1. NCS CHARTER OF RIGHTS AND RESPONSIBILITIES – OPTIONS PAPER

[s.30(b)(ii) applies]

Bill Provisions (as amended in June)

Sections 11 and 12 of the NCS Bill sets out provisions for a Charter of Rights and Responsibilities.

- **Section 11** outlines that Scottish Ministers must prepare a Charter and make it publicly available. The Charter should have a summary of the existing rights and responsibilities in relation to the services provided by the NCS of:

    - people accessing National Care Service support;
    - people with a personal interest in their wellbeing (such as a family member or carer); and
    - any other people the Scottish Ministers consider appropriate

The Charter should also include a description of the processes for upholding the rights that it summarises. For example, a complaints process and details on available information, advice and advocacy services. The Charter cannot create any new rights or responsibilities, or change any existing rights or responsibilities

The overarching purpose of these provisions is to place a duty on Ministers to create a Charter which summarises people's existing rights, as underpinned by domestic legislation, and enable individuals to hold the system to account when those rights under the NCS are not met.

- **Section 12** outlines that, when creating the Charter, Scottish Ministers must consult with 'any person they consider appropriate'. There should be a particular focus on:
    - people whose rights and responsibilities, in relation to the NCS are summarised in the Charter; and
    - people who are employed or professionally engaged with providing NCS services.

Scottish Ministers are responsible for laying the first copy of the Charter and, following a review, any new version before Parliament. They must review the first version within 5 years of it being laid and, thereafter review within 5 years of the last review concluding. Following a review, Ministers can make changes they consider appropriate. With the exception of the duty to lay the Charter in Parliament, Ministers can delegate any Charter functions to the National Care Services Board (NCSB) or any other person they consider appropriate.

The overarching purpose of these provisions is threefold:

- to place a duty on Ministers to consult (co-design) Charter development with individuals whose rights, in relation to the NCS, are summarised in the Charter, including family members and carers and also with those responsible for delivering services.
- to place a duty on Ministers to review and update the Charter at specified intervals, therefore ensuring content remains up to date and remains cognisant of policy and legislative updates; and
- toto future proof provisions and allow Scottish Ministers the option to delegate any/all of roles to the NCSB or anyone else they see fit (with the exception of laying the Charter in Parliament, which is required to remain the duty of Ministers).

- **Section 12A** outlines that the NCSB is required to promote public awareness of the Charter.

The overarching purpose of this provision is to place a duty on the NCSB to ensure that the Charter and its contents are adequately promoted so that people have a full understanding of their rights from the start of their support journey.

Evidence from co-design and engagement to date

1. A majority of responses to the NCS Bill consultation, demonstrated support for a Charter of Rights and Responsibilities to be developed for social care so that people can better understand what they can expect from social care services.

2. Evidence submitted to the HSCS Committee during the Stage 1 scrutiny demonstrated support for the concept of the Charter. Derek Feeley noted he is '*very supportive of the Charter being in the Bill*' and members of the Committee recognise the Charter as an obvious place to reflect the NCS Principles. Many also welcomed the approach being taken to developing the Charter via co-design; and commitment to, as far as possible, align the NCS Charter with the existing Charter of Patient Rights and Responsibilities to ensure clarity for those accessing services.
3. Evidence gathered through co-design and engagement carried out to date, particularly in relation to legislative implications, demonstrates:
4.

- People are often unaware of their existing rights and of the processes to follow when they feel their rights are not met.
- People feel strongly the Charter should have a legal basis or 'teeth'.
- Calls (from the Cross Party Group on unpaid carers and others) for Bill provisions to explicitly recognise the importance of eliciting the views of particular groups in the preparation and review of the Charter. Namely, those with a personal interest in the wellbeing of another individual to whom the NCS provides a service. Specifically unpaid carers and family members.
- The importance of ensuring that the Charter remains cognisant of the wider policy and legislative landscape and content updated to reflect any changes.
- The importance of ensuring the Charter compliments existing Charters and Standards / does not contradict.
- Clear desire for social care to be given priority and visibility as a set of services that individuals feel is currently lacking in the system (linked to points made about a fear of a 'medicalised' model of care).
- Calls (from the Equalities and Human Rights Commission) to recognise the importance of ensuring the Charter is adequately promoted. Further evidence gathered during both Charter co-design phases was supportive of having a formal requirement that the Charter be adequately promoted to ensure that people accessing services are fully informed on their existing legal rights.

