



The Scottish Parliament  
Pàrlamaid na h-Alba

## Criminal Justice Committee

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10 February, 2023

Dear Gillian,

### **National Care Service (Scotland) Bill: report from the Criminal Justice Committee**

As you know the Parliament appointed the Criminal Justice Committee as one of the secondary committees to consider the part of the National Care Service (Scotland) Bill relevant to the remit of our committee.

Section 30 of the Bill<sup>1</sup> would provide Scottish Ministers with the power to consult on whether to transfer criminal justice social work services from local authorities to the new National Care Service.

Following such a consultation, the Bill would also empower the Scottish Ministers to transfer criminal justice social work services to the National Care Service by way of subordinate legislation in the Parliament, should Ministers decide to make such a transfer.

The annex to this letter contains our report to your committee, as the lead committee, and our conclusions and recommendations on section 30 of the Bill.

Best wishes,

Audrey Nicoll MSP  
Convener, Criminal Justice Committee

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<sup>1</sup> s30 *Consultation before bringing children's and justice services into the National Care Service*:  
<https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/national-care-service-scotland-bill/introduced/bill-as-introduced.pdf>

## INTRODUCTION

### The Bill

1. The [National Care Service \(Scotland\) Bill](#) ('the Bill') was introduced into the Scottish Parliament by the Scottish Government in June 2022, with the aim of improving the quality and consistency of social services. The Scottish Government has stated that this is a framework bill, laying the foundations for the establishment of a National Care Service (NCS) in Scotland. The lead committee for the Stage 1 scrutiny of the Bill is the Health, Social Care and Sport Committee.

2. The Bill sets out powers allowing the Scottish Ministers to transfer responsibility for adult social care and social work, from local authorities to the new NCS. The NCS will be under the control of the Scottish Ministers. The transfer of functions would be done through a process of secondary legislation once the Bill has been enacted.

3. It would also allow the Scottish Government to bring criminal justice social work<sup>2</sup> (CJSW) and/or children's services into the NCS, removing them from local authority responsibility. Again, this would be done through secondary legislation. However, before doing so, the Bill would require the Scottish Government to carry out a public consultation and report back on the findings to the Scottish Parliament.

### Criminal Justice Committee scrutiny

4. Owing to the breadth of the policy areas the Bill covers, the Scottish Parliament has appointed four committees to act as secondary committees. Secondary committees may consider various parts of the Bill relevant to their own remit and report any conclusions and recommendations back to the lead committee for its consideration.<sup>3</sup>

5. The Criminal Justice Committee ('the Committee') is a secondary committee for the purposes of examining those provisions of the Bill relating to the possible transfer of criminal justice social work from local authorities to the NCS.

6. At its [meeting on Wednesday 23 November 2022](#), the Committee took oral evidence from Anil Gupta, Chief Officer for Communities, COSLA; Lynsey Smith, Chair of the Justice Standing Committee of Social Work Scotland, and Kate Ramsden, National Executive Member of UNISON Scotland.

7. COSLA, Social Work Scotland and UNISON Scotland all provided written submissions to the lead Committee's public call for views on the Bill, which ran from 7 July to 2 September 2022.

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<sup>2</sup> Justice social work is also referred to as criminal justice social work.

<sup>3</sup> The other secondary subject committees are the Local Government, Housing and Planning Committee, the Education, Children and Young People Committee, and the Social Justice and Social Security Committee.

8. The Committee also received a written response<sup>4</sup> from Claire Wilson of Aberdeen Health and Social Care Partnership. This response was based on the questions the Committee put to witnesses in the oral evidence taking session on 23 November.

9. At its [meeting on Wednesday 21 December](#), the Committee concluded its evidence taking by hearing from Kevin Stewart MSP, Minister for Mental Wellbeing and Social Care, who is the Minister in charge of the Bill. On 13 January 2023, the Minister also provided further written evidence following on from his appearance before the Committee.<sup>5</sup>

## **Current structure**

10. Criminal justice social work and the system of community justice in Scotland is one of the key cornerstones of the Scottish criminal justice system and is central to the management and rehabilitation of offenders.

### *Criminal justice social work*

11. CJSW services are currently part of local authorities, which are responsible for the delivery of community orders and related criminal justice social work interventions, with support from partners including third sector organisations. Funding for criminal justice social work services is currently provided by the Scottish Government by way of a ring-fenced grant to local authorities. CJSW services may be, but are not required to be, delegated to Integration Authorities (also known as Integration Joint Boards (IJBs) or Health and Social Care Partnerships (HSCPs).

12. This has resulted in a mixed approach across the country, in which CJSW services are delegated to IJBs in seventeen local authority areas, have a joint delivery model in one area and are retained by the local authority in twelve areas.<sup>6</sup> The range of services CJSW provide includes:

- assessments and reports to assist decisions on sentencing;
- court services to assist those attending court;
- bail information and supervision services as an alternative to custodial remand;
- supervising people on social work orders to tackle offending behaviour and its causes;
- supervising people who are required to perform unpaid work for the benefit of the community;
- prison-based criminal justice social work services to those serving custodial sentences that involve statutory supervision upon release;

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<sup>4</sup> Written submission from Claire Wilson, Chief Social Worker, Aberdeen Health and Social Care Partnership, 28 November 2022: <https://www.parliament.scot/-/media/files/committees/criminal-justice-committee/correspondence/2022/ncs-bill-additional-written-evidence-aberdeen-city-hscp.pdf>

<sup>5</sup> Letter from the Minister for Mental Wellbeing and Social Care, 13 January 2023: <https://www.parliament.scot/-/media/files/committees/criminal-justice-committee/correspondence/2023/minister-for-wellbeing-to-convener-follow-up-evidence-23-december-2022-meeting.pdf>

<sup>6</sup> These figures include Highland Council, which has a joint lead agency model delivering social work services with NHS Highland, and Stirling and Clackmannanshire councils, which operate a single shared social works department between them.

- preparing reports for the Parole Board to assist decisions about release from prison; and,
- through care services including parole, supervised release and other prison aftercare orders to ensure public safety.<sup>7</sup>

13. According to the latest Scottish Government statistics, there were 937 main grade or senior criminal justice social workers across local authorities in Scotland in 2020. There were 28,500 criminal justice social work reports submitted in 2019-20, and 1,990 cases commenced for diversion from prosecution covering 1,930 individuals. The total number of community payback orders in 2019-20 was 16,800, while there was 520 drug treatment and testing orders during that same period.

### *Community justice*

14. The current model for community justice came into operation on 1 April 2017, underpinned by the Community Justice (Scotland) Act 2016. This Act places duties on a group of statutory partners to engage in community justice planning and to report against a set of nationally determined outcomes.

