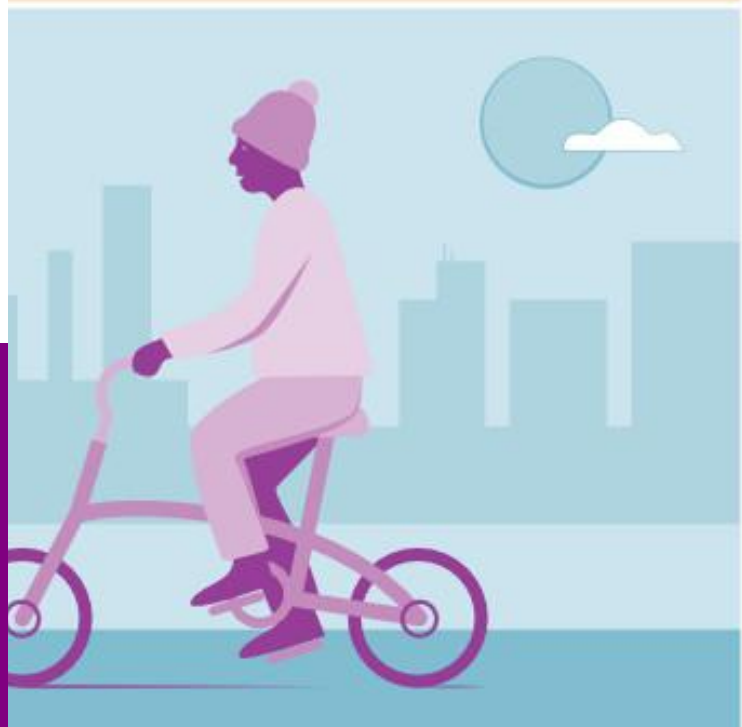




**The Health and  
Social Care  
Alliance  
Scotland  
(the ALLIANCE)**



**Care home and 'care at home' service  
providers - FOISA extension  
ALLIANCE response**

**30 March 2026**

## Introduction

The Health and Social Care Alliance Scotland (the ALLIANCE) welcomes the opportunity to respond to the consultation on the potential extension of the Freedom of Information (Scotland) Act (FOISA) to care home and 'care at home' service providers<sup>1</sup>. Our position is informed by direct engagement with members who use care home and/or 'care at home' services as well as unpaid carers, independent advocates and family members and third sector and independent care home and 'care at home' providers operating across a range of settings.

Overall, the ALLIANCE supports the principle of greater transparency and accountability in social care and believes that extending FOISA could support this aim. Care homes and 'care at home' services deliver an essential public function regardless of ownership or funding model, and people who rely on social care and those who support them should be able to access clear, timely and reliable information about how care is delivered and how decisions about that care are made.

Many of our members with lived experience that we heard from note that access to information is a practical necessity for the realisation of their human rights. However, they described repeated difficulties accessing information under current arrangements, including delays, incomplete or partial records, and reliance on the goodwill of individual managers rather than clear rights. The absence of a statutory route to information creates real barriers in practice. From this perspective, extending FOISA has the potential to create a more level playing field, reducing reliance on individuals' persistence, confidence or informal influence to access information.

However, the ALLIANCE emphasises that how FOISA would be extended matters as much as whether it is extended. Our members who are third and independent sector providers showed support for the principle of transparency alongside significant concerns about proportionality, capacity and timing. Many providers we heard from questioned what specific



transparency gap FOISA extension is intended to address, given the existing regulation, inspection and commissioning oversight of the sector.

Providers also raised concerns about the practicalities of compliance, including short statutory response timescales, the management of commercially sensitive information and the risk of FOI requests being used as an alternative complaints route. Without careful design and sufficient support, providers warned that new obligations could divert limited staff time away from care delivery. These concerns were consistently framed within the context of an already stretched sector facing rising costs, staffing pressures and multiple concurrent reforms.

The ALLIANCE therefore argues for a balanced approach that strengthens people's rights to information while recognising the operational realities of social care provision. While extending FOISA has the potential to strengthen access to information, it must not be implemented in a way that risks undermining other rights, including the right to safe, high-quality care, by diverting limited staff time and resources away from care delivery.

