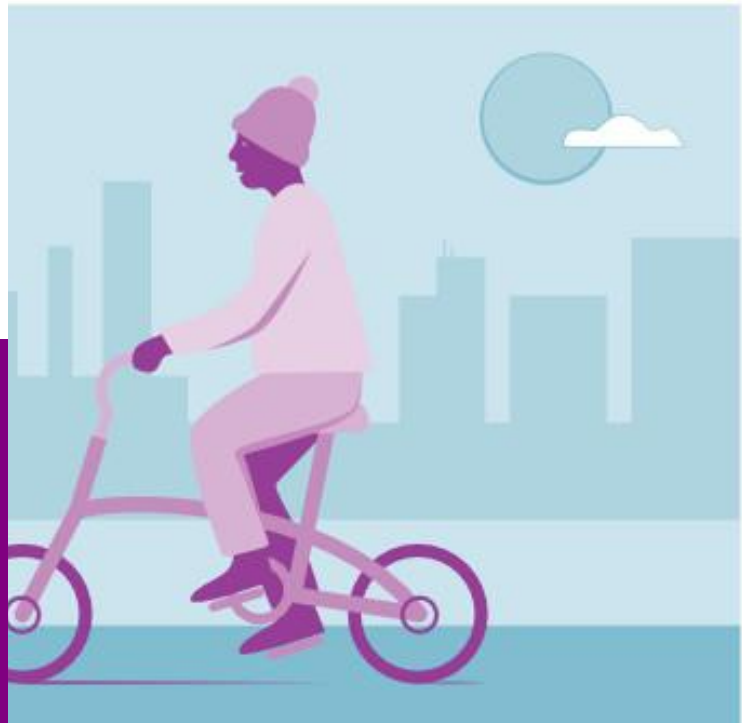




**The Health and
Social Care
Alliance
Scotland
(the ALLIANCE)**



**National Care Service (Scotland) Bill
Stage 1 debate briefing**

29 February 2024

Key points

- The ALLIANCE supports the principle of the creation of a National Care Service (NCS). The NCS offers an opportunity to improve people's experiences of rights based, person centred social care - if implemented in a way that responds to the concerns and experiences of people accessing social care and the workforce, and the recommendations in the Independent Review of Adult Social Care. As such, we recommend that MSPs vote in favour of the Bill at Stage 1.
- The ALLIANCE believes that the Bill as introduced requires substantial amendments at Stage 2 if it is to deliver improvements to the rights based, person centred social care that people need. We recommend several amendments to the Bill, as set out in this briefing.
- The ALLIANCE believes that the approach taken to develop the Shared Accountability Agreement risks undermining trust in the co-design process and in the NCS overall.
- The ALLIANCE calls on the Scottish Government to urgently publish its proposed Stage 2 amendments and asks the Scottish Parliament to extend the length of the Stage 2 process. This will enable stakeholders to meaningfully engage with the Bill and suggest amendments.
- The ALLIANCE recognises the difficult financial context but remains highly concerned about NCS financing, in particular ensuring adequate and sustainable funding for the third sector including but not limited to providers to carry out its functions under the Bill. The principles of human rights budgeting should be embedded in all NCS budgets at the national and local levels.



General Principles

The ALLIANCE supports the principle of the creation of a National Care Service (NCS). The NCS offers an opportunity to improve people's experiences of rights based, person centred social care - if implemented in a way that responds to the concerns and experiences of people accessing social care and the workforce, and the recommendations in the Independent Review of Adult Social Care. **As such, we recommend that MSPs vote in favour of the Bill at Stage 1.**

However, the ALLIANCE believes that the Bill will require **substantial amendments at Stage 2** if it is to deliver improvements to the social care support people need. Some of these are briefly described below, and we welcome more detailed discussion with MSPs ahead of Stage 2 proceedings.

