

PE1539/M

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Dear Mr Sharratt

CONSIDERATION OF PETITION PE1539

Thank you for your letter of 19 March seeking further views of the Scottish Government with regard to Petition PE1539.

As the Committee is aware from our response of 16 January, we intend to consult in spring on extending coverage of the Freedom of Information (Scotland) Act 2002 (FOISA). We can assure the Committee that this remains the case.

We also note the specific reference in your letter to the Scottish Information Commissioner's report '*FoI 10 years on: Are the right organisations covered?*' and welcome its contribution to the debate on FOI coverage. We intend to respond to this report later this year in the Scottish Government's first report about the use of its section 5 powers, as required under section 7A of FOISA (as amended). We will be considering further all the issues it raises, including the factors identified as being key in assessing whether a function is of a 'public nature'.

Prior to this, and while not wishing to pre-empt the forthcoming consultation, we would draw the Committee's attention to issues specific to the petition as well as the wider context of recent measures to promote openness and transparency in the housing association sector aimed at improving tenants' rights to access information.

Factoring services

A large part of the motivation behind the petition seems to be to seek more information for homeowners about their factoring services. However, in practice, we think it questionable that bringing housing associations under the scope of FOISA would lead to most homeowners being able to access much additional information, beyond what they can

already access from their factor. Most housing associations, as charitable bodies, have set up trading subsidiaries to deliver factoring services on their behalf.

We also do not feel that factoring services for homeowners could be described as a service of a public nature (as required under the terms of section 5 of FOISA). There is no public funding given to subsidise the provision of factoring services and the subsidiaries provide similar services to those delivered by commercial factoring companies that are not housing association subsidiaries. Therefore, if FOISA were extended to cover housing associations, we do not feel that this could include coverage of factoring services.

Mergers and Acquisitions

Secondly, Mr Clerkin referred in his evidence to the Committee to an increased number of mergers and acquisitions amongst RSLs as one of his concerns and an area where tenants needed more information.

Part 10 of the Housing (Scotland) Act 2010 requires RSLs that wish to merge to form a new body to demonstrate tenant support for this to the Scottish Housing Regulator (SHR) before the SHR will grant its approval for the merger. In effect this means that the RSL has to ballot its tenants prior to any merger to demonstrate tenant support. Section 98 of the Housing (Scotland) Act 2014 extends that requirement to RSLs wishing to enter into group structure arrangements.

These statutory requirements will enhance the rights of tenants to access information about proposed changes in constitutional arrangements and to influence the outcome of an RSL's proposals.

The Scottish Social Housing Charter

More widely, we think it important to make reference to the Scottish Social Housing Charter. This came into operation in April 2012, following extensive consultation with tenants, landlords and the SHR. The Charter promotes transparency across all social landlords – including housing associations.

In particular, we also note that the petitioner is incorrect in suggesting that the Charter is voluntary for housing associations. In fact all social landlords, including RSLs, are required to comply with the Charter under Section 31 of the Housing (Scotland) Act 2010.

The Charter is due for review next year ahead of renewal in 2017. Part of this review will include assessment of how effective social landlords' performance has been against Charter outcomes – including those concerning communication and participation. The views of stakeholders - including tenants organisations - will be key to this process. In the meantime, however, it is worth noting that the first National Report on the Scottish Social Housing Charter has shown a high level of tenant satisfaction with housing association landlords in terms of openness and transparency – on average their satisfaction levels were higher than for local authority landlords (who are already subject to FOISA).

Therefore, while we recognise the Commissioner's comments about loss of information rights due to stock transfer, it is not yet clear that there is evidence of tenants having concerns about not being able to request information under FOI from their landlord. In addition, the majority of RSL homes are not ones RSLs have acquired through a Council or other stock transfer. Where stock was transferred from a Council, in each case the majority

of tenants voted in favour of this through a ballot in the knowledge that they would be moving from a Council landlord to a housing association landlord.

I hope this information is helpful.

Yours sincerely

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