Homecare Association Response on trade union right of access

Submitted online: 16 December 2025

About you

Please indicate whether you are applying as:

- A business representative organisation (please specify)
- Homecare Association

If responding as an employer, business, business owner or business representative, approximately what is the size of your business? If responding as an individual or worker, what size workplace are you employed in?

- Not applicable.

Which region are you located in?

- London (but operate nationally)

What sector are you based in?

Human health and social work activity

Do you agree that access requests and responses should be made in writing

Yes/No

Do you agree that access requests and responses should be provided directly via email or letter?

Yes/No

Do you agree that access requests and responses should be made through a standardised template provided by the government?

Yes/No

Do you agree with the proposed information to be included in a trade union's request for access?

Yes/No

If your answer is 'no', please explain your reasoning or give an alternative.

The union must name itself and confirm that it is a legitimate union with a certificate of independence, linking to its listing on gov.uk. We recommend that this is required so that employers can quickly assure themselves that the union is legitimate and meets statutory requirements.

The Homecare Association recommends that the government provides more specificity about what access to the workplace is required and how, particularly in sectors such as homecare where the "workplace" is often an individual's home. This is because in homecare businesses, employers need to give due consideration to:

Physical sites:

- Access to some physical sites in the homecare sector can create safety or privacy issues for the people the services support, particularly when the workplace is their home. Legislation and statutory guidance must explicitly state that an individual's home is not an appropriate site for a meeting.
- Union officials must follow all safeguarding, infection control, and visitor policies as set out by the employer in line with Care Quality Commission regulations and appropriate health guidance from the Department of Health and Social Care, Public Health England, Local Health Protection Teams, and other relevant public agencies.
- To enable this, the legislation must ensure:
    - CAC permits temporary restrictions during emergencies, outbreaks, safeguarding investigations, or critical staff shortages
    - Employers may accompany union officials to ensure protocol compliance if they are accessing workplace areas where safeguarding or infection control issues arise
    - Union officials may be required to undergo appropriate screening for care environment access (e.g. DBS checks; COVID tests or other pandemic measures)
- Many homecare providers won't have an assembly room that is large enough to have all of their staff gathered.
- Where homecare employers have an assembly room, this is often for the purposes of training and will be frequently in use for that purpose. This means that the room may not be available without negotiation of a time and advance notice.
- The work involves visiting the homes of people with care and support needs. So, it will not be possible to have all staff present at once as some staff are required on duty at all times to maintain continuity of care. Access agreements must take account of the fact that, at any one time, some staff will be off duty

and others will need to be working in order to maintain continuity of care and keep people being supported by the service safe. Unions cannot expect employers to arrange a time when all staff are free to attend as this is not possible. Unions may need to offer alternative times and/or operate digitally in order to reach the whole workforce.

- Employers in the care sector operate on very tight margins. LaingBuisson data show that the public sector purchases 80% of homecare. Our Homecare Deficit report for 2025 shows that no public sector commissioner in England purchases homecare at our minimum sustainable price for homecare and 29% of council and NHS trusts pay rates that are below the direct employment costs of a careworker at the statutory minimum wage. There need to be clear expectations that employers cannot routinely pay workers to attend union meetings (noting the exception of union representatives), given the very tight margins under which care providers operate and the rates paid by public sector commissioners.

Digital access:

- If the union needs to send emails or hold a virtual meeting, then officials should explain why they need access to the employers' systems and cannot host this on their own email or meeting platforms.
- The legislation and accompanying statutory guidance must ensure that any proposal for access arrangements clearly outlines how digital access aligns with data protection principles, including ensuring that:
    - Employers and unions do not share personal data without the explicit, informed consent of employees
    - Unions comply with the GDPR and confidentiality requirements
    - Union materials that are circulated do not include personal information about employees or care recipients
    - Employees retain the right to withdraw data-sharing consent at any time
- Data protection was the most significant concern raised about trade union access by members of our Employment Special Interest Group (which is a small group of members who discuss employment rights issues in depth) and in our wider engagement with members through our 2025 Workforce Survey.
- Our members (homecare providers) tell us they are reluctant to use office staff time to forward frequent emails from unions to staff. If the staff members wish to be contacted by unions and have had an opportunity to share their contact details with the union, then they should be able to opt out of receiving unsolicited information about the union via their employer or otherwise. Unsolicited messaging could affect the employer's relationship with staff, and some employers tell us that staff are reluctant to join trade unions, despite those employers having previously raised unions' profiles within their organisations.
- Not all staff members are comfortable with digital systems. The proposal must outline how it will connect with all staff, including those not digitally competent.

