

The Campaign for Freedom of Information

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Social Housing (Regulation) Bill

House of Commons Report Stage

on March 1 2023

Briefing on New Clause 6

Social housing providers and Freedom of Information

About the Campaign for Freedom of Information

The Campaign for Freedom of Information was set up in 1984 and played a key part in persuading the government of the day to introduce the Freedom of Information Act 2000 and securing improvements during its Parliamentary passage. Since the Act came into force in 2005 the Campaign has monitored and sought to improve its operation, provided assistance to requesters and trained both requesters and public authorities.

The Campaign's work is funded by the Joseph Rowntree Charitable Trust, the Joseph Rowntree Reform Trust and the Andrew Wainwright Reform Trust.

Introduction

The Campaign for Freedom of Information supports an amendment to the Social Housing (Regulation) Bill to bring social housing providers under the Freedom of Information Act (FOIA).

The [amendment](#) is contained in proposed **New Clause 6** tabled at the bill's Commons report stage by the Shadow Housing minister **Matthew Pennycook MP** and drafted with the assistance of Greater Manchester Law Centre. The bill's report stage is **on Wednesday 1 March 2023**.

This briefing contains over 20 examples of providers refusing requests for information about fire safety, health hazards, empty properties and other issues.

The Bill proposes a new and alternative 'access to information scheme' for social housing tenants. As we explain below, we believe a more obvious and effective solution would be to bring social housing providers under FOIA. **We urge MPs to support New Clause 6.**

Social landlords in Scotland are subject to FOI

This has already been done in Scotland, where registered social landlords were brought under the Freedom of Information (Scotland) Act in November 2019.¹ A 2021 report by the Scottish Information Commissioner (SIC) found that social landlords they had 'responded well' to being covered by the Act:²

- 97% of organisations responding to the SIC's survey were confident in their ability to respond effectively to FOI requests
- 84% of requests for information held by registered social landlords or their subsidiaries resulted in some or all of the requested information being disclosed.
- 81% were publishing more information as a result of FOI.
- Organisations have not been overwhelmed by FOI, with 57% reporting a 'small' impact on staff workload, and 95% reporting 24 requests or fewer during 2020.
- Most organisations used existing staffing and structures to resource FOI, with only 8% of organisations employing new staff.

The Information Commissioner's view

In January 2022 the UK Information Commissioner's Office (ICO) called for registered social landlords in other parts of the UK to be made subject to FOIA:

'The ICO believes that housing associations that provide social housing should be covered by the Freedom of Information Act 2000 in the same way as housing provided by local authorities. We believe access to information laws should remain relevant and appropriate to how public services are delivered.'

¹ <https://www.legislation.gov.uk/ssi/2019/143/contents/made>

² The report examined the experience of registered social landlords over their first year of FOI, found that 97% of organisations responding to the Commissioner's survey were confident in their ability to respond effectively to FOI requests, while 81% were publishing more information as a result of FOI. <https://www.itspublicknowledge.info/registered-social-landlords-responding-well-to-foi>

*'While the ICO welcomes the commitment to providing some information to tenants, the scope [of the proposed access to information scheme] appears narrower than FOI in a number of significant ways.'*³

Social Housing Providers: we are open already

An (undated) briefing on the web site of the National Housing Federation (which represents providers states that 87% of providers have adopted its Code of Governance which requires that:

*"housing associations must respond in a considered and transparent way to requests for information about their work and activities."*⁴

A private member's bill proposed by Labour MP Andy Slaughter in 2018 and drafted by the Campaign for Freedom of Information would have brought social housing providers under FOIA. Following this, another National Housing Federation briefing stated:

*"Housing associations have an ambition to be among the most transparent and accountable bodies in the country."*⁵

However, the response to many requests for information undermines this claim.

Examples of refused requests

The following requests were made to social housing providers via a website which allows people to make requests under either the Freedom of Information Act (FOIA) or the parallel Environmental Information Regulations (EIR).⁶ In most of these cases the providers either refused the request on the grounds that they were not subject to FOIA/EIR or simply ignored them. None of those below offered to disclose the information voluntarily, which they might have been expected to do given their apparent embrace of openness and the obvious significance of some of the requested information.