Shared Accountability Agreement

Since the Bill was introduced, the Scottish Government and Convention of Scottish Local Authorities (COSLA) struck an agreement to share accountability, alongside NHS boards, for the NCS. This would see local government continuing to be responsible for the staff, assets and the delivery of social care. Whilst we understand that co-operation between national and local government is necessary to deliver the NCS, the ALLIANCE has repeatedly heard over the years, including through our 'My Support, My Choice' research¹, that many people who access – or try to access - social care or who provide unpaid care have felt let down and unheard by current accountability arrangements.

Making the decision on the accountability arrangements outwith the co-design or indeed the Bill scrutiny process has excluded the people the service should be designed by and for, as well as the third and independent sector which provides 78% of social care services² and plays a considerable role in informing and influencing policy and practice improvements. This risks undermining trust in the co-design process and in the NCS overall.



Scottish Government amendments

Further changes to the proposals were announced by Scottish Government in December 2023 including the creation of a National Care Service Board and for local services to be delivered by reformed Integration Authorities rather than creating Care Boards.³ The ALLIANCE welcomes the creation of a National Care Service Board, and strongly recommend that people with lived experience, the third and independent sectors are represented as equal members with equivalent rights to other members.

We also welcome the proposal to extend voting rights to lived experience members of Integrated Joint Boards, though further action and investment is needed to ensure lived experience representatives are adequately supported to play a meaningful role in decision making. At the same time, further action and investment is needed to ensure unpaid carer IJB members are also adequately supported.

To reflect these changes, the Scottish Government has confirmed their intention to bring forward several amendments at Stage 2 that will substantially alter the Bill.⁴ At the time of writing this briefing, the detail of these amendments have not been published. This, coupled with the relative lack of detail in the framework Bill, presents significant difficulty for the ALLIANCE and our members to engage and suggest amendments, as it is unclear whether parts of the Bill may be altered or removed by the Scottish Government's proposals.

The ALLIANCE calls on the the Scottish Government to urgently publish its proposed Stage 2 amendments, and asks the Scottish Parliament to extend the length of the Stage 2 process to enable stakeholders to meaningfully engage with the Bill and suggest amendments.



Proposed Amendments

The ALLIANCE recommends that MSPs make several amendments to the Bill as introduced, as described in more detail in our response to the Health, Social Care and Sport Committee's Call for Views.⁵ We are aware that some of our proposals may be affected by amendments we expect to be lodged by the Scottish Government. While we await the Scottish Government amendments, our interim proposals are summarised below.

Lived experience representation on care boards (Section 4(3)(a))

The ALLIANCE recommend amendments that support the full and equal membership of people with lived experience in care boards/reformed integration authorities /the National Care Service Board. This would include being given full voting rights (where these apply) and a duty to include multiple lived experience members to be considered quorate.

We welcome the sections in the Bill that enable care boards to pay care board and sub-committee members; the lack of proper remuneration has been a key barrier to lived experience representation on Integrated Joint Boards (IJBs) under the current funding model. However, we recommend the Bill includes an explicit duty to include multiple lived experience representatives to be considered quorate. Due to the Scottish Government's proposed changes, local care boards may no longer be part of the Bill, but this issue also applies to the revised proposals for reformed integration authorities and the proposed National Care Service Board.

Including the third and independent sector in strategic planning (Section 8)

The ALLIANCE recommend amendments to the Bill that explicitly acknowledge the third and independent sectors as key and equal partners in the planning and delivery of social care. One amendment would be a duty for care boards/reformed integration authorities /the National Care



Service Board to consult third and independent sector providers on draft strategic plans. Another amendment would be to appoint third and independent sector representatives as equal members of care boards/reformed integration authorities/the NCS National Board, with full voting rights where these apply.