We emphasise the need for clear articulation of the specific gap FOISA extension is intended to address, alongside clarity of scope, appropriate protections for Self-directed Support (SDS) and direct payment arrangements, and strong implementation support. Accessibility, awareness and independent advocacy must also be embedded from the outset so that new rights are communicated clearly and can be exercised safely and effectively by everyone who may need them. Achieving this will require realistic lead-in times, proportionate expectations on the scope of FOISA, co-produced practical guidance and ongoing engagement with the Scottish Information Commissioner.

Only by taking full account of existing social care sector and third sector pressures and enabling providers to comply meaningfully will FOISA implementation be sustainable and capable of delivering real improvements in transparency for people who use care home and 'care at home' services.



**Question 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**

The ALLIANCE agrees, with important considerations, that FOISA should be extended to private and third sector run care homes. Informed by our members, we consider that such an extension has the potential to strengthen transparency and accountability within social care, recognising the essential public function that care homes perform regardless of ownership or funding model. We support the principle that people living in care homes, alongside their families, unpaid carers and independent advocates should be able to access clear, timely and reliable information about how care is delivered, how decisions are made and how concerns are addressed. However, the ALLIANCE stresses that any extension must be implemented in a way that is proportionate and adequately supported, particularly given the current pressures facing the social care, third and independent sector.

Our engagement with people who use care home services and those who support individuals in these settings strongly reinforces the importance of this principle in practice. Members consistently described repeated difficulties in accessing information, including experiences of delay, incomplete or ‘cherry-picked’ records. In many cases, access to information was described as dependent on the goodwill or approach of individual care home managers rather than on clear, enforceable rights. Families and independent advocacy workers reported having to rely on local authorities as a workaround, requesting information indirectly through commissioning bodies already subject to FOISA, as there was no direct statutory route to the provider delivering care.

Broader ALLIANCE research, “My Support My Choice: People’s Experiences of Self-directed Support and Social Care in Scotland”<sup>2</sup>, reinforces the importance of transparency and accessible information in



social care decision making. Participants described difficulties obtaining paperwork and documentation relating to their care arrangements, even after repeated requests, alongside a lack of clarity about how decisions were made and how they could challenge them. Taken together, these experiences clearly illustrate why FOI matters in practice, and how extensions could support greater consistency, equity and accountability across the sector and for all groups who rely on care home services.

However, our engagement with care home and care at home provider members presented a more cautious and nuanced picture. Providers expressed support for greater transparency in principle, but questioned what specific gap FOISA extension is intended to address, given the already extensive regulatory, inspection and contractual oversight within the sector. Members believed that the sector is, in many respects, already broadly transparent. Members suggested that part of the challenge may lie not in the absence of routes to information, but in limited awareness or clarity amongst the public, families and unpaid carers about how existing routes can be used effectively. Greater clarity about the specific areas FOISA is intended to address, and how it complements rather than duplicates existing mechanisms such as subject access requests, will therefore be essential.

Significant concerns were also raised about proportionality, capacity and timing. Providers highlighted the challenge of meeting statutory response timescales, particularly the requirement to respond to an FOI request within 20 days. This was a particular concern for organisations that have limited administrative capacity and single points of responsibility for information governance. Our members expressed anxiety that FOI could be used as a proxy complaints mechanism, including the submission of vexatious or misdirected requests, increasing administrative burdens without improving outcomes for people who use services. These risks were seen as especially acute in the context of ongoing workforce shortages, financial pressures and already ongoing reform across the sector. The ALLIANCE recommends that further clarity be given to how FOISA would be



implemented without placing disproportionate strain on providers or diverting resources away from care delivery.

**Question 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**

The ALLIANCE agrees that FOISA should be extended to care at home services and supports its intentions in principle. However, extension in this context requires particularly careful design, clear scope and strong implementation support to reflect the distinct characteristics of care at home provision. Additionally, FOISA extension must be accompanied by safeguards for SDS and direct payment arrangements, and strong, co-produced guidance to ensure that the extension delivers meaningful transparency.

