

Extension of Freedom of Information in (Scotland) Acts 2002 (FOISA) to private and third sector providers of care home and ‘care at home’ services

March 2026

Introduction

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome the opportunity to provide a response to the consultation on the Extension of Freedom of Information (Scotland) Act 2002 (FOISA) to private and third sector providers of care home and ‘care at home’ services.

Summary

Members of Social Work Scotland welcome the opportunity to contribute to the consultation which raises important questions about transparency, accountability and parity across the social care landscape, particularly given the extent to which these services are commissioned by public bodies and deliver support to some of the most vulnerable people in Scotland.

A workshop was held at which members expressed broad support for the principle of extending FOISA to these providers. The central view was that people receiving care should have access to the same rights to information and scrutiny regardless of who delivers their service. Local authority-run services are already subject to FOISA, and many independent or charitable providers are delivering their services on behalf of, and funded by, local authorities or other public bodies. For members, achieving

parity and fairness in transparency obligations is therefore a matter of rights, equity and public trust.

At the same time, members stressed that implementation would require careful and proportionate planning. Smaller providers may face significant pressures in meeting FOISA duties without additional guidance, support and resources. Concerns were raised about legal and information-governance capacity, the administrative burden of responding to requests, the challenges of anonymising information in smaller or rural services, and the risk that poorly supported implementation could destabilise parts of an already strained sector. Members consistently emphasised that the success of any extension depends on ensuring that providers have the tools, infrastructure and protections necessary to discharge their obligations effectively and safely.

Overall, the position of Social Work Scotland members is one of principled support balanced with pragmatism: FOISA extension offers an opportunity to strengthen the rights of people who use care services and to enhance transparency across the sector, but it must be implemented with due recognition of the operational realities faced by providers of all sizes. The responses that follow reflect this balance, endorsing the aims of the consultation while identifying the conditions required to ensure that its ambitions can be realised in practice.

Questions and answers:

1. Do you agree that FOISA should be extended, where possible, to private and third sector (charity and not-for-profit organisation) run care homes?

Yes

Members of Social Work Scotland agree that FOISA should, in principle, be extended to private and third sector-run care homes as there is a strong case for ensuring parity across the sector. Local authority-run care homes are already subject to FOISA requirements, yet a significant proportion of care home provision is delivered by commissioned private and voluntary organisations offering the same services to people with equivalent levels of need. It is therefore inconsistent that some providers must meet statutory transparency obligations while others delivering functionally identical services are not required to do so. Extending FOISA would help promote fairness, consistency and openness, regardless of the organisational model through which care is delivered.

Members emphasised that transparency is an important safeguard for individuals who use care services, their families and the wider public. Given the critical nature of care home provision, access to information supports scrutiny, public trust and accountability. As care homes deliver essential services on behalf of the state, often funded in part or wholly through public money, it is reasonable for them to meet comparable transparency standards to those already applied within the public sector.

However, members also recognised that extending FOISA is not without challenges. Smaller providers, rural and remote services, and organisations without the infrastructure available to local authorities may face significant practical difficulties in meeting the statutory requirements. Local authorities benefit from established FOI teams, legal services, information governance specialists and administrative systems that support compliance. Most independent providers do not have access to equivalent resources. Without sufficient guidance, training or support, smaller organisations may find themselves unable to manage requests effectively, potentially risking administrative overload or inadvertent breaches of data protection law.

Members also noted that many care providers operating in Scotland are part of larger organisations headquartered in England. They emphasised that FOISA

compliance should apply to the services delivered within Scotland regardless of where a provider's corporate headquarters is based. The expectation is that cross-border organisations would be required to meet Scottish transparency requirements for their Scottish-registered services in the same way they already comply with other Scottish regulatory duties.

These concerns do not diminish the principle that FOISA extension is justified. Instead, they highlight the need for careful planning and proportionate implementation. Members believe that if FOISA is extended, the Scottish Government should ensure that the sector is adequately supported, whether through guidance, model frameworks, shared resources or other mechanisms, to allow providers of all sizes to meet their obligations safely and effectively. The intention of greater transparency is positive, but the structure required to deliver it must be built intentionally, recognising the diverse capacities and contexts of Scotland's care home providers.

