

# Social Tenants Access to Information Requirements (STAIRs)

## National Housing Federation Consultation Response

July 2024

### Summary

The National Housing Federation (NHF) is the voice of housing associations across England, representing over 550 housing association members that provide around 2.7 million homes to 6 million people.

We welcome this consultation and the opportunity to comment on the proposed direction to the Regulator on the [Social Tenants Access to Information Requirements \(STAIRs\)](#).

We support the principle of STAIRs, and our members are already working to improve transparency with residents. Some of our members own and manage homes in Scotland, where the Freedom of Information (FOI) requirements were extended to the sector in 2019 and have embedded learnings from this throughout their English portfolio.

Over 80% of our members have adopted the NHF's Code of Governance, which commits boards to:

- Operate openly and transparently, and demonstrate accountability to key stakeholders, including residents and partner statutory bodies.
- Proactively publish a range of information to residents and stakeholders.
- Ensure the organisation responds in a considered, open and transparent way to requests for information about its work, activities, and board decisions.

The NHF's voluntary [Together with Tenants Charter](#), which has over 225 adopters, covering 88.5% of homes owned by NHF members, also commits adopters to

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ensuring that their relationships with residents are based on openness, honesty and transparency.

We know that through these initiatives and long-established working practices our members are already committed to being transparent and accountable to their residents. Alongside this, housing associations must comply with the Regulator's new Transparency, Influence and Accountability Standard.

To inform this consultation response, we have undertaken a range of engagement activities with our members and stakeholders.

Our headline response is as follows:

- We support the principles behind STAIRs and our members are already working to improve transparency with residents.
- STAIRs proposals should be reviewed in the context of the broader current financial and regulatory environment for the housing association sector. They should only be introduced once a broader review of the regulatory landscape has been undertaken, and if that review indicates that they will bring significant additional benefits to residents.
- If STAIRs are introduced, a lengthy implementation timeline should be given, with a staged approach introducing the publication scheme element first.
- Further detail on the requirements, best practice guidance tailored to our sector and training opportunities for housing associations will be critical.
- An impact review should be undertaken after the first year of any STAIRs requirement coming into force and this should be used as an opportunity to review and adjust the requirements.

In our response, we also raise several specific concerns, including: the predicted costs cited in the impact assessment, the lack of clarity provided about the type of information in scope, and on proposed adjustments to the timescales.

## Our overarching response

Whilst we are supportive of the principle of STAIRs, housing associations are facing significant financial challenges and are working to swiftly and effectively adopt a range of new regulations, all whilst delivering against strategic objectives. This includes developing new social and affordable homes, remediating any building and

safety concerns, preparing for decarbonisation and improving the quality of existing homes.

The introduction of STAIRs would be the largest expansion of FOI-style obligations in the UK since the passage of the original Freedom of Information Act (FOIA) 24 years ago. We note that housing associations in Scotland have recently been brought into scope of the Freedom of Information (Scotland) Act and the experience of the Scottish sector has been drawn upon in formulating these proposals.

However, the English housing association sector is significantly larger. In Scotland, the extension of FOI applied to around 200 housing associations and 280,000 homes. In England, STAIRs would apply to around three times as many organisations and more than 10 times as many homes.

This has implications for the scale of potential information requests. Furthermore, the English housing association sector now sits within a different regulatory and financial environment to that facing Scottish social landlords in 2019. Now, housing associations are adapting to a significant increase in the scale of regulatory requirements and an increasingly constrained financial environment.

We would suggest that greater consideration is given to the impact of STAIRs as a further addition to this broader, more extensive regulatory context. We are [calling on the new government](#) to urgently review the timeframe for introducing additional regulatory requirements, prioritising the successful adoption of the new consumer standards framework and Tenant Satisfaction Measures. The introduction of further additional requirements, including STAIRs, should be paused pending a review of the social housing consumer regulatory landscape. This is to ensure that it is delivering the right outcomes for residents. New requirements should only be introduced if there is clear evidence that they will substantially and directly benefit residents.

This consultation currently only assesses the impact of the STAIRs proposals in isolation from this critical broader context. Our further comments are made on the basis that our primary feedback, above, is considered first.

