

DLUHC Social Tenant Access to Information Requirements consultation

Background and overview of our response

Southern Housing is one of the largest housing providers in the UK with close to 79,000 homes across London, the South East, the Isle of Wight and the Midlands. We welcome the opportunity to comment on DLUHC's proposed approach to the access to information scheme for the tenants of private registered providers. Directions to the Regulator of Social Housing will introduce a new standard that will require social landlords like us to be transparent with their residents about the management of their homes.

While we broadly agree with the proposals, we feel there may be inadvertent risks within some of the finer detail. For example, stock management data being made public comes with some safeguarding risk and mitigations will need to be in place to avoid abuse by bad actors. Commercially sensitive information is another area we have concerns about being in the public domain. And altering some complex information so it's understandable for the audience (residents) is something we believe should be permissible, for instance fire assessments. We'd also recommend that a thorough assessment be made of local authorities' experiences. They've years of experience of information requirements and there will be best practice to replicate but also missteps that could be avoided when created schemes for social housing.

Response

Publication scheme

1. Do you agree with the requirements for the publication scheme, as outlined in the consultation document?

- Yes
- **No**

Please explain why.

We agree with the principle of making information that matters most to a majority of residents readily available and accessible. But we don't believe the requirements as drafted give sufficient detail and therefore don't agree with them because we don't believe in their current utility. Further guidance is required to enable organisations to assess the feasibility and implications of the publication scheme. Some of the categories as listed are vague and we're concerned that it would result in varying interpretations amongst organisations.

We would particularly benefit from more clarity in the following areas.

Governance and decision making:

- Senior staff names and roles: There are data protection risks associated with the disclosure of information held in lists and registers, e.g. register of directors

includes date of birth, address and nationality. Further clarity is required to understand the expectations on the balance of data protection versus data sharing.

- Governance arrangements: It'd be helpful to have further clarity on the disclosure of governance arrangements. For example, is information required additional to that we're required to disclose on our governance arrangements in our Financial Statements?
- Information on tenant consultations: clarification on which consultations this relates to would be helpful. Does this relate to the "Right to Manage/ Right to Transfer" requirement only, or all consultations with tenants on service improvement for example?
- Tenant meeting minutes and agendas: clarification needed on which tenant "bodies/ groups/ committees/ panels" this relates to i.e. strategically focused resident groups or locally based resident groups. Likewise further clarification is required on the expectation that registered providers disclose internal board and senior management agendas and meeting minutes.

Spending:

- Clarification required on how to disclose and present information i.e. details of each item of expenditure over £500.
- Although not listed under Table 1, we would want explicit clarification that it is/ is not the expectation that registered providers disclose detailed information on budgeting; business planning; expenses; salaries; staffing; funding; procurement. This has potential to create significant additional work, and there is also potential for expectation management complexities in the face of changing funding models and changes in economic environment.

Housing stock management:

- Plans/ maintenance work: clarification is required on the types of information to be disclosed with regards to plans/ maintenance. Notably, whether it relates to high level strategic goals and progress/ performance. Or alternatively, investment plans, internal key performance information metrics, and (what is currently treated) as internal department-focused implementation plans.
- Requiring the publication and frequent updating of all organisational plans and information on maintenance work, no matter how granular would be hugely bureaucratic and a drain on resources and staff time, impacting on operational efficiency.
- There are also risks associated with abuse and misuse of this information if publicly available. Tenant safety could be put in danger if fraudsters use this information to access tenants' home on false pretences. We'd be uncomfortable having to share commercially sensitive asset data.

Performance:

- Inspections outcomes – clarification required on whether this relates to organisations' regulatory judgement; (where applicable) CQC ratings and guidance on which other inspections outcomes are required.

- Performance reviews and evaluation reports – this has the potential to be onerous, bureaucratic and potentially inappropriate if registered providers are opened up to publish information on *all* reviews and evaluation reports which happen as a matter of course. It would be helpful if clarity could be given on the themes of reviews and reports that are within scope of this requirement, for example, would organisations be required to disclose internal audit reports and quality assurance reports?
- Complaint metrics and health and safety performance – clarification sought on the components that we are required to share under these requirements.
- Information request data/ responses – clarity is required on whether full responses are required for disclosure, immediately after completion of a request or whether the requirement pertains to data on 'number of information requests responded' / 'within set timescales' and high level information on generic themes.

