



## **The National Care Service and the Crisis of Community Justice**

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### **Abstract**

This article discusses the institutional structures around Justice Social Work (JSW) – a role analogous to probation services elsewhere, and the main ‘provider’ of Scottish ‘community justice’ - in relation to an abortive attempt to create a National Care Service for Scotland which, it was proposed, would include JSW within its framework. We site these developments in the historical context of repeated administrative reorganisations of JSW, beginning in the 1980s and driven by local/central political dynamics as well as justice policy concerns, alongside other reforms (notably the 2013 creation of Police Scotland and the 2014 integration of health and social care at local level). Drawing on extensive literature reviewing, we unpick the reasoning for further structural reforms to JSW, highlighting an assumption that structural reforms will fix longstanding and complex problems, aggravated by their under-resourcing of front-line services. We also outline the legislative development of the National Care Service, and its eventual collapse.

### **Introduction**

Proposals for a National Care Service for Scotland during 2022 to 2025 generated renewed discussion about the structural arrangements underpinning the provision of Justice Social Work (JSW) services. JSW forms a specialism within local authority social work departments under the 1968 Social Work (Scotland) Act which abolished Scotland’s probation service and merged its functions with new social work departments in Scotland’s local authorities (restructured under 1990s reforms into 32 unitary authorities). It is the Scottish equivalent to state probation services found elsewhere, with broadly similar responsibilities.

JSW is a key part of community justice in Scotland, but Scottish community justice sits beyond JSW. It also includes the national body Community Justice Scotland, local community justice partnerships, and a range of public- and third-sector organisations with an emphasis on community supervision. While concepts and practices of community justice diverge, the Scottish Government (2014) defines it as:

“The collection of agencies and services in Scotland that individually and in partnership work to manage offenders [sic], prevent offending and reduce reoffending and the harm that it causes, to promote social inclusion, citizenship and desistance”.

We recognise that this definition centres the state, and does not include the possibility of communities finding or practicing their own solutions to crime and harm; indeed, like many rhetorical appeals to community, it treats ‘community’ as a self-evident good while ignoring the question of what (or where) it is. Much is therefore left out, and much is included that is not especially community-oriented or, in similar vein, generative (McNeill et al., 2026). Nevertheless, we use the Scottish Government definition here because we are focused on policy narratives and state-led administrative reconfiguration.



Rather than a policy concern with contemporary JSW arrangements, it was developments in the related field of social care, particularly the *Independent Review into Adult Social Care (IRASC, 2021)* chaired by Derek Feeley, that led the Scottish Government to propose a new National Care Service (NCS) to centralise all social care, and potentially social work including JSW. But whether (or how) this would happen remained uncertain throughout the lifetime of the proposals.

Despite the significant amounts of policy attention afforded to it, limited research exists on the organisation of JSW in Scotland, and reforms surrounding community justice (but see Morrison, 2015; Buchan and Morrison, 2020). Moreover, this is the first academic article to evaluate the implications of the proposed NCS for JSW and more widely for criminal justice in Scotland. Herein, we highlight a range of problematic implications generated by the proposals but also of Scottish policymaking in this area more generally. In so doing, we advance a historicist analysis to situate the NCS proposal in context, as the latest in a series of structural reforms to JSW and community justice since 1989 and in relation to the integration of health and social care provision from 2015. We then critically consider the NCS proposals and political controversies surrounding them, reflecting on what the integration of JSW into the new service might have looked like, and what issues this raises in the wider context of a penal crisis affecting Scottish (and UK) criminal justice.

Even though, as we go on to note, the NCS proposal essentially collapsed while we were writing this article, our critiques remain relevant through their broader application to Scottish penal policy, and the literature on policy implementation failures. This is because many of the restructuring policies, and concerns they have engendered, have centred on the 'governance' of JSW and community justice - how it is to be organised and delivered to achieve particular outcomes.<sup>1</sup>

## Methods

This article draws on both authors' extensive research on the organisation of Scottish community justice, including in the lead-up to the NCS consultation. The research comprised a literature review of international scope as well as a secondary analysis of the consultation responses themselves, in addition to critical reviews of the National Care Service Justice Social Work Research (Ormston et al., 2024), and subsequent grey literatures. It is, then, underpinned by a systematic search for publications between 2000 and 2025 in the English language across academic databases including Google Scholar, SAGE, ASSIA, Scopus and ProQuest. A wide range of search terms were used in various combinations including: Probation; Criminal Justice Social Work; Organisation; Structure; Workplace; Transforming Rehabilitation; Offender Management; National Probation Service; Community Rehabilitation Companies; Probation, Organisational Reform, Culture change; Probation Ireland/Scotland/Republic of Ireland/England and Wales and Organisation, Structure, Change; Governance and Justice; Probation AND Europe and so on. After refining terms and sifting through the search results, over 70 articles were downloaded. Operational and government platforms were also searched

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<sup>1</sup> This includes the creation of the *National Strategy for Community Justice* under the 2016 Act, and the emphasis on outcomes improvement planning at local level, under the Community Justice Authority (CJA) and latterly Community Justice Partnership (CJP) models.



including Scottish Government, Scottish Parliament, the Care Inspectorate, and Audit Scotland, and relevant publications downloaded.

