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CIPFA Response to the Scottish Parliament's Consultation on the National Care Service (Scotland) Bill and Financial Memorandum

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Introduction

CIPFA welcomes the opportunity to respond to the consultation on the National Care Service (Scotland) Bill (the NCS Bill) and the accompanying Financial Memorandum (FM).

CIPFA has a key interest in social care reform across the United Kingdom. In Scotland, CIPFA was involved in the Integrated Resource Advisory Group, which considered the financial implications of integrating health and social care. CIPFA was also involved in work leading to the Public Bodies (Joint Working) (Scotland) Act 2014. However, CIPFA did not take part in the consultation exercise preceding the NCS Bill, and we have therefore not yet commented on the associated financial implications.

In summary, our response raises the following points:

- The FM to the NCS Bill lacks sufficient detail in order to say with confidence that the estimates provided are accurate.
- The Bill as drafted is enabling and provides framework powers to create the NCS, while the estimates provided cover only the current intentions. Therefore, many of the potential financial implications remain unclear and depend on future decisions. The FM as presented does not provide a full picture of the potential financial implications of the powers conferred on the face of the Bill.
- There are concerns in relation to opportunities for scrutiny, levels of uncertainty and evidence associated with the estimates, the potential implications of the economic and financial climate in which the Bill is presented, local democracy and knowledge, and proposed timescales.

Detailed comments

Opportunity for scrutiny and evaluation

We note that the Bill as it stands is enabling, and "leaves space for more decisions to be made at later stages," and that some of those decisions will be implemented through subsequent secondary legislation. However, some of these later decisions may have significant financial implications and yet no financial estimates are provided to enable full scrutiny of the provisions of the Bill as drafted.

CIPFA welcomes the fact that the Scottish Government commits to providing financial and regulatory impact assessments alongside secondary legislation, and that Parliament will have further opportunities to examine the associated financial implications. However, we understand that subsequent secondary legislation can significantly alter the financial implications of primary legislation, and there is the risk that secondary legislation provides fewer opportunities for robust scrutiny, even when subject to the affirmative procedure. It is crucial that stakeholders can voice their opinions and that the creation of the NCS harnesses sector knowledge at every stage.

To ensure that the full financial implications of the Bill are understood as accurately as possible, CIPFA suggests that the Committee may wish to consider:

- requesting that the Scottish Government provide an update to Parliament on the estimates in the FM following their forthcoming emergency budget, particularly in light of the changes in the wider financial and economic climate since the FM was prepared
- the proposed procedures attached to subsequent secondary legislation arising from the Bill and whether it will enable adequate consideration of the associated financial implications
- planning to undertake robust post-legislative monitoring and evaluation of the financial implications of the provisions in the Bill, particularly given that so much depends on decisions yet to be taken.

Uncertainty of estimates and evidence

While it is correct that the FM considers only those powers conferred directly by the Bill and not those related to wider plans for policy reforms, the fact that many of the associated estimates are related to the current cost of services raises concern. Clearly, wider policy reforms could have serious and significant implications for the overall expenditure on services. For example, increasing pay, improving terms and conditions for social care staff, bringing free personal and nursing care in line with National Care Home Contract rates, and removing non-residential social care charges would have a significant impact on levels of spend of services, and therefore on the costs estimates for the NCS and care boards going forward.

The Bill states that a "phased approach may result in a period of double running" in addition to the costs of providing services which could be transferred to care boards cited in the FM. However, there is no attempt made to determine or explain the likelihood, extent or time period for such potentially significant double running costs.

The cost of services that could be transferred may not be considered as additional, but rather as a transfer from local government to the Scottish Government. However, the use of local government total expenditure as a basis means that this includes spending funded from locally raised income (eg council tax or non-domestic rates), which will represent an additional pressure to be planned for and identified from the Scottish Government's core budget. There appears to have been no attempt to quantify or assess the extent of this pressure.

There is lack of detail in describing the methodologies used to calculate many of the cost estimates provided (aside from the helpful detail on carers' breaks), which makes forming an opinion on the reasonableness and accuracy of the FM extremely difficult. We assume that in time there will be a detailed business case with accompanying extended financial information. However, without such information, conducting a comprehensive analysis of the estimates provided is problematic.

No cost estimates are provided for the proposed electronic health and social care record, which could represent a very significant outlay. The National Audit Office has reported that the track record for digital transformation in the NHS has been poor, with previous major national programmes being "expensive and largely unsuccessful". This precedent suggests that the Scottish Government need to meticulously evaluate and analyse the costs of the proposed digital project, which will be a very complex – and potentially costly – undertaking. For such a major component of the Bill, it is surprising and disappointing that no estimates are provided.

Similarly, no estimates are given for the financial implications of the legislation on health boards. The FM states that "Ministers will also have powers to transfer functions from health boards to the new care boards, and to delegate their own health functions as NCS functions". It suggests that they are "expected to be less significant," however given that many of the associated decisions remain to be taken, this would benefit from further clarification.

