

Notice of Special Meeting and Agenda Scotland Excel Joint Committee

Date	Time	Venue
Friday, 22 October 2021	10:15	Remotely by MS teams,

KENNETH GRAHAM
Clerk

Membership

Councillor John Reynolds and Councillor David Cameron (both Aberdeen City Council); Provost Bill Howatson and Councillor Alastair Bews (both Aberdeenshire Council); Councillor Angus Macmillan Douglas (Angus Council); Councillor Rory Colville (Argyll and Bute Council); Councillor Alasdair Rankin and Councillor Andrew Johnston (both City of Edinburgh Council); Councillor Donald Balsillie (Clackmannanshire Council); Provost Norman Macdonald (Comhairle Nan Eilean Siar); Councillor Stephen Thompson (Dumfries and Galloway Council); Bailie Willie Sawers (Dundee City Council); Councillor Gordon Jenkins (East Ayrshire Council); Councillor John Jamieson (East Dunbartonshire Council); Councillor John McMillan (East Lothian Council); Councillor Tony Buchanan (East Renfrewshire Council); Councillor Gary Bouse (Falkirk Council); Councillor Altany Craik and Councillor Ross Vettraino (both Fife Council); Councillor Ruairi Kelly and Councillor Martin McElroy (both Glasgow City Council); Councillor Jimmy Gray and Councillor Matthew Reiss (Highland Council); Councillor Jim Clocherty (Inverclyde Council); Councillor Derek Milligan (Midlothian Council); Councillor Aaron McLean (Moray Council); Councillor Joe Cullinane (North Ayrshire Council); Councillor Paul Di Mascio and Councillor Allan Graham (both North Lanarkshire Council); vacant position (Orkney Islands Council); Councillor Sheila McCole (Perth and Kinross Council); Councillor John Shaw (Renfrewshire Council); Councillor Simon Mountford (Scottish Borders Council); Councillor Amanda Hawick (Shetland Islands Council); Councillor Peter Henderson (South Ayrshire Council); Councillor Josh Wilson and vacant position (both South Lanarkshire Council); Councillor Alison Laurie (Stirling Council); Councillor Ian Dickson (West Dunbartonshire Council); and Councillor John McGinty (West Lothian Council).

Councillor John Shaw (Convener); Councillor Paul Di Mascio (Vice Convener).

Further Information

If you require further information in relation to this meeting please call 0141 618 7111.

Items of business

Apologies

Apologies from members.

Declarations of Interest

Members are asked to declare an interest in any item(s) on the agenda and to provide a brief explanation of the nature of the interest.

1 Response to National Care Service Consultation 5 - 24

Report by Chief Executive of Scotland Excel.

Scotland Excel

To: Special Joint Committee

On: 22 October 2021

**Report by:
Chief Executive of Scotland Excel**

Response to National Care Service Consultation

1. Introduction

The purpose of this report is to seek approval from members for Scotland Excel's proposed response to the Scottish Government's consultation on the National Care Service (NCS).

2. Background

In February this year the report on the findings of the Independent Review of Adult Social Care was published. The report found issues with implementation of social care policy and was critical of current commissioning & procurement activity.

Amongst the recommendations, to help drive improvement in the sector, was the establishment of a NCS in Scotland. The report recommended that the NCS take over responsibility for the strategic aspects of social care planning and commissioning from local government. Local government would instead become a care provider alongside the private and voluntary sectors and would be commissioned to deliver services on behalf of the NCS.

In August, the Scottish Government published their consultation on the creation of the NCS in Scotland. The proposals set out within this document are significant and will result in a fundamental change to the role of local government in Scotland if implemented.

The scope of services proposed for inclusion in the NCS is also far broader than was initially anticipated and includes services relating to adult social care, children's services, community health, addiction, justice, and social care in prison.

3. Scottish Government's National Care Service Proposals

The potential impact on Scotland Excel's role is also very significant. The proposed plans include the creation of a new team within the NCS to undertake national commissioning of complex care services including residential services and the National Care Home Contract.

The proposals include that the new NCS team will also undertake national market research and analysis activity in relation to social care and will lead on the creation of a new 'Structure of Standards and Processes'. This includes the provision of guidance, templates and tools to support local commissioning practice.