For children's care homes members note that as these are small in capacity (usually no more than 4 beds, and often smaller) issues of protection need careful consideration to ensure that individual cannot be identified is critical if children's care homes are to be included.

2. Do you agree that FOISA should be extended, where possible, to private and third sector (charity and not-for-profit organisation) run 'care at home' services?

Yes

Members of Social Work Scotland agree that FOISA should, in principle, be extended to private and third sector-run care at home services. As with care homes, a substantial proportion of care at home provision is commissioned by local authorities and Health and Social Care Partnerships, and the services delivered are often equivalent in nature and purpose to those provided directly by the public sector. Extending FOISA would therefore promote parity, fairness and consistency, ensuring that individuals receive the same level of transparency and accountability regardless of the organisational model through which their care is delivered.

Care at home provision, whether delivered to adults, older people, or children, supports people with essential personal care, wellbeing and daily-living needs. Members noted that extending FOISA to these services is a logical continuation of the principle that care funded, commissioned or overseen by the state should be open to public scrutiny. The group also reflected that providers headquartered outside Scotland, particularly those based in England, should be expected to comply with FOISA for their Scottish-registered services. Regardless of where the organisation's corporate base lies, services operating within Scotland already comply with Scottish regulation, and FOISA should be treated no differently.

In discussions about children's services specifically, members highlighted the distinct and sensitive nature of care at home provision for children and young people. Many such services, whether provided directly by local authorities or commissioned from the third sector, play a vital role in supporting children with disabilities to remain safely at home with their families, or in assisting families facing adversity and complex challenges. These supports are often highly individualised and are delivered in close partnership with families, making confidentiality a central component of effective practice.

For that reason, while the principle of FOISA extension applies equally to children's care at home, members stressed that any transparency must be carefully governed by confidentiality safeguards. In many cases, responses to FOI requests may not be feasible because the nature of the support, small-scale, individualised and often delivered in small communities, may make it impossible to disclose information without identifying a child or family. Strong protections will be essential to ensure that FOISA does not inadvertently compromise the privacy, dignity or safety of children and young people receiving support.

Members also noted the need for clarity around what constitutes "care at home" in the context of children's services. If FOISA is tied solely to the definition of a registered service, this may exclude a wide range of vital third sector supports (such as family support services) that provide care in the home but are defined differently in regulation. In addition, questions arise regarding externally purchased fostering placements and whether such arrangements would fall within the scope of FOISA. Members consider that these definitional issues must be thoughtfully resolved to

avoid inconsistencies and ensure that FOISA applies in a way that recognises the complexity and diversity of children's care.

At the same time, members acknowledged the practical considerations that apply across the sector. Smaller providers may struggle to manage FOISA obligations without additional support, training and guidance. Concerns were raised about the administrative burden of preparing responses, the risk of inadvertent data breaches, and the challenges small services face in protecting anonymity, especially in rural areas. These challenges, members felt, must be addressed through proportionate implementation measures rather than through exempting certain providers from FOISA.

Overall, members of Social Work Scotland support the extension of FOISA to private and third sector-run care at home services, including those for children and young people. The principle of parity remains central: people receiving care should have equal rights to transparency regardless of who provides their support. However, successful implementation will require careful attention to confidentiality in children's services, consideration of definitional boundaries, and appropriate support for providers of all sizes to meet their obligations safely and effectively.

3. Whether or not you actually support any extension, please indicate which of the following statements best reflects your view:

a) If FOI law were to be extended to care home and 'care at home' providers, information about all such services should, where possible, become subject to FOI law, irrespective of the level or type of public funding that supports those services.