There is no clear indication given in this consultation of an implementation timeline for STAIRs. In Scotland, after FOI expansion to housing associations was approved, the sector was given 9 months to prepare for implementation. Owing to the much greater size and complexity of the sector in England and the current resource and regulatory challenges it is facing, we believe a far longer lead-in time is necessary.

If STAIRs is introduced, we would recommend a staged implementation timeline is followed, with requirements for the publication scheme coming into force before the information request regime. We believe that giving housing associations the time and resource to ensure that publication schemes are the best they can be will significantly reduce the later required workload of an information request scheme. This could also provide an opportunity to gather resident feedback on the types of information (that have not been addressed by a publication scheme) they want access to via any later information request scheme.

During the implementation period for STAIRs, we would also welcome the opportunity to work with the government, the Regulator of Social Housing, the Housing Ombudsman and other stakeholders such as the Information Commissioners Office (ICO) to develop a suite of guidance, best practice and critical training opportunities for housing association staff. This partnership approach would help to ensure a smoother rollout of these FOI-style regulations in the sector. The Scottish Information Commissioner's Office (SICO) said of the training and guidance that they provided, "overall, it appears that the range of support provided contributed to a high degree of preparation across the sector by the time the designation order came into force." It will be important for the ICO to work closely with the Housing Ombudsman in developing this guidance.

We would also like to request an impact review, one year on from implementation of STAIRs – with an opportunity to amend, if necessary, the details of the requirements based on its findings. [The Scottish Information Commissioner undertook a similar exercise.](#)

Beyond this, there are a number of specific areas in the proposal where changes and further clarity for our sector would be welcome. These include:

- Greater detail is needed on the in-scope information for housing associations to make a more informed assessment of the scheme and associated resourcing and practicalities.
- In our view, and that of our members, the impact assessment significantly underestimates the ongoing costs of STAIRs.
- It should not be mandatory to publish individual STAIRs information requests more widely, although landlords may choose to do so.
- We suggest that a specified list of acceptable designated representatives for residents is provided, to ensure information requests are used for their

intended purpose of providing residents with information about their own landlord.

- Proportionate expectations should be clearly set out on how housing associations could show that they have taken 'all reasonable endeavours' to seek relevant information from third parties. This must acknowledge the limits landlords can face in obtaining information from contractors.
- We believe that the staff time limit of 18 hours to respond per information request is too high. This equates to half a full-time working week and is too burdensome, particularly for smaller landlords with few staff. We suggest one working day (8 hours) is a more appropriate limit.
- We agree with the requirement to respond to complaints in 30 calendar days as a baseline. However, it must be explicitly acknowledged by the Housing Ombudsman that they will apply this timescale when reviewing any STAIRs-related complaints which are escalated to them, rather than the times in their existing Complaint Handling Code. A time limit for responding to stage 2 complaints about STAIRs requests should also be specified, in addition to the 30 calendar days for stage 1 complaints. As with complaints about other matters, residents must complete their landlord's complaint process before escalating a STAIRs-related matter to the Housing Ombudsman.
- Greater clarity on any working relationships between the ICO, the Regulator and the Housing Ombudsman would be welcome. We believe it is appropriate for the Housing Ombudsman to be the primary source of redress for residents in relation to STAIRs requests. This is because it has been acknowledged that the Ombudsman will not be able to consider a complaint where a resident has an alternative source of redress in relation to data protection legislation. However, it will be crucial that the ICO shares its expertise in handling matters relating to FOI requests with the Housing Ombudsman if STAIRs is established.

The NHF and our members look forward to further engagement with the government, the Regulator and Ombudsman as they develop any further details of the scheme and associated guidance and best practice.

**Please contact [our team](#) for more information**

# Full consultation response

## Question 1

**Do you agree with the requirements for the publication scheme, as outlined above? If not, why not?**

### Response: Partially agree

We broadly agree with the outlined proposals for the publication scheme, if STAIRs is to be introduced. Our members' key concern is the lack of clarity and specificity regarding the information that needs to be published. For example, the publication of information relating to 'maintenance work' and 'decision-making processes' could vary considerably in granularity. It would be beneficial, both for landlords and residents, if sub-categories were provided which give greater clarity on what information should be published. This would help landlords to prioritise the information they need to collect and publish helping residents to have more consistent expectations across different landlords.

