

# Health and Social Care Alliance Scotland (the ALLIANCE)

## Independent Review of Adult Social Care: Briefing Paper

12 November 2020

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### Introduction

The Health and Social Care Alliance Scotland (the ALLIANCE) welcomes the opportunity to submit this Briefing Paper to the Independent Review of Adult Social Care ('the Review'). It is informed by consultation with our members and partners, many previous briefings on social care,<sup>1</sup> and national research on people's experiences of Self-directed Support (SDS) and social care.<sup>2</sup>

The ALLIANCE believes that social care is a means to an end; it exists to help people equally enjoy their human rights, including (but not limited to) the rights to live with dignity, independent living, meaningful and active participation in Scottish society, work, education, and so on. Without the right support at the right time in the right place, people who use adult social care services cannot experience full and equal enjoyment of their rights.

COVID-19, and responses taken to it, have seriously impacted all aspects of our lives, including social care. While some of this Briefing addresses issues that have arisen since early 2020, much of what is covered pre-dates the introduction of the pandemic in Scotland, which emphasised and exacerbated pre-existing issues.

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<sup>1</sup> See, for example: <https://www.alliance-scotland.org.uk/blog/resources/alliance-response-discussion-paper-on-adult-social-care-reform-for-scotland/>; <https://www.alliance-scotland.org.uk/blog/resources/consultation-response-health-and-sport-committees-social-care-inquiry/>; <https://www.alliance-scotland.org.uk/blog/resources/alliance-response-to-covid-19-committee-on-the-social-care-staff-support-fund/>; <https://www.alliance-scotland.org.uk/blog/resources/alliance-response-to-the-ijb-executive-group-on-adult-social-care/>; <https://www.alliance-scotland.org.uk/blog/resources/alliance-briefing-paper-on-social-care-and-covid-19-emergency-powers/>; <https://www.alliance-scotland.org.uk/blog/resources/alliance-response-to-the-scottish-government-coslas-question-on-reopening-social-care-day-services/>; <https://www.alliance-scotland.org.uk/blog/resources/alliance-briefing-paper-on-covid-19-social-care-guidance/>.

<sup>2</sup> Health and Social Care Alliance Scotland and Self Directed Support Scotland (October 2020), 'My Support My Choice: People's Experiences of Self-directed Support and Social Care in Scotland – National Report'. Available at: <https://www.alliance-scotland.org.uk/blog/resources/my-support-my-choice-peoples-experiences-of-self-directed-support-and-social-care-in-scotland-reports/>.

## Human rights and ethics in social care

Scotland needed a radically different approach to social care even before the pandemic, and it has been clear for some time that we cannot expect good quality, accessible and equitable social care for all by maintaining the status quo.

Approaching social care as an equalities and human rights issue reframes it as a positive investment in Scotland's people, society and economy, rather than a 'gift' to those 'less fortunate' and a 'drain' on resources.

### What are human rights?

Human rights are a set of universal values and principles that provide a common language to address and overcome seemingly thorny, complex and competing issues in a joined up, fair and transparent way.

Relevant international human rights law – to which the UK is a party – includes the International Covenants on Civil and Political, and Economic, Social and Cultural Rights, the UN Declaration on the Rights of Disabled People (UNCRPD), and the UN Convention on the Elimination of Discrimination Against Women. Relevant regional instruments include the EU's Charter of Fundamental Freedoms and Social Charters. These treaties encompass a wide range of rights, and the agencies charged with overseeing them have built up a substantial body of jurisprudence to inform and guide in-country implementation.<sup>3</sup>

Some elements of human rights can be found in current Scots law and policy related to social care. However, there can be an 'implementation gap', whereby people's experiences do not reflect this national 'rights based' law and policy.

- National Performance Framework (NPF) – adult social care aligns with several National Outcomes, including human rights, communities, economy, education, culture, health, and poverty.
- Public Sector Equality Duty – as the Equality and Human Rights Commission notes, compliance with this is not only a legal duty but “makes good business sense.”<sup>4</sup>
- Fairer Scotland Duty ('socio economic duty')<sup>5</sup> – places a legal responsibility on public bodies to actively consider how to reduce outcome inequalities caused by socioeconomic disadvantage when making strategic decisions.