4. Approach to Scotland Excel's Consultation Response

The approach to the consultation response was discussed with Executive Sub-Committee members in September. Elected members noted that the response should:

- Refute any inaccuracies and address any gaps presented in the consultation documents.
- Highlight the skills, experience and current role of the organisation.
- Make the case for national commissioning remaining with Scotland Excel.
- Propose that Scotland Excel expand its areas of work to support improvement.
- Ensure the response does not appear defensive or protectionist.
- Focus on procurement and commissioning elements.

Elected members also considered governance plans relating to the response. Members requested that a special meeting of the Joint Committee be convened to consider the proposed response given the significance of the proposals for local government.

Following this direction from elected members, Scotland Excel met with the Chief Executive Officers Management Group (CEOMG) to discuss the response in more detail. Discussions with this group confirmed the response should:

- Not be constrained by the question set but should be drafted as a thematic response
- Set out Scotland Excel's current role and associated skills and experience
- Highlight the positive outcomes and good practice across the sector supported by Scotland Excel
- Highlight the complexity of social care markets and the risks associated with this work

Scotland Excel has produced the draft response set out in appendix 1 in line with this feedback.

5. Recommendation

Members are invited to:

- Review the proposed consultation response as set out in appendix 1; and
- Approve this response for submission to Scottish Government

Appendix 1 - Scotland Excel Draft Response to the National Care Service Consultation

Introduction

Scotland Excel submits the following in response to the Scottish Government's consultation on the establishment of a National Care Service (NCS).

We welcome the opportunity to respond to the proposals set out and would like to confirm our support for the overarching aspirations of improving social care and the experiences of those accessing services and their families. We would also like to confirm our commitment to continue working in partnership with others in the sector to support this improvement.

Scotland Excel's response focuses on social care commissioning and procurement given this reflects our current role and area of expertise.

Before considering the proposals in detail, we would like to note the feedback on current procurement and commissioning activity which was provided to the Independent Review of Adult Social Care (IRASC). It is, of course, critically important to acknowledge the views of those with lived experience and to recognise that more can be done to change and improve commissioning practices.

Scotland Excel believes that some of the current issues relating to commissioning and procurement practice can be addressed by empowering more commissioners to utilise the full flexibility provided by the procurement legislation, enabling more activity to be undertaken in innovative and collaborative ways.

It is Scotland Excel's opinion, however, that neither the IRASC nor NCS consultation document accurately describes the full picture. It is critically important for Scottish Government to recognise the context in which current procurement and commissioning decisions are made, the key drivers for current practices, including the extent to which limited budgets drive current practice and the complexity of this landscape. Good social care procurement and commissioning drives improvement and helps to embed change to support wider policy goals when it focuses on quality as the main determinant of best value and is delivered by skilled and specialist professionals. The organisation which undertakes the national activity must have the experience and capability specific to this complex and important task. Scotland Excel has successfully undertaken this role for more than ten years and we remain committed to delivering further improvement in procurement and commissioning practice.

Submission Format

Scotland Excel's submission is predominantly included within this letter rather than the question set. This is due to the complexity of the matters being considered and the need to set out the role of the organisation in some detail.

The first section of our response aims to set out the current landscape in relation to national social care commissioning and the specific role of Scotland Excel which, regrettably, has not been reflected within the consultation documents.

The second section of our response seeks to set out Scotland Excel's position in relation to the proposals detailed in the consultation documents for commissioning of services.

The third, and final, section reflects the response to the question set. Scotland Excel has respectfully elected to only answer a small number of questions within the consultation document which specifically relate to our established role within the social care landscape in Scotland.

1. Scotland Excel

1.1 Overview

Scotland Excel was established in 2008 following the publication of the McClelland Review of Public Procurement in 2006. This report recommended the establishment of procurement Centres of Expertise (CoEs) to promote collaboration and develop professional capability.

Since the publication of the report, the CoEs, Scottish Government and local procurement teams have worked together to transform public procurement from a transactional function to a strategic collaborative driver of social value and better public services. While the transformation now required in the social care sector may be far more significant than anything required by McClelland, effective collaboration remains the key to success.