We would also recommend that the Housing Ombudsman works with the ICO to create a model publication scheme specific to the housing association sector, as the ICO has previously created for FOI obligations. The scope of information should remain proportionate and focused on information that is important to residents, to understand the quality of services delivered by their landlord and to effectively scrutinise landlord services, so as not to divert resources away from core service delivery. Examples of good practice should be provided, but with clear acknowledgement that landlords will have flexibility in how they provide and format information.

We appreciate much of this may be detailed in further consultations and guidance from the Regulator and Ombudsman. However, without this detail we and our members have found it difficult to assess the resourcing needed to implement the proposed requirements. We would propose a further impact assessment is considered when further detail is consulted upon by the Regulator.

As set out in our summary, we recommend that the publication scheme is introduced before the individual information requests element of STAIRs. Giving housing associations the time and resource to ensure that publication schemes are the best they can be will significantly reduce the latter required workload of an information request scheme. This could also provide an opportunity to gather resident feedback

on the types of information (that have not been addressed by a publication scheme) they want access to via any later information request scheme.

## **Question 2**

**Do you consider it appropriate for the publication scheme to include a requirement for providers to publish previous information requests made under STAIRs, and the responses to those requests? Please provide your reasoning.**

### **Response: No**

We believe that housing associations will likely opt to take this approach in many instances, both for the purposes of transparency and because they recognise that proactive publication will reduce the workload of managing individual information requests.

However, we believe it will not be appropriate in all circumstances. There may be instances where the information requests are simply too specific, contain information that needs redaction for data protection purposes prior to wider publication, or requires significant detail of the context of the resident's initial request for wider publication to be of use.

There may also be instances where a resident is seeking information that they do not want to be more widely published (e.g. if it is in relation to their own home).

In many cases, resources would be best used in learning from previous requests to enhance what is available to all on an ongoing basis through the publication scheme rather than publishing historic requests and information.

## **Question 3**

**Do you agree with the assessment of the impacts of the publication scheme, as outlined in the 'Publication scheme impacts' sub-section? If not, why not?**

### **Response: No**

Our members have told us that the estimates in the consultation for the sector costs in establishing and operating a publication scheme are significantly below what they anticipate.

The current impact assessment only incorporates staffing costs, when there may be a range of other associated costs associated with establishing a scheme. These could include website and IT/data system improvements, policy design and staff training.

As the SICO report showed in Scotland, in many cases, new staff will need to be employed and/or consultancy services sought to support with the regulatory transition. Where additional responsibility is added to existing job roles, this will likely increase staffing costs.

Furthermore, the impact of the staffing costs to establish a publication scheme will vary greatly by housing association. For larger housing associations, the scale and complexity of data may mean it takes considerably longer to establish. For a smaller housing association, the impact on staffing capacity of the transition may have a greater impact on the delivery of core services, as they have a much smaller staff team with each employee tending to work on a more diverse set of areas. This would subsequently impact residents and could drive-up costs in other areas.

Most importantly, the assessment only discusses the establishment of a publication scheme, rather than any ongoing costs to maintaining it on a regular basis.

One member told us they would, “expect this to require 0.5 FTE spread across 3 teams (customer experience, communications, and governance). That is likely to be circa £25,000 p.a. for an association with 7,000 homes.”

The sector is under significant financial pressure, as established through [a review](#) by the Levelling Up, Housing and Communities Committee into the Finances and Sustainability of the Social Housing Sector. It is critical that the publication scheme is introduced with clear and proportionate requirements for landlords, to limit the cost and staff time required.

#### **Question 4**

**Do you have any wider comments on the costs providers will face in implementing STAIRs?**

**Response: Yes**

Due to the lack of detail on the type and format in which information will need to be published, it is challenging to accurately estimate the cost of STAIRs by reviewing this consultation. We also do not yet know how much Ombudsman fees will need to

increase because of these proposals. As the Regulator and Ombudsman bring forward further detail, it will be easier to assess costs.