The third and independent sectors are vital to the provision of social care and support in Scotland. There are an estimated 11,758 voluntary organisations operating within the social care sector in Scotland, and 1,988 health voluntary organisations.⁶ The vast majority of these are local (89% of third sector organisations overall, and 98% of community groups), providing tailored support to the people they serve.⁷ In 2023, 49,182 social care and support staff were employed within the voluntary sector in Scotland.⁸ That figure does not include volunteers – and Volunteer Scotland estimate that 200,000 volunteers provide support within the voluntary sector more broadly across the country.⁹

Due to the Scottish Government’s proposed changes, local care boards may no longer be part of the Bill, but the issues also apply to the proposals for reformed integration authorities and the proposed National Care Service Board.

Citizen access to and control of care records (Section 36)

The care records proposed in the Bill should follow best practice in human rights based approaches to data, and a digital choice approach. We recommend the Bill is amended so that regulations made under the Bill must include:

- Citizens’ rights to access and control care records pertaining to them, including the ability to decide who should have access to different types of information in their care record.
- Guardians’ rights to access and control the care records of the person for whom they care and hold Guardianship.



- Citizens' rights to access and control care records digitally or in other formats.

Third and independent sector access to care records (Section 36)

The ALLIANCE, in partnership with our member Mydex CIC, recommends the Bill is amended to ensure that third and independent sector providers of care and support (including personal assistants and support workers), citizens and unpaid carers can collect, store, access, share and use care records where appropriate via a personal data infrastructure. The amendment should require regulations made under the Bill provide for:

- Social care workers' access to the care records of people for whom they care, subject to permission from those individuals. This should include third and independent sector providers of social care and support, and personal assistants.
- Provision to support citizens, unpaid carers, and the workforce to design and deliver inclusive person centred services, with appropriate personal data infrastructure and workforce development to enable data collection, entry, control, storage and sharing under the control of citizens

This amendment should also introduce data infrastructure to underpin human rights and build trust and sustainable relationships between citizens and organisations across the health and care ecosystems. The citizen would become the point of integration across health and care to enable the design and delivery of inclusive, person centred services.

Strategic planning by Scottish Ministers (Section 6) and care boards (Section 7)

We recommend an amendment to the Bill for an explicit duty on Scottish Ministers and on care boards/reformed integration authorities/the National



Care Service Board to co-produce strategic plans with people with lived experience of accessing social care and unpaid carers (not just to consult).

The ALLIANCE welcome the sections in the Bill that commit to strategic planning and public consultation by Scottish Ministers (Section 6) and care boards (Section 7). Prioritising lived experience as a requirement for strategic planning would assist in the delivery of human rights based approaches to the proposed NCS and advance the practical application of the principles of participation, equality and non-discrimination.

Due to the Scottish Government's proposed changes, local care boards may no longer be part of the Bill, but this issue also applies to the proposals for reformed integration authorities and the proposed National Care Service Board.

Definition of ethical commissioning (Section 10)

The ALLIANCE recommends an amendment to the Bill that adds a definition of ethical commissioning which explicitly referencing human rights and a human rights based approach.

We welcome the references to ethical commissioning in Section 6 (Strategic planning by Scottish Ministers) and Section 7 (Strategic planning by care boards) of the Bill. These sections state that strategic plans must set out plans for ethical commissioning strategy in relation to the delivery of services.

However, at present there are a wide variety of interpretations of what "ethical commissioning" entails. If a clear definition is not provided in primary legislation, Scotland is likely to see inconsistent delivery of ethical commissioning – leading to the perpetuation of ongoing problems with varied delivery of services across different care boards and areas. If human rights are to be at the heart of the proposed new NCS they should be explicitly referenced in relation to commissioning.



National Care Service Charter and accountability measures (Sections 11 and 12)

The ALLIANCE recommends the Bill is amended to ensure that Ministers are accountable for ensuring that the NCS Charter is upheld. This should also include detailing in regulations the consequences if duty bearers do not operate in line with the Charter, and what options for redress are available to people if the Charter is not upheld. It would also require Scottish Ministers to have regard to relevant international human rights instruments in preparing the Charter; produce an annual report describing how they have met the expectations of them contained in the Charter; and make the Charter available in accessible formats.