~~b) If FOI law were to be extended to care home and 'care at home' providers, only information about such services which are mainly publicly funded should, where possible, become subject to FOI law.~~

~~c) No view.~~

3(a). If you chose option 'b' above, please set out any more detailed thoughts you may have on the type or level of public funding that should result in the provider becoming subject to FOISA:

n/a

4. Do you agree that any extension to private and third sector care home and 'care at home' services should apply to such services when delivered to children and young people (i.e. people under 18 years of age)?

Yes / No / No view

Members of Social Work Scotland agree that any extension of FOISA to private and third sector care home and care at home services should apply equally to services delivered to children and young people. As with adult services, the principle of parity is important: children and families should not have different rights to transparency simply because their care is delivered by an independent or third sector organisation rather than a public body.

However, members emphasised that children's services require a far higher degree of care and caution in implementation. Children's care homes are typically very small in scale, with Care Inspectorate guidance often referring to four-bed houses, and many services operating with even fewer places. This creates significant risks around identification. Even where information is anonymised, the small size of services and the close-knit nature of many communities can mean that individual children or families may be readily identifiable from seemingly non-personal details. For this reason, any FOISA extension in children's services must be governed by robust confidentiality protections, and in many cases, responses may not be feasible without risking a breach of privacy.

Members also noted that care at home for children and young people is often provided in circumstances of family difficulty, adversity or significant need. Many services exist specifically to support families to maintain children safely at home and prevent them from becoming looked-after and accommodated. The sensitive nature of this work, often involving child protection concerns, health vulnerabilities, parental difficulties or complex disability-related needs, means that exceptional caution is

required in responding to information requests. Even high-level information may have the potential to identify a child or family or to expose them to stigma or harm.

In addition, members highlighted that the definition of “care at home” within children’s services is not straightforward. If FOISA extension applies only to registered care at home services, a large proportion of children’s in-home support may fall outside scope. Much essential support for children, such as family support services provided by the third sector, intensive home-based interventions, or flexible crisis programmes, is defined differently in regulation and may not be captured by a narrow service definition. Further complexity arises in relation to fostering, particularly where local authorities purchase fostering placements from external agencies. Members agreed that these definitional issues must be carefully considered to avoid inconsistencies, unintended gaps, or unequal application of FOISA across the landscape of children’s care.

5. Are there any issues, opportunities or challenges specific to children and young people’s services which require to be considered? If so, please set out how you see these:

Members identified several issues specific to children and young people’s services that require particular consideration in any extension of FOISA. The most significant concern relates to the small scale and highly individualised nature of many children’s services. Children’s residential provision in Scotland typically consists of very small houses, and many third sector providers operate only one or two such homes. In these circumstances, even high-level or anonymised information may risk identifying a child or their family. The close-knit nature of many communities further increases this risk, meaning that confidentiality protections must be exceptionally robust.

Members noted that this raises a practical challenge for FOISA extension: if providers are unable to respond to requests without risking identification, they may be required to withhold much of the information sought. As a result, the intended transparency benefits of FOISA may be limited or not fully realised within children’s services. The priority, however, must remain the protection of children’s privacy, dignity and safety, even where this constrains the extent of information that can be shared.

Overall, while members support the principle of FOISA applying to children's services, they emphasise that the unique scale, sensitivity and context of these supports mean that confidentiality risks are significantly heightened. These must be fully recognised in both the design and implementation of any extension.

6. Do you consider that the size of a private or third sector care home or 'care at home' service provider should have any bearing in whether that provider is made subject to FOISA?

No.

~~6(a). If you answered 'yes' to question 6, which of the following statements best reflects your views in relation to care home providers?:~~

- ~~a) Only the very smallest providers, offering services to up to 10 people, should be exempt from FOISA.~~
- ~~b) Providers offering services to up to 50 people should be exempt from FOISA.~~
- ~~c) Providers offering services to up to 100 people should be exempt from FOISA.~~
- ~~d) Only the largest providers, offering services to over 1000 people should be made subject to FOISA.~~

~~6(b) If you answered 'yes' to question 6, which of the following best reflects your views in relation to 'care at home' providers?:~~

- ~~a) Only the very smallest providers, with a staff headcount of up to 10, should be exempt from FOISA.~~
- ~~b) Providers with a staff headcount of up to 25 should be exempt from FOISA~~
- ~~c) Providers with a staff headcount of up to 50 should be exempt from FOISA~~
- ~~d) Providers with a staff headcount of up to 100 should be exempt from FOISA~~

e) ~~Only the largest providers, with a staff headcount of over 1000 should be subject to FOISA.~~

6(c) Do you have any other comments on the challenges or opportunities that might come from extending FOISA to smaller providers?

