

PE1539/A

Our ref: MA/ML/jb

14 January 2015

Public Petitions Clerks
Room T3.40
The Scottish Parliament
Edinburgh EH99 1SP

Dear Sir/Madam

RSLs AND THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

This is the Wheatley Housing Group (WHG) response to the Petitions Committee on RSLs and the Freedom of Information Act.

WHG is fully and totally committed to openness and transparency in every aspect of its operation and continues to adopt and comply, as a Registered Social Landlord (RSL), with the spirit of the Freedom of Information Act. However, as a Group with a diverse range of partner organisations, it would ask the Committee to take on board several important facts and considerations as it determines how to take matters forward.

In summary, it is our contention that the case for any extension of FOI to - some or all - RSLs in Scotland needs to be examined and considered in the context of an already strongly-regulated social housing sector and a number of other considerations and complications that might deem such a move to be, in certain regards, both impractical and unworkable.

Background Information

As a RSL, WHG is, in fact, a diverse group of organisations covering the social housing, private housing, care and property-management sectors. It is the parent organisation of four RSLs – GHA, Cube, West Lothian (WLHP) and Loretto – which have housing stock ranging from 41,000 homes to just 400 - and two commercial subsidiaries, Lowther Homes and YourPlace Property Management.

WHG itself does not receive any public funding in its own right.

As the Committee is aware, RSLs generally derive income from a range of sources. Most of this revenue is generated by rents, private sector funding and a small amount of commercial activity. The only public funding received by GHA, Cube, WLHP and Loretto is capital subsidy to build new build homes for people on their respective waiting lists.

WHG's commercial subsidiaries generate income by offering homes for private let in the mid and full market sectors (Lowther Homes) and through property management / factoring services (YourPlace).

During your recent Committee session, the petitioner referred to information requests involving YourPlace (previously known as GHA Management). It should be noted that this organisation does not receive public funding. It is a commercial operation and competes for market share with private factors, such as Hacking and Paterson, Redpath Bruce and Spiers Gumley. In maintaining consistency, it is difficult to see, therefore, how YourPlace - despite being part of an RSL group - could be covered, without such legislation also applying to private companies too.

It is also the case that all property management organisations are governed already by legislation under the Property Factors (Scotland) Act 2011 and that their customers' rights and the services and standards of service they receive are safeguarded by the Homeowners' Panel, under a regulatory environment that ensures the highest degrees possible of openness, transparency and information availability. This is underlined by the fact that some of the issues referred to by the petitioner in relation to YourPlace and charging have been considered already and adjudicated on by the Panel.

Again, in highlighting the varying component parts of a RSL such as Wheatley, we would point out that last year WHG received a public rating from Standard and Poor's. This enabled it, in late 2014, to issue successfully a public bond on the capital markets, which will fund a large-scale new-build housing programme, helping to address the chronic shortage of affordable homes to let in Central Scotland.

The relevance of this to the Committee is that this move is another clear example of the Group's ongoing commitment to openness and transparency as to access the capital markets, WHG has to comply fully with the exhaustive disclosure requirements of the London Stock Exchange. This is balanced by the need of the Group, in accessing these new funding sources for such a strong social purpose, to acknowledge the need obviously, as we go forward, to adhere to commercial confidentiality as it applies to private funders and investors. It would also create a disparity be those English RSLs going to the bond market and ourselves, alongside other Scottish RSLs, seeking additional funding for new homes. This could impact on the number and volume of investors who may be willing to invest in Scottish RSLs.

Role of the Regulator

It is our contention the addition of another layer of regulation in the social housing sector would need to be considered very carefully within the context of the existing strong regulatory framework for RSLs.

The Scottish Housing Regulator was established to protect through regulation "the interests of tenants, homeless people and others who use social landlords' services". The Regulatory Code of Governance already requires RSLs to be open and accountable to service users and stakeholders. This has been further enhanced by legislation covering the publication by each RSL of performance against the Scottish Housing Charter.

The Regulator, through legislation, has an enabling and compliance role in ensuring greater public access to information and key documents about RSLs. It is also worth noting that GHA, for example, as a registered charity is regulated by the Office of the Scottish Charities Regulator, which has a memorandum of understanding with the Scottish Housing Regulator

to which they have delegated certain statutory regulatory functions, set out in the Charities and Trustee Investment (Scotland) Act 2005.

Significantly, the Crerar Review identified that RSLs believed the volume of performance reporting and external scrutiny had become disproportionate to the benefit delivered, as well as the risk it was set up to overcome. Importantly, it was also concluded that resources already were being diverted from front-line delivery.

We support the proposition in the Crerar Review that if new processes and procedures were to be introduced (in the form of FOISA or similar) then all existing scrutiny would need to be reviewed and, potentially, scaled back.

Scale of Coverage

If any extension of coverage is considered, we see no justification for differentiating between RSLs on the basis of their size, area of operation or whether or not they were created principally as a result of a Large Scale Voluntary Transfer. We do not believe this can be justified by larger organisations having greater capacity and access to more resources. The resources required to service the Act would be broadly proportionate in relation to the size of the RSL. Given that some small organisations are already covered by the Act, e.g. individual medical practices, we do not accept the justification for such a distinction.

Also, it is totally incongruous and inconsistent, we believe, to contemplate making FOI available to certain members of the public and not to others, dependent on whether their tenancy is held by a social landlord of a certain size and scale, and how it came to be formed.

Clarification through Regulatory Guidance

In such a strongly-regulated sector, in which existing safeguards to ensure accountability are already monitored and enforced by the Scottish Housing Regulator, it may be appropriate as a next step to introduce new measures, such as a publications scheme or a code of practice governing records management. These would ensure “public bodies”, such as RSLs, achieve a minimum standard of transparency, openness and information accountability.

Finally, whatever change(s) or extension is deemed necessary by the Committee and, ultimately, the Scottish Government it is vitally important the sector and all organisations affected are given sufficient and appropriate consultation and lead-in time.

Thank you for the opportunity to contribute to the Committee’s deliberations. We would be delighted, of course, to answer any questions or offer any clarification needed.

Yours faithfully

Alastair Dempster
Chairperson