15. The Scottish Government's National Strategy for Community Justice states that the key principle of community justice is about "organisations working together to ensure that people who have offended address the underlying causes of their behaviour and pay back to the community where appropriate". The aim of community justice should be to "encourage rehabilitation, reduce reoffending, and protect the public, leading to fewer victims and safer communities." This "requires a strong partnership-working approach from the point of arrest, through to integration into the community", "with robust risk management systems in place to ensure that, where appropriate, those who have committed offences can be managed safely and effectively in the community."<sup>8</sup>

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<sup>7</sup> *Justice Social Work in Scotland, Crime and Justice social research*: Scottish Government (June 2022): <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2022/06/national-care-service-justice-social-work-scotland/documents/justice-social-work-scotland/justice-social-work-scotland/govscot%3Adocument/justice-social-work-scotland.pdf>

<sup>8</sup> *National Strategy for Community Justice*, Scottish Government (30 June 2022): <https://www.gov.scot/publications/national-strategy-community-justice-2/pages/2/#:~:text=community%20justice%20partners-,What%20is%20community%20justice%3F,to%20the%20community%20where%20appropriate.>

## EVIDENCE TAKING

### Establishment of a National Care Service

#### *Absence of detail on the inclusion of CJSW*

16. All of the non-government witnesses from whom the Committee received written and oral evidence shared a common frustration around the Bill. As it is largely drafted as a 'framework' Bill, most witnesses were concerned that the lack of detail from the Scottish Government prevented them from being able to make a valid assessment of the possible impact of the NCS on CJSW services. Several witnesses said it was impossible for them to assess how any future transfer of these services into the NCS may impact their delivery and efficiency.

17. One of the key issues to emerge was a view that the provisions on CJSW in the Bill do not sit comfortably with the majority of the provisions, which are primarily focussed on the provision of social care. In 2020, the Scottish Government commissioned the *Independent Review of Adult Social Care in Scotland*,<sup>9</sup> chaired by Derek Feeley, former Director General for Health and Social Care and Chief Executive of NHS Scotland. Its final report ('the Feeley Report') was published on 3 February 2021 and has gone on to form the basis for the proposed changes to the delivery of social care set out in the Bill.

18. The principal aim of the review was to recommend improvements to adult social care in Scotland. Primarily in terms of the outcomes achieved by and with people who use these services, their carers and families, and the experience of people who work in adult social care. The review took a human-rights based approach.

19. Lynsey Smith of Social Work Scotland pointed out that the Feeley Report did not include criminal justice social work services in its considerations and whether such services should be incorporated into a new NCS. As such, she stated, the proposals for the NCS structures in the Bill were not co-designed from the point of view of including criminal justice social work in the NCS.<sup>10</sup>

20. While Social Work Scotland stated their frustrations with the lack of detail in the Bill, they also highlighted some potential benefits that streamlining of CJSW services under the NCS could deliver. In their written evidence<sup>11</sup>, they argue that there should be a review of the evidence base for inclusion of children's and justice services within the NCS, before Scottish Ministers make any decision on whether to transfer these functions.

21. Such an evidence review they argue, should be carried out before any decisions are taken on the design of the NCS, so that its development can reflect the full range of services covered.

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<sup>9</sup> Report of the Independent Review of Adult Social Care in Scotland (3 Feb 2021): <https://www.gov.scot/publications/independent-review-adult-social-care-scotland/>

<sup>10</sup> Criminal Justice Committee, Official Report 23 November 2023 Col 42.

<sup>11</sup> Written submission from Social Work Scotland: [https://yourviews.parliament.scot/health/national-care-service-bill/consultation/view\\_respondent?show\\_all\\_questions=0&sort=excerpt&order=ascending&q\\_text=social+work+scotland&uuld=204943498](https://yourviews.parliament.scot/health/national-care-service-bill/consultation/view_respondent?show_all_questions=0&sort=excerpt&order=ascending&q_text=social+work+scotland&uuld=204943498)

22. Lynsey Smith explained some of the benefits such as moving criminal justice social work from “32 local authorities to one joint point of accountability” as part of the NCS. This, she said, would eliminate the “cumbersome” multiple arrangements that are currently in place. This is based on the “assumption that streamlining it and having one point of contact, with one set of governance arrangements, would lower some of the barriers to developing and scaling up improvements and services”.<sup>12</sup>

23. Kate Ramsden of UNISON Scotland highlighted the problem the Bill poses for stakeholders and the Scottish Parliament alike when trying to make a determination about the potential impact of the NCS on CJSW. She said-

“The trouble for us is that there is no detail about what social work would look like if the proposals went ahead. The bill, if passed, will leave it open to ministers in making secondary legislation, and it will leave our social work and social care members hostages to fortune as to what their service will look like, who their employer will be and how services will be managed and funded.”<sup>13</sup>

24. Kate Ramsden also cautioned over how the Scottish Government’s approach to the formulation of the Bill and the proposals for CJSW has undermined the confidence of social workers in the process and how successful it may be, saying-

“There is a sense that there has been no opportunity to look at the role of social work and the important role of criminal justice social work, or to look at the professional values that underpin that role. All that needs to be looked at, but it should not be looked at after the bill has been passed; it should be looked at before the bill goes through [the Scottish] Parliament, because if we do not do that, we can have no confidence that those voices and the voices of service users will be listened to and heard.”<sup>14</sup>

25. In her written submission to the Committee, Claire Wilson, Chief Social Worker with Aberdeen Health and Social Care Partnership, pointed out that the focus of the Feely Report was based around what is required to improve care services. The report, she said “did not consider the wider statutory functions of social work in relation to public protection, nor did it take into account the landscape it currently works within.” She pointed out that “from a misguided notion of keeping ‘social work’ together, other elements of social work appear to have been bolted on without fully comprehending the complexity of this and the impact it has thereafter.”<sup>15</sup>

26. COSLA expressed a similar frustration with the Bill. In their written evidence<sup>16</sup> they argued that that CJSW services, along with other areas of social work, should remain within Scottish local government, and that additional funding is required to expand and improve services.

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<sup>12</sup> Criminal Justice Committee Official Report 23 November 2022, Col 39.

<sup>13</sup> Criminal Justice Committee Official Report 23 November 2022, Col 40.

<sup>14</sup> Criminal Justice Committee Official Report 23 November 2022, Col 43.

<sup>15</sup> Written submission from Claire Wilson, Chief Social Worker, Aberdeen Health and Social Care Partnership, 28 November 2022 (page 1): <https://www.parliament.scot/-/media/files/committees/criminal-justice-committee/correspondence/2022/ncs-bill-additional-written-evidence-aberdeen-city-hscp.pdf>

<sup>16</sup> Written submission from COSLA: [https://yourviews.parliament.scot/health/national-care-service-bill/consultation/view\\_respondent?show\\_all\\_questions=0&sort=excerpt&order=ascending&q\\_text=cosla&uuld=55566480](https://yourviews.parliament.scot/health/national-care-service-bill/consultation/view_respondent?show_all_questions=0&sort=excerpt&order=ascending&q_text=cosla&uuld=55566480)

27. They highlighted what they saw as the potential negative consequences of merging CJSW services into a new NCS, warning that structural changes will add additional uncertainty for services which are already facing significant challenges.