Members of Social Work Scotland do not consider that the size of a private or third sector care home or care at home provider should determine whether that provider is made subject to FOISA. The group agreed that applying FOISA selectively based on organisational size would undermine the principle of parity that underpins their support for extending the legislation. People receiving care should have equal access to transparency and scrutiny regardless of whether their service is delivered by a small rural provider or a large national organisation. Creating exemptions based on size risks establishing a two-tier system in which some individuals experience weaker rights solely because of where they live or which provider delivers their care.

Members also noted that defining size is inherently problematic. A service with fewer than ten residents may nevertheless support individuals with highly complex needs, while a service with fifty residents may operate with very different demands.

Similarly, using staff headcount as a threshold risks arbitrary distinctions that do not reflect the volume or complexity of work generated within a service. Attempting to use simple numerical cut-offs could therefore create loopholes, perverse incentives, or unintended disparities in the level of scrutiny applied across the sector.

At the same time, members acknowledged that the capacity of organisations to comply with FOISA does vary significantly. Local authorities have access to legal services, information governance teams and dedicated FOI officers, but smaller independent providers often have no equivalent support. For them, responding to FOI requests, or handling particularly complex or vexatious ones, could be disproportionately burdensome. Moreover, in small or remote services, anonymising information may be practically challenging, increasing the risk of accidental disclosure of personal data. These are genuine concerns, but members felt they should be addressed through proportionate support and safeguards, rather than by excluding smaller services from the legislation altogether.

Members discussed that FOISA already contains mechanisms, such as exemptions for personal data, commercial sensitivity and excessive cost, that can help protect smaller organisations from unreasonable demands. In addition, any implementation should be accompanied by guidance, training and potentially shared support structures that reduce the administrative and financial impact on smaller providers. The issue is therefore not whether size should determine inclusion under FOISA, but how the system can be designed so that providers of all sizes can comply fairly and safely.

Members expressed concern about the potential impact on provider sustainability. If smaller organisations experience significant new demands without additional resource or infrastructure, this could deter people from taking on management roles, exacerbate recruitment and retention issues, or even contribute to service closures. At a time when the sector is already experiencing significant pressures, including workforce shortages, financial constraints and increased regulatory requirements, there is a risk that FOISA obligations may unintentionally amplify these challenges.

Despite these concerns, members acknowledged that there are potential opportunities. Extending FOISA could strengthen trust in the sector by demonstrating openness and improving public confidence in both small and large providers. It could also encourage providers to enhance their internal recording, information governance and organisational systems, which may benefit quality assurance and internal accountability. However, these opportunities can only be realised if the implementation is accompanied by meaningful, proportionate support. This may include sector-wide guidance, accessible training, practical toolkits, and potentially shared or centralised resources that smaller providers can draw on.

Overall, members emphasised that the issue is not whether smaller providers should be included, but how they will be supported. To ensure that FOISA strengthens transparency without undermining service delivery or organisational viability, smaller providers will require tailored protections, capacity-building and recognition of the unique contexts in which they operate.

7. What would be most helpful to assist care providers in discharging their obligations under FOISA?

Members of Social Work Scotland felt that the most helpful support for care providers, particularly smaller or stand-alone services, would be the establishment of clear, practical and accessible national guidance that outlines what FOISA compliance requires in day-to-day practice. Many private and third sector providers do not have in-house legal or information governance expertise, so simple explanations of roles, responsibilities and expectations would be essential. This could include guidance on how to manage requests, how to apply exemptions appropriately, how to balance FOISA with data protection requirements, and how to handle situations where anonymisation is more challenging, especially in small or rural services.