Additionally, one of us collaborated with IPSOS Scotland who led on the consultation commissioned by the Scottish Government (Ormston et al., 2024) as part of a wider programme of professional and public consultation on whether JSW should be included in the NCS. Both authors conducted a secondary analysis of the published data through the lens of our theoretical framework detailed below. These data included semi-structured interviews and focus groups with JSW professionals and key stakeholders (including service users) across six case study local authorities (Argyll and Bute, Fife, Glasgow, Highland, South Lanarkshire and West Lothian). 141 participants took part in one-to-one, paired depth or group interviews between April and July 2023, including: 102 professionals working directly in JSW (including senior managers, team leaders, social workers and paraprofessionals); 19 professional partners from a wide range of other services, and 20 JSW clients.

As Ormston et al. (2024: 5) concede, the timing of this consultative work was not itself without limitations, a point we return to later through an implementation lens. They note that at this time:

“Scottish Government was still developing its plans for the NCS, including options for including JSW within the service. As such, the research team were not in a position to relay a definitive or detailed description of what this might look like. Participants’ views on the NCS were therefore based largely on what they had seen and heard at that point in time, which may not reflect later proposals.”

Nonetheless, it would not have been useful to gather more data on this proposal - even had detail been provided that could have generated novel insights, the collapse of the central NCS proposal (discussed below) renders these questions redundant. Thus, the limitation of this research is a ‘case in point’ reflection of the limitations of the policy process itself.

### **Contextualising and Theorising Scottish Criminal Justice**

In this section we outline historical developments around Scottish community justice leading up to the NCS proposal. We draw on Terpstra and Fyfe’s (2015) application of the implementation literature to Scottish (and Dutch) policing reforms, and McAra’s (2008) concept of ‘hyper-institutionalisation’. We argue that this history is characterised by a persistent ‘implementation gap’ that results from a pattern of overestimating the impacts of policy ‘solutions’ and underestimating the problems they intend to solve (Hudson et al., 2019).

The history of JSW has coincided with shifts in and debates over Scotland’s constitutional position in the UK - especially devolution and long-term campaigning for Scottish independence. However, JSW was subject to repeated reorganisations even *before* devolution, dominated by the question of whether the system should be administered centrally or locally.



Another important contextual feature then is the complex relationship between Scotland's local and central government. This was brought into connection with criminal justice when the 1968 Social Work (Scotland) Act (hereafter, the 1968 Act) merged probation services into new generic social work departments, as part of a wider egalitarian social welfare project in which offending was positioned as part of an interconnected set of social problems (Brodie et al., 2008). The 1968 Act has been described as exemplifying penal-welfarist principles and, in positioning JSW as part of generic social work, consolidated a 'distinctive' Scottish penal-welfarist narrative (Muncie, 2011) that both positions Scottish criminal justice as distinct from England and Wales and serves the political interests of Scottish Nationalism (Maclennan, 2016). However, its radical intentions were never fully realised; in particular, a system of generic social work budgets (with local authorities afforded autonomy over the allocation of funding) led to a situation in which people under justice supervision were losing out to social work client groups deemed more 'deserving' of help, such as children (Moore, 1978).

At this point, there appeared another prominent contextual feature of the historical developments around JSW: the tendency, in Scotland as elsewhere, for debates about community justice to be shaped by concerns about imprisonment. The 1980s saw a series of violent protests in Scottish (and UK) prisons, due largely to overcrowding and prison conditions (notably, in Scotland, the extreme measures imposed in control units at Peterhead and Inverness prisons). This led to the decision by Malcolm Rifkind (1989), then Secretary of State for Scotland, to 'ringfence' funding for justice services, alongside a set of National Objectives (now Outcomes) and Standards which placed new requirements on the service. This led among other things to the partial and limited reversal of the 'generic' social work model, with 'criminal justice social work' being seen as a specialisation in itself.

### **The Devolutionary Period**

In the 1990s, the local government regions in place since 1975 were replaced with the present set of unitary authorities. These are distinctive in being comparatively numerous (32) and in predating the (re-)establishment of the Scottish Government. Post-devolution, negotiations between central and local government – the latter represented mainly by the Convention of Scottish Local Authorities (CoSLA) – played a growing role in debates over JSW organisation. There is an enduring 'top-down' narrative of Scottish approaches to governance and policymaking as decentralised and locally-oriented – although Scotland remains highly politically centralised. Indeed, in contrast to the enduring policy orientation towards centralisation or nationalisation *and* integration in the proposed NCS reforms and attendant narratives, arguments emphasising the importance of local knowledge, local autonomy and therefore local governance were prominent in both the online consultation (Scottish Government 2022a) and the NCS Justice Social Work Research (Ormston et al, 2024).

