



NORTHERN IRELAND FEDERATION OF HOUSING ASSOCIATIONS

Response to:

Freedom of Information Act 2000: designation of additional public authorities.

The consultation paper was issued by the Ministry of Justice on 25 October 2007 and the response deadline is 1 February 2008.

Background Information about the Federation and its Members

The Northern Ireland Federation of Housing Associations (NIFHA) represents 43 housing associations in this part of the United Kingdom. Its membership includes all of the associations registered and regulated by the Department for Social Development (DSD). Collectively, these associations provide 30,000 good quality, affordable homes for renting or equity sharing. Further information is available at www.nifha.org

NIFHA works closely with its counterparts in England (The National Housing Federation), Scotland (the Scottish Federation of Housing Associations) and Wales (Community Housing Cymru).

Housing associations are voluntary organisations which are also important social businesses. Their surpluses are all re-invested to develop or improve more homes and benefit the community in other ways. They help a very wide range of people including families, single persons and people needing support services as well as accommodation. Housing associations vary considerably in size (from a handful of dwellings to several thousand), focus (from general to highly specialised aspects of housing need) and geography (from a single neighbourhood to the whole region).

Our Comments

- A.** This consultation is very ambitious. It challenges respondents and policy-makers to consider the impact of a wide range of complex legal and practical issues on a myriad of very different organisations in two contrasting sectors (voluntary and private).

NIFHA can only speak for housing associations in Northern Ireland so we will limit our response to giving their perspective.

- B.** NIFHA considers that the perspective of our members cannot be properly conveyed within the format of the consultation questionnaire.

We hope that the remainder of this submission, however, makes our views clear on what we see as the key issues.

- C.** NIFHA strongly supports the consultation response submitted by the National Housing Federation. In Northern Ireland, as well as in England, it is very much in the public interest that policy-makers:
- (a) respect the independence of housing associations
 - (b) take account of the public accountability already required by the constitutions and regulators of housing associations
 - (c) avoid measures that could inadvertently blur the distinction between private borrowing by housing associations and expenditure in the public sector.
- D.** NIFHA believes that housing associations do not fall within the scope of section 5 of the Act. We also consider that the most appropriate way of applying the principles of freedom of information to Northern Ireland's housing associations does not require legislative change. For these reasons we judge that only question 2 in the consultation paper is applicable to the sector we represent.
- E.** Although we believe that the core business of housing associations is not public in nature, NIFHA can conceive of circumstances in which a housing association in Northern Ireland may enter into a contract to carry out public functions on behalf of a public authority.

If a public authority wishes to enter into a contract with a housing association for the delivery of services of a public nature, it could write specific freedom of information requirements into the contract. The requirements would thus be clear and the cost of satisfying them would be reflected in the tenders submitted for the contract.

Conclusion

The Northern Ireland Federation of Housing Associations supports Option 3 in the consultation paper.

National Federation of Housing Associations' response

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Consultation: Freedom of Information Act 2000: Designation of additional public authorities

The National Housing Federation's response to the consultation

Housing associations and the National Housing Federation

The National Housing Federation is the trade body for housing associations (also often referred to Registered Social Landlords) and represents 1,300 members, who between them provide 2.4 million homes for over 5 million people.

Our members range from small locally based associations with fewer than ten homes to national organisations with over 50,000 homes. Associations have been providing homes for people who were unable to afford market prices for hundreds of years. Starting with Alms Houses, progressing through philanthropic bodies such as Bournville and Peabody, associations are a vibrant part of the third sector.

Associations work in some of the most deprived neighbourhoods in the county and are often the strongest and most experienced third sector organisation working in the neighbourhood. They invest over £500 million per annum of their own resources into community investment.

Government funding

In terms of government funding the largest is through grants to assist in the provision of affordable housing either directly for rent or through low cost home ownership schemes. The latter are often referred to as shared ownership homes where people buy a share of the home and pay a rent on the remainder, enabling them to start on the home ownership ladder. They usually have an option to increase the proportion of the home they own over time until they own it outright.

The government grants are not outright and remain on association accounts as a liability. If any home or asset which has received grant is disposed of the amount of grant that had been made originally has to be recycled into homes and cannot be used for other purposes.

Housing associations share the government's ambition of a massive increase in affordable homes over the next decade. The Government announced in its Comprehensive Spending Review 2007 that it will provide £8.4 billion for new affordable homes in 2008-2011 either for rent or shared ownership. Housing associations will more than match this by raising at least £12 of private finance to stretch this grant to deliver 157,000 affordable homes.

Threat to independence

The Federation is concerned that there is a real threat to the independent 'non-public' status of associations. This is not just with regard to the consultation on the Freedom of Information Act but includes proposed regulation powers included in the Housing and Regeneration Bill. The concern is that the Office of National Statistics who decide on the matters, do not look at one factor but take into account a range of different factors which, although individually would not make an organisation a public body,

combined they may tip the balance. The seriousness of this risk is illustrated by the EU's ruling in 2004 that associations should count as 'public' for the purposes of European procurement rules.

Result of associations being classed as public authorities

The effect of a reclassification would be totally counterproductive. Initially the £35 billion of private finance raised to date by housing associations would count against public sector borrowing and any further borrowing would also be so counted. This would remove the ability of associations to borrow, based on their assets and expected future income, off the public balance sheet. Currently our member borrowing brings in more resources than the grants that are given by the government. In effect the plans of the government for new affordable housing would be destroyed.