Section 11 (The National Care Service Charter) and Section 12 (Further provision about the charter) of the Bill contain welcome commitments to human rights, including discussion of the importance of input from people accessing and delivering social care and support. However, while much of the proposed content of the Charter is welcome, and in line with PANEL principles – particularly legality, empowerment and accountability¹⁰ – there is nothing in the legislation to indicate the consequences of not upholding the Charter, how this will be monitored, or who is responsible should that occur.

Independent advocacy (Section 13)

The ALLIANCE recommend amendments to include a clear definition of independent advocacy and an explicit duty to provide independent advocacy services for everyone who wishes to access them in Scotland. In addition, Sections 6 (Strategic planning by Scottish Ministers) and Section 7 (Strategic planning by care boards) should include commitments to including the provision of independent advocacy services within all strategic planning.



The ALLIANCE welcomes the references to independent advocacy in Section 13 (Independent advocacy) of the Bill. Independent advocacy is vital in ensuring that people are properly supported to access health and social care, and to holding public bodies accountable when people's human rights are not met. The Bill offers an opportunity to strengthen those existing legislative commitments, by requiring Ministers to make provision for independent advocacy services within the NCS, and in turn ensuring that these vital services are properly resourced, included in strategic planning, and a duty to share information about local services is included for social work professionals as part of their work.

Limitations on transfer of care board functions in an emergency (Section 18) and on transfer of care board functions due to service failure (Section 19)

The ALLIANCE recommend that the transfer of care board functions should be both short term and time limited and include a duty on Ministers to refer to the principles set out in Section 1 (The National Care Service Principles) of the Bill. This will ensure that human rights are prioritised in the event of an emergency or service failure.

Section 18 (Transfer of care board's functions in an emergency) and Section 19 (Transfer of care board's functions due to service failure) are understandable contingency measures to include within the Bill to ensure that Ministers are fully accountable for the delivery of the National Care Service. While it is to be hoped that neither Section is required in practice, it is reasonable to outline in primary legislation measures to enable direct Ministerial input in instances where radical intervention is required.

We are concerned that the Bill as introduced does not place sufficient limitations on Ministerial interventions in the event of emergency or service failure. However, we recognise that these sections of the Bill may be removed by Scottish Government amendments.

Intersectional data collection and analysis



The ALLIANCE recommends an amendment to include a duty on Ministers and care boards/reformed integration authorities/the National Care Service Board to carry out data collection and intersectional analysis of people's access to and experience of social care, and to ensure that this information is used in strategic planning.

At present, data collection on social care is variable across each local authority and Health and Social Care Partnership. This causes substantial difficulties for analysts looking to collect and analyse social care data – and, in turn, for Ministers, local authority, and health and social care staff to effectively plan and deliver high quality social care, based on people's requirements and experiences, nor monitor their effectiveness and outcomes. Without measures in place in primary legislation to ensure good data collection and intersectional analysis, the NCS will struggle to evidence and respond to people's needs and rights across Scotland.

Financial Memorandum

The ALLIANCE remains concerned about the financing of the National Care Service, in particular ensuring adequate and sustainable funding for the third sector to carry out its functions under the Bill.

The Scottish Government published a revised Financial Memorandum in December 2023,¹¹ which contains more detail on costings and assumptions than the original Financial Memorandum. We recognise the difficult financial context and acknowledge that significant resource is necessary to implement the NCS.

However, we believe that social care is an essential and fundamental public good that engages multiple human rights and employs a significant workforce, mostly consisting of women. When we invest in social care, we enable people to live their lives with dignity and participate equally in society, whilst valuing the skills of the workforce and bridging the gender pay gap.



That investment must therefore be a priority for the government and investment now must also be prioritised to delivering the urgent priorities of fair pay for the workforce and the long overdue implementation of the commitment to end non-residential care charging, as well as implementing the NCS. The principles of human rights budgeting should be embedded in all budgets, both national and local, establishing clear principles as to how to direct that investment and, crucially, measuring the impacts and providing direct lines of accountability.

