Homecare Association

Comments on draft code of practice on trade union right of access

Submitted by email 19/05/2026

Due to time constraints, we have provided a limited response to your consultation on the Draft Code of Practice on Trade Union Right of Access below. The Draft Code raises significant operational and cost implications for homecare providers. We have focused only on the highest-risk areas rather than all areas of concern in this response – this is because of the timetable, not because the remaining issues are unimportant.

The high-risk areas that we believe the Code needs to address are:

- Greater clarity on data protection, infection control, and safeguarding
- Adjustments to the proposed employer response form to ensure the information required is practical for non-typical work arrangements
- Greater clarity that the access framework does not create a general expectation that employers must pay all workers to attend trade union access meetings, particularly where access may take place during working hours or as frequently as weekly

In summary, we ask the Government to amend the Code to: clarify the private dwelling exemption for homecare; make digital and indirect access a normal and proportionate route for dispersed homecare workforces; clarify that the framework does not create a general expectation that employers must pay all workers to attend access meetings; amend the templates so they do not require individual-level rota data, client addresses or sensitive operational information; and ensure third-party premises provisions do not override the rights and consent of people living in residential or domestic settings.

Many of the issues that we highlighted in our initial response to the consultation on trade union access also remain relevant to the Code of Practice. It must take account of the fact that:

- Homecare operates across many sites, with the workforce rarely or never in one place
- Private dwellings must remain outside the right of access framework. In homecare, the place where care is delivered is first and foremost a person's home, not an employer-controlled workplace. Employers cannot consent to union access on behalf of the person living there.
- Safeguarding, infection control and other measures in care settings can affect access
- There is a need for clarity about how access arrangements interact with data protection legislation

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We would be happy to discuss our comments further with you. While practical access for trade unions is important, the new agreement process must not jeopardise the safety of individuals, compromise data security or undermine the regulated care sector. Nor should the framework create unfunded administrative, staffing, or attendance costs for providers operating in a publicly funded market where fee rates frequently do not cover the true cost of care.

Response

Question 1: Please indicate whether you are responding as:

A business representative organisation (please specify) – Homecare Association

Question 2: 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?

We represent 2,100 homecare providers of varying sizes

Question 3: Which region are you located in?

UK-wide

Question 4: What sector are you based in?

Other - Social Care

Question 5: What is your email address?

policy@homecareassociation.org.uk

Q8. Are the 'model' terms of access agreements set out in paragraphs 56 to 65, including the frequency and duration of access for different scenarios, sufficiently clear and detailed?

No

Q8.1 Please provide further information to support your answer.

The model terms are not sufficiently clear for care settings. The Draft Code notes that safeguarding requirements, such as DBS checks, may be relevant where union officials enter schools. The Code should make equally clear that safeguarding requirements may also apply in care settings.

The Code should also recognise that infection prevention and control requirements may affect access arrangements for care settings, including during outbreaks or in accordance with public health guidance. Without this clarification, there is a risk of inconsistent expectations about what access is reasonable in regulated care environments.

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The Code should also make clear that weekly access should not become a default expectation in homecare. While weekly access may be appropriate in some large, fixed workplaces, it may be disproportionate for providers with dispersed, mobile workforces who rarely attend a central workplace. For homecare, proportionate model terms may include indirect digital communication, scheduled online sessions, or access linked to existing induction, supervision or training events where this is operationally feasible.

Q16. Are the arrangements set out in paragraphs 87 to 89 sufficient and flexible on facilitating access for workers with non-typical working patterns, including shift workers, part-time workers and those who rarely attend the employer's premises?

No

Q16.1 Please provide further information to support your answer.

The Code should provide more explicit guidance for sectors with dispersed and variable-hour workforces. Earlier sections recognise that the way an employer ordinarily communicates with staff is relevant when considering what access arrangements are reasonable. The Code should repeat that principle clearly in relation to workers with non-typical working patterns. This is particularly important in homecare, where workers are rarely, if ever, all in the same place or working at the same time.

The Code should also recognise that employers normally pay homecare workers for contact time with people receiving care, travel time between visits and training time. They are not generally paid for open-ended availability or optional meetings outside agreed working arrangements. Access arrangements should therefore not interrupt scheduled care visits, reduce contact time, or create an implied expectation that the employer will pay all workers to attend union meetings. The way that the public sector generally purchases care (by-the-minute and contact time only) would not support this (as we discuss below).

Q17. Does the code provide clear and workable guidance on 'digital' access in paragraphs 90 to 95 provide clear and appropriate guidance on digital access, including the use of indirect digital communication, consent requirements, and the role of the CAC where personal data is involved?

No

Q17.1. Please provide further information to support your answer, including any views on the role of consent and the use of indirect digital access.

The Code would benefit from clearer and more developed guidance on the interaction between digital access and data protection law. In particular, paragraphs 92 to 95 should distinguish more clearly between indirect digital access and direct digital access, and explain the data protection implications of each.

For indirect access, the Code should clarify that an employer may cascade union information to employees without this involving the sharing of personal data with the

union and that the Government considers this compatible with data protection legislation. This would help avoid unnecessary uncertainty about whether such arrangements engage data protection concerns.

In homecare, employer communication channels may include care planning systems, rostering systems or secure messaging platforms containing sensitive information about people receiving care. The Code should clarify that digital access must not require unions to access systems containing client records, rota locations, client addresses or special category data.

