach. Further evidence is required to support the consultation proposals.

Q48. Are there other ways that Alcohol and Drug services could be managed to provide better outcomes for people?

See our answer to question 47, above.

Q49. Could residential rehabilitation services be better delivered through national commissioning?

Yes

No

Please say why.

Moves to deliver residential rehabilitation services through national commissioning must be supported by a clear evidence base demonstrating the benefits and efficiency of such an approach. Further evidence is required to support the consultation proposals.

Q50. What other specialist alcohol and drug services should/could be delivered through national commissioning?

We have no further comments.

Q51. Are there other ways that alcohol and drug services could be planned and delivered to ensure that the rights of people with problematic substance use (alcohol or drugs) to access treatment, care and support are effectively implemented in services?

We have no further comments.

Mental Health Services

Q52. What elements of mental health care should be delivered from within a National Care Service? (Tick all that apply)

- Primary mental health services
- Child and Adolescent Mental Health Services
- Community mental health teams
- Crisis services
- Mental health officers
- Mental health link workers
- Other – please explain

The consultation proposals are lacking in detail and further clarification is required. It is not clear how the consultation proposals will interact with existing duties set out in primary legislation, for example duties placed on local authorities by sections 25-27 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and by the Adults with Incapacity (Scotland) Act 2000. It is not clear how the consultation proposal will address current difficulties in mental health services, particularly adequate resourcing for statutory functions, and there is a risk that current difficulties will simply be replicated on a national scale. It is not clear how the independence of those fulfilling statutory roles, such as Mental Health Officers, will be preserved. The Scottish Mental Health Law Review is currently reviewing mental health, adults with incapacity and adult support and protection legislation. We consider that these pieces of legislation and reform in this area have an important role in underpinning future social care policy and legislation.

Q53. How should we ensure that whatever mental health care elements are in a National Care Service link effectively to other services e.g. NHS services?

See our answer to question 52, above. Further clarification of the consultation proposal is required. Consideration should be given to the particular human rights considerations which may arise in mental health services where individuals may lack capacity to consent to care and treatment, and how adequate support for decision-making can be provided to meet minimum human rights obligations.

National Social Work Agency

**Q54. What benefits do you think there would be in establishing a National Social Work Agency?
(Tick all that apply)**

- Raising the status of social work
- Improving training and continuous professional development
- Supporting workforce planning
- Other – please explain

The consultation proposals are lacking in detail. It is not clear how the proposed NSWA will address the issues and problems identified. There may be more proportionate ways to address these issues and problems within existing organisational structures.

Q55. Do you think there would be any risks in establishing a National Social Work Agency?

See our answer to question 54, above. Further clarification is required to ensure that there are no intended consequences arising from the consultation proposals.

Q56. Do you think a National Social Work Agency should be part of the National Care Service?

- Yes
- No

Please say why

See our answer to question 54, above. There may be more proportionate ways to address these issues and problems within existing organisational structures.

Q57. Which of the following do you think that a National Social Work Agency should have a role in leading on? (Tick all that apply)

- Social work education, including practice learning
- National framework for learning and professional development, including advanced practice
- Setting a national approach to terms and conditions, including pay
- Workforce planning
- Social work improvement
- A centre of excellence for applied research for social work
- Other – please explain

See our answer to question 54, above. Further clarification is required.

Reformed Integration Joint Boards: Community Health and Social Care Boards

Governance model

Q58. “One model of integration... should be used throughout the country.” ([Independent Review of Adult Social Care](#), p43). Do you agree that the Community Health and Social Care Boards should be the sole model for local delivery of community health and social care in Scotland?

- Yes
- No

Please say why.

See our general comments, above. Any proposed new governance model must be based on a clear, evidence-based review of existing provision, identification and analysis of current deficiencies, and must include detailed proposals to specifically address the deficiencies identified. The consultation proposals lack sufficient detail at this stage.

Q59. Do you agree that the Community Health and Social Care Boards should be aligned with local authority boundaries unless agreed otherwise at local level?

- Yes
- No

Q60. What (if any) alternative alignments could improve things for service users?

See our answer to question 58, above. We have no further comments.

Q61. Would the change to Community Health and Social Care Boards have any impact on the work of Adult Protection Committees?

See our answer to question 58, above. We have no further comments.

Membership of Community Health and Social Care Boards

Q62. The Community Health and Social Care Boards will have members that will represent the local population, including people with lived and living experience and carers, and will include professional group representatives as well as local elected members. Who else should be represented on the Community Health and Social Care Boards?

See our answer to question 58, above, and our general comments. We have no further comments.

Q63. “Every member of the Integration Joint Board should have a vote” ([Independent Review of Adult Social Care](#), p52). Should all Community Health and Social Care Boards members have voting rights?

Yes

No

Q64. Are there other changes that should be made to the membership of Community Health and Social Care Boards to improve the experience of service users?

See our answer to question 58, above. We have no further comments.