Nonetheless, our members envisage the costs to be significantly higher than outlined in the consultation, which focuses solely on assessments of staffing hours. In reality, there may need to be a range of other resourcing considerations. For example:

- Changes to data collection, IT systems and websites.
- Changes to policies, procedures and contract management, for example to ensure relevant third parties are brought into scope of STAIRs requirements. Landlords may also need to renegotiate existing contracts which could increase costs.
- Recurrent staff training on the new requirements as well as associated legislation such as Freedom of Information Act, Environmental Information Regulations (EIR) and Data Protection Act (DPA) which they will need to understand as a result of STAIRs requirements and exemptions being linked to the Acts.
- Staff resource in ensuring compliance with GDPR and other legislation when redacting and publishing documents.
- Seeking appropriate legal or third-party services and advice where appropriate.

Costs will clearly be higher in the transition period, but many of these costs will also be recurring. We also recognise that some housing associations will face larger costs than others.

In Scotland, the SICO report found that 8% of Registered Social Landlords (RSLs) had employed new staff to meet FOI requirements and 16% had created new job roles. Other RSLs had commissioned consultancy services to support with transition and ongoing advice and workload.

In regard to increased staff workload, 10% of RSLs in Scotland reported a 'large impact' and a further 32% had reported a 'medium impact' as a result of the change in regulation. The report also showed that the volume of requests for information increased with 14% of housing associations saying it 'increased a lot'.

The vast majority of RSLs reporting a significant impact on their staff workload were larger landlords. The data submitted by the 156 Scottish RSLs covered by FOI shows that, between January and December 2020, RSLs reported receiving 1,191

FOI and EIR requests. This represents an average of 7.5 requests per organisation across 2020. However, Scotland's largest RSL, Wheatley Glasgow Housing Association (which is responsible for 39,722 homes), reported the largest number of requests with 48. This is significant because in England there are a number of larger housing associations including 15 that are larger than Wheatley Glasgow Housing Association and 72 with more homes than the 2<sup>nd</sup> largest Scottish housing association. From this data, we anticipate that this higher level of organisational workload for information requests will be seen across the sector in England.

In determining whether STAIRs are a proportionate method of providing additional information to residents, the cumulative financial impact of previous regulatory changes should be considered. This year, the Regulator of Social Housing increased its fees by more than 70% per social home, and the Housing Ombudsman is proposing to increase its payable fee per home by 40%. These costs are not negligible, particularly given current financial pressures across the sector.

### **Question 5**

**Do you agree with the scope of information that is covered by STAIRs, as outlined in paragraphs 46-50? If not, why not?**

#### **Response: Yes**

We agree with the proposed scope in principle. However, as with the publication scheme, the proposed headline categories of information do not give sufficient detail to assess whether they set reasonable and proportionate limits and expectations for the type of information residents can request.

It will be important, in response to this consultation or through subsequent consultations, for further detail to be provided on the types of information residents can request and expect landlords to provide. This additional detail will be beneficial for both landlords and residents. It will help to ensure there is greater parity for residents of different landlords, as it will increase the chance that residents asking for similar information will receive similar responses. It will set clearer expectations for residents and help to avoid them being frustrated by asking for information that landlords cannot, or are not obliged to, provide. It will also help landlords to prepare for the types of requests they are likely to receive.

### **Question 6**

**The above section (paragraphs 51 to 53) outlines the requirements relating to who can make information requests. Do you agree with these requirements? If not, why not?**

**Response: Partially agree**

Housing associations are committed to the principles of transparency and open dialogue with residents. We also recognise that there will be examples where residents will want and/or need the support of a legitimate, designated representative and advocate to access relevant information and that this should be supported.

We welcome the more limited scope of STAIRs, compared to FOI, in that the obligation on information sharing is intended to primarily benefit residents. However, our members have raised concerns that some third-party representatives may seek to pressure or take advantage of residents in order to become a designated representative and access information for uses not intended by the STAIRs scheme.