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<sup>3</sup> See, for example, the UN Treaty Body database:

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/TBSearch.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx).

<sup>4</sup> <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty/>.

<sup>5</sup> <https://www.gov.scot/publications/fairer-scotland-duty-interim-guidance-public-bodies/>.

- The national health and wellbeing outcomes – these support independent living and note that social care services should contribute to reducing health inequalities.
- Fairer Scotland Disability Delivery Plan – national policy that is “rooted firmly in the UNCRPD”.<sup>6</sup>
- Self-Directed Support (Scotland) Act 2013, the SDS Implementation Plan 2019-2021, and the SDS Change Map – legislation and policy that put people’s rights to exercise choice and control over their support at the heart of social care.
- Carers (Scotland) Act 2016 and Equal Partners in Care – legislation and policy that reinforces the rights of unpaid carers.
- Scotland’s Reform of Adult Social Care programme – an ambitious national programme developed by a partnership of local and national government, with input from civil society, and focused around human rights.

### **Human rights principles and standards**

As well as international treaties, there are a range of human rights principles and standards that are highly relevant for social care reform, including:

- Indivisibility and interdependence – rights are inextricably interlinked; it is not possible to realise one right without realising others, and similarly if one right is infringed then others will be too.<sup>7</sup>
- Non-discrimination and equality – this principle underpins all international human rights law. Barriers that prevent people from fully enjoying their human rights in equality with others can be viewed as discriminatory.
- Obligations – the state has a duty to ensure that people’s rights are respected, protected and fulfilled. The duty to respect means the state must not interfere with someone’s rights (unless there is a legitimate reason). The duty to protect means the state must protect individuals from infringements on their rights by others. The duty to fulfil – which is pertinent for social care – means the state must take positive, proactive steps (legislative, administrative, financial, judicial, social and educational) so that people can enjoy their rights.
- Accountability – rights should be monitored, and public bodies held to account if things go wrong.
- Maximum available resources – the state must allocate the maximum available resource to the realisation of rights and take human rights into account when generating and allocating resources.<sup>8</sup>

<sup>6</sup> <https://www.gov.scot/publications/fairer-scotland-disabled-people-delivery-plan-2021-united-nations-convention/pages/3/>.

<sup>7</sup> <https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>.

<sup>8</sup> <https://www.escr-net.org/resources/maximum-available-resources>.

- Progressive realisation and non-retrogression – the state must take steps to progressively achieve the full realisation of people’s rights, independent from economic growth, and can only reduce the enjoyment of rights if it can be fully justified (for example, by being temporary, necessary and proportionate, but not discriminatory).<sup>9</sup>
- Minimum core – the state should ensure the satisfaction of minimum essential levels of each right. This principle is intended to ensure that people can live with human dignity.<sup>10</sup>

## **Myth-busting and the rights based approach**

There are several myths about human rights; for example, that they are an intangible ‘wish list’ with no practical application, something to be ‘bolted on’ to existing frameworks, or that they are purely legalistic and intended to punish public bodies. The Review and its recommendations could support the work that is needed to overcome these misconceptions, particularly given the growing recognition that a human rights based approach (HRBA)<sup>11</sup> is a different and positive way of doing things in both policy and practice.

ALLIANCE members spoke frequently about the need to ensure that any reforms made to social care as a result of the Review should adhere to a HRBA. It is a practical way to identify and agree the purpose and value of social care that champions better equilibrium in the imbalance of power between people and the state. Taking a rights based approach helps shift the culture of social care away from stigmatising and paternalistic models of disability towards people being regarded as rights holders with an active role to play in directing their own lives.<sup>12</sup>

In a practical sense, adopting a HRBA means:

### **Participation**

People should be supported to participate in all decisions that affect them in social care. Participation is a right itself and is necessary for the enjoyment of other rights. Putting people at the heart of decision making also makes good ‘business sense’ because it gives decisions greater credibility and promotes sustainable implementation. The national People-Led Policy Panel is a practical example where people participate in national policy making; this should continue to be resourced and efforts made to replicate this model at local levels. SDS legislation also seeks to

<sup>9</sup> <https://www.escri-net.org/resources/progressive-realisation-and-non-regression>.