Devolution shifted justice policymaking away from the UK Government into new Scottish political structures, with new *electoral* accountability through the re-established Parliament. There was a performative need to show the devolutionary experiment would work, producing what McAra (2008: 494) evocatively describes as 'hyper-institutionalisation' - the creation and reformulation of justice institutions to galvanise public legitimacy



and political capacity for the newly devolved government. Predictably, amid escalating concern about crime and antisocial behaviour, criminal justice took centre stage in this performance of governmentality as “the grip of [older elite policy] networks over the strategic direction of policy [had] been loosened” (McAra, 2008:494).

Significant concerns about efficiency, alongside the impulse to hyper-institutionalisation, led to interest among New Labour governments in London and Edinburgh in ‘joining up’ government departments. The 2003 Scottish Labour manifesto proposed to merge JSW with the Scottish Prison Service, and create a Correctional Service for Scotland (Scottish Executive, 2004). This was strongly resisted by local government and professional social work interests; one argument against it was its similarity to the English/Welsh National Offender Management Service (now HMPPS). The policy compromise was the alternative creation in 2005 of eight regional Community Justice Authorities (CJAs). While intended to improve coordination and efficiency between the local authorities within their areas, and hold JSW to account, they were innately structurally compromised from the start (Buchan and Morrison 2020).

### **Scottish ‘Nation-Building’**

Since 2007, the Scottish Government (formerly Executive) has been under the control of the Scottish National Party (SNP), and policymaking has been shaped substantially by the Scottish Nationalist imperative to demonstrate Scotland’s competence for self-government (Maclennan, 2016). For most of the SNP’s tenure, the UK government was Conservative-led, creating opportunities to articulate this narrative within their limited sphere of autonomy. One was the imposition of spending cuts at Westminster following the 2007-8 financial crisis - a policy unpopular in Scotland, that the Scottish Government had to comply with (but not publicly support). The Christie Commission (2011) recommendation - that public services be reoriented towards preventing rather than reacting to adverse outcomes - offered a narrative that set the tone for much Scottish public policy. Yet despite the change of government, the impulse towards ‘hyper-institutionalisation’ remained.

The SNP’s time in power has also been characterised by playing on long-running narratives of ‘Scottish exceptionalism’ - the idea that Scotland, including Scottish criminal justice, is distinguished by egalitarianism and an emphasis on social welfare, with arrangements under the 1968 Act evidencing and exemplifying this. But distinctive institutional structures and welfare-oriented rhetoric coexist with the awkward reality of punitiveness in Scotland; recent scholarship (e.g. Brangan 2019) critiques ‘Scottish exceptionalist’ narratives, noting that Scotland’s rates of imprisonment have long been very high - sometimes exceeding those of its supposedly more punitive neighbour, England – driven by factors including high remand, longer prison terms (Scottish Government, 2024), decreases in parole release and increases in recall (Inside Time 2023). Notwithstanding the impact of Covid-19 on sentencing, the use of community sentences has been comparatively stagnant (Scottish Government, 2024). Given both the longstanding separation of Scottish and English/Welsh criminal justice, and the exceptionalist narratives around it, it is surprising that justice did not figure prominently in campaigning for independence. What did was the narrative of Scotland as distinctively welfare-oriented, in contrast to the punitive and austerian England.



One consequence of the 2007-8 financial crisis was renewed global attention to the economic costs of imprisonment. Although established before the crisis, the Scottish Prisons Commission's (2008) report, advocating a dramatic reduction in imprisonment and a pivot towards community penalties as a default, came at a seemingly opportune moment. The resulting 2010 Criminal Justice and Licensing (Scotland) Act sought to achieve these ends through sentencing reforms, but critical reports in 2012 by Audit Scotland and the Commission on Women Offenders returned the Scottish Government to the question of reorganising JSW again.

This led to further reforms, culminating in the 2016 Community Justice (Scotland) Act; indeed, it was only then that the term 'community justice' came to be widely used (but see Introduction). The 2016 Act replaced CJAs with the current two-tier framework, wherein local community justice services are governed and administered by local authority-level, localised Community Justice Partnerships (CJPs). Each of the thirty<sup>2</sup> CJPs must produce a regular outcomes improvement plan for meeting particular goals around re-offending and other outcomes, aligned with the *National Strategy for Community Justice* (Scottish Government, 2022b). CJPs collaborate with other bodies including health and social care partners (see below), but the exact configuration varies between local authorities, reflecting notably dispersed governance arrangements which Hudson et al. (2019) suggest, can, in part, problematise implementation success. The 2016 Act also established Community Justice Scotland, a national body intended to provide leadership for the sector, review the performance of CJPs and promote community justice. However Community Justice Scotland lacks power to provide leadership in governance terms - it cannot hold JSW to account, since this is the role of local government and social work bodies.