Members also felt that providers would benefit greatly from a structured toolkit or framework that could be adopted or adapted by organisations of different sizes. This might include template policies, standard operating procedures, sample responses, redaction guidance, and checklists to support consistent practice. A shared model would reduce duplication of work and help ensure that providers start from a common foundation, rather than each trying to design their own systems from scratch.

Another form of support highlighted was access to expert advice. Local authorities have dedicated FOI teams and legal services to turn to when difficult questions arise; most independent providers do not. Members discussed whether sector bodies (such as Scottish Care, for example) could be resourced to offer centralised legal or information governance support to their membership. This could give smaller providers a safe route to clarify complex or borderline FOI decisions, reducing the risks of either over-disclosing sensitive information or refusing requests inappropriately.

Some members also reflected on the potential use of technology. While recognising that not all providers would have the capacity to invest in new systems, they noted that digital tools, including document management systems and emerging AI-supported search and redaction tools, might help providers retrieve information more efficiently and reduce administrative burden. However, this would require careful consideration of cost, security and training needs.

Overall, members stressed that for FOISA to be successfully extended, providers must not be left to navigate the requirements alone. A combination of national guidance, practical toolkits, accessible training, opportunities for shared or pooled expertise, and proportionate support for smaller services would be essential in helping providers meet their obligations without compromising their capacity to deliver high-quality care.

8. What would be most helpful to people who access social care and other members of the public to enable them to access their rights under FOISA?

Members of Social Work Scotland felt that the most helpful support for people who access social care, and for the wider public, would be clear, accessible information about what FOISA is, how it works, and what rights individuals have under it. Many people already understand how to use complaints processes, but FOISA is less familiar, and people may not realise that it offers a separate route for seeking information about how services operate. Ensuring that the public know how to submit a request, what they are entitled to receive, and what to do if they are dissatisfied would therefore be essential.

Members also highlighted the importance of visibility. For FOISA rights to be meaningful, the public need to know they exist. Care providers already promote complaints and comments procedures, and this is supported by social workers in practice, who routinely inform individuals of their rights. Extending this approach to FOISA, by ensuring information is included in service documentation, displayed clearly in care settings, and communicated by practitioners, would help people understand the different routes available for raising concerns or seeking clarity about their care.

Consistency across providers was also seen as vital. People accessing care should not need to navigate different systems or levels of clarity depending on who delivers their support. Standardised, plain-language information made available across all services would make it easier for individuals, families and advocates to exercise their rights, and reduce confusion about how FOISA interacts with existing complaints or regulatory processes.

Finally, members noted that most FOI requests come from journalists or researchers, and that having more transparent systems across all care providers may ultimately benefit the public by improving the accuracy and detail of information available in the public domain. Nonetheless, for individuals receiving care, the priority should be ensuring that information about their rights is accessible, simple, and widely promoted by those involved in their support.

9. What categories of information relating to the work of care home and 'care at home' services would people be most likely to seek?

Members of Social Work Scotland found this question particularly difficult to answer, as it is not for providers or sector representatives to predict what information the public will request. FOI requests are, by their nature, driven by the individual priorities and concerns of the requester, and these vary widely. Members noted that the question itself is poorly framed, as it presumes a degree of foresight that organisations simply do not have.

In general terms, however, past experience suggests that people tend to seek information that helps them understand how services operate, how decisions are made, and how care is delivered. Members reflected that, where people have concerns about the care of a loved one, they may request information relevant to the issue they are raising, such as records relating to incidents, staffing levels, or organisational policies. In these cases, individuals usually focus on information directly linked to the circumstances they are querying, much as they would when making a complaint.

Members also noted that a substantial proportion of FOI requests across the public sector come from journalists and researchers, rather than individuals accessing care. These requesters often seek broader, service-level information such as inspection findings, staffing models, patterns of incidents, or financial and contractual arrangements. Such information can contribute to wider public understanding of how care services operate, but predicting specific categories of information that may be requested remains difficult and somewhat speculative.