<sup>10</sup> <https://www.escri-net.org/resources/minimum-core-obligations>.

<sup>11</sup> [https://www.scottishhumanrights.com/media/1409/shrc\\_hrba\\_leaflet.pdf](https://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf).

<sup>12</sup> See, for example, this film of Professor Theresia Degener, current Chair of the UN’s Committee on the Rights of Disabled People, the mechanism that oversees national implementation of the CRPD: <https://www.youtube.com/watch?v=9ILQOUEAOW8>.

ensure people lead decisions about their social care services and support, albeit some people experience the 'implementation gap', as discussed further below.

## **Accountability**

Commissioners of social care services, care providers and regulators must understand their human rights duties and promote accountability for human rights in social care. Rights strengthen accountability by ensuring that the practices and procedures of commissioners and providers are grounded in human rights law, and regulators use rights in inspections. Rights should be monitored, and a good starting point to be built upon is the Care Inspectorate's use of the rights based Health and Social Care Standards<sup>13</sup> to frame an independent evaluation of SDS implementation in six Health and Social Care Partnerships.<sup>14</sup>

## **Non-discrimination and equality**

People have different identities based on their gender, ethnicity, religion and many other grounds, and all population groups, irrespective of their identities, should have an equal voice in social care. Equality Impact Assessments help public authorities have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. Equality and Human Rights Impact Assessments go even further: this is a practical tool developed by the Scottish Human Rights Commission (SHRC) and EHRC that has already been piloted by Scottish local authorities.<sup>15</sup>

## **Empowerment**

Everyone should understand what their rights are and how they can claim them. As discussed further below, people have variable experiences accessing information about SDS/social care and supported participation in decision making. They value and benefit from access to vital independent information, advice and advocacy services, like those funded by 'Support in the Right Direction'.<sup>16</sup>

## **Legality**

Accountable bodies, including national and local government, health boards, and social care providers, must be sure that their practices and procedures are grounded in human rights law and under the law they must not breach the human rights of anyone. The ALLIANCE has long called for the incorporation of international human

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<sup>13</sup> <https://www.gov.scot/publications/health-social-care-standards-support-life/>.

<sup>14</sup> <https://hub.careinspectorate.com/media/3676/thematic-review-of-self-directed-support-in-scotland-transforming-lives.pdf>.

<sup>15</sup> <http://eqhria.scottishhumanrights.com/>.

<sup>16</sup> <https://www.inspiringscotland.org.uk/news/new-support-right-direction-2021-grants/>.

rights law – including the UNCRPD – into Scots law, which would bring the following positive changes to social care:

- Rights would be fully grounded in the law.
- Social care services would be available, accessible, acceptable and of a good quality – people would get the right support at the right time in the right place.<sup>17</sup>
- Transparency would be ensured.
- Health inequalities would be mitigated and prevented.
- People could participate freely, meaningfully and actively in decisions that affect them.
- Public bodies would understand their responsibilities, there would be robust and systematic monitoring, and accountability for when things go wrong.
- Discrimination would be prevented and the people who face the biggest barriers would be prioritised.
- Everyone would understand their rights and how to claim them.

Incorporating the UNCRPD would help deliver the NPF outcomes, and is supported by the National Taskforce for Human Rights Leadership, which is creating a statutory framework to bring internationally recognised human rights into domestic law and protect the rights of every member of Scottish society.<sup>18</sup> The Independent Review of Learning Disability and Autism in the Mental Health Act<sup>19</sup> and the Scottish Mental Health Law Review<sup>20</sup> are both framed around international human rights law, particularly the UNCRPD. The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, which is currently making its way through the Scottish Parliament, demonstrates that incorporation is achievable.

### **High quality social care and the needs, rights and preferences of people accessing social care**

ALLIANCE members are clear that in the context of social care, people's rights should be considered first, and after that risks should be addressed. However, as the Review will have heard during its engagement phase, there are several obstacles that stand in the way of universal enjoyment of quality, accessible social care.