Ultimately, the NCS proposals would have been another in a long series of decades of reactive structural reorganisations, although this time with JSW was largely an "afterthought" (Ormston et al., 2024:50). However, to understand more fully the developments around the NCS we must acknowledge major adjacent reforms in criminal justice and the wider public sector.

### **Policing and Social Care: Reforms Outwith Community Justice**

During 2011-16, the SNP held an overall majority, enabling it to enact sweeping structural reforms across criminal justice and beyond. The signal justice reform of this era was the 2013 creation of Police Scotland through a merger of eight local forces and two national bodies. While initially this proposal attracted broad support, it met with significant implementation problems – generating learning which, we propose, *ought* to have been salutary. Illustratively, Terpstra and Fyfe (2015: 538) noted that "the detailed design of the new organizational structure of the national [police] force only occurred once the reform legislation had been passed and the new Chief Constable appointed". Indeed, police centralisation was optimistically expected to strengthen local policing, but actually uprooted existing local governance structures with no clear sense of what would replace them (Henry et al., 2019). A disjuncture between national approaches and local conditions (as in the heavy-handed policing of sex work in Edinburgh, or the use of armed patrols in the low-crime rural north) was one theme in a series of controversies and scandals around this signature reform (Terpstra and Fyfe, 2015). While not the only justice reform of the 2010s, the creation of Police Scotland bears closely on

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<sup>2</sup> The three Ayrshire councils operate a single partnership.



questions of local versus central administration, and lived on in participants' memories (Ormston et al. 2024), shaping their responses to the NCS proposal. It exemplifies the 'gap' between policy intentions and how they played out in practice (Terpstra and Fyfe, 2015) but still possessed a degree of certainty and simplicity absent from the NCS proposals.

A further signal reform during this period was the integration of health and social care at local authority level. The 2014 Public Bodies (Joint Working) Act merged social care and health at the local authority level, under new local bodies - Health and Social Care Partnerships (HSCPs) governed by 31 Integration Joint Boards (IJBs). Local authorities were afforded limited choice about how these would be structured; in 17 authorities, social work (including JSW) is governed under health and social care arrangements through the subordination of CJPs to IJBs. This integration represents a further step in a process that began shortly after devolution, with pressure for reform also coming from an ageing population, serious health inequalities, and the resulting rise in demands on care. This played into the 'prevention' agenda, which has underpinned much Scottish policy rhetoric (Christie Commission, 2011), albeit with questionable impact (Cairney and St. Denny, 2020). A decade on, it seemed that health and social care would be reformed *again*, raising questions about the efficacy of integration.

### **The National Care Service Proposals**

The NCS proposals were developed during the 'care crisis' of the Covid-19 pandemic, when high death rates among clinically vulnerable care home residents drew attention to structural problems in social care (Needham and Hall, 2023). While policy discussions (Scottish Government, 2022a) situate the proposed NCS as a direct response to IRASC (2021), it was first raised in the Scottish Government's (2020) *Programme for Government*.

IRASC argued that a NCS was needed to shift accountability for social care from local to national authorities and facilitate a long-hoped-for parity with the NHS, responding to the devastation of Covid-19 as the creation of the NHS did that of the Second World War. A national service was perceived as key to ensuring consistency of outcomes, coordinating specialist activities nationally and promoting co-production and human rights. Another influence (and potential source of confusion) was the earlier *Independent Care Review* (2020) on children's local authority care, and its report *The Promise*.

The new service could, it was envisioned, include JSW, potentially alongside other social work. According to the Scottish Parliament's policy memorandum (June 2022), rationales for integrating JSW into the NCS included ensuring consistency of access to justice-related services, noting that "issues exist regarding minimum standards, resourcing, and arrangements to support delivery of effective, person-centred community justice services" (p27-8). To support this, they cite Audit Scotland's (2021) paper *Community Justice: Sustainable Alternatives to Custody* - which raised (already longstanding) concerns about progress in shifting from use of custody to community interventions. While Scottish Government considered that including JSW in the NCS 'could contribute to addressing the[se] issues' (p28), we find it hard to reconcile the causes of these issues, which, as previously noted, relate largely to sentencing and release decisions, with the proposed solution of further restructuring.



Other rationales included geographical variations in the use and costs of community sentences; confusion surrounding lines of accountability and areas of responsibility; and uncertainty around intended outcomes of community sentences (beyond reduced re-offending). However, these issues result from the *last* community justice reshuffle; the confusion surrounding roles, remits and responsibilities has persisted because the post-2016 arrangements are ‘just as cluttered and complex as the previous ones’ (Audit Scotland: 2021: 8). Audit Scotland also note that “community justice funding makes up less than five percent of overall justice funding, and there has been little change in recent years” (Audit Scotland, 2021:7). Funding and resources, rather than structures, appear to reside at the heart of strategic leaders’ and professionals’ concerns, but the Scottish Parliament (2022) policy memorandum elided this.