28. Even where CJSW services are not incorporated into a new NCS, COSLA believes there will be consequences for the existing service. Currently, CJSW is delegated to integrated joint boards (IJBs) in many areas. If IJBs should be disbanded because of reforms in the Bill, COSLA stated this will have an impact on how criminal justice social work is delivered across Scotland.

29. In his oral evidence, Anil Gupta of COSLA warned that the lack of clarity in the Bill about the structure and operating of the NCS, was already causing concern across the local government sector, where a multi-agency approach to community justice has developed. This confusion, he feared, is already drawing capacity away from addressing the current problems faced by the system. He told the Committee that-

“The bill does not cover in any satisfactory way the multi-agency work for which local government is responsible in community justice and where that would end up. We will still have matters around housing, employability, education and skills to bring to the table, but we will probably not have the services that help to complete the picture should they be taken out of local government. The lack of definition means that we have an unclear proposition and it is difficult to do the work.”<sup>17</sup>

#### *Scottish Government*

30. In his evidence to the Committee on 21 December, Kevin Stewart MSP, Minister for Mental Wellbeing and Social Care (‘the Minister’) acknowledged the Bill is designed to set out a framework for the changes the Scottish Government believed are required to social care and social work in Scotland. As a framework bill, the legislation provides the scope for further decisions to be made around the possible integration of CJSW and community justice services into the NCS. This flexibility, the Minister stated, “will enable the NCS to develop, adapt and respond to specific circumstances over time”.<sup>18</sup>

31. Responding to questions raised as to why the Scottish Government has opted to include provision for the possible transfer of CJSW services now, and whether those provisions in the Bill are ill-advised at this time, given the lack of consultation undertaken with justice services before its introduction, the Minister acknowledged the concerns of many stakeholders.<sup>19</sup> The Minister was at pains to point out that the Scottish Government is undertaking comprehensive consultation with local government and justice stakeholders, and that no decision has yet been made on whether to transfer CJSW to the NCS.

32. The Minister told the Committee, the reason for including CJSW in this framework Bill at this stage was made because-

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<sup>17</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 41.

<sup>18</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 3.

<sup>19</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 6.



“...we found that many folks felt that bringing only adult social care into the national care service could lead to difficulties around transition points and cause problems with linkages, [...] That is why we consulted about bringing other things into the national care service. [...], if we are to bring community justice and children’s services into the national care service, we recognise that we need to have the evidence base to do that. That is why we are carrying out the research and the options appraisal and, most importantly, why we are listening to stakeholders to establish whether those services should be included in the national care service.”<sup>20</sup>

33. The Minister reassured the Committee that the Scottish Government did not suddenly pluck the idea of including provision for the transfer of CJSW “out of thin air”. He said the Scottish Government “listened to the voices of people with lived experience and to their views and thinking on what they wanted the national care service to deliver.”<sup>21</sup>

34. He reassured the Committee that any decision by the Scottish Ministers to transfer CJSW services “will be taken on the basis of evidence that is collated by the sector”, and that he and the Scottish Government are “committed” to listening “to the profession” in the CJSW sector.<sup>22</sup>

*Planning and commissioning, statutory functions and possible privatisation*

35. In November 2022, the Scottish Government provided additional briefing material to the Committee on the Bill, in relation to a number of points. This included details of how the new commissioning model of operation of the NCS might accommodate the delivery of CJSW at a local level. The full briefing note is available online.<sup>23</sup> Amongst the information provided the Scottish Government confirmed that-

“On local provision

- Services will continue to be designed and delivered locally. That is right, to support delivery with and for our communities, and the people they serve.
- Care boards will provide the understanding of local needs and ensure that local engagement is maintained.

On the workforce

- In partnership with COSLA, the Scottish Government published the National Workforce Strategy for Health and Social Care on 11 March 2022.
- The Strategy outlines our shared vision for a sustainable, skilled workforce with attractive career choices where all are respected and valued for the work they do.
- Any future decision on the transfer of staff will be a matter for individual local authorities; local authorities will be able to continue to provide social care services if they wish, commissioned by the local care board.
- [The Scottish Government] will work closely with local government, the workforce and unions to ensure that the impact on staff of any changes is fully considered.”

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<sup>20</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 5.

<sup>21</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 6.

<sup>22</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 9.

<sup>23</sup> Criminal Justice Committee meeting paper CJ/S6/22/29/4 (Annex B):  
<https://www.parliament.scot/~media/committ/4527>



36. Commenting on the commissioning model of planning and delivery of service, and what this may mean for CJSW, Anil Gupta told the Committee that-

“A commissioning approach locks in all of your current service provision, including your strengths and weaknesses, whereas if you manage something locally, you can be much more responsive to what is going on. To my mind, commissioning solidifies things; it prevents you from revisiting your contracts until they come up for retendering, and it creates a degree of stasis in the whole system at a point when we are trying to make fairly significant changes to services and public attitudes.”<sup>24</sup>

37. In relation to staffing and workforce relations, Anil Gupta pointed out a feature of the present model of delivery, where it is not clear the proposed national-level NCS commissioning model in Scotland would address key issues, such as policy on the registration of violent sex offenders-

“...who will represent the workers and deal with the issues that they face in delivering these policies. You will get the trade unions’ side, but we in local government also work with the Scottish Government and the UK Government on matters such as the violent sex offenders register, access to information, data sharing and so forth. From where I stand at the moment, I find it difficult to understand how all those significant service matters would work in practice.”<sup>25</sup>

38. An NCS national model of commissioning may have other consequences for the delivery of CJSW services in the future. One such consequence is whether a national commissioning model, as opposed to a local authority controlled one, may open up the prospect of private sector entities bidding for, and winning, contracts for the delivery of CJSW services. Especially if various local authorities were to decide not to bid to deliver such services in their own area. Anil Gupta of COSLA was unsure as to whether this may be a realistic prospect. However, he did tell us that on employability, he was “aware that, when councils were able to put in tenders for the delivery of services, some chose not to, while some were successful.”<sup>26</sup>

39. Kate Ramsden of UNISON Scotland had no doubt the current proposal for a national commissioning model would lead to service privatisation, saying-

“...there is no doubt that it paves the way for extensive outsourcing and privatisation—it enables that to go ahead. If that happens, criminal justice social workers, and other social workers for that matter, could have a change of employer every three years, when services are tendered for. Although there are already huge pressures on the system, creating that additional uncertainty and upheaval is not helpful at all for the people who are trying to deliver the service now.”<sup>27</sup>

40. Such a scenario, it was suggested, may also give rise to the possibility that statutory services of the nature of CJSW, which are presently delivered on a not-for-

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<sup>24</sup> Criminal Justice Committee Official Report, 23 November 2022, Cols 52-53.

<sup>25</sup> Criminal Justice Committee Official Report, 23 November 2022, Cols 53.