Fire safety

Wandle Housing Association (7 May 2021) – A tenant asked for a description of the fire safety issues with a block of flats that failed an external wall fire review survey, the remedial work required and its timescale and cost. The request was made by a tenant. It was not answered ([link](#)).

Clarion Housing (16 March 2020) – A report from fire consultants on cladding at one of their properties was requested. Not answered. ([link](#)).

London & Quadrant Housing Trust (12 November 2019) – The type of cladding used on the property in which the tenant lived and whether it was of a type found to be unsafe. Not answered ([link](#)).

³ <https://committees.parliament.uk/writtenevidence/42099/pdf/>

⁴ [Briefing: Transparency and accountability in the housing association sector.](#)

⁵ National Housing Federation, Westminster Hall debate on the extension of the Freedom of Information Act to housing associations and public contractors

⁶ www.whatdotheyknow.com

Metropolitan Housing Trust Limited (11 July 2018) – The type of cladding used on the tenant’s property, whether it is combustible and a copy of the most recent fire risk assessment. Not answered ([link](#)).

Genesis Housing Group (14 August 2017) – Confirmation that fire testing that tenants had been told was being carried out had been done, that it applied to both cladding and insulation and the results. Not answered. ([link](#)).

Health hazards

London & Quadrant Housing Trust (4 March 2019) – Information relating to the presence of asbestos in a housing association block of flats. The trust replied that it is *“not subject to the Freedom of Information Act and will therefore not be responding to this request.”* ([link](#)).

One Housing Group (29 March 2021) – The percentage of properties that have had legionella risk assessments carried out over the last ten years. *“One Housing is not a public authority, is not listed in the schedule [to FOIA] and, therefore, is not covered by the FOIA and have no obligation to process such requests at this time.”* ([link](#)).

Thirteen Group (31 May 2020) – The number of complaints received from tenants about the presence of mould or asbestos in their properties in the period 2016-2020 and the outcomes. Not answered. ([link](#)).

First Choice Homes Oldham (2 June 2022) – The number of complaints made about water damage ([link](#)) Not answered.

Moat Housing (26 May 2022) – Information about reports relating to pest and vermin infestations in three properties over 10 years. Not answered ([link](#)).

First Choice Homes Oldham (17 July 2019) – Information relating to the presence of asbestos in four housing association estates/properties. *“FCHO have a robust approach to the management of asbestos across our stock and have completed management surveys on 94% of our total stock and processes in place to survey the remaining properties....we undertake R&D surveys and provide this information to the relevant parties. However we do not share specific information with third parties based on enquiries such as yours.”* ([link](#)).

Charges to tenants

Hyde Housing Association (14 January 2020) – A Southwark councillor stated that a resident at an assisted living property was being charged £8.42 a month for their furniture, *‘to cover the cost of one small table, two chairs (one of which split as soon as it was sat on), a wardrobe and a fridge freezer. This charge is deducted every month for the whole length of the tenancy which means that if they live there for 10 years they will have paid almost £4400 which is well in excess of the value of the furniture.’* Residents were also charged for the cost of communal furniture. The councillor asked for the original cost of the furniture, why tenants are being charged throughout their tenancy, whether refunds were made for payments above the original cost, whether the Association was making a profit from the arrangement and whether the same arrangement applied in other assisted housing blocks. The request was not answered. The

councillor told us a Housing Officer subsequently contacted her but the response “*didn't fully address the issues I raised*”. ([link](#)).

Complaints

Wales & West Housing Association Limited (12 January 2019) – The number of complaints over the last 6 years about anti-social behaviour and harassment at a property providing a sheltered housing scheme, the number investigated and the outcomes. “[W]e are not covered by the provisions and obligations set within the Freedom of Information Act.” ([link](#))

Caldmore Accord Housing Trust (1 April 2019) – The number of complaints from tenants over three years and the outcomes of those complaints. Not answered. ([link](#)).

