

# SERVITE HOUSING ASSOCIATION

## OPENNESS AND CONFIDENTIALITY POLICY

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## **1. INTRODUCTION**

This Policy describes how Servite Housing Association (SHA) will meet its commitments in relation to openness and confidentiality.

The Policy applies to SHA Committee of Management members, and to all employees of SHA, whether they work in head office or at housing developments.

### **1.1. DELEGATED AUTHORITY**

SHA will ensure that staff and the Committee of Management's responsibilities in relation to the management of this Policy are clear. The Committee of Management's role is to agree policy and evaluate performance, and to ensure that the policy is observed in relation to its own activities and conduct. Implementation of the Policy as it relates to SHA employees will reflect SHA's line management structure, as described in the Association's procedures.

## **2. PRINCIPLES, AIMS AND OBJECTIVES**

### **2.1 PRINCIPLES**

SHA is committed to act in an open and accountable way in relation to its tenants and residents, its partners and other stakeholders.

Openness and accountability are essential for the following purposes:

1. Providing opportunities for tenants and other stakeholders to be involved in or influence decision-making;
2. Demonstrating that SHA is acting in accordance with the commitments made to tenants and other stakeholders;
3. Upholding the principles and practice of equal opportunities and continuous improvement.

As a matter of general policy, information about SHA and its work should be widely and freely available. SHA will publish material about the organisation, its services and its performance, and communicate it through a variety of mediums (see Sections 5 and 6). SHA will make additional information available upon request, unless there are good reasons of confidentiality or practicality, or where its disclosure is restricted by legislation (see Section 8). The commitment to openness does not detract from the need to keep certain types of information confidential, particularly where it is required by law (see Section 9). The policy is designed to strike a balance between a commitment to openness and the need for confidentiality in some circumstances. In general terms, all organisational information, which is not sensitive should be openly available; all personal information that is not a matter of public record should be kept confidential.

Committee of Management members and employees of SHA, under their respective Codes of Conduct, accept an obligation to account for their actions in

an open manner. SHA is accountable to a wide range of groups, including tenants, residents, Local Housing Organisations, other RSLs, local authorities, lenders, regulators, local communities and other partners in the statutory and voluntary sectors. Code of Conduct for Committee of Management Members, Rules and Standing Orders are posted on SHA's Internet. Different mechanisms will be used for different stakeholders, depending on their interests and the nature of any legal or contractual agreement with the group. SHA will ensure that through these mechanisms each group is kept informed about SHA's activities, and has an opportunity to comment on, and where appropriate have an involvement in, SHA's planning and decision making.

### **3. AIMS OF POLICY**

The aims of this Policy and associated procedures are to describe:

- How SHA will meet its commitments to openness and accountability;
- How it will make information available and provide access to information; and
- How it will deal with information, which must remain confidential.

SHA has a separate policy on data protection. This describes the arrangements on access to personal information and compliance with the law on data protection.

### **4. EQUAL OPPORTUNITIES STATEMENT**

This Openness and Confidentiality Policy complies with SHA's Equal Opportunities Policy. SHA recognises its pro-active role in valuing and promoting diversity, fairness, social justice and equality of opportunity by adopting and promoting fair policies and procedures. The Openness and Confidentiality Policy is of considerable significance in creating opportunities for disadvantaged groups in playing a full part in SHA's activities and governance.

SHA will check its Openness and Confidentiality Policy and associated procedures regularly for their equal opportunity implications, taking appropriate action to address inequalities likely to result or resulting from the implementation of the policy and procedures.

SHA is committed to providing fair and equal treatment to all its applicants including tenants and will not discriminate against any on the grounds of race, color, ethnic or national origin, religion, age, gender, sex, sexual orientation, marital status, family circumstances, employment status or physical ability.

## 4. LEGAL AND REGULATORY FRAMEWORKS

### 4.1 LEGISLATION

In formulating and implementing this Policy, statutory requirements have been incorporated, where required.