<sup>26</sup> Criminal Justice Committee Official Report, 23 November 2022, Cols 50.

<sup>27</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 52.

profit basis by local authorities, could in future be delivered by for-profit private sector organisations. Witnesses questioned whether it is desirable and appropriate to have such services delivered in such a way.

41. Kate Ramsden responded that this “is yet another thing that we just do not know, and it is another thing that is creating quite a lot of stress and anxiety for our members, because we do not know how it will be managed.” She added that local authority social work staff “do not even know how [their] pensions will be managed, if [they] are taken out of local government.”<sup>28</sup>

42. Lynsey Smith of Social Work Scotland was also unsure of the risk posed by the possible scenario of privatisation of commissioned social work services. However, she stated that-

“There is a huge argument to be made for working with the system, the structure and the set of governance arrangements that are in place now. As the research and evidence come in and evolve, we will probably be better placed to decide whether that is the preferred option instead of justice being included in the national care service.”<sup>29</sup>

#### *Scottish Government*

43. Responding to the concerns raised around issues of the centralisation of decision and tendering processes, and the possible privatisation of service delivery, the Minister stated that-

“There will be no privatisation of those services. [...] the national care service will balance the need for local flexibility by having care boards plan and commission care while providing national consistency through ministers being ultimately accountable.”<sup>30</sup>

44. The Minister did not share the fears expressed by witnesses that an NCS-provided national commissioning model would, by extension, mean that for-profit private sector providers could win contracts for the delivery of CJSW services. He told the Committee-

“We have had situations in which a huge amount of tendering has gone on and the winning of contracts has been based on price. I will be honest with you: omissions from such contracting frustrated me over the years in which I was in a local authority—I hasten to add that not everything that we did was based on price. Other elements should be put into procurements. Fair work is the main example. We are looking at other elements that can be built into all of that. Currently, there is a mixed economy for care. Let us be honest: the third sector plays a hugely important role in all of this, and I am quite sure that nobody wants to omit it as we move forward. Ethical procurement will drive up transparency and bring fair work into play.”<sup>31</sup>

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<sup>28</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 52.

<sup>29</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 53.

<sup>30</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 14.

<sup>31</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 21.

45. In supplementary written evidence on 13 January 2023, the Minister expanded on his position how a national commissioning model, and its implications for service delivery and staffing, might operate saying-

“No decisions have been taken at this stage on the employment of qualified social workers or the delivery of social work services under the National Care Service. These decisions need to be taken as part of the commitment to a co-design process in developing a NCS focused on the views of people needing care and support. Neither is there any intention to privatise social work services or outsource social workers, but to implement a consistent approach to commissioning across Scotland. Through the NCS we expect that the option to deliver social care services and supports in house by Care Boards, or through outsourcing to a range of providers including Local Government, private and third sector organisations, will be considered locally as part of an ethical commissioning strategy.”<sup>32</sup>

## **Research, consultation and co-design**

### *Preparation and pace of the statutory consultation*

46. To prepare for undertaking the statutory consultation provided for in the Bill, the Scottish Government is engaged in a programme of research work, with key stakeholders, in order to scope a programme of work. This has included facilitating a scoping group with representatives from COSLA, Social Work Scotland and Community Justice Scotland. This work consists of three key elements, namely-

- Research on the strengths and weaknesses of current CJSW practice, and the implications of the inclusion or not of CJSW services in the NCS. This research work is currently underway;
- Option appraisals to be carried out to support prospective delivery models for CJSW (both within and outside an NCS), co-designed with stakeholders and people with lived experience. These appraisals are running concurrently to the aforementioned research;
- A twelve-week public consultation on the outcomes of the research and option appraisals to seek views on the proposed approach to the future delivery of CJSW. This will help inform a final decision on the future delivery of CJSW services.

47. Speaking of this research and option appraisals work, Anil Gupta told us that-

“Unfortunately, [COSLA] do not know enough about what the proposition is to be able to do that work properly. The work is probably being done the wrong way round. We should consider the strengths and weaknesses of the current systems and what is needed to make them deliver in the future and then, perhaps, discuss where they are positioned and what is needed.”<sup>33</sup>

48. Lynsey Smith acknowledged that there is “an appetite for change and reform” in the social work sector, both in terms of driving improvements and consistency in

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<sup>32</sup> Letter from the Minister for Mental Wellbeing and Social Care, 13 January 2023: <https://www.parliament.scot/-/media/files/committees/criminal-justice-committee/correspondence/2023/minister-for-wellbeing-to-convene-follow-up-evidence-23-december-2022-meeting.pdf>

<sup>33</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 41.

the service across the country, and in terms of tackling some of the major challenges facing the sector.

49. She also reiterated the points made by stakeholders like UNISON Scotland that many in the sector are “weary” and there is worry about “whether this scale of change [proposed in the Bill] is appropriate at this time, given what folk have been through and have been dealing with”. Lynsey Smith hoped the research programme would “set out the strengths and weaknesses of the current system”, stating it is important-

“...to work out what the benefits might be to justice social work being included in the NCS in relation to leadership. [...] Structures in themselves will not achieve the change that we are looking for; there is a collective that needs to be looked at, and leadership and professional development lead into those kinds of opportunities for the staff group as a whole.”<sup>34</sup>

50. Claire Wilson of Aberdeen Health and Social Care Partnership stated that, in the programme of research, the Scottish Government needs to “consider the impact of suggestions for the whole of social work statutory duties and not just delivery of social care.” Stressing the need for the Scottish Government to carefully listen to the concerns raised by stakeholders, she said that pausing the whole Bill “is not the answer”, but rather the Scottish Government “need to take time to get it right”.

51. On the question of a more comprehensive and slower consultation process than the one presently underway, and whether that may allay some of the concerns being voiced, Claire Wilson said “this would allow people to really consider what [reform] could look like, understand the impact and be part of the process of change.”<sup>35</sup>

### *Scottish Government*

52. Responding to these concerns, the Minister told the Committee that work is currently in progress to collate evidence on whether CJSW should be moved to the NCS. This includes working with partners “to develop options for the future of justice and include a public consultation at the end of 2023, which is a result of the feedback from stakeholders in the consultation”. The Minister confirmed that “justice social work staff and people with lived experience” will be central to the Scottish Government’s programme of research and evidence gathering.<sup>36</sup>

53. Questioned on the exact timetable for a final decision by Scottish Ministers on whether to proceed with a transfer of CJSW services to the NCS, the Minister explained the research work currently underway would allow for an “understanding of the desirability and viability of each option” to be developed and-

“That will help to inform an in-principle decision in autumn 2023. The final phase is the 12-week public consultation to seek views on the proposed

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<sup>34</sup> Criminal Justice Committee Official Report, 23 November 2022, Cols 42.