Our lived experience members described barriers to accessing information in care at home services that closely mirror those experienced in care home settings. These included difficulties obtaining care notes, understanding decisions about care delivery, and a lack of transparency around changes to, or withdrawal of, care at home packages. Contributors also highlighted uncertainty and distress where decisions to reduce or end care at home provision appeared to be linked to moving into residential care, without clear explanation or access to information underpinning those decisions. As with care homes, reliance on informal relationships or goodwill, rather than clear statutory paths, was a recurring theme.

In our engagement with ALLIANCE provider members, they raised additional and specific concerns about feasibility in care at home contexts. Care at home services are frequently delivered alongside housing support and community support often across multiple organisation structures, funding streams and management arrangements. Providers highlighted the practical complexity of disentangling what would and would not fall within



scope for FOISA, particularly where operational boundaries are blurred. Without clear definitions and guidance, there is a risk of inconsistency, confusion and dispute about responsibility for information.

As with care homes, providers expressed concern about the additional administrative burden that FOISA extension could introduce at a time of acute workforce shortages, financial pressures and ongoing reform. Members questioned whether FOISA would, in practice, add clarity for people who use services, or whether it might instead risk confusing existing routes for accessing information such as subject access requests and complaints procedures unless these existing mechanisms are clearly articulated and communicated in line with potential FOISA introduction.

A specific concern raised by our members relates to Self-directed Support (SDS) Option 1 and direct payment arrangements. There was anxiety that individuals who employ personal assistants directly, including unpaid carers and family members acting in this capacity, could inadvertently become subject to FOISA themselves. This raises significant questions about proportionality, capacity and fairness, particularly given wider societal narratives around scrutiny of social security recipients and unpaid carers. The ALLIANCE considers this a critical risk that requires explicit clarification and protection within any proposed extension, to ensure that individuals exercising choice and control over their care are not unintentionally exposed to inappropriate information governance obligations.

**Question 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.**



The ALLIANCE considers that if FOISA is extended, information about care home and care at home services should be subject to FOI irrespective of the level or type of public funding as it risks creating inconsistency and confusion.

Our engagement evidence strongly suggests that access to information should not depend on how care is funded. Individuals and families experience care as a public service regardless of whether it is publicly or privately funded or mixed, and access to information should not depend on an individual's financial circumstances. Members expressed concern that limiting rights based on funding would entrench inequity and exclude people who self-fund care due to marginal eligibility thresholds, rather than genuine difference in need.

Providers also noted that mixed funding models within single services is common, and that attempting to separate FOI-covered and non-covered information based on funding would be operationally complex and difficult to administer. However, the ALLIANCE recognises that funding models are relevant to proportionality and resourcing and these should be reflected in implementation support rather than in determining access to rights.

**Question 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**

The ALLIANCE agrees that any extensions of FOISA should apply equally to services delivered to children and young people. Excluding children's services would risk undermining equity, rights and safeguarding, lived experience contributors were clear that transparency and access to information are essential protections for children and young people, particularly disabled children and those with complex needs, and for



families, unpaid carers and guardian acting on their behalf. The ALLIANCE strongly supports a consistent approach that does not differentiate access to information based on age or service user group.

**Question 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:**

While members did not raise extensive service-specific concerns, the ALLIANCE believes any potential extension of FOISA specifically to children and young people’s services should be validated against the provisions in the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. Furthermore, careful attention will be required to consent and confidentiality while clear, practical guidance will be essential to support providers in understanding who is entitled to access information, including parents, guardians and those with legal authority, and to ensure that rights are upheld without creating unnecessary barriers.

**Question 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** (multiple choice)

**Question 6c: Do you have any other comments on the challenges or opportunities that might come from extending FOISA to smaller providers? Please use the space below to set out your views:**

The ALLIANCE recognises that organisational size and capacity are relevant considerations in the design and implementation of any extension of FOISA, but caution against size-based exemptions that would remove rights from people who use smaller services.



The ALLIANCE recommends a graduated and proportionate approach to implementation, rather than exclusion from FOISA. This should include longer lead-in times, embedded flexibility around response timescales where appropriate, access to shared resources and infrastructure and co-produced, practical guidance. Such an approach would support smaller providers to comply effectively while ensuring people who use service retain meaningful access to information and rights.