Community Health and Social Care Boards as employers

Q65. Should Community Health and Social Care Boards employ Chief Officers and their strategic planning staff directly?

- Yes
 No

Q66. Are there any other staff the Community Health and Social Care Boards should employ directly? Please explain your reasons.

Any proposed new governance model must be based on a clear, evidence-based review of existing provision, identification and analysis of current deficiencies, and must include detailed proposals to specifically address the deficiencies identified. This must include lessons learnt from previous reforms, including integration. There must be careful consideration of issues of local decision-making, accountability and proportionately. Any case for change must be linked to a demonstrable public interest justification and must deliver improvements for the end users of social care services.

Commissioning of services

Structure of Standards and Processes

Q67. Do you agree that the National Care Service should be responsible for the development of a Structure of Standards and Processes

- Yes
 No

If no, who should be responsible for this?

- Community Health and Social Care Boards
 Scotland Excel
 Scottish Government Procurement
 NHS National Procurement
 A framework of standards and processes is not needed

Q68. Do you think this Structure of Standards and Processes will help to provide services that support people to meet their individual outcomes?

- Yes
 No

Q69. Do you think this Structure of Standards and Processes will contribute to better outcomes for social care staff?

- Yes
 No

Q70. Would you remove or include anything else in the Structure of Standards and Processes?

In relation to competition, procurement and state aid, the provision of a National Care Service raises issues analogous to those that arise in the case of a National Health Service.

Whenever a public body funds and obtains services whether for itself or for anyone else the funding has to be fitted into a legal category. It may be:

1. payment of salary or wages to its own employees;
2. payment of consideration for services rendered;
3. payment of consideration to a market entity (which may be publicly owned) for services rendered;
4. the making of a subsidy;
5. the passing on of the service provision to a concessionaire which is remunerated in whole or in part by making its own charges to users; or
6. none of the above but truly a transfer of the resources to what is in reality a semi-department of itself.

Competition law, including procurement and state aid law, will not apply to the provision of services to a body by its own employees. Conversely the possible impact of some kind of competition law cannot be excluded where the provision is by an entity that is active on a market, for example in the business of service provision. This is true as regards both for-profit and not-for-profit providers and also applies to public bodies that are carrying on market activity, such as commercially operated sports or entertainment venues. Some situations can be difficult to classify, for example: when the authority itself forms a company which provides the service and is paid against invoices submitted. Much depends on whether the entity functions truly as a “quasi-department” of the commissioning body (i.e. is under its control and provides services exclusively or almost exclusively to the commissioning body). EU case law remains relevant to these questions. Accordingly, the Structure of Standards and Processes should be cognisant of the structure of the market for care services, including the presence of a significant number of private and third sector providers, as well as publicly owned providers that are competing in a market with private and third sector providers, and the impact of competition law on how those services must be provided. In particular, the Structure of Standards and Processes should not mandate any approach by providers that would potentially place them in breach of competition law.

Market research and analysis

Q71. Do you agree that the National Care Service should be responsible for market research and analysis?

- Yes
- No

If no, who should be responsible for this?

- Community Health and Social Care Boards
- Care Inspectorate
- Scottish Social Services Council
- NHS National Procurement
- Scotland Excel
- No one
- Other- please comment

From a competition perspective we do not have a position on whether or not a National Care Service should carry out market research and analysis that supports its role. However, it should be noted (in line with our comments above) that care providers do not provide services exclusively to the public sector and also provide services to a significant number of self-funders. The Competition and Markets Authority has a statutory role in assessing all markets regarding a number of the points identified in this question including market structure, behaviours and barriers to market entry as well as competitiveness more broadly, and the care services market has been examined in recent years. The remit of any National Care Service should be restricted to information required for it to perform its role as regards the public procurement of care services, and it may be able to obtain useful input from the CMA without duplicating that body's work.

National commissioning and procurement services

Q72. Do you agree that there will be direct benefits for people in moving the complex and specialist services as set out to national contracts managed by the National Care Service?

- Yes
- No

If no, who should be responsible for this?

- Community Health and Social Care Boards
- NHS National Procurement
- Scotland Excel

Regulation

Core principles for regulation and scrutiny

Q73. Is there anything you would add to the proposed core principles for regulation and scrutiny?

Any new regulatory arrangements should reflect the Better Regulation Principles (proportionality, transparency, accountability, consistency and targeted). Consideration should also be given to compliance with human rights law and to the context of planned incorporation of human rights instruments into Scots Law in the future.³

We have no further comments on questions 73-86.

Q74. Are there any principles you would remove?

We have no further comments.

Q75. Are there any other changes you would make to these principles?

We have no further comments.

Strengthening regulation and scrutiny of care services

³ <https://www.gov.scot/news/new-human-rights-bill/>

Q76. Do you agree with the proposals outlined for additional powers for the regulator in respect of condition notices, improvement notices and cancellation of social care services?

- Yes
 No
 Please say why.

We have no further comments.

Q77. Are there any additional enforcement powers that the regulator requires to effectively enforce standards in social care?

