



Response from the National Carer Organisations

A proposal for a bill to reform Freedom of Information legislation in Scotland

Introduction

The National Carer Organisations in Scotland welcome the opportunity to respond to the proposal for a Bill to reform Freedom of Information legislation in Scotland. In particular we are responding to the proposal to extend coverage to all bodies delivering public services, services of a public nature, and publicly funded services.

We refer to the more detailed submission of SCVO which we broadly support, but have highlighted areas below which are of particular relevance to the organisations and people that we work with.

Overview

In principle we support efforts to ensure better access to information and the use of Freedom of Information legislation to allow for greater transparency and accountability in Scottish civil society.

Our own experience of using Freedom of Information as a tool for accountability has been mixed. We believe that it could benefit from a more simplified process, more provisions on suitable timescales, and more consistency in the quality of information provided. We are also of the belief that there is more work to be done on compliance levels with existing legislation.

However, as a representative of the third sector we caveat this heavily with the view that any proposed changes to Freedom of Information legislation has to be proportionate and flexible and would echo the SCVO view that a 'broad-brush approach to designating under FoI voluntary organisations that deliver services of a public nature and receive public funding is the only option or the best option available to policymakers'.

Social care and FOI

The third sector across Scotland provide a wide range of essential services to unpaid carers and those that they care for. This includes carers centres, short breaks and respite services, day services to disabled people, and young carers support.

We are concerned by the proposal within the consultation to include all providers of social care and, in particular, we are extremely concerned by the statement "If a potential provider does not wish to be covered, they need not tender."

For many carers and those they support, services provided by the voluntary sector are described as lifeline services. This was particularly in evidence during the COVID-19 pandemic when many carers felt forgotten by statutory services and were increasingly reliant on the third sector for the provision of essential support.

There is huge variance in the size, capacity and governance of organisations within the third sector and there needs to be more nuance to the application of Freedom of Information that a blanket approach to all providers of social care. This includes greater clarity on the definition of ‘delivering public services, services of a public nature, and publicly funded services’ as the potential variance within these definitions cannot be underestimated.

Similarly, unpaid carers who rely on third sector providers in order to get support, or a break from caring, are likely to view it in far less binary terms than ‘if a provider does not wish to be covered, they need not tender.’

Short breaks, National Care Service and FOI

The statement mentioned above appears in a section on the creation of the National Care Service and as National Carer Organisations we believe that it is important to highlight a potential unintended consequence of the extension of FOI and the impact on tendering, particularly in relation to short breaks.

The new National Care Service Bill gives unpaid carers in Scotland a new right to a break from caring. This new right is a very welcome and much needed development however, it also inevitably will lead to greater levels of demand for short breaks and respite services in both capacity and in variety.

A right to a break from caring can only be delivered by a varied short breaks market and it has been shown repeatedly through research that offering unpaid carers choice and control in how they access short breaks leads to more successful outcomes. Current levels of provision already fall short of demand and in many cases organisations providing breaks are small third sector organisations, such as those funded through the Short Breaks Fund.¹

A one size fits all approach to FOI legislation would not recognise the varied nature of the third sector social care support for carers – which many would also see as its strength. The unintended consequence could be that small local level third sector providers – many of whom are providing services to those with more complex levels of need – could be disproportionately impacted by this change and so too could those that they support. It is absolutely essential that any changes to FOI legislation are practical, proportionate and that the costs and benefits are fully understood.

Tendering and FOI

We again refer to the more detailed submission by SCVO regarding but would emphasise the potential impact of the extension of FOI to third sector organisations particular those providing social care in regard to commercial sensitivity.

¹ [Short Breaks Fund - Shared Care Scotland](#)

Many carers support organisations provide services on behalf of Health and Social Care Partnerships and do so as a result of a tendering process. Short term funding – often for period of a year – is a huge issue for the sector^{2 3} - as is a competitive tendering process. As a result it is again important to emphasise that any Freedom of Information legislative reform should not disproportionately impact on smaller third sector providers.

The new National Care Service Bill emphasises the need for ethical commissioning and, as mentioned above, new rights for carers need a varied market of supply in order to meet demand. The potential for commercially sensitive information to regarding tendering and service levels being available through FOI could actively disadvantage third sector providers, deter them from continuing to provide services, or place administrative and legal demands on them which they do not have the capacity to sustain in the same way as large scale private organisations.

About the National Carer Organisations

The National Carer Organisations are brought together by a shared vision that all Scotland's unpaid carers will be valued, included and supported as equal partners in the provision of care and will be able to enjoy a life outside of caring.

They are Carers Scotland, the Coalition of Carers in Scotland, Minority Ethnic Carers of Older People Project (MECOPP), Carers Trust Scotland, the Scottish Young Carers Services Alliance, Crossroads Caring Scotland and Shared Care Scotland.

Further information

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² Holidays or Isolation: Research into holiday activity provision for disabled children and young people in Scotland - Shared Care Scotland

³ The Scottish Third Sector Tracker – wave four findings (Summer 2022) – SCVO