- Staff may not have digital access beyond their phones – the Digital Care Hub found that 53% of homecare organisations have staff using their own devices for work. Digital access arrangements must not assume staff have access to work computers.

The access request should:

- Explain why access is required and, if digital, why this access is more beneficial than using the union's digital systems.
- Make it clear exactly what is required of the employer and why the trade union needs that, taking into account data protection and safety issues.

There must be clear guidance for employers on how this interacts with data protection legislation.

Do you agree with the proposed information to be included in an employer's response to a trade union's access request?

Yes/No

Do you agree with the proposal on how the parties should notify the CAC that an access agreement has been reached?

Yes/No

If your answer is 'no', please explain your reasoning or give an alternative.

We recommend the government publish clear guidance about what constitutes a notification 'on behalf of both parties'. This is not clear at the moment.

If a notification 'on behalf of both parties' means that both parties need to contact the CAC separately to confirm that the agreement is in place, this would provide assurance that both parties have reached a mutual agreement. For that reason, we would support this.

Do you agree with the proposal on how joint notifications to the CAC of a variation of revocation of an access agreement are made?

Yes/No

If your answer is 'no', please explain your reasoning or give an alternative.

We recommend the government clarify the text to explain that a joint notification requires, for example, an email from one party with the other cc'd. It is important that the method of notification ensures that one party cannot make variations unilaterally without the other party being aware of the changes. Unilateral changes could escalate disputes unnecessarily.

We could easily imagine a circumstance in which an employer moves office and forgets to update their agreement and notify the CAC (even if union meetings

continue as usual). We would encourage the Government to publish clear guidance that addresses such scenarios and allows appropriate leniency so that enforcement agencies do not fine employers unnecessarily.

Do you agree with the proposed time period of 5 working days for the employer to respond to the trade union's request for access?

Yes/No

If your answer is 'no', please explain your reasoning or give an alternative.

We do not agree that 5 working days is sufficient. We recommend that the time period should be at least two week. Our two main reasons for this are:

- To allow for the fact that decision-making staff may be on annual leave. While there will be cover in relation to care services at all points, specific staff (who may be absent) could have responsibility for IT systems, HR or office management. While there could be arrangements to cover emergency situations, it is difficult to see why a trade union access agreement should be treated as an emergency.
- Some small to medium-size companies will not have in-house HR staff at all and may wish to seek advice from an external agency to ensure the terms of the access agreement do not compromise other compliance obligations, this could take longer than five working days.

We assume that the 5 working days specified is the legal definition of a working day – i.e. not including weekends or bank holidays, so effectively a week. Many care businesses operate 24/7 but won't have senior staff available for administrative matters at all hours, so we would prefer this to be set out in weeks rather than working days for clarity.

Do you agree with the proposed time period of 15 working days for the employer and trade union to negotiate the terms of access agreement?

Yes/No

If your answer is 'no', please explain your reasoning or give an alternative.

We do not agree that 15 working days will always be sufficient. In line with our response above, we suggest that the negotiation period should be four weeks (around a month). Similar to the last question, if a senior staff member in a small company who has responsibility for office management, IT systems or HR has annual leave or is off sick, they may not have the capacity to undertake negotiations quickly. Companies may also need to seek external advice multiple times in relation to a negotiation, and this takes time.

We assume that the 15 working days specified is the legal definition of a working day – i.e. not including weekends or bank holidays, so effectively three weeks. As many care businesses operate 24/7 but do not have senior staff available for administrative matters at all hours, we would prefer this to be expressed in weeks rather than working days for clarity.

Do you agree that there should be a limit of 25 working days for a party to request that the CAC make a decision on access following an access request being submitted?

Yes/No

If your answer is 'no', please explain your reasoning or give an alternative.

We understand this figure to be based upon the previous two: 25 working days is 5 working days for the employer to respond plus 15 working days to negotiate plus a further 5 working days.

We have suggested two weeks for the employer to respond and four weeks for negotiation. A further week in addition to that would make a period of 7 weeks. We therefore recommend 7 weeks.