Scotland Excel develops and manages collaborative contracts worth circa. £2bn per annum on behalf of local authorities, health & social care partnerships, housing associations and other third sector associate members. For more than 10 years this portfolio has included national social care arrangements delivered by Scotland Excel in collaboration with the wider sector. National social care commissioning is now a key strategic function for Scotland Excel, covering both adult social care and children's services.

We have a dedicated social care section, comprising three specialist teams staffed by skilled and experienced social care commissioners, supported by other professional disciplines and governance arrangements. With more than a decade of experience in commissioning at a national level, Scotland Excel has developed the skills and knowledge to offer expert stakeholder engagement and collaboration across complex stakeholder groups.

Scotland Excel has responsibility for national commissioning activity in relation to:

- Secure care
- Fostering and continuing care
- Children's residential care and education (including day education)
- Community meals
- Telecare and telehealth
- Social care case management software systems
- Care and support (including both care at home and supported living services)
- Care homes for adults with learning disabilities (including autism)
- The National Care Home Contract
- Social care agency workers

In addition to contracts for direct social care provision and related goods & services, Scotland Excel also provides a wide range of national contracts. The wider portfolio for supplies and services accessed by local government, housing associations and third sector associate members includes food supply contracts, janitorial products, PPE, washroom solutions, waste contracts, construction professional services and a new build residential works contract (with care home buildings in scope).

1.2 Collaborative Approach to National Commissioning

National social care contracts are delivered by Scotland Excel in line with best practice which supports the principles set out in the Feeley Review recommendations as well as ensuring compliance with procurement legislation. Our solutions aim to maximise choice for those who use services, utilising the scope provided by the 'light touch' procurement regime to deliver 'flexible' frameworks without limiting provider participation and are sufficiently agile to respond quickly to changing circumstances and demands.

This is not a typical competitive exercise, but rather an approach which ensures that all providers have an opportunity to participate in delivery of public services through a fair and transparent process. It also ensures that services meet Scottish Government objectives for a human-rights based approach, with the person receiving care at the centre, and a workforce receiving fair work commitments.

Our arrangements support tailored local commissioning and person-centred decision making while enabling an appropriate degree of standardisation and quality provision. Single contracts can be agreed in line with the preference of a self-directed support (SDS) recipient as well as agreeing multiple packages of support for people with similar needs.

They also support the inclusion of additional services and supports to reflect changing service user needs, with the flexibility to add and remove additional services as required. Our arrangements are designed to ensure continuity of service for individuals, with terms and conditions linked to individual placements or support packages which can continue beyond the scope of the framework. A focus on sustainable rates and true service costs, rather than price, also supports sustainability and continuity.

Scotland Excel's approach is based on collaboration with people at the centre of decision making. The organisation works closely with a range of partners involved in the delivery of care such as care practitioners from councils and HSCPs, and the representative bodies for care providers.

People with lived experience of social care have been involved in exercises undertaking roles such as shaping specifications, tender questions and evaluation of provider submissions. Scotland Excel is continually seeking opportunities to do more to involve people with lived experience and their families.

Scotland Excel's arrangements for social care services delivered to people are based on promoting quality with obligations in relation to high standards of service provision. They are based on an understanding of the cost of delivering high quality care, financial transparency and sustainability supporting decision making in relation to best value rather than price. In partnership with local authorities, COSLA and Scottish Care, Scotland Excel has developed a cost of care model which provides a clear, evidence-based model on which to base financial discussions in the care home sector. This approach ensures clarity in relation to financial drivers and transparency of commercial return. This model builds in payment of Real Living Wage to care workers and associated annual uplifts as standard.

1.3 Training & Improvement

Our role and expertise extend beyond the provision of contracts. The Scotland Excel Academy delivers people and organisational development programmes through qualifications, workshops and

masterclasses. The Academy delivers accredited and non-accredited programmes and creates bespoke content contextualised to the Scottish public-sector. This professional training offering could be expanded to offer tailored solutions to support commissioning practices.

Scotland Excel is also responsible for the local government roll out of the Procurement and Commercial Improvement Programme (PCIP), the national assessment which benchmarks organisational procurement performance across the public sector and measures continuous improvement. This improvement role also supports individual local authorities via consultancy support and delivering of major transformation programmes. This experience could be utilised to assess improvement in local commissioning activity in line with governance guidance and agreed best practice.