Several organisations, including the ALLIANCE, SHRC, Inclusion Scotland, SDS Collective, and GDA have reported on the impact of COVID-19 and responses to it on the rights of people who access social care. Amongst others, concerns have been

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<sup>17</sup> Toolkit on the Right to Health – Office of the UN High Commissioner on Human Rights <https://www.ohchr.org/EN/Issues/ESCR/Pages/Health.aspx>

<sup>18</sup> National Taskforce for Human Rights Leadership - <https://www.gov.scot/groups/national-taskforce-for-human-rights-leadership/>

<sup>19</sup> <https://webarchive.nrscotland.gov.uk/20200313205853/https://www.irmha.scot/>.

<sup>20</sup> <https://mentalhealthlawreview.scot/>.

expressed about the lack of communication, transparency and accountability for service cuts and other decision making,<sup>21</sup> and indications that local authorities are ‘clawing back’ SDS budgets.<sup>22</sup> The detrimental impact on unpaid carers, who have had to shoulder the burden of retracted social services, has also been widely reported.

However, many issues pre-date the pandemic. From November 2018-February 2020, ‘My Support My Choice’ (MSMC),<sup>23</sup> a national research project by the ALLIANCE and Self Directed Support Scotland, heard about the experiences of 637 people who accessed SDS. At the time of publishing the national report in October 2020, this represents the most recent and comprehensive reflection of people’s experiences of SDS/social care in Scotland prior to COVID-19. As such, MSMC provides vital evidence, analysis of good practice and recommendations for improvement in the review and reform of SDS/social care in the aftermath of the pandemic, based on people’s experiences.

As Scotland’s approach to social care, SDS guarantees people the right to exercise choice and control over their support and most MSMC research participants said that it improved their social care. If properly applied, SDS could be a key driver for the shared vision for adult social care and the cornerstone of a world leading, human rights based system.

However, while many MSMC research participants reported positive experiences, others described the negative impacts of inadequate support, budget cuts and narrowing eligibility criteria. These can leave people having to manage without vital support, or places unacceptable demands on family and friends to assume roles as unpaid carers. The trend towards tightened eligibility also poses a significant threat to the drive for prevention; people who may need relatively small amounts of support are not able to access the preventative services that could delay or avoid the need for more invasive and costly intervention further down the line.

Unfortunately, we also found concerning gaps in local and national data about SDS/social care. Disaggregated data gathering and intersectional analysis is essential to develop policy and practice that prioritises equal access to social care for everyone, following human rights principles of equality, non-discrimination, participation and inclusion. People who access social care are not a homogenous group and it is essential that equalities are considered as well as people’s rights, needs and preferences to ensure non-discriminatory enjoyment of rights. Most

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<sup>21</sup> <https://www.scottishhumanrights.com/media/2102/covid-19-social-care-monitoring-report-vfinal.pdf>,

<sup>22</sup> <https://www.alliance-scotland.org.uk/blog/news/sds-collective-raise-concerns-about-budget-clawbacks/>.

<sup>23</sup> <https://www.alliance-scotland.org.uk/blog/resources/my-support-my-choice-peoples-experiences-of-self-directed-support-and-social-care-in-scotland-reports/>.

recently, the disproportionate impact of the pandemic and responses taken to it on some population groups reinforces the need to take an equalities – as well as human rights – approach.

MSMC heard about the experiences of a range of different population groups, including people with learning difficulties, Black and minority ethnic people, women as users of SDS, unpaid carers, older people, people with lived experience of mental health issues, blind and partially sighted people, people with lived experience of homelessness, LGBT+ people and disabled parents.

Not everyone we heard from in MSMC felt well enough informed about SDS. Many people require greater transparency about how care decisions are made and by whom, alongside inclusive communication and easy access to information. People reported difficulty obtaining paperwork and documentation concerning their care arrangements, even after repeated requests to social work departments, and difficulty obtaining information about how to lodge formal complaints.