The memorandum instead articulated optimistic expectations (Hudson et al., 2019) that inclusion in an (as yet ill-defined) NCS would somehow herald a ‘more consistent delivery of justice social work services’ (p28). This was to be achieved partly by relieving local authorities of their responsibility for its delivery — a position quickly resisted and overturned by CoSLA — and by providing greater role and remit clarity through stronger leadership and greater accountability (a claim questioned by many (Ormston et al., 2024)). Inclusion in NCS would keep Social Work together (as, in fact, it already was); while *somehow* improving links to health services. (The memorandum equally opaquely proposes that separating JSW from the NCS would impede JSW service users’ access to universal services.)

Finally, inclusion would build on existing integration by ‘avoid[ing] unpicking integration’ (Scottish Parliament, 2022: 28) where it exists, and integrating those areas that previously chose not to - without any evaluation as to the efficacy of *existing* integrated arrangements. In fact, the consultation on incorporating JSW into the NCS, led by Ormston et al., (2024), is the first window into professionals’ perceptions of the efficacy of community justice arrangements established in 2016.

In these policy narratives, then, there is a pronounced tendency to assume institutional restructuring will generate the hoped-for results – a reification of the institutional structures into apparatus that produce outcomes. Indeed, the NCS policy memorandum (Scottish Parliament, 2022) explicitly states that the aim is to enhance the quality and outcome of social services in Scotland, with an emphasis on continuous improvement.

The narrative advanced is utopian, resonating with Hudson et al’s (2019) observation of unrealistic or overly optimistic expectations as contributory factors in policy failures or implementation gaps. For example, the memorandum proposed that a ‘fully integrated NCS would work closely with other services to *ensure everyone has seamless access to the support they need*’ (p3, emphasis added) eliding the myriad challenges currently faced, though to a degree exposed in the consultation exercises. Yet alongside these overoptimistic expectations was a lack of detail about how they were to be achieved, which shaped reactions to the proposal ‘on the ground’.



## **The Story that Unfolded: Responses from the Ground**

In what follows, we draw on three overarching themes emerging from the various consultative exercises undertaken or commissioned by the Scottish Government on the NCS proposals. We aggregate our analysis of these into three broad thematic areas: localities and professional identities; funding and resources; consulting and co-designing.

### **Localities and Professional Identities**

Each community justice restructuring has been a compromise arrangement. Recurrent top-down, national policy-led efforts to centralise JSW have consistently encountered resistance from local government and professional bodies, partly due to local authorities' position as distinct policy actors and 'owners' of JSW. This was evident in the controversy surrounding the 2003 Correctional Service for Scotland proposal, which led to the compromise of Community Justice Authorities, the lead-up to the current two-tier arrangements, and CoSLA's (2024) response to the NCS proposals. While a desire to retain local authority control of JSW may be otherwise interpreted as territorial defensiveness, some of Ormston et al's (2024) participants highlighted key benefits to localised arrangements including enhanced interdisciplinary partnerships and cultures, opportunities for co-located services and openness to innovation and information-sharing.

This recalls the prominence of 'locality' in Scottish policy and criminal justice discourse – positioning it as essential to JSW practice and professional identity, such that centralising reforms represent an existential threat. In the initial NCS consultation (Scottish Government, 2022a), however, respondents generally agreed that JSW should remain with other social work services whether or not these were merged into the NCS, suggesting that social workers' professional identities and the significance of shared governance arrangements are, for many, a paramount concern (Ormston et al., 2024). As alluded to previously, local government hostility to centralisation was heightened by the impact of the creation of Police Scotland, which abstracted policing away from local control and accountability (Henry et al., 2019). Local government interests have therefore resisted new institutional configurations that could threaten continued 'ownership' of JSW, resisting the top-down imposition of centralisation.

Moreover, the proposed inclusion of JSW in the NCS was surprising, since *IRASC* makes only one substantive comment on it:

“those Integration Joint Boards, which have gone beyond the statutory delegation minimum of all adult social care, and that have all children's services and criminal justice social work also delegated, have performed well in relation to these services” (p43).

This applies not to the NCS proposal but to the previous set of reforms - which had not in fact been evaluated (Audit Scotland, 2021). Other evidence (IPSOS Scotland and Weaver, 2023) indicates that variations in performance *cannot* be attributed to particular local institutional configurations. Indeed, Ormston et al. (2024: 29) found that 'there was no consensus on the impact of integration within the HSCP's where JSW had been delegated'. Rather, perceptions of impact differed within *and* between areas, and by role. While managers



expressed more positive views e.g. around closer partnership working; the implementation of service innovations; and the co-location of services, those 'on the ground' struggled to discern a difference.