We would therefore suggest that a specified list of acceptable designated representatives for tenants is provided. This will ensure information requests are used for their intended purpose of providing tenants with information about their own landlord. This could include: family members, carers, individuals with power of attorney, and councillors. We would also welcome greater clarity on how long a person's authorisation as a designated representative would last.

Finally, our members asked for greater clarity on the definition of 'tenant' in the STAIRs regulations. For example, whether this includes:

- Only social tenants of the landlord in question, or whether any social tenant regardless of their landlord can make a request to any in-scope housing association.
- Individuals who have historically been social tenants of the housing association but are no longer tenants.
- Those named on the relevant tenancy agreement or whether other household members have rights under the scheme.
- How requirements interact with other tenures such as market rent properties.

### **Question 7**

**Do you consider it appropriate for the requirements to apply to local authorities with tenant management organisations in relation to information held by such bodies? Please provide details.**

**Response: Yes**

This appears sensible, consistent and proportionate, and will help to provide greater parity for residents of different social landlords. However, this is outside of our direct remit as a representative organisation of housing associations.

### **Question 8**

**Do you agree with the information provision requirements outlined in paragraphs 55-60? If not, why not?**

**Response: Yes**

We broadly agree with the requirements, with the exception of the wording relating to information held on behalf of the landlord by another body or person (see below). Our members particularly welcomed the commitment that “Registered providers are not required to create new records to comply with the information request” and ask that this is emphasised in future guidance on this matter. This will help to manage the workload of these new requirements.

### **Question 9**

**Paragraph 57 relates specifically to information held on behalf of the landlord by another body or person. Do you agree with the requirements relating to information held on behalf of the landlord? If not, why not?**

**Response: No**

Further guidance is required on the definition of ‘all reasonable endeavours’ in relation to the seeking of information from third parties. Without further clarification, we are not able to agree with these requirements.

Housing associations recognise that the failure of third parties to provide information is likely to be an area of difficulty in the policy and a cause of delays. Housing associations work with a wide range of organisations and individuals, some of which will be very small organisations that may find it challenging to incorporate STAIRs requirements into their work. There will be occasions where relevant data is held by

a myriad of different contractors and significant work may be required to secure and collate this by the housing association.

Housing associations would need to embed STAIRs into their contracting and procurement policies in order to consistently be able to retrieve specific information from third parties. If this were done at the point at which contracts naturally come up for re-procurement or renegotiation, which would be more efficient for landlords, it would take several years before all relevant third parties are captured within STAIRs requirements. If housing associations were expected to meet new requirements with regards to third parties by a fixed deadline, they would likely face significant costs through renegotiating all of their current contracts at once. In any case, reasonable and proportionate expectations should be set for the level of detail housing associations should be expected to require from third parties.

In particular, several housing associations raised concerns about how they would be expected to retrieve information from managing agents.

#### **Question 10**

**Do you agree with the requirements relating to where providers can refuse to disclose information? If not, why not?**

#### **Response: Yes**

We agree, with the exception of the staff time limit (see below). However, training will be required for housing association staff on the exemptions linked to the FOIA and DPA along with clear guidance to ensure these are drawn out and made specific and relevant to our sector. We do not believe that it should be left to housing associations to interpret legislation that does not apply to them. Without training and clear guidance, this could create inconsistencies of approach across the sector. Housing associations would appreciate further clarity on the role of the ICO in producing relevant guidance for our sector.

Equally, all relevant statutes should be clearly identified by guidance. In Scotland, housing associations are subject to both FOI and EIR. The proposed in-scope information for STAIRs will cover aspects of EIR information requirements (e.g. energy efficiency). We need further clarity on whether EIR and associated guidance and exemptions would also need to be considered.

Several housing associations have raised concerns regarding whether they would be expected to send unpublished information to residents following a request, despite

having a plan in place to publish it in the near future. We would propose an exemption is introduced to ensure refusals can be made where the information is going to be published to ensure the most useful and accurate final information is issued and to limit the resource burden of responding to additional requests.