Although the vast majority of MSMC respondents were on their preferred SDS option, not everyone was offered – or could actively make – a meaningful choice between all four SDS options due to lack of information or substitute decision-making. Budgets and waiting times were prevailing themes when respondents discussed concerns with needs assessments. People experienced inconsistent approaches on key issues like budget setting, which can leave local authorities open to criticism about unfair application as well as inconsistency in implementation.

People value and appreciate being able to use their SDS flexibly but reported variable experiences of this. For example, one blind MSMC research participant was told that they could not have help with shopping, because that was outwith the purview of SDS – even though their screen reader struggled with online grocery ordering and they found relying on shop workers for help stressful. During a separate consultation event, ALLIANCE members gave other examples of inflexible support, including one where an individual wanted a family carer to do their personal care and use their SDS for housework, but were informed that agency carers would only do personal care. Another example was shared of a family member being told they could not use a hoist due to lack of training, forcing them to instead resort to less safe manual lifting.

Many MSMC research participants reported good relationships and communication with social work professionals and social care staff, which is an essential element of quality care, however others outlined concerns about not receiving full answers to questions raised during assessments. Several people shared troubling stories of being treated with disrespect by social work or social care professionals, and a small number of people reported significant experiences of discrimination, bullying and



harassment. A small but significant minority of participants discussed the limitations of available feedback and complaint options when they were unhappy with their interactions with social work.

The Review will have heard examples of good practice during their engagement with people, communities and organisations around Scotland, many of which are delivered by ALLIANCE members. Unfortunately, sometimes these can be short-lived because without adequate sustainable investment they are subject to changing financial or other priorities. There are, however, ways to embed the dimensions of high quality care into Scotland's social care system, including:

- Care About Rights<sup>24</sup> – a practical initiative by SHRC to embed rights in social care.
- The UN 'right to health' toolkit<sup>25</sup> and indicators<sup>26</sup> – based around the 'AAAQ' key elements of the right to health (that services are Available, Accessible, Acceptable and of good Quality).
- The WHO's Quality Rights Toolkit<sup>27</sup> – training and materials to help the state and social services implement the CRPD in policy and practice.

### **Paid and unpaid carers**

Workers and unpaid carers are the backbone of Scotland's social care system – it could not exist without them – however, there are ongoing issues with workforce recruitment, retention, training and quality.<sup>28</sup>

With 85% of the workforce identifying as female, and the majority of unpaid carers also women, issues related to social care are highly gendered.<sup>29</sup> Despite the competencies, expertise and dedication required of its workforce, social care is often referred to as an undervalued and underpaid job, with low pay and poor terms and conditions.

The Fair Work Convention<sup>30</sup> reports that fair work is not being consistently delivered in Scotland's social care sector and that this is often driven by funding and commissioning systems. There are ongoing concerns about the differential pay and

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<sup>24</sup> <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-Independent-Review-of-Adult-Social-Care.pdf>;  
<http://careaboutrights.scottishhumanrights.com/>.

<sup>25</sup> <https://www.ohchr.org/EN/Issues/ESCR/Pages/Health.aspx>.

<sup>26</sup> <https://www.ohchr.org/documents/publications/factsheet31.pdf>.

<sup>27</sup> <https://www.who.int/publications/i/item/who-qualityrights-guidance-and-training-tools>.

<sup>28</sup> <https://www.alliance-scotland.org.uk/blog/resources/my-support-my-choice-peoples-experiences-of-self-directed-support-and-social-care-in-scotland-reports/>.

<sup>29</sup> <https://data.sssc.uk.com/images/WDR/WDR2018.pdf>.

<sup>30</sup> <https://www.fairworkconvention.scot/wp-content/uploads/2018/11/Fair-Work-inScotland%E2%80%99s-Social-Care-Sector-2019.pdf>.

conditions for third and independent sector workers compared to those employed by local authorities. Research for the Scottish Government and COSLA notes, “the main reason why people leave the workforce is for better terms and conditions, particularly pay levels and another driver is to do a less demanding job for similar or better rates of pay.”<sup>31</sup> The Fair Work Convention have highlighted that failure to address these issues will have broader consequences, for example low pay will significantly contribute to inequality in women’s working conditions and Scotland’s gender pay gap.