While the stated intention of merging social work into a NCS was to resolve and simplify local variations in social work governance and enhance outcomes, there is little evidence it would do so. The implication of the proposal is that even the limited local autonomy over institutional configurations granted under the 2014 and 2016 Acts was *still* more than local government could be trusted with - since only about half of local authorities had 'got it right'. More negative views included a perception that 'health "dominates" HSCPs, to the detriment of the voice and...professional autonomy of social work (Ormston et al., 2024: 33)'. Thus 'keeping things local' could also be interpreted not just through a geographical but a professional lens, with visibility, voice, identity and influence seemingly diminished in a wider HSCP structure and with separate systems and differences in pay, terms and conditions a source of frustration and discontent.

'within the whole HSCP we're such a small cog and social work in general...is very much the forgotten people'. (Senior Manager/team leaders interview 5, Ormston et al 2024:33)

From the earliest stages, local government raised significant criticisms of the NCS proposals. CoSLA's consultation response emphasised the value of "keeping care local" and the need to ensure social care and social work are joined with other local services. CoSLA raised concerns about the cost of the proposals and advocated numerous amendments to the legislation. Eventually, in September 2024, alongside Social Work Scotland, CoSLA withdrew support.

### **Funding and Resources**

The simultaneous erosion of and increasing demand for services (Ormston et al., 2024) are exacerbated by human and financial under-resourcing, compounded by enduring challenges around staff recruitment, absence and retention (CoSLA, 2024). The result is increasingly unmanageable demands, with implications for the working lives of JSWs and for what they can achieve (Miller and Barrie, 2022). These realities depart from the rather simplistic analysis of the Scottish Parliament's memorandum (2022), noted previously, which expressed concerns about consistency, accessibility and the provision of effective person-centred support. Even leaving aside the resource constraints that underpin service delivery, and therefore consistency, accessibility and availability, the very notion of 'consistency' in terms of 'sameness' as a desirable end was challenged by justice professionals with their own counter-narrative of the need for diversity, difference and localism (Ormston et al., 2024), which again recalls critiques of the impact of the centralisation of Police Scotland (Terpstra and Fyfe, 2015). Indeed funding and resource constraints are core to the issues and solutions identified by most justice professionals in Ormston et al., (2024), precisely because provision appears to be out of step with the increase in expectations and professional pressures placed.

"If you look at what's expected of Criminal Justice Social Workers from even ten years ago to what they're expected to do now ... the work that's placed on social workers is absolutely massive." (Senior managers / team leaders interview 8 - Ormston et al., 2024: 12)



The impact of this was captured by a social worker in Ormston et al (2024: 16: interview 6) who commented that as a consequence of resourcing pressures, and the time required for risk management, governance and administrative tasks:

‘the time you’ve got is really limited [...] I think the offence focus[ed] work, which is the whole purpose of why we do the job in the first place really – to reduce offending – it is what takes a back seat, unfortunately’

JSW funding is provided through a) ‘ringfenced’ JSW funding (known as section 27 funding after the relevant section of the 1968 Act), fixed at £86.45m per year since 2010-11, and b) the Community Justice budget, centrally allocated for specialist services (£19.4m in 2021-2). While the Community Justice budget is rising in 2024-5, it is not clear how much transfers to JSW. Inflation (for now returning to normal after a surge in 2022-3) means the long-term fixing of the s27 funding is actually a real-terms cut of tens of millions (Social Work Scotland, 2022).

Concerns have also been raised about the suitability of physical resources e.g. sufficient office space as well as access to external resources. Area-specific issues referred to in the Scottish Parliament (2022) policy memorandum are explained in reference to the additional delivery costs associated with the geography of rural areas’. ‘Geography’ – whether urban or rural - is a differently manifesting core issue for workload, staffing, service delivery, and resources, itself affecting the availability and consistency of services (Ormston et al., 2024), and which is unlikely to be remedied by centralisation. In terms of priorities, perhaps as CoSLA (2024:21) argue “any resource available should be used to support improvement work and front-line service delivery capacity”, not restructuring. It is worth, then, considering the resource costs of the NCS; in September 2024, the Government confirmed the proposals had already cost over £28 million - still only a tiny fraction of the likely costs if enacted. These were initially estimated by CoSLA (2022a) as at least £1.5 billion. Even where extra social care funding was promised, this attracted criticism from CoSLA (2022b) since most of it would have gone towards the NCS.

Ultimately, as controversy over the NCS developed, party-political criticisms increasingly centred on the dubious wisdom of funding new institutional structures rather than addressing resource gaps in the everyday functioning of the service. Addressing enduring issues in social care and justice requires substantive engagement with and resourcing for the ordinary and everyday business of these services, not the sort of short-term policy ‘fix’ that produces political capital for policymakers and politicians (Hudson et al., 2019) - which in this case seems anyway to have backfired.