Through procurement activity Scotland Excel has also been able to drive improvement in various sectors through supply chains, and delivering against Scottish Government policy objectives. This includes sustainability improvements, increasing local supply options, fair work and community benefits.

1.4 National Arrangements for Children's Services

Scotland Excel develops and manages three national children's services contracts which have been renewed multiple times, reflecting improvements in each iteration. Local authorities and Scottish Government use these contracts on a regular basis to supplement in-house services or to meet specialist requirements. These arrangements have been developed collaboratively with stakeholders in recognition of the importance of these services on the lives of children & young people.

Participation in these contracts is now high, but it took many years for different parties to recognise the benefits of the national arrangements. This evolution of understanding by all parties occurs only with time, experience and collaboration.

By way of example, the success of the children's residential framework is demonstrated by recent data which indicates that an average of 1,800 placements are in place each quarter, with a corresponding spend of over £127 million each year. This framework agreement offers providers a simplified route to contracting with local authorities and ensures an appropriate level of clarity and consistency through standardised terms and conditions, reporting requirements and placement processes. The national children's residential framework also supports the sharing of information and joined up decision making at a national level.

Scotland Excel is in a prime position to facilitate discussion between relevant stakeholders, such as local authorities, providers and their representative bodies, the Promise and different Scottish Government departments, on key policy change and improvements. Crucially, the national framework can be used to embed change and reflect best practice to help support policy implementation. Scotland Excel is already working with partners to ensure that national commissioning decisions support the changes required by the Promise while ensuring continuity of current service provision.

1.5 Support for Local Commissioning

While the children's residential framework is a successful example of a national framework agreement, it is important to note that different types of arrangements can provide more effective

solutions for other areas. Scotland Excel has an established track record of supporting national policy work to embed best practice in local commissioning and procurement arrangements.

More recently, Scotland Excel was grant funded by the Scottish Government to support the Early Learning and Childcare 1140 expansion. Scotland Excel created guidance documents which were published by the Scottish Government covering, Sustainable Rates; Business Sustainability; and Transition Options (Contracting Options). A set of contract documentation has been produced to encourage consistent practice across councils, while offering a degree of flexibility to meet local requirements.

This work involved extensive engagement with a range of stakeholders to ensure that the final guidance was fit-for-purpose and met expectations. The work embedded the principles of good procurement within national policy change to support local authorities with compliantly and confidently delivering national policy requirements, and is a model which could be applied elsewhere.

1.6 Adult Social Care

Scotland Excel has built on the success of the children's services contracts by introducing contracts for adult social care services in response to changing policy direction and Scottish Government requirements.

The first national care home contract for adults with learning disabilities was developed by Scotland Excel in collaboration with partners. This responded to the requirement for a national solution which was identified and recommended in 2013 within The Keys to Life, Scotland's learning disability strategy. This framework is now well established with participation from 31 purchasing authorities and 23 providers offering 55 services. This arrangement provides a critical service for people requiring residential care, as well as supporting people to move on to independent living, where possible.

Our experience in social care markets prompted COSLA's request for Scotland Excel's support in their annual negotiations on the cost of older people's residential and nursing care in 2012. In partnership with COSLA, authorities and provider representative bodies, Scotland Excel subsequently led the development of a care home cost model to provide an evidence-based approach to discussion on costs. This approach was welcomed by the Competition and Markets Authority (CMA) in their 'Care Homes Market Study' report published in 2017 which recognised the steps taken in Scotland to address concerns in the care home market through the cost model work.

Scotland Excel now undertakes the lead role in the development and management of The National Care Home Contract (NCHC), having taken over this lead role from COSLA in 2018.

While the cost of care model has been created and adapted, further discussions are required to secure the full use of this model to identify care home costs. As the current model framework was devised in 2013, there is a need to redesign the NCHC to embrace current approaches to social care.

Scotland Excel is working collaboratively to achieve this. This unique contract will be redesigned with active support from local government and Scottish Government representatives, and will also include care home representative groups and unions, as well as carer representatives and independent advocacy to secure the views and wishes of residents. This fully collaborative approach

will create a contract that has the residents, their rights, their needs and their wellbeing at its heart, and will maximise the sustainability of the sector.