Current openness and regulation of association

In setting out our concern, we are keen to stress that association's work is carried out under a climate of openness. The Housing Corporation's robust regulatory regime requires associations to be accessible, accountable and transparent to residents and other stakeholders. Housing associations are required to have published policies and to be accountable to their tenants and the regulator on a number of issues, including how they let their homes and how they tackle anti social behaviour. There are commercial interests that are not made available however normal information such as annual accounts are publically available. There is also as part of the regulatory regime a detailed inspection process by the Audit Commission.

Associations and whether they carry out functions of a public nature.

To be included in the scope of section 5 of the Freedom of Information Act, associations would have to be carrying out functions of a public nature for which there is, as pointed out in the consultation document, no single definition. The basic role of associations has always been the provision of housing although they also deliver wider community services funded for example through their own resources or charitable sources. The basic function, the provision of housing, cannot be seen as exercising a function of a public nature. If associations ceased to exist it is not certain that the provision of housing would be taken over by government. In fact the extension of the affordable housing grant regime to clearly private sector organisations emphasises the non public nature of the provision of housing. The relationship between landlord and tenant is essentially of a private contractual nature.

The grant funding for the new provision of affordable housing either for rent or for shared ownership is the major government contribution to associations' activities. However as mentioned before the government funding is more than matched by associations' borrowing power which is based on the premise that they are not public bodies. Without this freedom to borrow the ambitious targets the government wishes to see in the provision of affordable housing would be unachievable.

Circumstances where associations may carry out work of a public nature

It is accepted that there may be instances where associations do carry out functions that may be of a public nature. These would be where a public body wishes to contract with an association in the provision of a service which is a function of the public body. An example would be if a local authority sub-contracted to a housing association the employment of street wardens, as opposed to, for instance, the association only providing caretaking/supervision of their own homes.

The status of the National Housing Federation

In discussion with staff of the Ministry of Justice the question was raised whether the Federation was concerned that it could be classified as a public authority. This is not a concern as we are the trade body for associations and have no regulatory role.

Response to the Consultation

The consultation asks which of the five proposed options for extending the Act we consider the best option.

The Federation does not believe that any one of the five options can be appropriate in all situations. Whilst the arguments for the extension of the FIO may be reasonable in differing degrees due to the nature of the organisation that might be affected the Federation, as the trade body for associations, will only comment on how the options could affect our members.

On the options presented:

Option 1: take no action at this time. Only the public authorities already covered by the Act would be under a statutory obligation to provide information.

This is of course the simplest option to take but the Federation understands that this is not realistic given the pressure to extend the scope of the FIO, however this does not mean there is any acceptance of extending to include associations.

Option 2: self-regulation by relevant organisations. Organisations that meet the conditions of section 5 would be encouraged – for example by a Code of Practice – to provide information about their public activities on a voluntary basis.

This option may be relevant to some organisations but it assumes that the organisation meets the conditions of section 5 and could subsequently be extended to full coverage under section 5. Therefore it is not an option acceptable to housing associations.

Option 3: build information access obligations into contracts with organisations delivering public services. This would provide for some form of information access, in relation only to services provided under contract.

This option presents the most appropriate way of extending the FOI for associations if there are circumstances where it is considered they are carrying out functions of a public nature. The circumstances where this may occur should be restricted to where associations are contracted to provide services by a public authority whose provision is a function of that authority.

The advantage of this approach is that it would provide clarity about what information could be disclosed. Any contract with a public authority would make clear what information the contractor would have to provide as part of the contract and what parts of that information would be accessible through FOI inquiries to the public authority. There will be commercial information that should not be disclosed.

It would be reasonable that some information should be disclosed as part of the contract for example if an association is carrying out work where staff are required to have a Criminal Records Check it would be reasonable to confirm that they have been carried out.

At the outset it would be clear what the obligations were and what information would be provided to the public body under the contract and what could be subsequently released by the public body. The cost of collecting and providing that information would be factored into any tender price for the contract. If the association were required to provide information directly to enquiries the tender price would have to be inflated to allow for the potential cost. As the vast majority of contracts are not open ended, ie they are for fixed periods, all would eventually be covered. The fact that some existing contracts will not have these obligations therefore is not seen as a problem.

This approach clearly defines obligations and responsibilities and would be the simplest, least opaque and most cost effective approach for associations.

Option 4: introduce a section 5 order to bring a specified set of organisations within the ambit of the Act. This option would increase public access to information while putting limits on the extent to which section 4 would be used.

As the Federation believes there to be very limited circumstances where associations are carrying out functions of a public nature it would be hard if not impossible to designate all associations as a specified set. Any such designation would have to specify what functions were covered and the scope of that coverage. Given that the vast majority of associations are unlikely to be carrying out functions of a public nature a broad definition would not be appropriate.

Option 5: introduce a series of section 5 orders so as to widen the coverage of the Act. This option would allow for the greatest possible extension of coverage through section 5 over time.

The introduction of a series of section 5 orders would not be appropriate for associations nor would it achieve any benefit to the general public. As argued before the circumstances where associations may carry out functions of a public nature is limited. If the Option 5 approach were taken there would have to be individual assessments of each association and then on the basis of what they were doing that may be counted as a public function.

Therefore the Federation's preferred option is option 3.

The contacts regarding this response at the National Housing Federation are John Bryant or Des Kelly on 202 7067 1010, or jbryant@housing.org.uk or desk@housing.org.uk