For these reasons, members felt that the Scottish Government should not expect respondents to outline precise categories of likely information requests. Instead, the system should be built on the understanding that FOISA exists to serve the public's right to ask questions of public-facing services, and that the range of questions will necessarily be broad and diverse.

10. Do you have any comments on the business and regulatory impact of FOISA extension for organisations?

Members of Social Work Scotland identified several significant business and regulatory impacts that could arise from extending FOISA to private and third sector providers. The most prominent concern relates to organisational capacity. Many independent care providers, particularly small or single-site services, do not have access to the legal, administrative or information-governance infrastructure that local authorities rely on when responding to FOI requests. Without such built-in support, smaller providers may face considerable difficulty meeting statutory deadlines, interpreting exemptions, maintaining appropriate records or responding to complex or vexatious requests. The risk is that FOISA compliance could divert resources away from frontline care, especially in organisations already under pressure.

Members also highlighted that FOISA places additional regulatory obligations on organisations with respect to information governance. Providers will be required to manage records in ways that support timely retrieval, to apply exemptions correctly, and to ensure compliance with data protection legislation when preparing responses. For care home and care at home providers, where information is often highly sensitive and personal, the risk of inadvertent breaches is significant if staff are not adequately trained or supported. In small services, especially in rural communities, anonymisation can be particularly challenging, raising the risk that personal information may be inadvertently disclosed even when redactions are applied correctly.

Members also noted that FOISA compliance could create financial pressures. While local authorities may have teams funded through core budgets, independent providers may need to purchase legal advice or develop new systems without any additional funding. This can be burdensome for organisations already facing

increased costs from workforce shortages, rising insurance premiums, national policy requirements such as Anne's Law, and other regulatory responsibilities. Some members expressed concern that these cumulative pressures could impact provider sustainability, potentially discouraging people from taking on management roles or contributing to service closure in areas where the market is already fragile.

At the same time, members emphasised that these challenges are not insurmountable. FOISA already includes mechanisms, such as exemptions for personal data, commercial sensitivity and excessively burdensome requests, that can mitigate some risks. With adequate support, training, and clear national guidance, providers may be better able to navigate their obligations without compromising service quality. However, members felt strongly that these supports must be put in place before FOISA is extended, rather than assumed or left to individual providers to source themselves. Without deliberate planning for the business and regulatory implications, the extension of FOISA risks creating uneven impacts across the sector and placing disproportionate strain on smaller organisations.

11. Do you have any comments on impact of FOISA extension in relation to the fulfilment of data protection rights and obligations?

Members of Social Work Scotland identified several important considerations regarding the impact of extending FOISA on the fulfilment of data protection rights and obligations. A central concern was the increased risk of accidental disclosure of personal data, particularly for smaller providers who may lack the specialist information-governance support available within local authorities. Responding to FOI requests requires careful interpretation of exemptions, accurate redaction and confident handling of sensitive material. Without adequate training or access to legal advice, smaller organisations may unintentionally release personal information or fail to apply exemptions correctly.

This risk is amplified in small or rural services where anonymisation is inherently more difficult. Members noted that even when personal identifiers are removed, individuals can sometimes still be identified because communities are small and service users are well known locally. This challenge heightens the importance of

ensuring that providers are supported to make sound judgements about where disclosure could compromise privacy, and that they understand how to apply the relevant exemptions under FOISA and data protection law.

Members also expressed concern that organisations without dedicated information governance teams may struggle to maintain the level of record-keeping needed to fulfil both FOISA and data protection requirements. Unlike larger public bodies, smaller providers are unlikely to employ Data Protection Officers or privacy specialists; relying instead on managers or operational staff who already carry significant responsibilities. There is a risk that these staff may lack confidence in balancing FOISA duties with GDPR obligations, and may be unsure where to seek advice when complex or borderline decisions arise.