During our consultations, ALLIANCE members recognised that people receiving care and workers providing care have rights, and those rights do not have to be in conflict. Ensuring paid carers receive a good wage for every hour worked remains the right thing to do. To achieve the best quality care, we must prioritise paying social care staff better and must avoid rolling back to the institutionalised settings of the past to meet the financial challenges of today. At the core of issues related to fair work are the rights of people who access support and services and unpaid carers, as well as the rights of people who provide them.

Of those unpaid carers we spoke to as part of the MSMC research project, very few accessed SDS with a carers budget, and the majority were not aware that it was possible to access SDS as an unpaid carer. None of people who participated in the parent/Guardian focus group had been offered an assessment for a carers’ SDS budget. There was also considerable confusion as to whether unpaid carers could employ family members as personal assistants (PAs) – with variance in practice within individual local authorities as well as Scotland as a whole. Several people reported that employing a family member (not a Guardian) as a PA is actively discouraged by some local authorities, even following difficulties recruiting PAs or arranging support via SDS Options 2 or 3.

Parents whose children use SDS reported widespread difficulties with transitioning from children’s social services to adult social services. Many reported a break in service provision over several months, and a negative impact on family life and their adult children’s independence and opportunities.

### **Investment, funding and financial management**

There have long been calls for greater public investment in social care as part of the shift from acute services towards preventative, community-based support.<sup>32</sup> While the national social care budget has grown, thanks in part to campaigning by Scottish

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<sup>31</sup> <https://www.gov.scot/publications/implications-national-local-labour-markets-social-care-workforce-report-scottish-government-cosla/>.

<sup>32</sup> <https://www.audit-scotland.gov.uk/report/health-and-social-care-integration-update-on-progress>.

civil society,<sup>33</sup> it is widely recognised that much more investment is needed<sup>34</sup> and it is difficult to track overall spend.

Taking a human rights based approach to budgeting would embed fairness, transparency and people's participation in resource allocation, financial decision making, monitoring and accountability.<sup>35</sup>

The way public bodies raise and spend money is an indication of what they value, therefore if human rights are valued, they should be considered as budgets are developed. However, human rights and budgets are often discussed separately, and people's rights are not always considered in budgeting. But the way public bodies generate, allocate and spend money has huge implications for realising people's rights. Public bodies cannot guarantee people's rights without funding the policies, institutions and systems that are needed to make them a reality.

Human rights budgeting helps public bodies to reflect their values and ensure that their budgets respect, protect and fulfil human rights. In human rights budget work, human rights standards shape the budget's goals, and human rights principles shape the budget process. This can improve the impact of economic policy by making sure that financial decisions benefit those who are most in need.

As well as human rights budget work, other progressive economic models – like gender budgeting<sup>36</sup> and the Commission on a Gender-Equal Economy's 'Creating a Caring Economy'<sup>37</sup> – should be considered.

Unlike NHS health care, people must pay for some or all of their social care services. Charges are set locally, and according to COSLA care charging guidance from 2019-20, "Income from service user charges for non-residential care was £44 million."<sup>38</sup> Charging for social care uncompromisingly demands that some citizens must pay more to enjoy equality of access to the same human rights as other members of

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<sup>33</sup> <https://inclusionScotland.org/wp-content/uploads/2018/05/Shared-Ambition-for-social-care-final.pdf>.

<sup>34</sup> Around 25% of Scotland's £15bn health and social care budget in 2019-20 was allocated to social care.

<sup>35</sup> <https://www.scottishhumanrights.com/projects-and-programmes/human-rights-budget-work/>

<sup>36</sup> See, for example: <https://wbq.org.uk/blog/gender-budgeting-scotland-work-progress/>; <https://www.engender.org.uk/content/publications/GENDER-EDIT-OF-THE-SCOTTISH-GOVERNMENT-BUDGET-2019-2020.pdf>; <https://eige.europa.eu/gender-mainstreaming/methods-tools/gender-budgeting#:~:text=%20Gender%20budgeting%20is%20good%20budgeting%20%201,on%20the%20potentially%20different%20situations%20and...%20More%20>.