For consistency with the above, we suggest expressing this as a total of weeks rather than working days, as many care businesses operate 24/7 but do not have senior staff available at all hours for administrative matters.

We think it would be valuable if the CAC could facilitate the mediation of an agreement before making a decision. A mediated agreement may help parties to develop a better understanding of the terms of access and each other's needs and be beneficial for future relationships. An external decision from the CAC would not help in developing that relationship.

Do you agree that employers with fewer than 21 workers should be exempt from the right of access policy?

Yes/No

If your answer is 'no', please explain your reasoning or give an alternative.

We support the principle of organisations with 21 workers or fewer being exempt.

We disagree that the legislation should automatically regard franchisees by the count of their employees across the whole network. The application to franchisees should depend on whether the case meets legal tests showing that the influence of the franchisor over staffing decisions warrants viewing franchisees as associated employers (considering factors such as whether there is a shared staff handbook and shared terms and conditions).

Do you agree that the CAC should refuse access unless the access agreement specifies that there will be a minimum of five working days between when the terms of the initial access agreement are finalised and when access takes place for the first time?

Yes/No

If your answer is 'no', please explain your reasoning or give an alternative.

Care companies may need time for the right staff members to be in work to make arrangements for:

- The booking of a meeting room; bearing in mind that, if there is a room, this is likely to be a training room that is in frequent use. Notice might be required to book it.
- The communication of arrangements to relevant staff.
- Digital access arrangements to be set up with any supplier or IT service (which the care company might outsource).
- Infection control and other access measures to ensure that access does not present a risk to people being supported.

If a union official needs a DBS check because they are likely to have contact with vulnerable adults or children when entering the workplace, then timescales should allow for the DBS processing time.

It may not be possible to arrange this within the space of a week; particularly if staff are absent or careworker sickness absence is high and senior staff need to cover care calls.

For this reason, we do not agree that five working days will always be sufficient, and we would suggest a minimum period of two weeks.

Do you agree that access agreements should expire two years after they come into force?

- Yes
- No – there should be a different time limit
- No – there should be another mechanism to remove dormant access agreements
- No – there should be no requirement for access agreements to have an expiry date

Please explain your answer

It is very important that unions and employers review agreements regularly to ensure they can notify the CAC of variations and cancellations of agreements. Legacy agreements could present the risk that either party may be subject to a fine if they are not fully aware of what is in the agreement.

However, if an agreement is working well, then the requirement to register the agreement with the CAC every two years could add unnecessary bureaucracy to the process.

In order to encourage regular review, we would therefore suggest that the code of practice recommends that employers and unions review agreements annually and notify the CAC if they wish to cancel or vary an agreement.

We therefore support the option of having a time limit but recommend that access agreements expire after five years rather than two.

In general, are there other circumstances under which you think that the CAC must refuse access? (This question refers to section 2A generally).

- If a union requests access to someone's home.
- If a union requests access to a site of care, and access would compromise the safety or support of the people being supported.
- If the timing of the visit would disrupt care delivery (i.e. it is when staff are particularly busy delivering care – meal times, getting up and going to bed times, etc.).
- If the way that the union has requested access suggests that they do not understand staff members' working arrangements and is impractical. For example, if the union requests access to the office to meet staff when no careworkers come to the office during the day.
- If an employer can't grant the access requested without violating data protection principles.
- If the trade union already has the capability to organise a digital meeting on its own platform and there would be no benefit to the employer doing so.
- If a union has already had opportunities to access the workforce and recruit, but still has no members at the workplace.
- If union officials have behaved inappropriately or staff have complained about their conduct and the employer is refusing based on a duty of care to their employees.

We support a balanced approach that enables unions to engage with workers while safeguarding the people receiving care and respecting employers' legal obligations.

Our Workforce Survey 2025 highlighted that our members had some concerns about how a union presence in the workplace could increase demands on staff time and raise costs. If a union requests an access arrangement that is disproportionately costly in terms of staff time to facilitate, the CAC should consider this alongside lack of infrastructure (for example, not having a meeting room).

Do you agree that the presence of a recognised union representing the group of workers to which the union is seeking access be considered a reasonable basis for the CAC to refuse access to another union?

Yes/No

Do you agree that an access application that would require an employer to allocate more resources than is necessary to fulfil the agreement (e.g., constructing new meeting places or implementing new IT systems) should be regarded as a reasonable basis for the CAC to refuse access?