About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector intermediary for health and social care, bringing together a diverse range of people and organisations who share our vision, which is a Scotland where everyone has a strong voice and enjoys their right to live well with dignity and respect.

We are a strategic partner of the Scottish Government and have close working relationships with many NHS Boards, academic institutions and key organisations spanning health, social care, housing and digital technology.

Our purpose is to improve the wellbeing of people and communities across Scotland. We bring together the expertise of people with lived experience, the third sector, and organisations across health and social care to inform policy, practice and service delivery. Together our voice is stronger and we use it to make meaningful change at the local and national level.

The ALLIANCE has a strong and diverse membership of over 3,500 organisations and individuals. Our broad range of programmes and activities deliver support, research and policy development, digital innovation and knowledge sharing. We manage funding and spotlight innovative projects; working with our members and partners to ensure lived



experience and third sector expertise is listened to and acted upon by informing national policy and campaigns, and putting people at the centre of designing support and services.

We aim to:

- Ensure disabled people, people with long term conditions and unpaid carers voices, expertise and rights drive policy and sit at the heart of design, delivery and improvement of support and services.
- Support transformational change that works with individual and community assets, helping people to live 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 cross-sector understanding and partnership.

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¹ My Support My Choice – People's Experiences of Self-directed Support and Social Care in Scotland, the ALLIANCE and SDS Scotland, October 2020. 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/>

² National Care Service – adult social care workforce: evidence, Scottish Government, 21 June 2022. Available at <https://www.gov.scot/publications/national-care-service-adult-social-care-workforce-scotland/pages/3/>

³ Letter from Minister for Social Care, Mental Wellbeing and Sport to Health, Social Care and Sport Committee, 6 December 2023. Available at <https://www.parliament.scot/-/media/files/committees/health-social-care-and-sport-committee/correspondence/2023/national-care-service-minister-response-december-2023.pdf>

⁴ As above.

⁵ ALLIANCE response to Health, Social Care and Sport Committee Call for Views on the National Care Service (Scotland) Bill, 2 September 2022. Available at <https://www.alliance-scotland.org.uk/blog/news/alliance-response-to-the-national-care-service-scotland-bill/>

⁶ SCVO “Scottish voluntary sector organisations and activities”, *State of the Sector 2022: Scottish Voluntary Sector Stats* (2022), p. 4, available at: <https://scvo.scot/policy/sector-stats>.

⁷ SCVO, “Geographical reach: local, national and international”, *State of the Sector 2022: Scottish Voluntary Sector Stats* (2022), p. 8, available at: <https://scvo.scot/policy/sector-stats>.

⁸ SCVO, “Scottish Voluntary Sector Workforce”, *State of the Sector 2022: Scottish Voluntary Sector Stats* (2022), p. 19, available at: <https://scvo.scot/policy/sector-stats>.

⁹ Scottish Government, *Scottish Household Survey* (2020), available at: <https://www.gov.scot/binaries/content/documents/govscot/publications/statistics/2022/01/scottish-household-survey-2020-telephone-survey-key-findings/documents/scottish-household-survey-2020-telephone-survey-key-findings/scottish-household-survey-2020-telephone-survey-key-findings/govscot%3Adocument/scottish-household-survey-2020-telephone-survey-key-findings.pdf>. Combined figures mentioned are based on calculations by the research team at Volunteer Scotland. For more detail, see Volunteer Scotland, “Consultation Response: National Care Service (Scotland) Bill” (2022).

¹⁰ SHRC, “A human rights based approach: an introduction”, available at: https://www.scottishhumanrights.com/media/1409/shrc_hrba_leaflet.pdf.

¹¹ Letter from Minister for Social Care, Mental Wellbeing and Sport to Finance and Public Administration Committee, 11 December 2023. Available at https://www.parliament.scot/-/media/files/committees/finance-and-public-administration-committee/correspondence/2023/ncsbillfm_ministerscmwstoconvener_11dec23.pdf

