# Background

The Scottish Government introduced the National Care Service (Scotland) Bill in the Scottish Parliament on 20 June 2022. The Parliament’s Health, Social Care and Sport Committee published its Stage 1 report on the general principles of the Bill on 22 February 2024. On 29 February 2024, the Parliament voted to approve the general principles of the Bill at Stage 1.

On 1 July 2024, the Health, Social Care and Sport Committee issued a [call for written evidence](https://yourviews.parliament.scot/health/national-care-service-stage-2-call-for-views/) to hear stakeholder views about the draft amendments the Scottish Government is proposing to make to the Bill as introduced at Stage 2.

Community Justice Scotland submitted the following response to the Committee on 4September 2024.

For further context on the proposals for a National Care Service, refer to the Scottish Parliament’s [web page on the Bill](https://www.parliament.scot/bills-and-laws/bills/s6/national-care-service-scotland-bill). You can view Community Justice Scotland’s evidence at Stage 1 [here](https://yourviews.parliament.scot/health/national-care-service-bill/consultation/view_respondent?sort-order=excerpt-ascending&uuId=915998940), and our response to the initial consultation on our [website](https://communityjustice.scot/whats-new/insights/a-national-care-service-for-scotland-cjs-response-to-the-consultation/).

**CJS Response**

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

The over-arching strategy, as presented, appears logical in terms of how to address the issues highlighted in the “Independent Review of Adult Social Care in Scotland” (Feeley 2021). However, apart from it being very high-level, the strategy appears to focus on care and support without any meaningful reference to the work undertaken in the Justice sector where the activity is both mandated by legislation and impositional in nature, i.e. people do not request a service as it is imposed upon them by courts, Parole Board Scotland, etc. – a factor not considered by the Feeley report in 2021. This is a significant distinction between, for example, adult care where services are proffered and people can accept or reject them and justice services where people have no real choice (or where choosing not to comply has serious implications for the person and may result in the denial of their liberty). Justice services also extend beyond care or support matters as they have a direct function in relation to public protection and public safety – a factor that is well recognised yet not addressed in the Bill.

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

It is still unclear how the National Care Service Board (NCSB) will actually function and what its specific role is, e.g. the scope and power of intervention Scottish Ministers appear to have in relation to the NCSB creates an unclear picture of how independent the NCSB will be given authority of Scottish Ministers to delegate the functions of one NCS local board to another in the event of an emergency, etc. (Section 18 where there is no definition of the term “emergency”).

We further note that the NCSB would take on duties related to the provision of training “relevant to providing services on behalf of the provision of services by the National Care Service”. CJS currently provide training for justice social workers that are core to the delivery of their duties, including in specialised risk assessments for sexual harm and domestic abuse, the offending assessment and management planning method Level of Service/Case Management Inventory (LS/CMI), and in delivery of the Caledonian system targeting domestic abuse. These are specialist training areas with significant resource implications for providers and practitioners. It is unclear if this potential overlap is being taken into account should justice social work be included as service providers in the NCS.

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

The proposal, in itself, is logical if introducing National Care Service (NCS) local boards, i.e. essentially transferring the current functions of Integration Joint Boards (IJBs) to a new arrangement under the NCS. Notwithstanding, the proposed functions of the NCS local boards appear to be beyond the current remit of IJBs with new functions and revised priorities within a new set of structures, so it would not be a direct comparison to current IJB functions and activity. As noted earlier, there is a concern abut the potential for Scottish Ministers to ‘transfer’ functions between NCS local boards.

However, CJS notes that a significant number of Justice Social Work services are, presently, not included in IJB arrangements and would ask the question what happens in the NCS arrangements in respect of services delivered under the auspices of the local authority and not via the local IJB.

Beyond this, CJS is concerned that the profile of justice services will be adversely affected in a NCS local board arrangement. Even within the current situation of IJBs, the profile of justice services is not all that it could be. The introduction of Community Justice Partnerships (CJPs), through the work of CJS, has created a structure that allows for a greater focus and mechanism for the statutory partners (as defined in the Community Justice (Scotland) Act 2016) to come together and plan to address local issues with a view to increasing positive outcomes for people involved with / impacted upon via justice processes in that locality.

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

12K(1)(a) outlines that the National Care Service Board (NCSB) will “monitor the services provided by the NCS”. Other than in the general principles outlined in the supporting memorandum (para 138-139) for “the development of a national framework”, there is no detail as to how this will be undertaken and how it will identify if improvement work is required (as noted at 12K(1)(b)).

It is also unclear what relationship it will have with current national and legislative-driven processes on monitoring and/or improvement or the role of other agencies where relevant. For example, the Community Justice (Scotland) Act 2016 requires that community justice outcomes (contributed to by a number of statutory local and national partners and often directly involving justice social work activity) are monitored by Community Justice Scotland against the statutory Community Justice Performance Framework. A further example of ambiguity arises in considering the present role of the Care Inspectorate in leading on scrutiny and assurance of justice social work.

On the basis of the above, it is difficult for CJS to form a view on this question.