In 2020, Scotland Excel was commissioned by Scottish Government to develop a national solution for care and support services which was reflective of best practice, particularly in relation to service sustainability. This work built-in fair work principles and enables ongoing participation from new entrants and services to provide consistency and stability for people using services. Criteria for participation in this framework are based on service quality and financial transparency, rather than price. The framework currently has 119 providers participating, offering 460 services, with providers not party to the framework regularly contacting Scotland Excel to express an interest in joining.

The care and support framework allows for individual or multiple packages of care to be directly agreed with providers, and also supports other flexible commissioning options and partnership working. This includes aggregated commitment contracts to provide certainty and security to providers and processes for agreeing specialist packages of care for individuals with complex requirements.

The framework facilitates the detailed involvement of people who require care and support services, and can be tailored to meet the individual needs of people requiring support through SDS. As a recent example of this, SDS service users were involved in an evaluation process for choosing a provider for a six-placement housing support complex, and helped to determine which provider would be best suited for their needs.

Good practice examples such as this demonstrate the flexibility that well-crafted national arrangements can provide. This successful model was further developed to ensure that national frameworks are used to best effect where they are the most appropriate option for meeting service user needs.

As the care and support framework is relatively new, it has still to see the level of uptake that now applies across children's services arrangements. Scotland Excel cannot mandate use of the framework, and this diminishes the potential opportunity across Scotland to enable consistency in approach to ensuring that sustainability and fair work sits at the heart of all contracting arrangements, and that this is afforded to all providers. While uptake is expected to increase, in line with trends seen in children's services, the cost implications of using the framework may act as a barrier to use in some local areas.

Scotland Excel developed the framework to reflect best practice and ensure sustainability of this important service provision. Such advances are not without cost implications that require careful consideration, particularly where authorities face significant budgetary pressure. Our experience is that uptake tends to increase over time as the benefits of the framework become more established.

2. Response to Proposals

2.1 Overview

Good commissioning and procurement activity can help drive change and embed policy which supports improvement. However, this is not recognised by either the Feeley report or the consultation documents. Nor is the context of the current commissioning landscape fully recognised. It is critically important to understand the current system and the drivers behind current practice

before detailed improvement plans can be fully considered. Scotland Excel would be happy to support this work.

Scotland Excel notes the absence of current roles and responsibilities in relation to national commissioning from the consultation document. Without an accurate description of current roles, respondents may not have had a clear understanding of where the relevant skills and experience reside when answering questions about future roles and responsibilities in social care commissioning. It is vital that Scottish Government does understand this landscape and takes this into account when determining future direction.

With such a significant proportion of social care services externally commissioned, the risk of not carefully considering the future of commissioning arrangements cannot be overstated. Social care commissioning is a unique and specialist profession and requires a clear understanding of the complex social care markets in Scotland.

Scotland Excel has significant experience in undertaking a wide spectrum of social care commissioning work. We have the benefit of years of learning and our multi-disciplinary specialist teams include appropriate expertise and support structures, having carefully developed links with key stakeholders such as provider representative groups, local commissioners and social work teams. Scotland Excel is best placed to continue in this role and would be able to use these skills to undertake national exercises in the other areas.

With appropriate support from Scottish Government, Scotland Excel could build upon the success of the current model which has been independently recognised by peers and stakeholders. For example, the recent Scottish Government Procurement and Property Directorate (SPPD) report on 'Key Stakeholder Survey & Independent Assessment with Recommendations to Support Planning for the Future', published in May 2021 (by Proxima), indicated that a positive theme from the interviews carried out with local authority and government stakeholders included *"the work (Scotland) Excel are doing in managing the critically important category of Social Care."*

2.2 Structure of Standards & Processes

Scotland Excel agrees that more could be done to support improvement in local commissioning practices. Proposals relating to the creation of guidance, tools and templates nationally are welcome. Two factors are critically important to the success of a national approach.