[s.30(b)(ii) applies]

Embedding Rights and Equalities Unit

Discussion paper – implications and options for progressing workstreams without legislative framework

NCS Principles

1. Introduction

This paper seeks to provide an initial exploration of the implications of taking forward the workstream to develop a set of principles for the National Care Service, in the instance that legislation is not pursued. Options are described which may mitigate the impact should the Bill be withdrawn or altered to remove certain aspects.

2. Background – NCS Principles

Principles are "what we believe in". Principles should be of fundamental value, understood by all users, and reflect the organisation's purpose.

The NCS Principles aim to:

- Create a 'golden thread' of Ministerial priorities that deliver on the needs of people with lived experience of accessing and delivering community health, social work and social care across all levels of the NCS;
- Provide for monitoring, accountability and continuous improvement of NCS services against the NCS Principles.

The ultimate aim of the NCS principles should be to support improved outcomes for people who access community health and social care support and services.

2.1 NCS Bill provisions

a) The Principles

Section 1 of the NCS Bill, including proposed Stage 2 amendments ("the Bill"), sets out the overarching NCS Principles by which the NCS will operate. This is a suite of principles that aim to reflect and build upon the Integration Principles set out in the Public Bodies (Joint Working) (Scotland) Act 2014 (the "Public Bodies Act").

b) How the Principles will be used

The Bill provides that the Principles will be used in the following ways:

- Scottish Ministers must have regard to the Principles when preparing the NCS Strategy (Section 1D 1(a))
- The NCS Board must, when exercising their functions to oversee National Care Service local boards, ensure that continuous improvement in wellbeing is consistent with the NCS Principles (Section 12E (a))
- Integration Joint Boards / NCS Local Boards must have regard to the Principles when preparing an integration scheme, preparing a strategic plan, reviewing a strategic plan and carrying out their functions (Public Bodies (Joint Working) (Scotland) Act 2014 - sections 29, 30, 37 and 40)

- Oversight bodies *may* apply the Principles in their supervision of reformed Integration Joint Boards / NCS Local Boards (Section XX)

These provisions intend to ensure that the NCS Principles are applied across the NCS and ensure the monitoring, accountability and continuous improvement of NCS services against the NCS Principles.

c) Reviewing, amending and modifying the Principles
Schedule 1A and 1B provides Scottish Ministers with powers to review, amend and modify the NCS Principles to reflect ongoing co-design of the NCS and changes to legislation. The Bill ensures that this review happens with sufficient frequency (within 5 years of the previous review) to enable appropriate updates to be made. The Bill also provides that, when updating the principles, Ministers consult with and take account of the views of people with specific interest and experience.

d) Replacing the Integration Principles with the NCS Principles
In Schedule 2B provision is made to repeal the Integration Principles (IDP and IPP) within the Public Bodies Act and replace them with the NCS Principles and the NCS Strategy. This is intended to simplify what would otherwise be a complex landscape of principles, standards and outcomes.

2.2 Evidence received – summary of key points

a) Overall support for the principles
Much feedback from stakeholders has indicated overall support for “the principles of the NCS” in general.

b) Support for draft stage 2 amendments
Positive feedback has been received about amendments to include wording around rehabilitation, and additional principles to better align with the existing Integration Principles.

c) Cluttered landscape and accountability
Feedback has consistently reflected concern that adding another set of principles to an already cluttered landscape will cause confusion. Replacing the Integration Principles with the NCS Principles will assist, however concern remains that the landscape will be cluttered. Some stakeholders have suggested that existing principles are sufficient, and improving their application would improve outcomes, rather than creating a new set of principles.

d) Strength-based and outcome focused principles
Some feedback has indicated that the language of the principles does not currently align with an asset-based and outcomes focused approach. The Care Inspectorate expressed concern that the current draft Principles represent a move away from the outcomes focused approach of the Health and Social Care Standards.

e) Embedding rights
Stakeholders identified key human rights themes which could be more overtly reflected, improving empowerment and alignment with other legislation and

principles. For example improving reference to principles around choice and control and the right to independent living.

f) Clarity and accessibility
The Principles as written may not currently be clear or accessible to all users. Several concepts are included within single principles. This may make it difficult to operationalise the principles, affecting accountability, accessibility and empowerment.

3. Analysis of implications and opportunities

a) Intention: Create a 'golden thread' of Ministerial priorities that deliver on the needs of people with lived experience of accessing and delivering community health, social work and social care across all levels of the NCS.

Relevant provisions: Section 1 (1) a) – h)

[s.30(b)(ii) applies]

b) Intention: Provide for monitoring, accountability and continuous improvement of community health and social care services against the NCS Principles; ensure application of the Principles throughout the NCS.

