

**RESPONSE TO THE SFHA BY LISTER HOUSING CO-OPERATIVE**

I have been asked to submit this consultation response on behalf of the Management Committee of Lister and this represents the official view of our organisation. This view was finalised at the MC meeting of 26 January 2021 where most members of the Committee contributed to express considerable concern over various aspects of the draft guidance issued by the SFHA (on behalf of the four sponsoring organisations) in December 2020.

The considered view of Lister is that the draft guidance, although comprehensive in scope and information, is deeply flawed for a number of reasons and should be revised substantially. If this is not to be done then we recommend that the SFHA disassociates itself from the document.

There are a number of issues that Lister has with the draft guidance and these are outlined below.

**ISSUE 1 - THE END JUSTIFYING THE MEANS**

The guidance has the appearance of being written to justify an end: the end being the requirement by the SHR for each and every Registered Social Landlord (RSL) and Local Authority (LA) housing service to collect equalities data from tenants, applicants, staff and governing body (GB) members (and homeless applicants by Las; and Gypsy/Traveller site occupants, if such sites are provided).

This is evidenced in various locations where the authors keep coming back to the regulatory requirement of the SHR, linking it to whichever point they are studying in that section, for example:

P23 - Objective 8 Understanding why equality data is being collected  
- *complying with regulatory standards....*

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P33 - *"Implicit in this Standard is the requirement for social landlords to develop robust equality data collection procedures so that governing bodies are provided with quality information."*

There is nothing implicit in the standard that implicitly requires equality data collection at the individual tenant/RSL level. It is one way of gathering information but not the only way.

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P35 - *"A clear link between customer care and equality strategy is thus implicit in Standard 1. Without having information about individual needs, it is difficult to envisage how these can be addressed. It is through the organisational equality data collection procedure that such information is gathered"*.

Thus, the general statement in Standard 1 *"... individual housing needs recognised"* is then made to seem like that ONLY through the gathering of detailed individual data can individual needs be recognised. Other methods to recognise individual needs are not considered (e.g., through listening to tenants and customers at the point of contact or interaction).

P40 "All social landlords must carry out equality impact assessments that take account of local generated equality data. This provision is covered either in law and/or in regulatory requirements."

AGAIN the "locally generated" data collection must be done because it must be done, because the SHR says it must be done. It therefore follows that the legal and regulatory reasons under GDPR must be found to justify this requirement. And yet, even with these repeated exhortations, the guidance still requires each social landlord to choose what means of justification (for processing special category data) is to be used (see Issue 3).

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## ISSUE 2 - TRUST

The guidance comments in various places about the need to build/gather/maintain trust between the organisation (RSL/LA) and the people being surveyed/questioned. At no point is any consideration given to the impact that a questionnaire of this nature, with deeply personal questions being asked, might have upon the trust between the parties.

The gathering of equalities data is seen in the guidance as the core, the central element of the equalities strategy of the organisation, and almost all activities flow from the gathered data (yes, the avoidance of holding public meetings on a Hindu holiday can be achieved by asking how many people are Hindu).

There are many ways to build links with individuals, groups and representative bodies of those from different communities, with different characteristics. This should have been a much bigger focus and a questionnaire seen as only one small component of such activity.

## ISSUE 3 - GDPR AND DATA PROTECTION

The guidance attempts to say that the gathering of this data meets GDPR 2016 article 6 (1) by being required to comply with legal obligations (including regulatory functions that satisfy specified conditions). However, the guidance then simply says, p28, that therefore the main lawfulness condition relevant is this one. The caveat in the Regulation *'that satisfy specified conditions'* is not explained or explored here. It seems the authors seem to signal that 'regulatory requirement' be equated almost exactly to 'legal obligation'.