Furthermore, the administrative burden associated with FOISA could create pressures that inadvertently weaken data governance. When staff are stretched, processes such as quality checks, redaction reviews, secure storage and consistent application of retention schedules may become harder to maintain. Members emphasised that data protection must not become compromised as an unintended consequence of efforts to meet FOISA deadlines or volume of requests.

Overall, members stressed that extending FOISA is not inherently incompatible with strong data protection practice, but it does require robust support structures. Without clear national guidance, accessible training, and expert advice for smaller providers, the likelihood of data protection breaches, whether through over-disclosure, misinterpretation of exemptions or administrative error, would increase. Members therefore believe that any extension must be accompanied by proportionate measures to ensure that organisations can meet both FOISA and data protection obligations safely and confidently.

12. Do you have any comments on how the proposed extension might impact differently, whether positively or negatively, on different people in Scotland in relation to the following characteristics?

- Age.
- Disability (including both physical and mental impairments).

- Gender reassignment.
- Marriage and civil partnership (apply specifically to employment contexts).
- Pregnancy and maternity.
- Race.
- Religion or belief.
- Sex.
- Sexual orientation.

Members of Social Work Scotland found it difficult to identify specific differential impacts across the protected characteristics listed, as FOISA operates primarily as a transparency mechanism rather than a service intervention. The workshop discussion highlighted that the question itself is challenging and, in some respects, not well aligned to the nature of FOISA-related policy. Members also noted that the Scottish Government is likely to already hold data on how FOISA is used, and that such existing evidence would provide a more reliable picture of any differential impacts than sector speculation.

However, members did identify some possible areas of impact. They noted that groups who are more likely to access care services, particularly older people and disabled people, may benefit indirectly from the greater parity and transparency that FOISA extension would bring. Ensuring that all care providers, regardless of sector, are subject to the same standards of openness may help strengthen rights-based approaches and support individuals and families to understand and scrutinise the care being provided.

Members also felt that there is no clear evidence to suggest that the extension of FOISA would negatively impact people with any of the listed protected characteristics more than others. However, they emphasised that care should be taken to examine whether certain groups are currently less likely to access FOI rights, for example, due to digital exclusion, language barriers, or a lack of awareness of the mechanism. Members suggested that the Scottish Government should consider reviewing current FOI usage patterns, including whether any groups are systematically

under-represented among requesters, as this could provide a more meaningful basis for understanding differential impacts than assumptions made by providers.

The group also noted that FOI requests from journalists and researchers make up a significant proportion of current requests in local authority settings, and that it is less clear to what extent people from across protected groups are using FOI processes directly. Members therefore felt that the most important step in addressing equality impacts is ensuring that information about FOISA rights is accessible, clear, and communicated in ways that reach groups who may otherwise be less aware of their entitlements. Members also suggest that an equities impact assessment, a children's rights impact assessment, and island impact assessment are undertaken to inform this question.

Overall, members concluded that while FOISA extension is unlikely to have direct negative impacts on people with any of the protected characteristics listed, there may be positive impacts through increased consistency, fairness and rights-based transparency across the care sector. They emphasised, however, that any equality impacts should be grounded in analysis of existing FOI usage data rather than assumptions, and that proactive efforts may be required to ensure equitable awareness and access across all groups.

13. Do you have any comments on how the proposed extension might impact on the human rights of people in Scotland or beyond?

Members of Social Work Scotland felt that extending FOISA to private and third sector care providers has the potential to positively enhance the protection and realisation of human rights, particularly in relation to transparency, accountability and parity across the care system. Care home and care at home services support some of the most vulnerable people in society, and ensuring that all providers are subject to the same level of public scrutiny helps reinforce rights such as dignity, safety, autonomy and the ability to challenge decisions that affect an individual's care. Members highlighted that individuals receiving care through public-sector services already benefit from this transparency, and that extending FOISA ensures people are not denied rights simply because their care is delivered by a commissioned rather than a statutory provider. This is relevant for both adults and children, however some

of the specific issue related to children such as the ease with which children could be identified given the way services are provided should be carefully considered to ensure that the intent of the extension is achievable.