<sup>35</sup> Written submission from Claire Wilson, Chief Social Worker, Aberdeen Health and Social Care Partnership, 28 November 2022: <https://www.parliament.scot/-/media/files/committees/criminal-justice-committee/correspondence/2022/ncs-bill-additional-written-evidence-aberdeen-city-hscp.pdf>

<sup>36</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 2.

approach. That will commence in late 2023, and it will inform a final decision in around April 2024.”<sup>37</sup>

54. In supplementary written evidence,<sup>38</sup> the Minister set out a detailed timetable for the consultation and decision-making process on whether CJSW services will be moved to the NCS-

- November 2022: Stakeholder Reference Group established
- December 2022: Options Appraisal process begins
- January 2023: External research begins
- February 2023: Interim research findings
- August 2023: Final research findings
- September 2023: Options Appraisal concludes
- October 2023: In-principle decision
- November 2023: Public consultation opens
- February 2024: Public consultation closes
- April 2024: Final decision.

#### *Consultation process and co-design*

55. One of the major problems highlighted by witnesses with the approach the Scottish Government has taken in the Bill is the lack of co-design between reform of CJSW services and the design of the NCS from the beginning. Witnesses feared this failure may make future successful integration very difficult, if not impossible, or risk causing as many problems for the efficient delivery of CJSW as integration with the NCS seeks to solve.

56. Lynsey Smith stated that Social Work Scotland is of the view that “co-design” of the NCS “needs to happen first”. This is so “it can inform any future legislative process” on the design of the NCS and whether it will be compatible to future integration of CJSW services. As a result of the failure to take such a co-design approach to the NCS from the outset, Social Work Scotland told us that they “would not be in favour of the bill continuing at the moment.”<sup>39</sup>

57. Lynsey Smith feared the lack of an integrated co-design process from the start could exacerbate existing problems for social work, such as the increasing difficulty in recruiting and retaining social work staff. She set out the scale of the current staff retention problem for the Committee, telling us that-

“...one in four of our social work students who graduate will not make more than six years in the job. We know from our own surveys that more and more social workers are looking to take early retirement, and we think that [the lack of co-design] will only make things worse. We would ask you to put pressure on the Scottish Government to go back to the drawing board, to look at the proposals again and to co-design properly.”<sup>40</sup>

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<sup>37</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 12.

<sup>38</sup> Letter from the Minister for Mental Wellbeing and Social Care, 13 January 2023: <https://www.parliament.scot/-/media/files/committees/criminal-justice-committee/correspondence/2023/minister-for-wellbeing-to-convener-follow-up-evidence-23-december-2022-meeting.pdf>

<sup>39</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 54.

<sup>40</sup> Criminal Justice Committee Official Report, 23 November 2022, Cols 40-41.

58. Anil Gupta highlighted the need for key partners to focus on addressing existing problems with criminal justice social work, as opposed to focussing on a consultation on whether to integrate with the proposed NCS. The local government sector is “very keen” to address the key challenges facing criminal justice social work he told us, such as “workforce, finances, experimentation and learning from elsewhere”. He went on to say that the more important priority for the social work sector now is “to look more at what is required in order to achieve sustainable change, rather than to hobble ourselves with a complete change in structures” in terms of the creation of the NCS and the transfer of CJSW to it.<sup>41</sup>

59. UNISON Scotland highlighted the importance of co-design in ensuring a range of services continue to work effectively together as part of a “whole system approach”<sup>42</sup>. They warned that the creation of the NCS without criminal justice social work would “fragment the social work family and undermine integrated working”. Whilst the inclusion of criminal justice social work, they state, would “undermine the integration of local services” (e.g., with those relating to housing and employability). This highlights the complex nature of the current systems and why any process of change has to be undertaken in the right way.

60. UNISON Scotland pointed out that the Scottish Government has a very good model for consultation, and this was used well in the case of the “Independent Care Review which resulted in the Promise”.<sup>43</sup> Kate Ramsden felt that the approach taken by the Scottish Government on this occasion, in considering whether CJSW should be included in the Bill, had been done “back to front.” She believes the Scottish Government-

“...needs to pull the proposals back and do things the right way round, with proper consultation now—with social workers, service users and communities at the centre of things. It should hold the bill until that has been done, because it might well look completely different after that.”<sup>44</sup>

61. Lynsey Smith welcomed the proposal for a slower and more detailed consultation process, believing it would give all the key stakeholders “time to start thinking through the implications, both positive and negative, and the opportunities.” This, she felt, would “offer a degree of comfort, and folk would feel that their voices were being heard and that they were part of a process.”<sup>45</sup>

62. Anil Gupta reassured the Committee that COSLA is “not sceptical about the willingness of those in the Scottish Government to listen to our concerns about criminal justice and community justice”. He pointed out-

“...the Scottish Government and local government have shared competency in this area and the bill does not acknowledge that. Instead, it leaves it to ministers to decide where justice will go. The best that we have been able to get—which is still useful—is for the research findings to be presented jointly to the Scottish Government and local government.

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<sup>41</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 43.

<sup>42</sup> Written submission from UNISON Scotland: [https://yourviews.parliament.scot/health/national-care-service-bill/consultation/view\\_respondent?show\\_all\\_questions=0&sort=submitted&order=ascending&q\\_text=unison&uid=739241767](https://yourviews.parliament.scot/health/national-care-service-bill/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&q_text=unison&uid=739241767)

<sup>43</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 45.

<sup>44</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 55.

<sup>45</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 56.

63. However, he questioned whether this approach really provided the Scottish Parliament and its committees with the opportunity to meaningfully scrutinise the policy decisions reached by the Scottish Ministers in this important area. Especially in light of the fact all of the meaningful detail will only be contained in secondary legislation, and this will not be accompanied with a detailed Financial Memorandum on the resources needed.<sup>46</sup>

#### *Scottish Government*

64. The Minister acknowledged the challenges facing the social work sector on issues such as staff retention and recruitment and the need to ensure that key linkages between CJSW and other key services, such as housing, are maintained.

65. The Minister recognised the benefits of adopting a co-design process with key social work partners and others in the creation and establishment of the NCS. He reassured the Committee that the Scottish Government was “committed to co-designing and working with people with first-hand experience of accessing and delivering social work and social care” to “ensure that we have a person-centred national care service that best fits the needs of the people who will use and work in its services”.<sup>47</sup>

66. The Minister rejected the view that the Scottish Government’s approach to the formulation of the plans for the NCS to date required the Bill to be paused. He argued that the research work and options appraisals currently underway into CJSW services “will fully consider the implications and opportunities for improvements across community justice and criminal justice social work”. He recognised that “there have been a number of calls for [the whole] Bill, or elements of it, to be paused”. However, he stated that “many people want to see” the reform process set out in the Bill “moving at pace”.<sup>48</sup>

67. As Minister, he said the Scottish Government has “to strike the right balance” between the need for reform of both social care and social work, and the process of design of the NCS. He pointed out, however, that-

“...pausing the bill will not stop the work that we need to do to ensure that we get the best outcomes for people. As far as I am concerned, a national care service is the best way forward.”<sup>49</sup>

68. He went on to point out how the establishment of the NCS could provide solutions to some of the challenges witnesses have highlighted. For example, on social work staff retention and the staff “churn” to which the sector is susceptible, he said-

“...we know that there are folks who leave one authority to go to another because pay and conditions in the other authority are much better. That causes grief. It means that there are difficulties with recruitment and retention in some parts of the country, because other local authorities pay much more

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<sup>46</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 57.