<sup>37</sup> <https://wbq.org.uk/wp-content/uploads/2020/10/WBG-Report-v10.pdf>.

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[https://www.cosla.gov.uk/sites/default/files/documents/nonresidential\\_social\\_care\\_charging\\_guidance\\_2019\\_20.pdf](https://www.cosla.gov.uk/sites/default/files/documents/nonresidential_social_care_charging_guidance_2019_20.pdf).

Scottish society. Social care should be universally free because equal participation in society and independent living are human rights that should be afforded to all. Access to independent living is a critical tool to enable people to contribute as citizens, creating an inclusive and equal society. Supporting independent living is to support not just individual rights, but to value the qualities and contributions that disabled people and people who live with long term conditions have to offer.

### **Commissioning and procurement**

Third and independent sector providers have long highlighted difficulties in engaging with local and integration authorities' commissioning processes. Some of the issues raised with the competitive tendering is that it hinders, rather than helps, partnership working and can contradict the values of personal choice and control embedded in SDS/social care legislation.<sup>39</sup>

In the 2019 CCPS Business Resilience Survey, just under 50% of respondents (third sector providers) stated that they had abstained or withdrawn from a procurement process in the 12 months preceding the survey.<sup>40</sup> Respondents reported that “financial sustainability of services was a primary consideration [...] when considering whether to bid for a service”, especially when competing against private companies for contracts. More broadly, CCPS warned that for two years running an increasing number of providers “required additional funding to be sustainable [...] using reserves and cross-subsidising to fund service deficits and maintain services.”

They concluded the report as follows:

“Providers are well aware of the financial difficulties that Local Authorities and Integrated Joint Boards (IJBs) face. However, it is not sustainable to continue to expect social care providers to pick up this cost for unsustainably funded services. [...] The recent Accounts Commission report that local authorities and IJBs are facing similar challenges with their own funding suggests that this situation is unlikely to improve without intervention.”<sup>41</sup>

During the pandemic, Scotland's third sector organisations have responded rapidly and flexibly; reorienting and refocusing their efforts to meet the challenge. We know that the stark financial impact of COVID-19 has also come at a time when many third sector organisations face increased levels of demand for their services. The longer-term survival of third sector health and social care organisations is at stake, and the

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<sup>39</sup> <https://storage.googleapis.com/scvo-cms/wp-content/uploads/2020/03/The-Future-Delivery-of-Social-Care-in-Scotland.pdf>.

<sup>40</sup> <http://www.ccpscotland.org/wp-content/uploads/2018/12/Business-Resilience-Survey-2019.pdf>.

<sup>41</sup> <http://www.ccpscotland.org/wp-content/uploads/2018/12/Business-Resilience-Survey-2019.pdf>.

unique services and support they deliver will remain just as vital – if not more so – as we continue through COVID-19 recovery.<sup>42</sup>

COSLA's 'Guidance for Commissioned Services during COVID-19 Response'<sup>43</sup> demonstrates that public bodies can take a more flexible approach to commissioning, particularly in comparison to models that reduce care to 'time and task' calculations. Other examples of positive changes are highlighted by iHub's 'COVID-19: Health and Social Care Learning in Scotland' initiative,<sup>44</sup> and substantial information and guidance about what good social care commissioning looks like is available from the Coalition of Care and Support Providers (CCPS).<sup>45</sup>

Sustainable funding and flexible approaches to commissioning, focused on equalities, human rights and personal outcomes – and designed to encourage innovative practice – are never more needed.

### **Potential national aspects of a social care system**

The proposal for a national social care service has caused some confusion amongst ALLIANCE members, particularly about what this means in practice. It was felt that there was a risk that this might simply be adopting the language of the national health service, without matching the depth of provision – or funding – that the NHS receives. Expressing concerns about an 'implementation gap', members emphasised that integration and ambition must be "vertical and horizontal" and present at the level of service delivery, not just as a national policy rhetoric.