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

CJS agree that the National Chief Social Work Adviser must be a registered social worker.

On the question of a National Social Work Agency (NSWA) – which is not specified in the Bill and only in the policy memorandum – there is a need for more clarity on the function and scope of this.

It is unclear why NSWA has been designated an ‘Executive Agency’ and not a Non-Departmental Public Body (NDPB) on the basis that it is not clear what “specialised function in the management of public services” it will be performing as it will not have direct control of the social work workforce.

However, CJS welcomes the NSWA as being a “national body with oversight over social workers and their professional development”. Unfortunately, the available information does not outline or define what the term “oversight” actually means in this context. There is no provision indicating that the NSWA will have scrutiny and/or inspection powers or, indeed, the authority to mandate improvements, so more detail on the definition of “oversight” is required. As described elsewhere in our answer, there are at present other agencies with defined roles in monitoring the delivery of justice social work such as the Care Inspectorate.

Another welcome aspect would be the potential to develop “…approaches, such as national standards for social work, to support a more consistent experience of social work…”. This suggests that the NSWA could / would be a partner (if not lead agency) in creating, updating / revising and publishing Justice Social Work-specific practice guidance – a task which is currently undertaken by seconded advisors at the SG working in conjunction with CJS and other agencies. Notwithstanding, as stated previously, the NSWA would not have direct control over the workforce and would only be advisory in this regard.

Confusion still remains about the role of both the Scottish Social Services Council (SSSC) and the Care Inspectorate and that of the NSWA. The potential for duplication has not been resolved within the Bill and it would have been helpful to have a clearer understanding if the NSWA would subsume the functions, etc. of these agencies or if they were to remain discrete and independent.

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

See response at question 3 above.

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

CJS remains concerned that, at this juncture, it is unclear how local justice services will be delivered under a NCS. However, as previously stated, CJS notes that a significant number of Justice Social Work services are, presently, not included in IJB arrangements and would ask the question what happens in these arrangements where the services are still delivered under the auspices of the local authority and not via the local IJB?

The remit of NCS local boards will be extensive and, primarily, focused on the delivery of care services such as delayed discharge, support packages of social care, etc. CJS is concerned that, as is the current situation with IJBs, the profile and importance of justice services may be subsumed into the bigger agenda of the Local Board and, as a result, the status of delivering the multiple services for both stopping re-offending, rehabilitation and reintegration becomes diluted.

In particular, since 1991 the funding for justice services in the community has been ring-fenced and, therefore, protected within Local Authority general budgets – in the main, this has been to resource statutory obligations on the Local Authority through a range of legislation, e.g. Social Work (Scotland) Act 1968, etc.. It is unclear if this will continue and what the relationship that funding will have to the ways in which the NCS local boards are funded including the prioritisation of those funds to develop, support and improve justice services going forward.

The inclusion of Justice services into the NCS is not evidenced as a means of improving outcomes. For example the recent report “National Care Service: Justice Social Work research” (IPSOS/Weaver January 2024) clearly outlines that there is significant assumption in stating that the inclusion of Justice services within a NCS structure would, in and or itself, lead to more positive outcomes for people.

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

In keeping with many of the other responses in this paper, CJS cannot express a full view on the Charter due to the lack of available detail. However, there is some confusion in the wording of the Bill at Section 11. It does not clearly articulate which “rights and responsibilities” it refers to, e.g. is it the responsibilities of the NCS (and/or the agencies therein) and the rights of the people receiving services? – if so, then the wording should be revised to reflect this clearly and unambiguously.

Again, the Bill / Charter does not reflect the landscape of justice as it would require the invocation of Section 11(a)(iii) to include, for example, defence agents (who act on behalf of people in the justice system) whereby Scottish Ministers would require to “consider it appropriate to summarise…[this]… in the charter”, i.e. include them but only after a process has taken place. Also, the Charter cannot give rise to any new rights for people, impose any new responsibilities on agencies or, even, alter existing responsibilities on agencies. On this basis, it is difficult for CJS to make comment on whether the Charter would be in any way effective.

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

CJS take the view that, even at this advanced stage, there is insufficient detail about the costing of a NCS-type arrangement and how that funding would be made available to achieve the stated outcomes of the NCS as outlined in the Bill, and how this will impact on justice.

CJS remain concerned about the potential legislative changes that would be required to move to a NCS structure – in particular the likely impact on the Community Justice (Scotland) Act 2016 as the underpinning legislation that drives both CJS and the wider community justice landscape in terms of delivery and improvement.

CJS welcomes the proposal for an integration of care records as noted in Section 36 of the Bill. It is recognised that this is no simple task both from a technology point of view and also noting the complexities involved in the Data Protection Act 2018 & UK GDPR. Notwithstanding, the potential to have a single care record that is created, updated and shared between agencies would be a major step towards true integrative working and has the capacity to improve outcomes through more effective joint working, efficient processes and the avoidance of duplicate activities.

Response developed by Keith Gardner, Specialist Advisor, Community Justice Scotland, August 2024