In our engagement with provider members, members emphasised that smaller providers often operate with limited staffing, minimal back-office infrastructure and single points of responsibility for governance and information management. With this context, providers highlighted particular concern about the statutory 20-day response timescale, and the anxiety this creates around non-compliance in an already pressured sector, including the risk of diverting staff time away from care delivery to manage or help respond to information requests. It is also important to note that staff headcounts, particularly frontline care staff, does not equate to equivalent administrative capacity, meaning that arbitrary thresholds based on numbers alone are unlikely to reflect real organisational capacity.

At the same time, our members with lived experience strongly cautioned against blanket exemptions for smaller providers. Members emphasised that the size of provider does not reduce the importance of transparency, accountability or access to information. Exemptions based solely on size risks leaving some people without effective routes to information or redress, reinforcing existing power imbalances.

**Question 7: What would be most helpful to assist care providers in discharging their obligations under FOISA? Please provide your thoughts below**

The ALLIANCE considers that substantial, well-designed support will be essential if FOISA is extended to third and independent sector care home and care at home providers. Our provider members consistently



emphasised the need for a realistic and phased lead-in period, recognising the cumulative impact of workforce shortage, financial pressures and ongoing reform across the sector. Without adequate preparation time, the risk of non-compliance was seen as significant particularly given the limited administrative capacity within many third and independent sector organisations.

There was strong consensus on the importance of co-produced, sector specific guidance that clearly sets out what information falls within scope, how any exemptions should be applied in practice, and how FOISA interacts with existing regulatory and data protection requirements. Providers stressed the need for practical operational guidance rather than high-level interpretation, alongside templates, shared tools and clear routes for advice and support that are tailored to the realities of social care delivery.

In addition, providers highlighted the specific need for guidance on commercial sensitivity, particularly in a competitive funding market, and cautioned against FOI being inappropriately used for competitive or strategic ends. Some members noted that this may require parallel consideration of ethical commissioning approaches to mitigate risk and to ensure that compliance with FOISA does not inadvertently influence future funding decisions. Members also highlighted the importance of alignment between FOISA obligations and current commissioning, contracting and funding arrangements to ensure new FOISA expectations are realistic and resourced to not create unintended financial risks for providers.

A particular concern raised through engagement was the feasibility of complying with the statutory 20-day response timescale. Providers indicated that this requirement would be extremely difficult to meet consistently, especially in smaller organisations with limited back-office capacity. Members therefore questioned whether greater flexibility around response times could be built into the system, recognising that the social care sector does not operate with the same infrastructure or resources as many public bodies currently subject to FOISA.



In particular, uncertainty about the likely volume and nature of FOI requests was raised by members, making it difficult for organisations to assess the operational and financial impact in advance. Some members questioned whether mechanisms could be explored to ensure that FOISA primarily supports people who use services.

Providers also emphasised the value of an ongoing, constructive relationships with the Scottish Information Commissioner before, during and after implementation, including openness to flexibility where sector-specific challenges emerge. Clear guidance for those submitting FOI requests will also be important to prevent FOI being used as an alternative complaints route and to reduce misdirected requests. Finally, providers questioned whether potential FOISA extension should be accompanied by clearer articulation of the specific gap it is intended to fill, noting that the sector already provides transparency through multiple existing routes and that improved public understanding of these routes may also be required.

**Question 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? Please provide your thoughts below:**

Engagement with our members who use these services highlighted that rights are only meaningful if they are understood, accessible and supported in practice. They emphasised the importance of plain English and Easy Read information explaining FOI rights, alongside alternative formats and verbal explanation where required. This echoes findings from the ALLIANCE's More than Words: Communication for All campaign<sup>3</sup>, which calls for accessible communication to be embedded as a basic standard across all areas of health and social care. Members felt that information about FOI should be provided proactively at the point of entering care or care arrangements, rather than relying on individuals to seek it out during periods of stress or crisis.