Provisions: Section 1D (1) (a) and 1E; 12(E) (a); Schedule 2B 2; Schedule 2C 9(a)

s.30(b)(ii) applies[]

Opportunities / options:
[s.30(b)(ii) applies[]

4. NCS- Complaints – Policy Options Paper Evidence Review – Removal of Part 1 Implications – October 2024

National Care Service

Complaints and redress

[s.30 (b) (ii) – exchange of views]

1. Purpose

1.1. This paper considers the implications for the complaints and redress workstream in the instance where part 1 of the NCS Bill is removed at stage 2. This would have the effect of removing provisions that establish the National Care Services Board (NCSB) along with provisions in relation to the Charter of Rights, independent advocacy and complaints**. [s.30 (b) (ii) – exchange of views]**

2. Background

2.1. The Independent Review of Adult Social Care was clear that when things do not work well for people and their rights have not been upheld, they must have rapid recourse to an effective complaints system and to redress, and that the NCS should prioritise an improved complaints process.

2.2. The current complaints system within social care is complex. Despite efforts to simplify and streamline the landscape of complaints bodies and complaints handling processes, numerous inconsistencies and complexities remain. There is a clear need for a more joined up and accessible system for social work, social care and community health complaints, and for much greater assistance for people to access and navigate the existing system.

3. NCS Bill complaints and redress provisions

3.1. Section 14 of the NCS Bill, as introduced, sets out that Scottish Ministers must provide a service for receiving complaints about services provided by the NCS and then passing those complaints onto the appropriate person. As provided for under section 14(3), the appropriate person is the person who, in the opinion of the provider of the NCS complaints service, is best placed to address the complaint. The Scottish Ministers are required to fulfil this duty as soon as practicable and can do so by having the complaints service assume responsibility for dealing with complaints about different services at different times (Section 14(4)).

3.2. Section 15 of the Bill, as introduced, provides Scottish Ministers with a broad regulation-making power to make provision about the handling of complaints about NCS and wider social care services and associated remedies. Regulations can also impose requirements and create sanctions (section 15(3)). However, where regulations confer, modify or remove a function of person listed in schedule 6 of the Public Services Reform (Scotland) Act 2010, Scottish Ministers must obtain prior consent of the SPCB before draft regulations are laid (Section 15(4) and (5)).

3.3. Following the shared accountability agreement with COSLA, the complaints related provisions in the Bill remained broadly as introduced. Stage 2 amendments were developed to bring the new NCSB under the jurisdiction of the SPSO. **[s.30 (b) (ii) – exchange of views]**

4. Evidence gathering and co-design

4.1. The first, 'understanding', phase comprised of desk-based research to assess existing processes, evidence and data and a programme of co-design to understand the lived experience of people who access and provide care services. **[s.25 (1) – information otherwise available via Scottish Government website - National Care Service: Complaints summary of findings]**

4.2. The second, 'sense-making' phase is currently underway, which comprises of desk-based research, co-design and stakeholder engagement. This phase focuses specifically on establishing the NCS complaints service and its mandatory role in receiving and passing on complaints about services that fall under the NCS. It comprises primarily of two groups:

- Co-design group: including people with lived experience (people with experience of making or wanting to make a complaint) and service providers (people with experience of handling complaints as part of their work).

- Service design group: expert stakeholders and complaint handlers from Local Authorities, Health Boards and complaints bodies.

4.3. These groups, which are running from August to December 2024, are collectively sharing ideas to provide a small number of recommended minimum viable products for the NCS complaints service.

5. Complaints and redress policy priorities and evidence

5.1. Based on the work carried out so far, there are three overarching policy priorities for the complaints and redress workstream:

- Policy priority 1: To create a system and culture that welcomes feedback, and complaints, to inform continuous learning and improvement across the system. This includes a focus on improving complaints data recording and reporting to enable data to be used to identify areas of good practice and for improvement.

- Policy priority 2: To improve the existing complaints process so that when things do not work well for people and their rights have not been upheld, they are able to easily access an effective complaints process and have recourse to redress.

- Policy priority 3: To address complexities in the complaints landscape and create a more joined up and accessible complaints system across social care,

social work and community health services.

Priority 1: To create a system and culture that welcomes feedback, and complaints, to inform continuous learning and improvement across the system. This includes a focus on improving complaints data recording and reporting to enable data to be used to identify areas of good practice and for improvement

5.2. From the understanding and sense making phase, the key evidence based insights under this policy priority are:

- There is a need to shift the culture from complaints been seen as blame and criticism to them being seen as tools to drive evidence-based improvement and innovation; and that a good complaints culture should be driven at all levels.