### **Question 11**

**Do you agree with the staff time limit (18 hours) for responding to requests, as outlined in paragraph 63? If applicable, please make reference to any costs or other burdens relating to the time limit.**

#### **Response: No**

We recognise this time limit has been developed with reference to the requirements on public bodies under the FOIA. However, for many housing associations, particularly smaller ones, 18 hours of staff time will be a significant resource commitment and will take away capacity from delivering core services to residents. In Scotland, the SICO found that the average number of information requests throughout the year was 7.5. With a maximum of 18 hours per request, this could equate to almost an entire working month of a full-time equivalent (FTE) staff member per housing association each year. This burden would be additional to the already significant amount of resource that is directed to managing Subject Access Requests.

We believe that some of our member housing associations will constitute the smallest organisations that FOI-style requirements have been extended to so far in England, with many having less than a handful of staff members. From a previous survey of our members, we estimate that housing associations with under 100 homes (which provide general needs homes) have on average only 5 FTE employees. There are 749 housing associations with under 100 units of social housing, so this is a large subset of the sector.

Given this, and the fact that many housing associations will not have dedicated staff available to respond to requests as many local authorities have for dealing with FOI requests, we believe that a shorter staff time limit is more appropriate and proportionate. We recommend setting the staff time limit at 8 hours, the equivalent of one working day.

## **Question 12**

**Do you agree with the requirements relating to responding to information requests, including time limits, as outlined in paragraphs 68-74? If not, why not?**

**Response: Yes**

We agree with the requirement to respond to information requests in 30 calendar days. It is important that further time is explicitly allowed to arrange access to relevant information held by a contractor or by another body on behalf of the provider, given the concerns we raised in response to Question 9 above.

The consultation does not set out the rationale behind the proposal of 30 calendar days (proposed for STAIRs) vs. 20 working days (for FOI) to respond to an information request. However, we welcome this acknowledgement that STAIRs duties can vary from FOI requirements to consider the nuances of the housing association sector and the resourcing and regulatory environment it operates in.

We would also welcome further guidance on:

- How extensions can be sought and evidenced.
- The requirements to make information accessible (e.g. would this include language translation, and how to ensure accessibility for residents who may struggle to submit a written request).

## **Question 13**

**Do you have any comments regarding the process for dealing with complaints?**

**Response: Yes**

We recognise the process has been developed to mirror FOI requirements and we think it is right that the timescales are aligned to this rather than the existing Housing Ombudsman Complaint Handling Code. We believe it is appropriate for the Housing Ombudsman to be the primary source of redress for residents in relation to STAIRs requests, given it has been acknowledged that the Ombudsman will not be able to consider a complaint where the tenant has an alternative source of redress in relation to data protection legislation.

However, it must be explicitly acknowledged by the Housing Ombudsman that they will apply this timescale when reviewing any STAIRs-related complaints which are escalated to them, rather than the times in their existing Complaint Handling Code.

Additionally, a time limit for responding to stage 2 complaints about STAIRs requests should be specified, in addition to the 30 calendar days for stage 1 complaints. As with complaints about other matters, tenants must complete their landlord's complaint process, including a stage 2 complaint, before escalating a STAIRs-related matter to the Housing Ombudsman. Otherwise, landlords will not have adequate opportunity to address initial dissatisfaction with complaint handling, and there is a risk the Housing Ombudsman becomes overwhelmed with cases that could have been resolved without external intervention.

Members also raised concerns around whether the Housing Ombudsman Service has the requisite level of expertise around some areas of STAIRs that are likely to result in complaints. For example, where a housing association has refused a request based on exemptions in the DPA or FOIA. To support this, it will be crucial that the ICO shares its expertise in handling matters relating to FOI requests with the Housing Ombudsman. We would like to understand any proposed working relationships between housing associations, the Ombudsman and the ICO and Information Tribunal, and would recommend that the ICO supports the Housing Ombudsman in providing training and guidance.

Our members also highlighted that there should be clear guidance on what constitutes an effective internal review of a refused STAIRs request.

#### **Question 14**

#### **Do you have any comments on the draft direction?**

#### **Response: Yes**

The draft direction states that "This Direction comes into force on the day after the day on which it is given." It is important that housing associations are given adequate time to prepare to meet new requirements. Therefore, a reasonable time period must be granted after details of new requirements are confirmed before the new standard comes into effect.