<sup>47</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 2.

<sup>48</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 5.

<sup>49</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 5.



or the conditions there are better. We need to ensure that there is some kind of uniformity, and an improvement, in pay and conditions.”<sup>50</sup>

69. The Minister pointed out that, at present as CJSW is the responsibility of local authorities there was nothing he, or Scottish Ministers, could do to address these staffing issues as they are not legally responsible for the delivery of these services. Bringing these within the functions of the NCS would allow the Scottish Government to address these issues more directly and effectively, he argued.

#### *Importance of lived experience*

70. The need for incorporating the lived experience of CJSW service users as a vital element in mapping an approach to successful co-design of CJSW services and the NCS was also highlighted.

71. Speaking about the value which engagement grounded in lived and living experience of those working and using CJSW systems can provide, Lynsey Smith of Social Work Scotland stated that it was difficult just now for leadership in the criminal justice social work sector to engage with staff on the creation of the NCS, as they “do not have the detail” from the Bill. This, she said, has led to a sense that “what is proposed feels quite abstract at the moment”.<sup>51</sup> Speaking about how the present process has impacted on the debate amongst criminal justice social work staff, and how any future consultation should be shaped, Lynsey Smith told us that-

“When we ask staff to think through the pros and cons, it is difficult for them to do so, because they do not have a lot of detail. We would want to consult the staff on the ground and to hear from people who have lived and living experience in the justice system, and that takes time [...] we do not have a lot of time to play with in order to properly consult service users, staff and key stakeholders, such as the third sector. [So] what would make this a really meaningful piece of work, is proper consultation with the key stakeholders, including staff, would be key to that.”<sup>52</sup>

72. The Committee notes that the lead committee has used the Parliament’s [digital engagement](#) process to gather some lived experience of users of social work and criminal justice social work, as part of its scrutiny of the Bill.

73. Of the 150 individuals who engaged with the lead committee as part of its digital engagement process, 63% indicated were in favour of the potential including criminal justice social work services in the NCS. 8% were opposed to such a move and 29% were unsure about the provision and sought more information in this aspect of how the Bill’s provisions would work.

74. Of those who took part in the digital engagement and went on to make comments on this proposal, these were largely expressions of concerns or opposition to the inclusion of criminal justice social work in the NCS. Many comments emphasised the need for a cautious approach to be taken and warned

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<sup>50</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 16.

<sup>51</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 45.

<sup>52</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 45.

that, in relation to including criminal justice social work within the scope of the NCS, the “scale of the project must not be underestimated”.<sup>53</sup>

### *Scottish Government*

75. In response to the views for the need to shape a proper consultation and co-design process, and on the importance of hearing and learning from the voices of lived experience in the CJSW system, the Minister reassured the Committee that this is central to the Scottish Government’s approach to research and evidence gathering on CJSW services.

76. He told the Committee he has “made a clear commitment to listen to the voices of lived experience and to ensure that stakeholders are involved” in the process. He said he and the Scottish Government “will continue to listen all the way through” until they make a final decision on whether or not to transfer CJSW services to the NCS.<sup>54</sup>

77. The Minister went on to set out the work the Scottish Government has, and is, undertaking to engage with the widest possible group of stakeholders, including those with lived experience, saying the Government have-

“...listened to folk all the way through the process, and there has been a huge amount of engagement across the board by not only me but officials. For example, the national care service forum brought a huge number of people in person to Perth concert hall as well as a lot of folk online, including for a lot of stuff before the event. We are now at the stage of recruiting for lived experience panels—lived experience expert panels, I should say. More than 450 folk have applied, and we are encouraging folk from throughout the country with different experiences to play a part in that.”<sup>55</sup>

## **Other challenges for criminal justice social work**

### *Improving service outcomes*

78. Some of the witnesses told us that one of the key challenges facing CJSW services at present is the need to ensure consistency of outcomes for service users across Scotland. Several of the witnesses who provided evidence to the Committee accepted that improvements are needed to the present CJSW system, regardless of what structural changes may result from a future establishment of the NCS.

79. Anil Gupta addressed this point, and whether delivery across Scotland by a national-level body like the NCS would, in COSLA’s view, improve the situation. He said-

“Our view is that managing the local challenges is best done locally. We will find some difficulties in cookie-cutting services and applying them in local areas. We contend that the principle of keeping things as local as possible is not just about

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<sup>53</sup> Health, Social Care and Sport Committee, summary of digital public engagement on the National Care Service (Scotland) Bill, page 22: <https://webbetaclone-164780-cm.azurewebsites.net/-/media/files/committees/health-social-care-and-sport-committee/ncs-digital-engagement-summary.pdf>

<sup>54</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 7.

<sup>55</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 22.

efficiency and the best way of dealing with things; it is also about community ownership of the issues and ensuring that accountability is maintained.”<sup>56</sup>

80. The witnesses from COSLA, Social Work Scotland and UNISON Scotland all questioned whether the resources required for the integration of CJSW services within the NCS, would be better and more effectively spent on improving outcomes in the current CJSW system. Especially in areas like improving mental health outcomes in social work services.

81. Lynsey Smith questioned what the Scottish Government’s vision is for the delivery of CJSW services through the NCS. What opportunities, she questioned, does the Scottish Government believe the NCS structure will provide that do not currently exist in local authorities.<sup>57</sup>

82. Anil Gupta also questioned whether extra resources would be better spent in addressing the challenges in the current social work system.

83. Kate Ramsden agreed with these views saying-

“We know that mental health is a big issue, and that lack of mental health services is endemic across the country. Therefore, again, we would probably want to ask whether it would be better to put resources into front-line services and developing them instead of putting money into what will potentially be a huge restructuring process.”

#### *Scottish Government*

84. The Minister acknowledged some of the criticism which those parliamentary committees scrutinising the Bill have heard regarding the establishment of the NCS as the most effective way of addressing the challenges currently faced by both the social care and social work sectors. He told the Committee-

“Some of those views have come from critical friends. Other people, of course, do not want change. I think that it is fair to say that. However, change is required in relation to a national care service. We cannot continue in the same vein. We have changing demographics and we have a postcode lottery of care in Scotland, which is not good enough.”<sup>58</sup>

85. He added that improving social work service outcomes was central to the work the Scottish Government is undertaking through the development of the NCS. He pointed out that Scotland has-

“...been on a 20-year journey of health and social care integration; there have been improvements, but there are still implementation gaps. One reason why there are implementation gaps is that we have not listened to people, and we have not let people help us to shape services. I recognise that some folk do not want this change, but, if you listen to the voices of lived experience, you will hear that many of them are hungry for change. They

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<sup>56</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 49.