The organisation undertaking the lead role in this work must have extensive, direct, practical experience of undertaking complex procurement and commissioning exercises to enable solutions which:

1. truly understand and support both strategic and operational requirements in commissioning, thus supporting local commissioners to make practical changes to address the gap between policy and implementation highlighted within the Independent Review of Adult Social Care; and
2. understand the important balance between local commissioning and national commissioning. Getting this balance right is critical to ensure that work done nationally

delivers consistency and supports best practice while creating the flexibility to support individual choice.

Scotland Excel adopts various procurement approaches tailored to fit the situation and circumstances at play in each market and for each requirement and has experience in supporting local commissioning through provision of tools and guidance. We are therefore well placed to undertake the collaborative lead role in developing the Structure of Standards and Process.

To support the roll out of standards and processes developed and agreed collaboratively, Scotland Excel proposes to develop associated training. Our expertise in social care commissioning combined with our experience in improving procurement practice, undertaking transformation programmes and providing high quality learning via the Scotland Excel Academy, provides a unique position to offer this training and support for local commissioners. This could be also be collaboratively developed to support local commissioners to make full use of the flexibility afforded by procurement legislation for social care. There are clear synergies gained by having this work delivered by the one organisation.

2.3 Market Research & Analysis and Market Oversight

Scotland Excel is supportive of a greater level of national market research, analysis and market oversight in social care. While these are different roles requiring different skills, the interaction between organisations at points of overlap is critical to success in this area.

Scotland Excel is supportive of the Care Inspectorate providing a greater market oversight role in social care. The organisation must be appropriately resourced and empowered to undertake this role and make key decisions in this area.

Additional market oversight alone, however, will not be sufficient to deliver change in market behaviour. A commissioning response is required to address issues in practice which lead to poor outcomes for people.

Scotland Excel has extensive experience in undertaking market research and analysis at the national level and is uniquely positioned to build upon this experience and undertake this role.

The organisation undertaking this work must have extensive experience in market research and analysis activity specific to the unique social care landscape in Scotland to ensure that:

1. the differing markets which make up the full social care sector in Scotland are adequately considered. This includes understanding the specific make up of provision across different service areas as well as the unique risks, cost drivers, legislation, policy direction and demand trends.
2. the critical balance of local and national data gathering and sharing of intelligence is understood and reflected in agreed roles and responsibilities.
3. this work complements the market oversight role led by the regulator.

Scotland Excel proposes to work in partnership with the Care Inspectorate to provide information and analysis gathered as part of the national commissioning role to support market oversight

considerations and vice versa. This would ensure the sharing of vital market intelligence and would minimise duplication of effort.

For clarity, Scotland Excel does not propose to be involved in the main duties and function of the regulator but would agree a supporting function in relation to the areas where our skill and expertise allows. This would include overlapping areas, for example financial monitoring

Work in this area must not be an additional administrative burden on providers, instead it must strive to streamline data gathering and reporting as far as possible. A similar approach must be carefully considered, in collaboration with partners, to determine the optimal balance of local and national data gathering and reporting requirements.

2.4 National Commissioning & Procurement Services

Scotland Excel can support the NCS in delivering national framework as NHS NSS does for health services. We have been undertaking the lead role in establishing and managing national social care contracts in Scotland for over 10 years. We strongly believe that our existing skill and experience will drive better improvement results in the sector, in a more immediate timescale, than would be the case if this function is recreated in another organisation without this background knowledge and direct experience.

To undertake this lead role efficiently and effectively the organisation must:

1. understand the importance of social care to the lives of individuals and embed this person-centred approach in all work.
2. support the key aims and objectives of improvement in social care and of effective voice and recognition for the social care workforce.
3. have extensive direct experience of delivering national social care arrangements which reflect best practice.
4. understand the complex and unique social care and related regulatory landscape in Scotland. This includes the different markets which make up this landscape and their different policy and legislative context and direction, as well as practical experience of applying social care procurement legislation and best practice.
5. understand the key cost drivers in different social care markets and be committed to working to improve financial transparency and support financial sustainability.
6. be committed to delivering solutions which support high quality service provision.
7. understand the importance of achieving the right balance of local versus national commissioning.
8. be staffed by skilled and experienced commissioners led by senior leaders with extensive experience of commissioning at a national level.
9. have experience in delivering improvement activity, training and transformation work.
10. have appropriate specialist supporting services and structure including legal, financial and insurance support from professionals experienced in supporting social care commissioning activity at the national level.