The legislation particularly relevant to this Policy includes:

- **Data Protection Act 1998:** provides rights to individuals in relation to personal data held about them; and regulates the use of personal data
- **Freedom of Information Act (Scotland) Act 2002:** entitles members of the public to receive information that they request from a public authority, subject to certain exemptions such as the need for the protection of personal data, commercial sensitivity or national security. Although not bound by the Freedom of Information Act (which currently does not extend to RSLs), SHA is not bound by but aims to meet the spirit of the legislation. This Act supersedes the Access to Personal Files Act 1987.
- **Housing (Scotland) Act 2001:** provides a statutory right to all tenants with Scottish Secure Tenancies to receive information about their landlord's policies and procedures. The Act also obliges landlords to consult and provide tenants with information in developing their Tenant Participation Strategy.
- **Scottish Public Services Ombudsman Act 2002:** describes the statutory arrangements for conducting independent investigations of complaints relating to misadministration by a wide range of listed authorities, including Registered Social Landlords.
- **Human Rights Act 1998:** gives individuals a right to respect for their privacy.

### 4.2 PERFORMANCE STANDARDS

The following Communities Scotland/SFHA agreed Performance Standards are particularly relevant to this Policy:

**Guiding Standard GS3.2: Information and Advice:**

“SHA provide or secure effective information and advice, in line with the national standards for housing information and advice services.”

**Guiding Standard GS3.4: Performance Reporting:**

“SHA give our stakeholders the information they need about the organisation and its plans, services and performance”

**Guiding Standard GS3.5: Openness and Confidentiality:**

“SHA respond openly to requests for information, unless there are justifiable reasons for withholding it.”

## **Guiding Standard GS4.5: Ethical Standards**

“SHA conduct our affairs with honesty and integrity.”

### **4.3 GOOD PRACTICE**

In preparing this policy, SHA has had regard to current best practice guidance including:

- Communities Scotland: Inspection Guidance
- SFHA Raising Standards: Governance and Accountability
- SFHA Raising Standards: Access to Information
- Chartered Institute of Housing in Scotland: Guide to Data Protection Act
- Chartered Institute of Housing in Scotland: Guide to Freedom of Information Act

## **5. PUBLICATION OF INFORMATION**

### **5.1 STATEMENTS OF INTENT, ANNUAL REPORT & ACCOUNTS AND REPORT CARDS**

SHA's Business plan for each new financial year will be published and made widely available via the Internet.

SHA will comply with the law and with best practice and make available on an annual basis an Annual Report and its Annual Accounts through publication on the website.

The Annual Report will contain standard information required by company law and more detailed information on changes to SHA's structure and governance, its activities and its performance carried out in the previous financial year. The Annual Report and Accounts will be available on SHA's website, will be circulated widely, and will be made freely available upon request to any interested party.

The Annual Accounts will take the form required by the law, and will be available at the Annual General Meeting, on the SHA website and upon request to any interested party. The information made available will include the annual external auditor's statement. Additionally, a summary of the accounts will be included in the Annual Report, with a note to direct interested parties as to where they can obtain a full copy.

As a matter of good practice, SHA will continue to make available any annually updated Business Plan.

### **5.2 INFORMATION TO TENANTS**

SHA tenants have a statutory right under the Scottish Secure Tenancy to receive information about their tenancy and about their landlord's policies and procedures.

The information, which SHA will provide to each tenant, will include:

- Complaints policy and procedures
- Tenancy agreement
- The right to repair
- The right to compensation for improvements
- Rents and other charges
- Allocations Policy
- Priorities and procedures for allocating houses, including transfers and exchanges
- Repairs and Maintenance
- Service Standards
- Tenant Participation Policy, consultation arrangements, and details of tenants' organisations
- Equal Opportunities Policy

This information will be made available at the point a tenancy is granted, preferably using the medium of a Tenants' Handbook, which shall be periodically revised and updated. Thereafter, tenants will be informed of significant changes as they happen.