<sup>57</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 58.

<sup>58</sup> Criminal Justice Committee Official Report, 21 December 2022, Cols 13-14.

want rid of the postcode lotteries, and they want those implementation gaps to be plugged and a system that works for them.”<sup>59</sup>

86. The Minister cited a pilot project currently running in the Fife Council area which seeks to improve outcomes for CJSW users, by increasing the trust between users and their families and social workers. Speaking of how this pilot is showing ways to overcome the current problems, he said-

“I think that the element of mistrust often comes into play because a social worker has come in at a point of crisis rather than prevention. That is why we are currently looking at a number of changes on that front, and we will do further tests of change to see how we can improve things further. [The Fife pilot project has] given social workers a clean sheet to do what is required to achieve good outcomes for people—obviously within reason, but it is basically a blank sheet. The pilot is at the very early stages, but it already seems to be having positive impacts on people because social workers have been freed up and have autonomy. They are no longer bound by some of the strictures that were there in the past that could often lead to mistrust.”<sup>60</sup>

*Disruption, underfunding and the impact of other reforms*

87. Another concern for some stakeholders is that the reform process contained in the Bill may cause disruption across the current CJSW sector as it constitutes a major structural reform. Especially, they felt, at a time when the CJSW sector is facing numerous other challenges, such as underfunding and a crisis in staffing and recruitment.

88. In their written evidence COSLA expressed a fear that decreasing or ending the lead role local government currently plays in delivering community justice services risks side-lining those services and disrupt their links to other important services, (such as housing or employment services).

89. UNISON Scotland’s written evidence cautioned against the creation of a market for services, which they fear may lead to the “marketisation and outsourcing” of key public services, like CJSW services. This, they stated, risks disconnecting social workers from the wider professional community they presently sit within. As with other stakeholders, UNISON Scotland highlights a general need for more resources to be provided to social work services in order to address current problems.

90. Aberdeen HSCP argued<sup>61</sup> that the findings from ongoing reviews of other relevant services should form part of the decision-making process on the possible integration of CJSW services into the new NCS. It raised concerns about the design of the NCS being based on the structure of some specific existing services, and an assumption being made that those other services (like CJSW) can be successfully incorporated into the new NCS structure at a later date.

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<sup>59</sup> Criminal Justice Committee Official Report, 21 December 2022, Cols 13-14.

<sup>60</sup> Criminal Justice Committee Official Report, 21 December 2022, Col 19.

<sup>61</sup> Written submission from Aberdeen City Health and Social Care Partnership: [https://yourviews.parliament.scot/health/national-care-service-bill/consultation/view\\_respondent?show\\_all\\_questions=0&sort=submitted&order=ascending&q\\_text=aberdeen&uuld=556815647](https://yourviews.parliament.scot/health/national-care-service-bill/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&q_text=aberdeen&uuld=556815647)

91. Aberdeen HSCP also highlighted the importance of CJSW services having effective links to a range of health and local authority services within communities. It warned against any disconnection or siloing of services.

92. Witnesses also pointed out to the Committee the challenges that CJSW currently faces as a result of underfunding, the impact of COVID-19, increased demand for services and issues around recruiting and retaining staff.

93. Kate Ramsden pointed out that the Bill will not address the current funding crisis affecting CJSW, saying-

“There is absolutely nothing in the bill that addresses the current underfunding of social work, including criminal justice social work. In fact, it is sorely lacking in financial information, and what information is there has been roundly rubbished by a number of people who have responded to the bill, and by the [Scottish] Parliament’s Finance and Public Administration Committee, which has been very critical about the lack of detail.”<sup>62</sup>

94. Anil Gupta cautioned that a large-scale structural reorganisation of the criminal justice social work sector, such as its incorporation into a new NCS, will not address the pressing challenges currently facing the sector. Speaking about the proposed consultation set out in the Bill, he told us that-

“...the consultation might be about the wrong subject at this time. We really need to have a broad discussion about the future of community and criminal justice. At this stage, the issue of structural change is probably not the most important matter.”<sup>63</sup>

95. He added that it was more pressing to “discuss longer-term investment and the lack of confidence” that judges regularly express in community disposals. The focus, he said, of reform should be on “what needs to be done to improve the situation.”<sup>64</sup>

96. The Committee is also aware that changes emanating from other legislation currently before the Scottish Parliament may have implications for CJSW services. By implication, the impact of those changes could inadvertently risk adding to the burden of changes already facing the CJSW sector, as a result of the establishment of the NCS.

97. The Committee is currently undertaking Stage 1 scrutiny on the Bail and Release from Custody (Scotland) Bill.<sup>65</sup> It seeks to make changes in relation to bail for people who have been accused of a crime, as well as arrangements for the release of prisoners. The Committee has received evidence highlighting the important role CJSW will have implementing the proposed changes and that some of these could have significant resource implications for CJSW.

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<sup>62</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 43.

<sup>63</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 43.

<sup>64</sup> Criminal Justice Committee Official Report, 23 November 2022, Col 43.

<sup>65</sup> Bail and Release (Scotland) Bill, s1(4) & s1(5): *Decisions on bail: relevant information from officer of local authority*: <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/bail-and-release-from-custody-scotland-bill/introduced/bill-as-introduced.pdf>

98. For example, Gillian Booth, Justice Service Manager of South Lanarkshire Council pointed out that responding to the new system will be “challenging” for CJSW, especially because of the lack of resourcing. Citing a local example of an average sitting day at Hamilton Sheriff Court, she pointed out between 20 to 25 people going through the court process each day may be bail opposed. Each one of these people would require having an assessment for bail carried out on them by South Lanarkshire Council. Each can take “over 2 hours per assessment” which would result in “quite a considerable level of staffing” resource being needed.

99. Gillian Booth went on to explain that-

“...It is not only qualified social workers who provide that service; more often than not, it is our paraprofessional staff group. They are qualified to a social care qualification level, but they are not qualified to undertake risk assessments. Although I appreciate that there is an indication in the financial memorandum [for the Bail and Release from Custody (Scotland) Bill]<sup>66</sup> of how funding would be directed towards social work resources to undertake bail assessments, the difficulty that we have is that we do not know how many bail supervision assessments and electronic monitoring assessments would be required”.<sup>67</sup>

#### *Scottish Government*

100. The Minister did not share the fears expressed by the witnesses that the possible future integration of CJSW services into the NCS would cause disruption to the delivery of those services.