### **Consulting and ‘Co-Designing’**

While the Scottish policymaking approach has been described as comparatively consultative and deliberative (Cairney et al., 2016), this too has been questioned. In reality, choice granted to stakeholders is highly circumscribed; describing the hyper-institutionalisation of the 2000s, McAra (2008: 490) argued that ‘[a]lthough an ostensible aim ...[was]..to enhance local autonomy, it ...functioned principally to shore up ministerial command and control’ – even while masquerading as localism. Health and social care reforms were



similarly framed in terms of supporting local autonomy, but integration was mandatory, and local autonomy limited to a choice between predefined institutional configurations (Mulherin, 2024).

The NCS Consultation which ran from 9 August to 2 November 2021 (Scottish Government, 2022a) resembled not a true consultation with an initial point, but part of the implementation process where the wheels had already been set in motion. There was consultation on what the NCS might look like, and who should be included within it, but not on whether there should be one. The Scottish Government's stated intent at this point was to locate JSW (and perhaps other social work) within the NCS at some stage, accompanied by the creation of a National Social Work Agency which would have oversight of social workers' education and professional development, and conditions - but not be a frontline provider of social work. For JSW, the choices were between enmeshing (justice) social work in a NCS, whose nature remained unclear, and remaining in the current arrangements. No other structural options (for instance, a national JSW agency) were offered.

Much criticism of the NCS, including from JSW practitioners (Ormston et al., 2024) highlighted the lack of detail in the proposals. Scottish Government language around the NCS described a process of 'co-design' with service users, alongside the consultation process (Scottish Government, 2022c). However, the co-designed elements centred on specific processes rather than the institutional structure - "a Charter of Rights, a national complaints process, and an electronic social care and health record." (Scottish Government, 2022c: 2). It is also noteworthy that while co-design emphasises the importance of including lived experience and 'seldom heard' voices, this does not include people who have been subject to JSW supervision (although these views *were* sought by Ormston et al., 2024).

Notwithstanding this, by the time the 'co-design' processes had started, the NCS Bill had already been introduced in Parliament. It was extremely short on detail; the Scottish Government seemingly intended to work out much of the detail in secondary legislation, away from parliamentary scrutiny (even the 2012 legislation which created Police Scotland was far clearer in this regard). At no point did the Bill explicitly state which services would be included (Ormston et al., 2024) - a lack of clarity which led to an extremely fraught legislative process, outlined below.

### **The Failure of the National Care Service**

The name 'National Care Service' obviously recalls the National Health Service, the iconic institution of the postwar welfare state; indeed, *IRASC* (2021: 38) said it would be "equal in stature and impact". In 2019, the UK Labour Party had proposed a service of the same name as an "NHS for care", providing social care free at point of use. This was never the intention of the Scottish proposals - *IRASC* remarked, rather dismissively, that "if nationalisation is supported by some people they need to explain how it would be paid for" (2021: 42). Yet the Scottish Government was content to use the *appearance* of radicalism to promote this essentially managerial reform. The vision for the NCS was of a national commissioning body - therefore, presumably, limited in its ability to address longstanding challenges for both social care and social work around consistency of delivery and availability of services. The policy narrative promised sweeping institutional social work reforms, and under early plans to incorporate IJBs into the NCS, it would have been necessary to bring social work



*governance* at least closely into connection with the NCS (since many local authorities have CJs sitting within IJBs). What this would have meant for JSW and community justice was never clear either, particularly for those local authorities where IJBs do not incorporate CJs.

The Bill as introduced (section 30) noted the possibility of incorporating JSW into the NCS, but would have required prior consultation. Eliding a full discussion of legislative manoeuvrings around the NCS, we note that Holyrood's Health, Social Care and Sport Committee (2024) - the lead committee on the Bill – criticised both its emphasis on structures *and* the lack of detail about their form and nature (including around JSW) which rendered the proposals very difficult to scrutinise. In introducing the Bill, the expectation was that structural detail would be worked out in secondary legislation. This approach was critiqued by various stakeholders; the Law Society of Scotland (2024) for example noted that “the current approach at Stage 2, whereby fundamental changes are being made to reflect a significantly revised policy intention, limits the scope for full and effective parliamentary scrutiny and is therefore inconsistent with the creation of good law.”

By this point, references to justice were removed following the decision not to transfer functions away from local authorities, but there seemed to remain an expectation that JSW would be included alongside other adult social work under a shared NCS Board/local government accountability arrangement, as stated in the Minister's letter to the head of the HSC Committee (Todd, 2024):

“This approach reflects that people in the justice system are often involved with more than one social work or care service. Including justice social work in the National Care Service would therefore:

- Ensure that justice social work is aligned with the other areas of social work
- Ensure the National Care Service Board is responsible for all justice social work services across Scotland
- Promote a joined-up approach for justice social work with other areas of social work, care, and community health”.