Scotland Excel meets all 10 of these requirements and is uniquely positioned to build on this experience to potentially undertake national commissioning activity across a broader range of areas than those currently covered. Key to any new activity is:

1. thorough and detailed assessment undertaken in collaboration with stakeholders to determine whether a national solution would be suitable. The organisation undertaking this work must have suitable skills and experience to undertake such a review; and
2. recognition that national procurement exercises are not always the optimal solution. The organisation undertaking this work must have a clear understanding of the variables which support this important decision making. Where national procurement is not deemed optimal the organisation leading this work must be able to effectively review alternative options to support best practice in local commissioning. This is complex and specialist work.

2.5 Response Conclusion

The consultation proposals involve the creation of a new team within the NCS which essentially replicates the role of the Scotland Excel social care teams. Building on Scotland Excel's successful model would avoid expense and resource requirements necessary to set up a new commissioning team, any unintended loss of skill and learning and would facilitate more rapid progress.

Working in partnership with key stakeholders, Scotland Excel is uniquely positioned to continue to lead on national commissioning in social care. With appropriate resource, Scotland Excel could expand this successful model further to help Scottish Government meet the challenges identified. This approach would result in the ability to implement change much more quickly and effectively than waiting to establish new structures.

Retaining social care commissioning within the wider structure of Scotland Excel is also key to ensuring ongoing best practice. Scotland Excel as a whole is greater than the sum of its parts, with different teams and specialist areas working together to share experience and expertise in relation to common issues and procurement practice. While procurement and commissioning for social care services has many unique facets, it shares key considerations with other category areas, not least that it is required to treat providers equally and without discrimination and act in a transparent and proportionate manner.

These principles are embedded in the work that Scotland Excel undertakes for all national procurement processes and are embedded within all procurement processes, whether in social care or other categories.

Social care is a unique, complex, and critically important sector. The Scottish Government must work collaboratively with the sector, drawing on the wealth of skill and experience available, to identify risks, issues and opportunities. In relation to commissioning, some key overarching considerations must be carefully thought out before detailed plans are concluded. Many of these relate to the proposed change in local government role. Clarity is required on any impact on public provision, makeup of markets, and responsibilities for stepping in where things go wrong with commissioned services.

In conclusion, Scotland Excel would like to reiterate our willingness to be a key partner in this important work, to support Scottish Government to consider these key issues, and to support the improvement aims of Scottish Government and the wider sector. Scotland Excel is equally well placed to support any new structures established under the new NCS as it is to continue to support the local government sector and existing structures.

Given the significance of the proposals and the importance of this work, Scotland Excel would welcome the opportunity to meet with Scottish Government to discuss the future of social care commissioning.

3. Consultation Question Set

A National Care Service for Scotland - Consultation



RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

☐ Individual

☒ Organisation

Full name or organisation's name

Scotland Excel

Phone number

Address

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

- ☒ Publish response with name
- ☐ Publish response only (without name)
- ☐ Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- ☒ Yes
- ☐ No

Individuals - Your experience of social care and support

If you are responding as an individual, it would be helpful for us to understand what experience you have of social care and support. Everyone's views are important, and it will be important for us to understand whether different groups have different views, but you do not need to answer this question if you don't want to.

Please tick all that apply

- ☐ I receive, or have received, social care or support
- ☐ I am, or have been, an unpaid carer
- ☐ A friend or family member of mine receives, or has received, social care or support
- ☐ I am, or have been, a frontline care worker
- ☐ I am, or have been, a social worker
- ☐ I work, or have worked, in the management of care services
- ☐ I do not have any close experience of social care or support.

Organisations – your role

Please indicate what role your organisation plays in social care

- ☐ Providing care or support services, private sector
- ☐ Providing care or support services, third sector
- ☐ Independent healthcare contractor
- ☐ Representing or supporting people who access care and support and their families
- ☐ Representing or supporting carers
- ☐ Representing or supporting members of the workforce

- ☐ Local authority
- ☐ Health Board
- ☐ Integration authority
- ☒ Other public sector body
- ☐ Other

Commissioning of services

Structure of Standards and Processes

Q1. Do you agree that the National Care Service should be responsible for the development of a Structure of Standards and Processes

- ☐ Yes
- ☒ No

If no, who should be responsible for this?