The next two pages (p29 and 30) of the guidance then goes on to say... of course special category data requires one of 10 conditions to be met, and then says the Social Landlord must decide what condition or conditions each will use for processing special category data. The rest of those pages then talks mainly about consent. Then to add to that requirement that each Social Landlord must decide the conditions (to be met to be able to process special category data), the Appendices helpful adds: p89: *"social landlords must: - select their preferred options against relevant statutory duties; seek their own professional advice on what is appropriate for them"*

So, in other words, we have enormous amounts of guidance, much of which says in effect, you must do it, you must do it this way, you must not deviate from the standard format (apart from to enhance it, not restrict it) and then it says: you still have to decide the key decision of - what is the basis on which you are gathering this special data; and get professional advice to back up your decision. Some guidance.

## ISSUE 4 - STATISTICS - DATA SET SIZES

The report makes no mention whatsoever that for several of the populations to be surveyed, the data set size is very small. All RSL GBs are 15 or fewer people. Many RSLs have low numbers of staff - Lister, one of the smallest, has just 5 employees. Many have low numbers, under 20, under 50.

These small population sizes mean any data gathered will pose more issues regarding confidentiality when anonymously reporting to the Management Committee or to any other individual/organisation. Clearly if you have a staff of say, 8 people, and you recruit one more person then the anonymous responses of those 9 will differ from the anonymous responses of the previous 8 by.... the exact details of the new person

This is a considerable concern to our 13 Committee members and to our 5 staff.

## ISSUE 5 - KEEPING DATA 'CONTAINED'

It is assumed in the guidance that the data gathered will be presented anonymously to the Governing Board and that is the sole use of such data. However, it is not difficult to imagine such data will be sought by others, for example any or all of the following:

- a. The SHR.
- b. National Equality bodies, seeking to gather data.
- c. Journalists doing articles on a range of subjects.
- d. Individuals or organisations using Freedom of Information legislation to see data they know exists and they wish to see in the public domain, for whatever reason.
- e. Commercial organisations wishing to make use of such data for financial gain.
- f. Others who might wish to see such data for purposes that may be the opposite of promoting good equalities provision.

It is clear that we have a great concern over small data set sizes and whether data gathered will be able to solely restricted to our Management Committee, or whether it will get out into a more public arena. This is hardly touched upon in the guidance and again is a weakness as this is all so predictable an issue (and has been brought to the SFHA's attention several times).

The above concerns all make it very difficult to be able to say with any degree of certainty to the data subjects: "Yes we are only gathering this for our own use and no-one else". The more honest answer must surely be - we are gathering it for our own use but we cannot guarantee that anonymised data will not be required to be sent to others arising out a regulatory, legal or FOI requirement.

## ISSUE 6 - USING THE DATA WITHIN THE WORKPLACE

Much play is made of how useful having such data will be to many aspects of housing provision within an organisation e.g., knowing exactly how many people are disabled and

the exact nature of their disabilities (p12) means that one can check to see if a proposed venue for a meeting is accessible (p54).

However, when drilling down into this matter in detail, which is done in page 98, the guidance acknowledges that one cannot just simply let Housing Officers have direct access to the data - someone has to summarise / paraphrase the information and thence to pass it on to HOs. There is clearly a full-time job just summarising and paraphrasing to comply with this guidance, especially the data that is also special category data (which covers most of the data being gathered).

The guidance also states (p98) that *"Social landlords must clearly separate what is, strictly speaking, monitoring data, from equality data collected to provide appropriate services."* So, monitoring systems must meet these two objectives.

This issue of using exact data is raised in page 110 where guidance from the CiH is described, which says that *"if data is known about individuals' sexual orientation, such data can be used to:.... Work with individuals affected by such conduct to agree an appropriate remedy and solution."* How is this going to be possible if Housing Officers, the people most likely to do this work, cannot have access to the original survey data?

Lister believes that gathered equality data may provide some useful anonymous statistics however using specific data about individuals in the day-to-day sphere is fraught with confidentiality and data protection issues. It would be very easy for trust to break down, in these circumstances. Trust is something all reports and guidance state as crucial to maintain in equalities work.