However, Social Work Scotland's (2024:17) submission to the HSC Committee contended that:

“The Scottish Government's determination to persist with the debate over children's and justice service now represents an impediment to other, urgent reform discussions. Rather than embracing what their own commissioned research said about structures, Scottish Government has kept this question at the forefront, provoking an entirely predictable defensive posture from local government leaders. The Minister's proposed approach to resolving this impasse is to take powers (through an amendment to the Bill) to mandate the inclusion of children's and justice social work, but not to use that power until negotiations with local government have concluded. Considering that Ministers have made clear their preference for inclusions of these services within the NCS, the reference to ongoing negotiation feels disingenuous.”

Social Work Scotland was one of many organisations to withdraw the tentative support they had offered when the proposal was first mooted. Political support from local authorities and in Holyrood then ebbed further.



In January 2025, the planned new service was scrapped. Yet the Scottish Government still insisted on passing a version of the legislation, reflecting Hudson et al's (2019) observation that even the performance of passing legislation goes a long way, even if nothing actually changes. On 10th June 2025, the Bill was finally passed as the Care Reform (Scotland) Act 2025. The new name reflects a dramatically reduced scope; the Act contains only Parts 2, 3 and 4 of the original NCS Bill. Far from the utopian promise of the NCS, it centres largely on digitising record-keeping and improving information sharing in social care, and establishes a right to breaks for carers. The Act also establishes a National Social Work Agency. This is not, of course, a national agency that carries out social work, but (like Community Justice Scotland) a body intended to provide leadership and workforce development. It is unclear what if any effects this might have on JSW, or even Community Justice Scotland.

Although the NCS has been cancelled, the policy debates around it remain relevant in exemplifying our analysis of policy failures and implementation gaps in Scottish community justice. The NCS was both huge and underspecified; the fact of it was (apparently) determined while its nature, and hence the reality on the ground, would be left up to the implementation stage and thus almost certain to generate another implementation gap. Much of this has been driven by the upsurge of electoral imperatives which create incentives for short-termism and quick 'results' in justice reform (Hudson et al., 2019). Justice reforms and Scottish policy generally have been dominated for the last fifteen years by the SNP and its Scottish Nationalist political agenda (Buchan and McNeill, 2023); the next Scottish election (in 2026) may usher in a new set of policymakers with their own electoral imperatives.

## **Conclusion**

This article has outlined the policy manoeuvrings around Scottish community justice in relation to the proposal for a National Care Service. Over its life, the expectations around it - including in relation to JSW - shifted repeatedly until the proposal eventually collapsed.

The same debates about local versus central provision will undoubtedly resurface. These debates are not unimportant, but they have consistently detracted from more substantive questions about what JSW (and community justice generally) should do, and why (Nellis, 2016) - even as they have been presented as 'solutions' to offsetting high imprisonment rates. Since 2007, the imprisonment of children has been successfully reduced to zero, that of fine defaulters to almost zero, and that of women significantly reduced, yet the overall prison population has remained at or beyond crisis point. Restructuring JSW cannot itself reduce imprisonment (Buchan and McNeill, 2023). The 'on the ground' reality is of services dealing with extremely complex problems, increased expectations and demands, with ever more limited resources (e.g. CoSLA, 2024). Problems include the rising availability of cocaine (including crack cocaine) and synthetic drugs, and the attendant demand placed on JSW. JSW caseloads have risen - including not only community sentences but also supervised bail. JSW is also expected to address a backlog of unpaid work hours exacerbated by the pandemic. Societally, the impacts of high inflation and cost of living continue to be felt alongside the longer-term impacts of Covid-19. Scotland's NHS, although separate from its English/Welsh counterpart and



ostensibly protected from the worst effects of austerity and privatisation, is also increasingly described in terms of crisis and inability to meet rising demand (Audit Scotland, 2024).

Leaving aside longstanding central-local tensions, the proposals to bring together (justice) social work and health under the umbrella of a National Care Service clearly chime with a wider tendency in Scottish justice policy discourses: the embracing of public health rhetoric, exemplified in the preventive approaches of the Scottish Violence Reduction Unit, and in the growth of ‘trauma-informed’ practice in criminal justice. It is true, as the Scottish Government (Todd, 2024) says, that many individuals in contact with JSW are also involved in other social work or care services. However, there are important critiques of the potential for trauma-informed approaches to further criminalise already disadvantaged people and individualise trauma (Anderson, 2025). While recognising the value of co-located partnership services, we need to consider the implications of ‘joined-up’ services for the right to confidentiality, and the need for trust in professional relationships. The connections between ill-health and justice involvement, and the need to improve health outcomes for people in the justice system, are just as clear and urgent as the need to reduce imprisonment (and obviously connected). However, institutional alignment will not produce this without much-needed investment in the everyday governance of services on the ground. Furthermore, the implications of this policy and legislative fiasco are far wider than community justice – and for many carers and people with care needs, the National Care Service represents a huge missed opportunity for much-needed change (Beesley, 2025).



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