There was strong emphasis on the need for clear signposting to accessible and available independent advocacy and advice, particularly for those who



lack capacity, have additional communication needs or are navigating complex and emotionally difficult situations. Some members described fear of damaging relationships with providers or experiencing negative repercussions if they asked for information, particularly in smaller services where anonymity is limited. The ALLIANCE therefore considers that any extension of FOISA must be accompanied by active awareness-raising and support to ensure people can use their rights safely and confidently while also helping to ensure that FOI requests are appropriate and proportionate. This must also be supported by sustainable funding for the independent advice and advocacy sector, to ensure that an already under-resourced system is not placed under further strain by increased, unfunded demand.

**Question 9: What categories of information relating to the work of care home and ‘care at home’ services would people be most likely to seek? Please provide your thoughts below:**

ALLIANCE members with lived experience described seeking information that directly affects day-to-day care, safety and wellbeing. This included care notes relating to nutrition, hydration, medication and personal care as well as information about staffing levels, continuity of care, responses to incidents and how concerns are addressed. There was also strong interest in understanding how decisions are made, particularly decisions relating to changes in care packages or transitions between care at home and residential care.

These requests were framed as practical information needs linked to safeguarding, advocacy and informed decision-making. This reinforces the importance of ensuring that any FOISA extension focuses on information that matters most to the people who use services and those who support them.

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



The ALLIANCE recognises that extending FOISA would have business and regulatory implications for third and independent sector care providers, particularly smaller organisations. Particularly, uncertainty about the likely volume and nature of FOI requests was also raised by our provider members, making it difficult for organisation to assess the operational and financial impact in advance.

Providers highlighted concerns about additional administrative burdens, challenges in meeting statutory timescales and the potential diversion of staff away from care delivery. These risks were seen as particularly significant given current workforce shortages, financial pressures such as recent National Insurance increases and the cumulative impact of multiple reforms affecting the sector.

Members questioned whether this is the right time to introduce a new statutory obligation, or whether any potential FOISA duty should be integrated within a more comprehensive and coordinated package of reform. Providers were clear that they are not opposed to increased transparency in principle, but stressed that current operating conditions may make it difficult to embed FOISA related processes to meaningfully realise the intentions of FOISA.

Providers also raised concerns about commercial sensitivity, particularly in a competitive market where organisations may be delivering similar services under different contractual arrangements. Members emphasised the need for clear practical guidance on how commercially sensitive information should be handled and cautioned against FOI being used for competitive or strategic purposes. In relation, members expressed concern about how the risk of non-compliance with the 20-day response requirement, which many providers view as difficult to meet, could affect future commissioning of funding decisions.

At the same time, some providers acknowledged that greater clarity and consistency around access to information could, over time, support trust between providers and those who use services. The ALLIANCE considers



that realising these benefits will depend on proportional implementation, adequate resourcing and clear alignment with existing regulatory frameworks.

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

N/A

**Question 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.

The ALLIANCE considers that extending FOISA has the potential to deliver positive equality impacts, particularly for disabled people, older people and others who face barriers to accessing information and exercising their rights. Greater transparency could support advocacy, safeguarding and informed decision-making, especially for those who rely on other to act on their behalf.



However, these benefits will not be realised automatically. Members emphasised that without accessible formats, clear communication and advocacy support, FOI rights risk being taken up primarily by those with greater confidence, resources or system knowledge. The ALLIANCE therefore stresses that equality considerations must be central to implementation, rather than treated as an add-on. This would include undertaking an EQHRIA as early as possible in the policy development process, and ensuring it is kept under regular review as the policy moves into implementation.

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

The ALLIANCE considers that FOISA extension could positively support a range of human rights, including rights to dignity, autonomy, participation and accountability. For people who lack capacity, or who rely on family members or independent advocates to represent their interests, access to information is a critical enabler of rights in practice rather than principle alone. A statutory right to information would help reduce reliance on informal relationships, goodwill, or the capacity of families and independent advocates to repeatedly pursue responses, and instead provide a clearer and more consistent basis for accountability across the sector. FOISA has the potential to create a more level playing field, supporting equal access to information and strengthening human rights protections for those who are most reliant on services.