Empty properties, help to buy

Catalyst Housing (03 July 2021) – The number of occupied and unoccupied social housing properties in Borehamwood and Hertsmere. “We are not a public authority and therefore the information you have requested is not available from us under this Act.” ([link](#)).

Hyde Housing Association (4 July 2022) – The number of the association’s properties bought through the government’s help to buy scheme. “Housing Associations are not ruled by the freedom of information act, and therefore we are unable to provide the information requested.” ([link](#)).

Rochdale Boroughwide Housing (8 August 2020) – The number of association properties currently unoccupied and how long they have been unoccupied & other information. “Rochdale Boroughwide Housing is not subject to the Freedom of Information Act 2000 as it is not a publically owned company, nor a public authority. Due to this we do not respond to FOI requests.” ([link](#)).

Miscellaneous

Orbit Housing Association (27 February 2020) – The average wait time for repairs to tenant’s properties and the number of outstanding repairs. The association replied “...we are not...legally bound by the Act. For this reason, unfortunately, we are unable to provide the information in relation to the questions you have submitted. However...we do embrace the principles of the Act, and where appropriate and applicable, we do make information readily available in relevant and differing forms of communication. On this occasion we are sorry to inform you that we are not able to provide the information requested.” ([link](#)).

Poplar Housing and Regeneration Community Association (13 March 2021) – Information relating to a decision to increase rents during the pandemic, when the rents in the London property market were falling “we are not a 'public authority' for the purposes of the Freedom of Information Act and therefore not bound by its provisions.” ([link](#)).

First Choice Homes Oldham (6 July 2022) – How much of tenants’ service charge debt has been written off by the association. Not answered ([link](#)).

Notting Hill Genesis (17 June 2021) – The number of blocks of flats with CCTV installed in them ([link](#)). “Notting Hill Genesis is...not subject to either the FOI or the EIR legislation.”

London & Quadrant Housing Trust (25 September 2019) – The amount of government funding received by the Trust . “London & Quadrant Housing is not legally obliged to respond to requests made under the Freedom of Information Act.” ([link](#)).

Problems with the government’s proposed scheme

The government’s impact assessment on the Bill states that the proposed scheme:

‘will bring the ability of tenants of PRPs [Private Registered Providers] to access information in line with those of local authority tenants, who can access information from their landlord under the Freedom of Information Act.’⁷ [emphasis added].

In fact, the scheme falls far short of matching the rights under FOIA.

1. The Bill does not guarantee the proposed ATI scheme will actually be created.

The Bill’s clauses only provide that the Regulator of Social Housing (RSH) and the Secretary of State ‘*may*’ create the scheme, there is no requirement that they *actually do so*. If the Secretary of State decides not to introduce the scheme, or does not get round to it, the scheme might never be introduced.

Clause 22 of the Bill inserts a new section 194B into the Housing and Regeneration Act (HRA) 2008. This provides that:

‘194B Standards relating to information and transparency

(1) The regulator may set standards for registered providers in matters relating to the provision of information to their tenants of social housing and to the regulator.

(2) Standards under subsection (1) may, in particular, require registered providers to comply with specified rules about—

(a) the provision of information to their tenants of social housing concerning the accommodation, facilities or services provided in connection with social housing,’ (emphasis added)

⁷ Department of Levelling Up, Housing and Communities, Social Housing Regulation Bill, [Impact Assessment](#), paragraph 7.4.7

2. Details of the proposed new scheme are unclear

Details of the scheme will be decided by the Regulator of Social Housing and by the Secretary of State rather than set out in our statute. So far, details of how it will operate are almost non-existent.

It is not clear, for example:

- what the time limits for responding to requests will be, and
- on what grounds registered providers will be able to refuse requests
- whether providers will have to disclose exempt information if the public interest justifies it, as happens under FOIA.

3. It is not clear who will be able to request information using the scheme.

The new section 194B that will be inserted into the HRA by Clause 22 of the Bill provides that the Regulator *“may set standards for registered providers in matters relating to the provision of information to their tenants of social housing and to the regulator”*.