Yes/No

Do you agree that weekly access (physical, digital, or both) be included as a 'model' term in access agreements, to help support regular engagement between trade unions and workers?

Yes/No

If your answer is 'no', please explain your reasoning or give an alternative.

We do not think that weekly access should be a standard model term in all sectors.

We recommend that access agreements reflect the intended frequency of meeting so that employers and employees know what to expect from the union. A model should be based on statistical evidence of how frequently unions typically meet in different-size workplaces.

If the agreement says that meetings will take place weekly and they do not; this may raise expectations of staff. It may also present a cost to the employer as there is likely to be limited meeting space available. Employers may not have a meeting space where all staff can gather at once. There are costs involved in booking meeting space for a union to use. There could also be a cost to support staff being available to attend. So this should be based on actual intended use and not just to secure access in case the union might need it.

Arranging weekly access could also be costly and complex if this impacts people who are being supported by the service, affects infection control, safeguarding or other safety concerns that the employer must take into consideration to meet their compliance obligations while arranging access.

Please describe any other terms that you think should be regarded as 'model' terms.

- Clear model terms on digital access and how this interacts with data protection; and when unions need access to employer's digital systems (such

as virtual meeting hosting or messaging platforms) rather than using their own and what the rationale for this is.

- A model term on when an employer could legitimately suspend an agreement (for example, physical access paused due to infection control; or if there were safety or harassment concerns).

Do you agree that access agreements include a commitment from the union to provide at least two working days' notice to the employer before access takes place?

Yes/No

If your answer is 'no', please explain your reasoning or give an alternative.

Sometimes this would be reasonable, for example, if there was a routine meeting that the employer could expect.

However, employers should be free to specify longer periods of time if special arrangements need to be made. This could be because of meeting room booking and availability, or the need to communicate with staff and plan working patterns.

Exceptions are required when there are infectious disease outbreaks, emergencies, or critical staffing shortages.

Are there any further matters to which you think the CAC must have regard when making determinations on access? If so, what are they? For example, you might want to suggest practical, legal, or workplace-specific considerations that haven't already been covered.

We support a balanced approach that enables unions to engage with workers while also safeguarding people receiving care, protecting staff, and recognising the operational realities of homecare services.

The homecare workforce works in the community and will almost never all be available at the same time and place. Care providers need to maintain operations over a large geographic area, sometimes 24/7. This means that some staff will always be off duty and some staff will be delivering care that is necessary to the safety of the individuals. Unions and the government cannot expect employers to make their workforce available for a meeting all at the same time and in the same location. If employers need to meet their own workforce, they will do so over several sessions scheduled at different times, not all at once.

- If a trade union makes an access request that is not practical – for example, one that assumes the entire workforce will all be available at the homecare provider's office – the employer should be able to raise this concern about the access arrangements proposed. The CAC should not view this as obstruction; employers themselves do not meet staff in this way.

- Due to the fact that the workforce works in the community, many care providers will not have large meeting rooms available. Where they do, these are training rooms and are often in use.
- Safeguarding, harassment, safety or disruption to care services.
- Data protection principles.
- The wishes of the workforce; if they have already engaged with the union and do not want repeated contact.

Which of the following options do you consider most appropriate for setting the maximum value of the fine?

- **Option A –** a fixed maximum fine of £75,000
- **Option B –** a two-stage system £75,000 for initial breach and up to £150,000 for repeated breaches
- **Neither of these options**

Please explain your answer or suggest an alternative approach

£75,000 is already a significant deterrent and is in line with other legislation. A £150,000 fine might be enough to put an organisation or a union out of business.

We therefore support Option A, a fixed maximum fine of £75,000.

Do you agree with the proposed matters the CAC must consider when determining fines?

Yes/No

If your answer is 'no', please explain your reasoning or give an alternative.

- If there had been a period of non-activity in which active use of the agreement lapsed prior to the complaint being made.
- If there was a systems problem that meant an employer couldn't give access (particularly for digital systems – for example, a website outage)
- If the other party had breached the agreement, and disruption to access was a result of this.
- If a party, third party, or change in circumstance created a safety issue for people being cared for or staff members, that meant the agreement needed to be renegotiated.
- If the employer suspended the agreement due to infection control, safeguarding, critical staffing shortages or other emergency concerns affecting a care provider and the wellbeing of the people they support, this should be taken into account.