However, these benefits will depend on how the extension is designed and implemented. If poorly resourced or overly rigid, FOISA extension could risk unintended consequences, including increased pressure on care delivery and reduced capacity to meet peoples care needs and fulfil their right to health. A balanced proportionate and rights based approach will therefore be essential to ensure that enhanced transparency strengthens, rather than undermines, the realisation of human rights. It is therefore



critical that a EQHRIA be undertaken as early as possible as outlined in question 12.

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

The ALLIANCE considers that extending FOISA has the potential to benefit individuals affected by socio-economic disadvantage by improving access to information and accountability. A statutory right to information could help address existing power imbalances by reducing reliance on persistence, informal influence of professional advocacy to obtain information.

Members highlight that, in the absence of clear statutory routes, those with fewer resources, limited time or reduced capacity to navigate complex systems are often least able to secure information, even where it directly affects their wellbeing or the care of a loved one. FOISA extension therefore has the potential to create a more equitable baseline, ensuring that access to information does not depend on an individuals' ability to repeatedly challenge services or negotiate informally.

However, these benefits will not be realised automatically. Without targeted support accessible communication and proactive awareness-raising, there is a risk that people experiencing socio-economic disadvantage may still be least able to exercise new rights. Addressing this risk should form a core part of implementation planning, ensuring that FOISA extension contributes to reducing, rather than reinforcing, existing inequalities.

Undertaking an Equality and Human Rights Impact Assessment (EQHRIA) at the earliest stage, and keeping it under review, will be important in identifying and mitigating these risks. Specifically, as an EQHRIA strengthens standard equality impact assessments by incorporating human rights considerations, including the right to equality and non-discrimination, and by better capturing the experiences of groups not fully covered by the Equality Act 2010, such as those affected by socio economic disadvantage.



In addition, the Fairer Scotland Duty provides a relevant framework for implementation. Applying this duty would support public bodies to actively consider how FOISA extension can reduce inequalities of outcome associated with socio-economic disadvantage, ensuring that improved access to information contributes to tackling wider poverty-related disparities.



## About the ALLIANCE

The Health and Social Care Alliance Scotland (the ALLIANCE) is the national third sector membership organisation for the health and social care sector. We bring together over 3,500 people and organisations dedicated to achieving our vision of a Scotland where everyone has a strong voice and enjoys the right to live well, with dignity and respect. Our members are essential in creating a society in which we all can thrive, and we believe that by working together, our voice is stronger.

We work to improve the wellbeing of people and communities across Scotland by supporting change in health, social care and other public services so they better meet the needs of everyone in Scotland. We do this by bringing together the expertise of people with lived experience, the third sector, and organisations across health and social care to shape better services and support positive change.

### The ALLIANCE has three core aims.

#### We seek to:

- **Empower people with lived experience:** we ensure disabled people, people with long term conditions, and unpaid carers are heard and that their needs remain at the heart of the services and communities.
- **Support positive change:** we work within communities to promote co-production, self management, human rights, and independent living.
- **Champion the third sector:** we work with, support and encourage co-operation between the third sector and health and social care organisations.

The ALLIANCE is committed to upholding human rights. We embed lived experience in our work and aim to ensure people are meaningfully involved at every level of decision-making.



Working together creates positive, long-lasting impact. We work in partnership with the Scottish Government, NHS Boards, universities, and other key organisations within health, social care, housing, and digital technology to manage funding and develop successful projects. Together, our voice is stronger, and we can create meaningful change.

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<sup>1</sup> Scottish Government, 'Care home and 'care at home' service providers - FOISA extension: consultation' (January, 2026), available at: <https://www.gov.scot/publications/extension-foisa-private-third-sector-providers-care-home-care-home-services-consultation/>

<sup>2</sup> The ALLIANCE, "My Support My Choice: People's Experiences of Self-directed Support and Social Care in Scotland" (October, 2020), available at: <https://www.alliance-scotland.org.uk/wp-content/uploads/2020/10/ALLIANCE-SDSS-MSMC-National-Report-Oct-2020.pdf>

<sup>3</sup> The ALLIANCE, "More than Words: Communication for All" (n.d), available at: <https://www.alliance-scotland.org.uk/more-than-words-communication-for-all/>