As the Information Commissioner’s Office has pointed out:

“This may not, for example, allow community and civil society groups, special interest groups, charities, MPs or councillors or journalists to make requests of social housing providers as they can under FOIA.”⁸

At committee stage, the minister said the intention was that tenants and their representatives would be able to request information:

“On the point about tenant representatives, it is certainly the intent that they will be able to make those requests on behalf of tenants. In some cases, that could include journalists”⁹[emphasis added]

This falls short of a ministerial commitment or statutory requirement guaranteeing the right of access will apply to tenant representatives and journalists. Under FOIA, ‘any person’ can make a request for information.¹⁰

4. There will be no parliamentary oversight over the content of the scheme.

The new scheme will be established by the Regulator of Social Housing and by the Secretary of State who may give the regulator directions about the scheme’s provisions.¹¹ These measures do not need Parliament’s approval and cannot be amended by Parliament.

⁸ <https://committees.parliament.uk/writtenevidence/42099/pdf/>

⁹ Public Bill Committee, 29 November 2022, col 49 [https://hansard.parliament.uk/commons/2022-11-29/debates/53c86d37-c6b4-4e18-a061-937882fea92f/SocialHousing\(Regulation\)Bill\(LORDS\)\(SecondSitting\)](https://hansard.parliament.uk/commons/2022-11-29/debates/53c86d37-c6b4-4e18-a061-937882fea92f/SocialHousing(Regulation)Bill(LORDS)(SecondSitting)).

¹⁰ Freedom of Information Act, section 1(1).

¹¹ Clause 25 of the bill inserts a new section 197(2A) into the Housing and Regeneration Act 2008. Section 197(2A)(b) allows the Secretary of State to direct the regulator as to the standards to be adopted for the access to information scheme.

5. The proposed complaints mechanism does not guarantee compliance

If a tenant does not receive the information they believe they are entitled to they will be expected to ask the landlord to carry out an internal review of the decision.¹² It is not known how long the landlord will have to respond to the request nor how long will be permitted for internal review.

After that, a tenant will be able to complain about a refusal to the Housing Ombudsman. However, the Ombudsman's decisions are not binding. If a landlord refuses to comply with a decision, the Ombudsman could refer the matter to the Regulator of Social Housing, who has enforcement powers. However, a Memorandum of Understanding between the Ombudsman and the Regulator states that the Ombudsman will only make such a referral where there is evidence of a 'systemic issue'. This suggests the Regulator will have no part to play in dealing with one-off issues of non-compliance.

The result is there may be nothing the Ombudsman can do if a landlord refuses to comply with its decision. By contrast, the ICO's decisions under FOIA can be appealed against but are otherwise legally binding and enforceable by action for contempt of court.¹³

6. The Housing Ombudsman lacks the ICO's expertise

Unlike the Information Commissioner who determines complaints under the FOI Act, the Housing Ombudsman has little experience of applying FOI-like exemptions. The Housing Ombudsman will have to judge whether information about fire, safety or health problems found in neighbouring flats have implications for the requester's premises. However, anything taking place in a neighbour's flat is likely to involve the neighbour's personal data and its disclosure, even in an apparently anonymised form, may raise complex data protection issues. The Information Commissioner, who regulates both FOIA and data protection, is accustomed to dealing with these issues. The ICO is also far better placed to address claims of commercial confidentiality and questions about whether disclosure of exempt information is justified in the public interest (assuming the scheme permits such disclosure at all).

It is not clear how the Housing Ombudsman will handle such complex matters, or whether there will be any remedy if the Housing Ombudsman's decision appears questionable.

7. A more effective solution: bringing social housing under FOIA

Bringing providers of social housing under FOIA would be a far simpler and more effective remedy. It would provide housing association tenants with the same rights as local authority tenants. It would ensure that not just tenants, but their representatives, local organisations, the media, councillors and MPs could obtain information from social housing providers. It would provide an enforceable right of access to information of the kind that applies to many thousands of public authorities and leave enforcement in the hands of an expert regulator.

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¹² Social Housing White Paper, paragraph 22.

¹³ Freedom of Information Act, section 54.