

SFHA Finance Conference 2019

Legal Update

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Freedom of Information

- Extending FOI by designating RSLs and their subsidiaries as public authorities for the purposes of the FOI(S)A 2002
- On basis that RSLs “*perform functions of a public nature*”
- What functions? SG says “housing activities” defined in s165 of the Housing (S) Act 2010 as “any activities undertaken by a social landlord in relation to housing services” – very widely drafted

Freedom of Information - Subsidiaries

- Extension to subsidiaries – very far reaching
- All-encompassing approach by SG means:-
- Possible that care/support services, reactive repair services (even on a commercial basis), could be covered
- Are these “functions of a public nature”???
- Interesting question over subsidiaries of one RSL performing services for another RSL
- SIC has said Order should be interpreted widely

Duty to Publish

- Guide to information
- Eg board minutes: Obligated to publish minutes, agenda, board papers etc
- “Day One” approach
- Summary??
- Policies eg procurement, HR, salary bandings etc
- Certain information already available eg contracts register, job adverts

Responding to a FOI Request: Exemptions and RSLs: What Will You Use?

1. Vexatious and Repeated Requests: must be looked at on case-by-case basis
2. Sharing information will cause harm to 'commercial interests': key for contracts and tenders
3. Breach of confidentiality: key for contracts

Exemptions and RSLs: What Will You Use?

Information requested is personal data:

- GDPR v FOI: who wins?
- If request for person's *own* personal data deal with under GDPR
- If request relates to 3rd party's data probably need to ask:
 - Do we have their consent?; or
 - Is disclosing: lawful; fair and transparent?

Data Protection Officers

- **Mandatory for RSLs from 11 November 2019**
- **Professional qualities, experience, and expert knowledge proportionate to size of organisation**
- **Inform, monitor, advise, co-operate**
- **Cannot conflict with any other tasks or duties (e.g. Board Member)**
- **Can't be held personally liable**

GDPR

Statistics

- Over 40,000 data protection complaints to ICO since 25th May 2018
- Over 14,000 personal data breaches reported to ICO (4 times as many as previous year)
 - Fewer than 0.5% led to either an improvement plan or civil monetary penalty
- £183.39 million - the first GDPR fine
- 32,000 DPOs in the UK

Basis of Processing

- From 11 November 2019, RSLs will no longer be able to rely on the ‘legitimate interests’ basis for processing
- That ground not available to public bodies – RSLs are “public bodies” from that date under FOI
- Should only have been used as last-resort ‘catch-all’ ground
- Almost all processing: performance of contract (tenancy ag)

Draft Codes of Practice

- **Data Sharing Code to be launched Autumn 2019**
- **Direct Marketing Code to be launched end of October 2019**

Housing (Scotland) Act 2014

- Final provisions in force 1 November:-
- S12: assignation/sublet/joint tenancy
- S13: succession
- Those obtaining tenancies via succession/assignation – must have lived in the house for 12 months before they become the tenant (except spouses/civil tenants)
- Requests to add a joint tenant/sublet – only once the tenant has been living in the house for 12 months

Issues re: Funding

- **FCA: LIBOR to be replaced by 2021**
- **Underpins over \$350 trillion in debt**
- **Been published since 1986**
- **Features in all types of finance agreements**
- **Market disruption clauses in most RSL loan agreements:
if LIBOR unavailable – reference banks rate/cost of
funding the loan**

Issues re: Funding

- Not ideal – likely to need primary legislation to amend existing loan terms
- Alternative: “Sonia” - Bank of England’s Sterling Overnight Index Average
- LMA issued new “Screen Rate Replacement Event” wording for new agreements – meant to be neutral – ie neither party benefits
- But legacy agreements – rely on stopgap or wholesale change via legislation or agreement eg FRS 102

Issues re: Funding

- Restriction of SHR's powers
- Unknowns - Brexit
- Future of private finance/new entrants to the market as alternatives to traditional lenders

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