We'd also recommend that a thorough assessment be made of local authorities' experiences. They've years of experience of information requirements and there will be best practice to replicate but also missteps that could be avoided when created schemes for social housing.

2. Do you consider it appropriate for the publication scheme to include a requirement for providers to publish previous information requests made under STAIRs, and the responses to those requests? Please provide your reasoning.

- Yes
- **No**

Please explain why.

Based on our experience of historic requests which would in future be aligned to the proposals, most requests will be for specific information relevant only to the individual/s making the request.

It is likely most reactive requests will be of limited or no wider public interest and the information / data used to respond will be time limited and quickly become outdated (service charge information, for example).

It is also likely to make it more difficult for residents to find accurate and relevant information.

We consider this requirement to be unnecessarily burdensome on organisations. It would be time consuming to routinely store, process, redact, and publish previous requests.

We therefore believe organisations should be given discretion as to whether the information is of wider public interest and publish accordingly. Organisations should instead be encouraged to note trends in reactive requests and update their publication scheme as appropriate.

Publication scheme costs

3. Do you agree with the assessment of the impacts of the publication scheme, as outlined in the 'Publication scheme impacts' sub-section of the consultation document? If not, why not?

- Yes
- **No**

Please explain why.

We think the assessment grossly underestimates the complexity of the task required and the resource implications in the collation and publication of the data as well as its ongoing management.

Acknowledging there are a variety of approaches that could be taken, if one were to assess a more involved approach, it is clear that the timescales and operational requirements of setup, implementation and ongoing operational costs have not been adequately assessed in the 'Publication scheme impacts' sub-section of the consultation document. Crucially, this would require many hours of work from most departments in our organisation. Further clarification would be beneficial assist in our own impact assessment of the proposals.

4. Do you have any wider comments on the costs providers will face in implementing STAIRs?

Using Subject Access Requests experience as a proxy for future STAIRs requests, the costs appear to be grossly underestimated. Noting the proposal would allow an individual reactive STAIRs request to take up to 18 hours to deliver before it could be refused, even a handful per month would require additional staff resource.

We expect that STAIRs requests like SARs, will be logged and co-ordinated from a central point. But unlike SARs, STAIRs will need asset owners across the organisation to be trained to understand the scheme, assist in compiling relevant information and drafting responses. Tentatively, we expect a time commitment to be required from senior staff across several departments to:

- identify, collate all of the relevant information
- oversee its publication in a form that is resident friendly, accessible and compliant with requirements proposed
- update a variety of policies and procedures
- deliver training to all staff to support STAIRs on an ongoing basis
- update contractual arrangements as well as procurement processes to ensure we can collect information from third parties.

Requests which require information from third party contractors are likely to be more onerous for the organisation to manage even with updated contractual clauses.

The range of exemptions which need to be considered to protect data (DPA 2018, FOIA, EIR etc.) will require expert knowledge with associated training costs for the organisation.

We're concerned that no consideration has been given in the assessment to the work required to update existing contracts with third party suppliers or communicate the new requirements so third parties understand their obligations. And some of the third parties with whom we have information-sharing relationships (whether in a formal contract or not), might require a fee to provide that information or otherwise not prioritise the information request, where a fee is not applicable.

More widely, there are unforeseen costs associated with running services in a way that reflect the spirit and purpose of the scheme but aren't included in current plans and therefore assessments of cost. For example, a resident service portal where a resident could put in their address and immediately see a wealth of information aligned to the publication scheme categories would require massive investment in housing associations' current IT and or communications infrastructure.

What information is covered?

5. Do you agree with the scope of information that is covered by STAIRs, as outlined in paragraphs 46-50 of the consultation document?

- **Yes**
- No

If not, why not?

Who can make requests?

6. Paragraphs 51 to 53 of the consultation document outline the requirements relating to who can make information requests. Do you agree with these requirements?

- Yes
- **No**

Please explain why.

We note government's intention is to make information accessible for residents. The proposals as they stand now would open the door to many requests for political/press purposes. Although the proposals stipulate a named resident needs to designate a representative, this still leaves room for journalists and other individuals to pro-actively seek residents out to represent.

While we acknowledge that some residents may need extra assistance to make information requests, we are also aware that there is a risk of abuse in this area for registered providers. When requests for information are made in good faith, we fully support providing it to the residents (through their representatives). But we believe there is a risk of third parties using the programme for political or journalistic purposes. It would be disappointing if, in implementing a scheme for residents' benefit, registered providers end up spend an excessive amount of time and energy responding to and interacting with requests from the media, taking resources away from other work.