The FM lacks detail on the planned nature of care boards in terms of their legal status and financial arrangements. It states that professional expert support will be required to identify costs in areas such as VAT, assets and pensions. All three of these areas will potentially incur significant costs, and no indication of the assumed cost is given for VAT or assets (pensions assumes a contribution rate of 20.9%).

VAT is a particular concern. Currently local government bodies can reclaim most of the VAT they incur in conducting statutory functions under Section 33 of the Value Added Tax Act 1994. By contrast, NHS bodies fall under Section 41 of the 1994 Act and in general cannot reclaim VAT they incur (with some exceptions for contracted-out services). Should care boards be established in the model of health boards, then the resulting change to the VAT regime could result in significant VAT costs being added to those transferred costs of services estimated in the FM. There are also significant complications that may arise in the transfer of staff if there is any differential VAT regime between care boards and local authorities. The precedent of the centralisation of police and fire services shows that it is imperative that a favourable VAT settlement is reached before the NCS enters operation. It would be helpful to have an estimate range of how much VAT would be incurred if a favourable VAT position was not available to the NCS and the care boards.

The FM also suggests that investment in social care can help to reduce the gender pay gap, tackle inequalities and child poverty, target youth unemployment, and can help Scotland meet its climate change and sustainability goals. The limited evidence cited to support these claims does not naturally lead to these conclusions. Moreover, the FM recognises that these benefits relate to “investment in social care” rather than to the provisions contained within the Bill itself.

Current climate

It is assumed (despite not always being clear) that the majority of associated costs from the Bill will be met from the Scottish Government budget. The Scottish Government are committing a significant sum from their own budget at a time when the deputy first minister has announced cutting over £500m from planned spending, and at the time of writing, is planning a further emergency budget in the coming weeks. This raises serious questions about the affordability of this major transformation project at a time when the Scottish Government as a whole is facing serious financial uncertainty as a result of the wider financial and economic climate.

The inflationary assumptions used to calculate costs in the FM are no longer relevant given the current climate. It is not clear how the 3% standard uplift was applied. However, it is CIPFA’s view that this uplift is unlikely to meet current challenges presented by the cost-of-living crisis, rising energy prices and public sector pay deals. Given that the outlook for inflation remains highly uncertain, using a range of possible estimates or scenarios may provide a clearer picture of the potential financial implications.

In the 2022-23 Budget, the Scottish Government committed to increasing social care spend by 25% by the end of the parliament, which equates to c. £840m. According to the amended Table 1 of the FM, establishing and running the NCS national organisation alone is estimated to cost between £331-£496m. Including the establishment and running of care boards, this equates to between £620m and £1.2bn over five years. This means that the Scottish Government is potentially spending £400m more than has already been committed, and on what could arguably be considered a transformation programme rather than directly on frontline services. A much greater level of detail is essential to conclude whether this is a worthwhile investment.

Local democracy and knowledge

CIPFA has long been an advocate of a whole-system, place-based approach to public services. It is from this perspective that we note with regret suggestions that there has been a lack of meaningful consultation and engagement with local government in the development of the proposals in the Bill.

Given the potential impact on the statutory responsibilities of local government, this does not appear to reflect the spirit of partnership and collaboration between local and central government that is needed. Greater attempts to draw on the knowledge and experience of local government in developing the proposals may have dissipated some of the concerns and tensions arising across the sector.

The full implications of the Bill’s impact on local authority funding and finance appears to be underexplored, and in the establishment of an NCS there is the danger of a loss of local democratic accountability. While CIPFA appreciates the stated intention to provide a degree of consistency at national level, this should not preclude the unique needs and circumstances of localities and their populations. CIPFA believes in the principle of subsidiarity, and that centralisation may prove ineffective in considering the specific needs of local populations and providing value for the public pound. This should be carefully considered throughout the establishment of the NCS, as future decisions are taken.

Timescale

The proposed timescales (where they are provided) appear challenging considering the extent of the powers contained in the Bill, the uncertainty regarding aspects of implementation, the scale of structural change involved and the immense pressures already on the health and social care sector arising from Scotland's recovery from the pandemic, as well as the existing challenges of workforce shortages, demand for services and pressure on the provider market.

Conclusion

While CIPFA welcomes the intended outcomes of the NCS of improving the quality of care, bolstering people's human rights, enhancing prevention, boosting data interconnectedness and going further with much-needed support for unpaid carers who play such a crucial role in the economy and Scottish society, the estimated financial implications over the next five years remain uncertain and could be substantial at a time of serious financial and economic challenge.

The principles and ambition of the NCS are to be lauded, however it is CIPFA's view that far greater clarity is needed on the financial implications of this proposed legislation and the major transformation it will entail.