The group noted that failure to extend FOISA could unintentionally create unequal rights for people depending on who delivers their care. They observed that if private and voluntary services remain outside FOISA, large numbers of people would not have the same access to scrutiny or information as those supported directly by local authorities. Members therefore viewed the extension as a way of strengthening fairness and ensuring equal access to information rights across Scotland.

At the same time, members recognised that the implementation of FOISA must be handled carefully to ensure that the increased transparency does not inadvertently compromise rights in other ways. For example, smaller services may face challenges in protecting personal data when responding to requests, particularly in small or rural communities where individuals may be identifiable even after redaction. Members stressed that the system must support providers to uphold data protection rights robustly, as any accidental disclosure of sensitive personal information could constitute a violation of privacy rights.

Members also highlighted that the burden of compliance should not undermine people's rights to safe, high-quality care. If smaller organisations struggle with the administrative demands of FOISA without adequate support, this could impact their ability to focus on service delivery, workforce stability or other aspects fundamental to the rights and wellbeing of people using the service. Ensuring that providers are not overburdened, and that the extension does not contribute to instability or closures in an already pressured market, is therefore also a matter of protecting human rights in practice.

14. Do you have any comments on how the proposed extension might impact individuals affected by socio-economic disadvantage?

Members of Social Work Scotland found this question difficult to answer directly, as the relationship between FOISA and socio-economic disadvantage is not straightforward, and the discussion highlighted that the phrasing of such questions

can be challenging. However, members explored several possible ways in which the proposed extension might affect individuals experiencing socio-economic disadvantage.

Members noted that, in principle, extending FOISA could support fairness for people affected by socio-economic disadvantage by ensuring they have the same rights to information about their care as those whose services are delivered directly by public bodies. Without extension, individuals whose care is provided through commissioned services, many of whom may be older, disabled, or living with limited financial means, would have fewer avenues to scrutinise decisions or seek clarity about the quality and nature of the care they receive. Ensuring parity across all providers therefore helps strengthen equal access to transparency and accountability.

However, members also stressed that socio-economic disadvantage may influence people's ability to exercise their FOISA rights in practice. If some individuals are less aware of FOI processes, have limited digital access, or face barriers in navigating bureaucratic systems, they may not benefit equally from the extension. Members felt that the Scottish Government should therefore consider how information about FOISA rights can be communicated in accessible, plain language formats, and through routes that reach people who may otherwise be excluded.

Members further discussed that any unintended negative impacts are more likely to arise indirectly, specifically if FOISA places new burdens on smaller providers operating in deprived areas. If additional administrative responsibilities contribute to financial strain or workforce pressures, there may be a risk of service instability or reduced availability in communities where alternative provision is already limited. This could disproportionately affect people who have fewer options due to geography, resources or support networks.

Finally, members also reflected that the Scottish Government should examine existing FOI usage data to understand whether people affected by socio-economic disadvantage are currently under-represented among FOI requesters. Members felt strongly that assumptions should not replace evidence, and that any assessment must be grounded in real patterns of FOI engagement rather than speculation by providers.

Overall, members concluded that the extension of FOISA has the potential to promote fairness for people experiencing socio-economic disadvantage by equalising information rights across the sector. However, this positive impact depends on the Scottish Government ensuring that FOISA rights are meaningfully accessible, and that implementation does not inadvertently destabilise services on which disadvantaged communities disproportionately rely.

Conclusion

In conclusion, members of Social Work Scotland support the aspiration to extend FOISA to private and third sector providers of care home and care at home services, recognising the important role that greater transparency can play in strengthening rights, trust and accountability across the social care system. At the same time, members emphasise that the effectiveness and fairness of any extension will depend on the Scottish Government ensuring that appropriate support, guidance and proportional implementation measures are in place. Without these, smaller providers may face unintended pressures that could undermine their capacity to deliver safe, high-quality care.

Overall, members believe that the proposed extension presents a valuable opportunity to enhance parity and openness across the sector, provided it is accompanied by thoughtful, well-resourced and collaborative implementation that recognises the diverse realities of Scotland's care providers.

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