We would suggest limiting the individuals who can act as representatives to a prescribed list to the:

- Carers...
- Family members...
- Doctors...
- Solicitors...
- And councillors...

...of an individual named resident.

Clarification is also required as to whether requests can be made by former residents.

We believe the expectation that all requests are to be made in writing is counter to being accessible. We'd suggest that while a written request needs to ultimately be produced, those who need support to make a request (e.g. over the phone) should indeed have the option to be supported to do so. This would ensure that all interested residents have the same ability to access and the chance of receiving information as each other.

7. Do you consider it appropriate for the requirements to apply to local authorities with tenant management organisations in relation to information held by such bodies?

- **Yes**
- No

Please provide details.

Processing requests

8. Do you agree with the information provision requirements outlined in paragraphs 55-60 of the consultation document?

- Yes
- **No**

Please explain why.

We understand the proposals as drafted to mean we cannot manipulate or alter information. We believe for some information we will have to alter (or paraphrase) information to make it tenant friendly and understandable e.g. fire risk assessment information, stock condition survey information etc. Not in intent or meaning but presenting the information in a way that is understandable for the audience it is intended.

We need further clarity on the information categories as a number of these overlap (already fall under) existing legislative requirements. For example, the Landlord & Tenant Act – service charge information has to be disclosed/published. All regulatory overlaps need to be explicitly called out as valid exemptions, if the requirements are to have clarity not least because they may have different time limits under the different regulations.

9. Paragraph 57 of the consultation document relates specifically to information held on behalf of the landlord by another body or person. Do you agree with the requirements relating to information held on behalf of the landlord? If not, why not?

- Yes
- **No**

Please explain why.

We'd welcome clarity about what is meant by 'all reasonable endeavours'. A timeframe in particular would be useful. We have multiple, complex relationships with managing agents, superior landlords and managing companies some of whom currently charge us to access data in relation to services supplied to our leaseholders. Would all existing contracts have to be updated to include clauses in relation to STAIRS (in the same way we require suppliers/third parties to support with SARs)? If so this hasn't been reflected in the proposed costings.

Refusing information requests

10. Do you agree with the requirements relating to where providers can refuse to disclose information? If not, why not?

- Yes
- **No**

Please explain why. There is a limit of 2500 characters.

It is difficult to meaningfully agree or disagree with the requirements as currently drafted as they are insufficiently detailed to be useful to staff. Proposals currently state that in deciding whether or not it is reasonable to withhold information, providers should '*have due regard to the definitions given, and protections afforded to, certain classes of information in the Freedom of Information Act, Data Protection Act and any other relevant statutes*'. This is overly reliant on existing legislation and doesn't clearly set out what new expectations are put upon registered providers. Much greater clarity is required here. It's also unclear where providers can refuse to disclose information to third parties, and former and prospective residents.

11. Do you agree with the staff time limit (18 hours) for responding to requests, as outlined in paragraph 63? If applicable, please make reference to any costs or other burdens relating to the time limit.

- Yes
- **No**

Please explain why.

We are concerned that the technical complexity of retrieving the data and ensuring appropriate protections are applied to data protected by other statutes will result in requests often taking up to 18 hours. This will become burdensome for our organisation and will result in significant costs. We would like to see this reduced to one working day.

12. Do you agree with the requirements relating to responding to information requests, including time limits, as outlined in paragraphs 68-74 of the consultation document? If not, why not?

- Yes
- **No**

Please explain why.

The requirements do not align with any existing regulations (FOIA or DSARS) and place an additional requirement on organisations to manage information requests to a new timescale. It is imperative that organisations have clarity about what is considered 'reasonable efforts' as chasing third parties for information is likely to place a significant burden on organisations and cause frustration amongst residents. We consider this to be one of the more likely reasons for complaints.

Complaints

13. Do you have any comments regarding the process for dealing with complaints?

- **Yes**
- No

We are concerned that the Housing Ombudsman Service does not have the technical knowledge and expertise in this area to manage complaints. We would suggest that the Information Commissioner's Office (ICO) would be better able to field these complaints.

Direction to the Regulator of Social Housing

14. Do you have any comments on the draft direction?

- Yes
- **No**

In introducing the standards that will require PRPs to meet the requirements set out in the STAIRs policy statement, the Regulator must allow sufficient time for implementation. This is unclear in the current consultation literature.