101. The Minister stressed that the Government is well aware of the need to maintain crucial linkages between CJSW services and other key local services, such as housing. Pointing out that any NCS structure would continue to ensure CJSW services are designed at a local level for local needs, he said-

“...the national care service will balance the need for local flexibility by having care boards plan and commission care while providing national consistency through ministers being ultimately accountable. Why have we moved in that direction? It is because people have told us that they want ministerial accountability. Accountability has been a high priority in the discussions that have been had. [...] The Government’s position remains that new local care boards will work collaboratively in partnership with the national health service, local authorities and the third and independent sectors to improve support locally and nationally.”<sup>68</sup>

102. In relation to the concern that the commissioning nature of service provision in the NCS may mean CJSW staff need to transfer to new employers as contracts changed, with all the administrative and employment disruption that may cause, he told the Committee that “it is by no means a foregone conclusion that local

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<sup>66</sup> Bail and Release from Custody (Scotland) Bill, Financial Memorandum: <https://www.parliament.scot/-/media/files/legislation/bills/s6-bills/bail-and-release-from-custody-scotland-bill/introduced/financial-memorandum-accessible.pdf>

<sup>67</sup> Criminal Justice Committee, Official Report 14 December 2022, Col 22: <http://archive2021.parliament.scot/parliamentarybusiness/report.aspx?r=14060&mode=pdf>

<sup>68</sup> Criminal Justice Committee, Official Report 14 December 2022, Col 14.

authorities' staff... will need to transfer their employment."<sup>69</sup> He went on to point out that a new NCS structure could ensure other disruptive challenges to staffing in the CJSW sector – such as lack of opportunity for career progression – could be properly addressed in a NCS structure.<sup>70</sup>

103. On concerns about the underfunding of the CJSW sector, and the need for a greater focus to tie the delivery of successful outcomes into issues of resource and funding, the Minister spoke of the greater opportunity the NCS could provide CJSW staff in calling for the resources needed to meet the requirements of service users, saying-

"I referred to front-line social workers talking about eligibility criteria and budgets. It is fair to say that many front-line social workers feel that social work has lost its voice at the moment, in particular in certain parts of the country. Again, that needs to be addressed."<sup>71</sup>

104. On the issue of budgets and the fears about the drift of funding away from local authorities to the NCS, if CJSW services are transferred, the Minister said-

"Local authorities are concerned about the movement of budgets. I reiterate what I said to the Finance and Public Administration Committee: we will try to make it cost neutral. I want to ensure that we co-operate and collaborate to the max with local authorities [...] As I have said, there is worry about resourcing. Let us be honest: there always is. That is the way of the world. However, as I said to the Finance and Public Administration Committee, we will try to make this as cost neutral as possible for local authorities."<sup>72</sup>

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<sup>69</sup> Criminal Justice Committee, Official Report 14 December 2022, Col 16.

<sup>70</sup> Criminal Justice Committee, Official Report 14 December 2022, Col 16.

<sup>71</sup> Criminal Justice Committee, Official Report 14 December 2022, Col 18.

<sup>72</sup> Criminal Justice Committee, Official Report 14 December 2022, Col 20.



## CONCLUSIONS AND RECOMMENDATIONS

### Scrutiny by the Criminal Justice Committee

105. As a secondary committee, our role was to consider and report to the lead committee on those parts of the National Care Service (Scotland) Bill that come within our remit. It is for the lead committee to report on the general principles of the Bill and whether or not it believes the Scottish Parliament should pass the Bill at Stage 1. This Committee expresses no view on whether the Bill should pass that hurdle.

106. Our focus was to consider and report on the proposals in the Bill which allow the Scottish Ministers to carry out a statutory consultation on whether criminal justice social work services should be transferred from local government control, where they presently sit, to a new National Care Service (specifically section 30). At this stage, that is all that the Bill does in relation to such services. It does not transfer criminal justice social work services into a National Care Service. It permits the Scottish Ministers to carry out a consultation with a view to doing so. Any subsequent transfer would be done by secondary legislation.

### Inclusion of criminal justice social works in a National Care Service

107. It is clear from the evidence received that key stakeholders believe that there has been insufficient information available to them at this time to allow them to form a view on the merits of transferring criminal justice social works to a National Care Service. Consequently, based on the evidence we have received so far, the Committee is not yet convinced of the merits of transferring criminal justice social work services to a National Care Service.

108. The Committee notes various concerns expressed by stakeholders about the lack of consultation and detail in the Bill and accompanying documents. We have set these concerns out in this report.

109. As such, we draw the attention of the lead committee to the following key concerns that were expressed to us-

- On the consultation process: witnesses drew attention to the need for a consultation process which is long enough to deliver a more accurate reflection of the complex nature of the integrated services involved, and the possible significant impacts of the changes proposed. Witnesses also voiced concerns about the capacity of criminal justice social work services to fully engage in a consultation at a time when they face increasing workloads. We note the timeline the Minister for Mental Wellbeing and Social Care outlined to us in writing, that any in principle decision will be made by Scottish Ministers in October 2023, with a final decision on whether to transfer criminal justice social work services to a National Care Service due to be made in April 2024 (see paragraph 54).

- **On parliamentary scrutiny:** witnesses expressed concern that the framework nature of the Bill places the Scottish Parliament in a position where it is trying to scrutinise the policy content and costs of the Bill while much of the policy detail has yet to be developed by Scottish Ministers. The Bill leaves much of this policy detail to be brought forward by way of future statutory instruments. Witnesses feared this would, in their view, leave insufficient time or ability for the Parliament to fully consider the policy detail of any transfer of criminal justice social work services to a National Care Service, or to be able to propose amendments.
- **On the importance of lived experience:** witnesses and the Minister emphasised the importance of shaping a design for a National Care Service which could deliver criminal justice social works around the input of those with living and lived experience. It is important that lived experience is a central part of any reform process.
- **On improving service outcomes:** witnesses acknowledged that there are potential pros and cons to the delivery of criminal justice social work services through a nationwide-based National Care Service, such as the ability to ensure better outcomes for service users across Scotland. However, witnesses also feared that the focus on structural changes provided for in the Bill will detract from the capacity of the service to improve outcomes in the short and medium term.
- **On funding:** witnesses voiced concerns about the potential costs of the process of transferring criminal justice social works to a National Care Service, and how this may impact on funding available to improve the service.
- **On staffing:** witnesses expressed fears that much-needed action to tackle critical problems regarding the recruitment and retention of criminal justice social work staff may be delayed or deferred by the focus on the Bill, and any structural reform of the service.
- **On the transfer of statutory responsibilities:** The Committee notes that if a decision is taken by the Scottish Ministers to transfer criminal justice social works services to a National Care Service, this would represent a major transfer of statutorily responsibilities away from local authorities and to the Scottish Ministers.

110. Should the Bill be passed, and in the event Scottish Ministers decide to transfer criminal justice social works to a National Care Service following a statutory consultation, this Committee stands ready to undertake further scrutiny, as needed, on the details and implications of any such transfer.

111. We would wish there to be sufficient time for detailed parliamentary scrutiny of any secondary legislation brought forward in this respect.

112. In the meantime, we draw the attention of the lead Committee and the Parliament to our conclusions and recommendations.