- People told us they want: to be able to give regular feedback to services; for services to proactively seek people's feedback and resolve any issues before they escalate to a 'formal' complaint; and for their complaint or feedback to inform service learning and improvement.

- Telling positive stories of how complaints have led to changes can help to build people's trust in the complaints process.

- Appropriate resourcing, training and support for staff involved in complaints handling is important. This should include:

    - Dedicated complaint handling staff within services.

    - Giving staff encouragement, and enough time, to try to resolve issues.

    - Supporting staff who handle complaints and when they are complained about.

    - Framing complaints positively as an opportunity for learning and improvement.

- There are substantial gaps, inconsistencies and ambiguities in how adult social care complaints data is reported locally. It is not possible to determine the total number of complaints across Scotland or identify any trends through the published data.

- There is opportunity to improve the transparency and consistency of reported adult social care complaints data to inform service improvement.

- Early indications from the sense-making phase include suggestions to improve complaints data with opportunity to require local authorities to report complaints data or by implementing data sharing agreements with oversight bodies.

Priority 2: To improve the existing complaints process so that when things do not work well for people and their rights have not been upheld, they are able to easily access an effective complaints process and have rapid recourse to redress

5.3. From the understanding and sense making phase, the key evidence based insights under this policy priority are:

- The evidence does not indicate a need to change the key elements of the SPSO's Model Complaints Handling Procedure (MCHP). The co-design findings thus far support its key principles, including having clear timescales and a focus on early, frontline resolution.

- However, the MCHP, at present, does not apply to private care providers. This means there is variation in how social care complaints are handled.

- People face various barriers in accessing the existing complaints process. This includes people not knowing their rights, having difficulty finding the entry point to make a complaint, and being afraid their care might be affected if they do complain.

- Overcoming these barriers and improving people's experience of the complaints process needs to focus on:

    - Telling people about their rights and actively encourage them to raise concerns and provide feedback.

    - Making it easier for people to find out how to complain.

    - Enabling good conversations with skilled complaint handlers in order to build trust and confidence.

- Early indications from the sense-making phase highlights that varied and accessible options for submitting a complaint are important and that services that promote/favour particular submission methods over others can create further barriers.

- Some groups of people experience extra barriers to making a complaint, such as a fear of stigma or cultural differences. Support from professional advocates is an important element in ensuring that people have their voices are heard.

- In relation to redress, it is important for people to be told how their complaint or feedback will make things better. People told us that they want an apology or acknowledgement when things go wrong and to know that their complaint will lead to improved outcomes for them/the person they are caring for and for others.

Priority 3: To address complexities in the complaints landscape and create a more joined up and accessible complaints system across social care, social work and community health services

5.4. From the understanding and sense making phase, the key evidence based insights under this policy priority are:

- Whilst existing complaint handling organisations currently advise and signpost people, confusion persists for the complainant due to the complexities in the complaints landscape and processes.

- Health and social care integration is likely to increase complexity, as processes and safeguards have built up incrementally in separate health and social care systems of complaints.

- People making and handling complaints raised issues in navigating two separate complaint processes (LA and NHS) when a complaint is complex and spans both health and care services. While HSCPs can and do work together in some cases to provide a more integrated complaint handling experience and response, this is not always the case, particularly where a service is truly NHS based rather than part of a HSCP. People have to submit separate complaints that can cause confusion for the user and can lead to conflicting responses.

- Addressing the complexities in the complaints landscape successfully will require action in a range of areas, including access to information, inclusive communications and improved advocacy. Specific areas to emerge from the evidence include:

    - Early indications from the sense-making phase include the value of providing information on how to make a complaint in one place and for services to proactively provide complaints information.

    - There could be value in creating a simple point of access for complaints about NCS services, as this would reduce the complexity and burden placed on people to navigate this themselves. However, some stakeholders have raised concerns that adding another body / layer would have an adverse effect and instead add complexity to the complaints landscape.

    - The introduction of a complaints co-ordinator role within local authorities could help allocate complaints appropriately and provide better support to people to navigate the complaints system.

    - People from groups who might experience extra barriers to making a complaint considered advocates, who could provide specialised support, to be important to help them access and navigate the complaints system.

[s.25 (1) – information otherwise available via Scottish Government website - National Care Service: Complaints summary of findings]

[s30 (b) (ii) – exchange of views]

[s.25(1) – information otherwise available via Scottish Government website - National Care Service: Complaints summary of findings]

[s.30 (b) (ii) – exchange of views]