We have no further comments.

Market oversight function

Q78. Do you agree that the regulator should develop a market oversight function?

- Yes
 No

Q79. Should a market oversight function apply only to large providers of care, or to all?

- Large providers only
 All providers

Q80. Should social care service providers have a legal duty to provide certain information to the regulator to support the market oversight function?

- Yes
 No

Q81. If the regulator were to have a market oversight function, should it have formal enforcement powers associated with this?

Yes

No

Q82. Should the regulator be empowered to inspect providers of social care as a whole, as well as specific social care services?

Yes

No

Please say why

We have no further comments.

Enhanced powers for regulating care workers and professional standards

Q83. Would the regulator's role be improved by strengthening the codes of practice to compel employers to adhere to the codes of practice, and to implement sanctions resulting from fitness to practise hearings?

We have no further comments.

Q84. Do you agree that stakeholders should legally be required to provide information to the regulator to support their fitness to practise investigations?

We have no further comments.

Q85. How could regulatory bodies work better together to share information and work jointly to raise standards in services and the workforce?

We have no further comments.

Q86. What other groups of care worker should be considered to register with the regulator to widen the public protection of vulnerable groups?

We have no further comments.

Valuing people who work in social care

Fair Work

Q87. Do you think a ‘Fair Work Accreditation Scheme’ would encourage providers to improve social care workforce terms and conditions?

Yes

No

Please say why.

Social care work tends to be female dominated and is low paid and contributes to the gender pay and pension gap.⁴ Any moves to improve the pay and conditions of social care workers is a positive step in terms of gender equality.

We have no further comments on questions 87-96.

Q88. What do you think would make social care workers feel more valued in their role? (Please rank as many as you want of the following in order of importance, e.g. 1, 2, 3...)

	Improved pay
	Improved terms and conditions, including issues such as improvements to sick pay, annual leave, maternity/paternity pay, pensions, and development/learning time
	Removal of zero hour contracts where these are not desired
	More publicity/visibility about the value social care workers add to society
	Effective voice/collective bargaining
	Better access to training and development opportunities

⁴ See Fair Work in Scotland’s Social Care Sector 2019, available at: <https://www.fairworkconvention.scot/wp-content/uploads/2018/11/Fair-Work-in-Scotland%E2%80%99s-Social-Care-Sector-2019.pdf>

	Increased awareness of, and opportunity to, complete formal accreditation and qualifications
	Clearer information on options for career progression
	Consistent job roles and expectations
	Progression linked to training and development
	Better access to information about matters that affect the workforce or people who access support
	Minimum entry level qualifications
	Registration of the personal assistant workforce
	Other (please say below what these could be)

Please explain suggestions for the “Other” option in the below box

We have no further comments.

Q89. How could additional responsibility at senior/managerial levels be better recognised? (Please rank the following in order of importance, e.g. 1, 2, 3...):

	Improved pay
	Improved terms and conditions
	Improving access to training and development opportunities to support people in this role (for example time, to complete these)
	Increasing awareness of, and opportunity to complete formal accreditation and qualifications to support people in this role
	Other (please explain)

Please explain suggestions for the “Other” option in the below box

We have no further comments.

Q90. Should the National Care Service establish a national forum with workforce representation, employers, Community Health and Social Care Boards to advise it on workforce priorities, terms and conditions and collective bargaining?

Yes

No

Please say why or offer alternative suggestions

We have no further comments.

Workforce planning

Q91. What would make it easier to plan for workforce across the social care sector? (Please tick all that apply.)

A national approach to workforce planning

Consistent use of an agreed workforce planning methodology

An agreed national data set

National workforce planning tool(s)

A national workforce planning framework

Development and introduction of specific workforce planning capacity

Workforce planning skills development for relevant staff in social care

Something else (please explain below)

We have no further comments.

Training and Development

Q92. Do you agree that the National Care Service should set training and development requirements for the social care workforce?

Yes

No

Please say why

We have no further comments.

Q93. Do you agree that the National Care Service should be able to provide and or secure the provision of training and development for the social care workforce?

Yes

No

Personal Assistants

Q94. Do you agree that all personal assistants should be required to register centrally moving forward?

Yes

No

Please say why.

We have no further comments.

Q95. What types of additional support might be helpful to personal assistants and people considering employing personal assistants? (Please tick all that apply)

National minimum employment standards for the personal assistant employer

Promotion of the profession of social care personal assistants

Regional Networks of banks matching personal assistants and available work

Career progression pathway for personal assistants

Recognition of the personal assistant profession as part of the social care workforce and for their voice to be part of any eventual national forum to advise the National Care Service on workforce priorities

A free national self-directed support advice helpline

The provision of resilient payroll services to support the personal assistant's employer as part of their Self-directed Support Option 1 package

Other (please explain)

We have no further comments.



Q96. Should personal assistants be able to access a range of training and development opportunities of which a minimum level would be mandatory?

Yes

No



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