For direct access, the position on consent in paragraph 93 is unclear. Employers need to understand whether the Code expects them to seek consent from employees on behalf of a union, in what circumstances that would arise, and what happens if the employer does not seek consent or the employee does not give consent. This is particularly sensitive where employees may have concerns about disclosing an interest in union contact to their employer.

Our preference is that any data-sharing or consent-based arrangements should remain voluntary for employers rather than being required by the Code. The Code should also signpost any relevant guidance on voluntary data-sharing agreements if the government envisages direct digital access and the employer wishes to pursue and support this.

Q32. How clear and workable is the standardised template for employer responses to an access request, including the information employers are expected to provide?

No

Q32.1 Please provide further information to support your answer.

The standardised template is not fully suitable for sectors such as homecare, where work has variable-hours and delivered primarily in people's homes rather than at a single employer-controlled site. We would highlight four points.

Workers to whom access relates
The template should clarify which figure is being requested. In homecare, workforce numbers may change frequently. The form should specify whether the government expects employers to provide a current headcount, or another way of measuring worker numbers, and whether they should include vacancies.

The template should distinguish between headcount, full-time equivalent staff, active workers, bank or casual workers, live-in carers, and workers in the relevant group the union is seeking access to.

Working pattern/rota
Many homecare providers do not operate fixed shift or rota patterns. Staff may work on zero-hours or guaranteed-hours arrangements, and individual working patterns may change frequently in response to the needs of the people they support. The

template should make clear that the government does not expect employers to provide individual-level rota information. Where working patterns are variable, it should be sufficient to provide a high-level description of how employers organise rotas. The template should make clear that the guidance would not require employers to provide individual-level rota data, worker location data, client addresses, visit schedules or other operational information that could identify people receiving care or compromise safety and confidentiality.

Locations of work
The template should clarify that the government does not expect employers to list the addresses of individual homes where care is delivered. In homecare, that would be inappropriate and could raise privacy and safeguarding concerns. It should be sufficient for employers to provide their office address and explain that staff work in people's homes across a defined area. As stated in the Code, the trade union access process cannot request access to private homes.

Data protection/information sharing
The template should include a section addressing any proposed data-sharing or information-sharing arrangements and how the union and employer will manage these in line with data protection legislation. The template may not need to include this if the government does not intend direct digital access to be required in any case – in which case, the Code should state this clearly.

Q35. Do you have any comments on any other areas of the Code?

Yes

Q35.1 Please provide further information to support your answer.

We would like to make four further points:

Third-party premises and residential settings
Paragraphs 84 to 86 address situations where the employer does not control the premises where workers work. This may be appropriate for some commercial settings, but it needs qualification for homecare, supported living, extra care housing and other residential care-related environments.

The Code should make clear that where premises are private dwellings or residential settings, access must not override the rights, privacy, dignity, safety or consent of people living there. The Code should not penalise employers where they have taken reasonable steps to facilitate alternative access but cannot secure access to premises they do not own, manage or control.

Small social care employers
The Government's response to the earlier consultation indicates that the access framework will apply to small workplaces in the social care and school support sectors where national negotiating bodies cover workers.

We argue that very small organisations should not have to engage in formal access processes in the same way as larger employers. The Code should explain clearly

how the 21-worker threshold will operate in social care and whether providers below that threshold may nevertheless be brought within scope because of national negotiating arrangements.

Smaller providers will often lack the HR capacity, administrative resources and facilities to support formal arrangements of this kind. Making employment processes too complex for small employers may incentivise the increased use of self-employment models, and this will directly undermine the Fair Pay Agreement and any employment legislation or care regulations in place.

If the Government intends the framework to apply in these circumstances, the Code should address this directly (including an implementation date if this provision is intended to be introduced at a later stage) and provide additional guidance, for example in an annex, on how access arrangements should operate in very small workplaces. That guidance should clarify the scope of the framework, and the government should develop this with input from the social care and school support sectors.

Guidance for employers on staff pay

Employers need clear guidance on whether the law requires them to pay workers to attend trade union access meetings. We understand that existing statutory rights distinguish between paid time off for recognised trade union representatives undertaking trade union duties, and unpaid time off for workers or representatives taking part in trade union activities. The Code should make this distinction explicit. In particular, it should clarify that the new access framework does not create a general expectation that employers must pay all workers to attend trade union access meetings.

This is particularly important in homecare, where employers normally pay workers for contact time with people receiving care, travel time between visits and training time. If HMRC interpreted access meetings, potentially as often as weekly, as paid working time for all relevant staff, this would create substantial unfunded costs for providers and could divert resources from direct care.

Funding

The government purchases and funds around 80% of homecare. Administering access requests, cascading information, arranging digital meetings, responding to CAC processes, making facilities available, paying staff attendance where required, paying travel time where required, and arranging cover could all increase costs. Our evidence suggests that only one council in the UK paid a sustainable price for homecare in 2025/26 and that 29% were paying rates that did not even cover direct employment costs at minimum pay rates. Legislative changes are not being adequately considered in budget setting. Further unfunded increases in costs could drive non-compliance or a drift towards self-employment models that avoid regulatory costs. The Government should assess the cumulative impact of employment reforms on regulated care providers, rather than treating each individual reform as marginal or cost-neutral. We are calling on the Government to implement a National Contract

for Care Services that sets a fee rate floor for commissioned homecare that is calculated according to an agreed fee methodology and adjusted when government policy increases the cost of care delivery.