- ☐ Community Health and Social Care Boards
- ☒ Scotland Excel
- ☐ Scottish Government Procurement
- ☐ NHS National Procurement
- ☐ A framework of standards and processes is not needed

Q2. Do you think this Structure of Standards and Processes will help to provide services that support people to meet their individual outcomes?

- ☐ Yes
- ☐ No

Q3. Do you think this Structure of Standards and Processes will contribute to better outcomes for social care staff?

- ☐ Yes
- ☐ No

Q4. Would you remove or include anything else in the Structure of Standards and Processes?

Not at this time. Determining the list of inclusions within the proposed Structure of Standards and Processes should be undertaken in collaboration with the sector.

Scotland Excel would welcome the opportunity to consider the list in partnership with Scottish Government and others before answering this question.

Market research and analysis

Q5. Do you agree that the National Care Service should be responsible for market research and analysis?

☐ Yes

☒ No

If no, who should be responsible for this?

☐ Community Health and Social Care Boards

☒ Care Inspectorate

☐ Scottish Social Services Council

☐ NHS National Procurement

☒ Scotland Excel

☐ No one

☐ Other- please comment

Scotland Excel has extensive experience undertaking market research and analysis in both adult social care & children's services at the national level. We therefore believe we are uniquely positioned to utilise our existing skill and experience to extend our current role in this area. Scotland Excel could expand our current role beyond monitoring in relation to national contracts and could offer this across social care as agreed in collaboration with other stakeholders.

We believe there is overlap in market research & analysis activity with aspects of market oversight activity and that this needs to be carefully thought out and agreed. Scotland Excel proposes to work in partnership with the Care Inspectorate to agree parameters for our respective roles in relation to these types of activities. We also propose to work with local areas to agree activity which should be undertaken locally and how this interacts with national activity.

We would welcome the opportunity to agree roles and responsibilities in relation to this work and implement these as soon as possible.

National commissioning and procurement services

Q6. Do you agree that there will be direct benefits for people in moving the complex and specialist services as set out to national contracts managed by the National Care Service?

☐ Yes

☒ No

If no, who should be responsible for this?

☐ Community Health and Social Care Boards

☐ NHS National Procurement

☒ Scotland Excel

Regulation

Core principles for regulation and scrutiny

Q7. Is there anything you would add to the proposed core principles for regulation and scrutiny?

Q8. Are there any principles you would remove?

Q9. Are there any other changes you would make to these principles?

Strengthening regulation and scrutiny of care services

Q10. Do you agree with the proposals outlined for additional powers for the regulator in respect of condition notices, improvement notices and cancellation of social care services?

- ☐ Yes
- ☐ No
- ☐ Please say why.

Q11. Are there any additional enforcement powers that the regulator requires to effectively enforce standards in social care?

Market oversight function

Q12. Do you agree that the regulator should develop a market oversight function?

- ☒ Yes - and should consider the key elements of market oversight and market research & analysis in collaboration with Scotland Excel to agree clear roles & responsibilities.
- ☐ No

As the regulator, the Care Inspectorate would have the main role in terms of market oversight and Scotland Excel would not propose to detract from this. We would instead propose to agree a supporting function in relation to the areas where our skill and expertise allows. This would include areas identified as overlapping in terms of market oversight and market research and analysis e.g., financial monitoring.

Q13. Should a market oversight function apply only to large providers of care, or to all?

☐ Large providers only

☒ All providers

This would depend on the proposed approach to be taken. Providing the approach was proportionate for smaller providers, and recognised the importance of local monitoring and intelligence, an approach which encompassed all providers could potentially be created.

Q14. Should social care service providers have a legal duty to provide certain information to the regulator to support the market oversight function?

☒ Yes

☐ No

Q15. If the regulator were to have a market oversight function, should it have formal enforcement powers associated with this?

☒ Yes

☐ No

Q16. Should the regulator be empowered to inspect providers of social care as a whole, as well as specific social care services?

☒ Yes

☐ No

Please say why

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