## ISSUE 7 - DATA PROTECTION IMPACT ASSESSMENTS

The guidance rightly states that any new gathering of significant amounts of data will require a DPIA. Clearly a 100% survey of each of the data sets as set out here - tenants, applicants, staff, GB members - is a new and significant event. So why is there so little in the guidance about DPIAs.

## ISSUE 8 - WHO IS ACTUALLY SURVEYED

Most if not all questionnaires are answered by one person in a household (except for the national census which is carefully designed to capture information on all occupants including babies and overnight visitors).

For all these types of questionnaires, invariably one person completes the questionnaire, per household. Sometimes it is the one 'tenant/head' of the household, but it may be that there are two tenants (or three) in the household. When one asks these sensitive questions, one only gets the answers from that one person, not all the possible answers that could properly reflect the characteristics of everyone in the household.

For example, you could have a white Scottish man, living with a Muslim woman from North Africa, who is pregnant. He could have a child, living with them, from a previous relationship who is now a young adult and exploring gender re-assignment. Whoever answers the door / responds to a questionnaire request will have a significant effect upon the answers given to certain key questions asked.

## ISSUE 9 - THE EXAMPLES, PARTLY USED TO JUSTIFY DATA GATHERING, ARE WEAK

The guidance describes examples of how this (detailed personal special category equalities) data could be used, to partly justify the said data gathering. However, the situations quoted could be considered or planned for without any such confidential data being gathered at all.

Examples include:

- using the data to plan public meetings to avoid religious festivals (when the dates of all such festivals are publicly available);
- asking about sexual orientation needing to be done in advance of planning a presentation to ensure that it would promote a positive view of LGBT groups (think of it in the reverse - if we knew there were no-one LGBT going to attend then it would thus be alright to have a presentation that is pejorative to members of such groups);
- gathering disability information to know if a venue is accessible or not;
- knowing about if people are single parents which would mean creche facilities for a meeting might be more likely to be needed (rather than offer a creche anyway). This is a doubly bizarre example as the data to be collected does not give any outcome that says: 'Is a single parent'.

## FINALLY - SOME INDIVIDUAL QUERIES WITH THE ACTUAL GUIDANCE

The draft guidance contains several items which do not seem right, and it is surprising that in such a near-publication document, these are still evident. These include:

- A. In the ethnicity question, the category Other British, used by everyone else, is missing.
- B. In the ethnicity question, there is no category for Arab, apart from 'Other group'.
- C. In the Sex (assigned at birth) question, Intersex is not a possible answer as presently, we understand, in the UK only Male or Female can be assigned/recorded at birth, in law.
- D. In the Age category, there is no option of 'Prefer not to say' concerning giving one's date of birth.
- E. Footnotes 34-36, 38, 41-48, 50-56 and 60-74 are missing.

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## IN CONCLUSION

So, are there:

- I. other ways for Social Landlords to undertake equalities work;
- II other ways to gather data?

The answer is yes to both.

I. Other ways to work:

Just yesterday (28 January 2021) we received publicity about some excellent work being done by the Scottish Refugee Council:

<https://www.scottishrefugeecouncil.org.uk/new-toolkits-to-support-refugee-integration-in-scotland-and-beyond/>

and a link in that webpage to survey work done for the SRC about refugees:

<https://www.scottishrefugeecouncil.org.uk/wp-content/uploads/2021/01/Refugee-integration-public-attitudes-research-2020.pdf>

In none of these examples do we see any mention of the key element of this guidance, namely that the top priority is to do surveys to gather special category protected data about individuals.

II. Other ways to gather data:

There is an existing data gathering machine which is tried, tested, well resourced, well respected, that covers all of Scotland. It gives very clear information across a very consistent set of indicators, at a size level (of Output Areas) of approximately 50-150 persons. Yes, it's the Scotland census, arriving in 2022.

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On behalf of the Management Committee of Lister Housing Co-operative Ltd  
29 January 2021