However, some considered it an opportunity to move from perceptions of care as 'cost/burden' to care as 'investment', particularly given the evidence that investment in care has hugely positive benefits for society and economy.<sup>46</sup> Likewise, the possibility of making it easier to share and enforce best practice and working conditions across the country was seen as a substantial improvement over the current patchwork of localised systems, which can vary enormously and result in a 'postcode lottery' of care.

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<sup>42</sup> <https://www.alliance-scotland.org.uk/blog/news/leading-health-and-care-charities-urge-first-minister-to-help-safeguard-future-of-the-sector/>.

<sup>43</sup>

[https://www.cosla.gov.uk/\\_data/assets/pdf\\_file/0026/15569/coslaguidanceforcommissionedservices170420.pdf](https://www.cosla.gov.uk/_data/assets/pdf_file/0026/15569/coslaguidanceforcommissionedservices170420.pdf).

<sup>44</sup> <https://ihub.scot/project-toolkits/covid-19-health-and-social-care-learning-in-scotland/hscp-learning/applying-strategic-planning-and-commissioning-guidance/>.

<sup>45</sup> <http://www.ccpscotland.org/hot-topics/improve-commissioning/commissioning/>.

<sup>46</sup> Despite contributing an estimated £3.4bn to the Scottish economy, with a GVA greater than that of agriculture or the arts, social care is more commonly portrayed as a drain on public resources. See <https://tfn.scot/news/social-care-contributes-billions-to-the-scottish-economy>, and <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-Independent-Review-of-Adult-Social-Care.pdf>.

The ALLIANCE believes that all aspects of the future social care system – at all levels – can and should be centred around equalities and human rights. ‘Our Shared Ambition’ – a statement by Scottish civil society organisations, including the ALLIANCE – sets out the “core features of a modern, social care support infrastructure” centred around people’s rights, needs and preferences.<sup>47</sup> The Reform of Adult Social Care programme was already addressing many of these when the pandemic struck.

Regardless of any future structure for social care in Scotland, it is essential that necessary, transformational change is delivered, as detailed in this Briefing. The ALLIANCE recommends assessing potential options for a national care service, or other mooted reforms, by how effectively they would deliver this change, namely:

- Adhering to an equalities and human rights based approach.
- Closing the implementation gap between policy and people’s experiences.
- Ensuring adequate sustainable investment in social care, and adopting a human rights based approach to budgeting.
- Reversing the trend towards narrowing eligibility criteria and SDS budget cuts.
- Ensuring people get the right support, at the right time and in the right place.
- Great recognition and support for unpaid carers.
- Addressing low pay and poor conditions for social care staff.
- Making social care universally free at the point of use.
- Adopting flexible and innovative approaches to commissioning and procurement, focusing on equalities, human rights and personal outcomes.

## **For more information**

### **Contact**

If you would like to discuss any of the topics raised in this response, or to request any further information, please contact:

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<sup>47</sup> <https://inclusionScotland.org/wp-content/uploads/2018/05/Shared-Ambition-for-social-care-final.pdf>.

## About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for a range of health and social care organisations. We have a growing membership of nearly 3,000 national and local third sector organisations, associates in the statutory and private sectors, disabled people, people living with long term conditions and unpaid carers. Many NHS Boards, Health and Social Care Partnerships, Medical Practices, Third Sector Interfaces, Libraries and Access Panels are also members.

The ALLIANCE is a strategic partner of the Scottish Government and has close working relationships, several of which are underpinned by Memorandum of Understanding, with many national NHS Boards, academic institutions and key organisations spanning health, social care, housing and digital technology.

Our vision is for a Scotland where people of all ages who are disabled or living with long term conditions, and unpaid carers, have a strong voice and enjoy their right to live well, as equal and active citizens, free from discrimination, with support and services that put them at the centre.

The ALLIANCE has three core aims; we seek to:

- Ensure people are at the centre, that their voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change, towards approaches that work with individual and community assets, helping people to stay well, supporting human rights, self management, co-production and independent living.
- Champion and support the third sector as a vital strategic and delivery partner and foster better cross-sector understanding and partnership.