### 5.3 **OTHER PUBLISHED INFORMATION**

SHA will make the following additional information available to the public, on the Internet and in published form, in the interests of transparency and accountability:

#### **Type of information**

#### **Information on SHA's structure, governance and decision-making processes**

SHA will make the following information publicly available about its structure and governance:

- How the Committee of Management of is elected
- How decisions are made about housing and related services, and about management of the organization

#### **Reports of investigations carried out by the Scottish Public Services Ombudsman on SHA.**

RSLs are required to make copies of investigation reports available for inspection, unless the Ombudsman has directed that a report should not be made available, taking account of the public interest and the interest of the complainant and other persons.

Unless so directed, SHA will publish any reports in full, and will summarise them through a variety of channels. SHA will also publicise these arrangements in its complaints policy.

## **Results of customer surveys and SHA's response to them**

SHA will carry out periodic surveys of its tenants to determine the level of satisfaction with SHA services and performance. These results will be published, along with SHA's response to them, in order to demonstrate SHA's commitment to act on the results of the information received.

## **Inspection reports**

Communities Scotland, the government agency which carries out independent inspections of the management performance and the quality of services offered, publishes its findings in full on its website.

SHA will notify stakeholders of the outcome of the inspection, and will advise those who wish to read the results of how to obtain a copy, either from SHA's office or through the website.

## **Investment Plans**

SHA will make available its plans to improve the housing stock and provide new housing. These plans will be updated on at least an annual basis.

## **Minutes of Committee of Management meetings (other than confidential items)**

Minutes will be published on the SHA website and will be available for inspection at SHA offices. SHA will also advise members and service users, through occasional newsletter articles and information in the reception area, of their entitlement to inspect or obtain copies of Committee of Management minutes and reports, unless there are matters of commercial and personal confidentiality, which cannot reasonably be placed in the public domain.

Where Committee of Management business is of a confidential nature, the business will be conducted in closed session and a separate confidential minute will be produced.

Minutes of business considered in closed session will not be made available under the arrangements previously described.

The circumstances in which Committee of Management business may be deemed to be confidential or commercially sensitive are described in Section 9 of the Policy.

## **6. COMMUNICATION OF INFORMATION**

Information on the above will be made available through a range of channels appropriate to the information in question, including:

- SHA website, which will be maintained in order to ensure that it provides an accessible, accurate and up-to-date information resource covering all of the items listed above.
- Tenants Handbook
- Regular newsletters distributed to SHA tenants and other interested parties.
- In printed form; upon request from SHA's head office.

SHA undertakes to hold meetings with the body of tenants, which provide the opportunity for tenants and owners to ask questions on the Associations business plan, and other published documents, after their publication and distribution.

SHA will ensure that, wherever possible and practicable, information available to the public will be written in Plain English. Every effort will be made to avoid unexplained acronyms, jargon and technical language where Plain English alternatives exist.

In order to overcome barriers caused by sensory impairments, language difficulties, literacy issues and other particular needs, SHA will make information available on request in a variety of information formats and in translation. Policy documents will contain in the English version the following sentence: -

*“SHA will provide this policy on request at no cost, in large print, in Braille, on tape or in other non-written format, and in a variety of languages”.*

In addition, SHA is committed to provide copies of any requested policy in a specified language, provided that a translator can be made available to translate the material.

The most frequently requested translations are:

- Arabic
- Bengali
- Cantonese
- Farsi
- Hindi
- Punjabi
- Urdu

SHA will always endeavour to access a translation/translator service on request and to facilitate this has subscribed to language line.

## **7. ACCESS TO MEETINGS**

### **7.1 ANNUAL GENERAL MEETING**

SHA, in accordance with its constitution, will hold an Annual General Meeting (AGM) to which all members of the Association will be invited.

As stated in 5.3 above, minutes of the Committee of Management are published on the SHA website, and printed copies can be made available on request for individuals without access to the Internet.

## **8. REQUESTS FOR INFORMATION**

### **8.1 FREEDOM OF INFORMATION**

In addition to the information made publicly available, SHA will comply with requests for information wherever practicable and appropriate, subject to considerations of confidentiality, cost and practicality.

Under the Freedom of Information (Scotland) Act 2002, members of the public can receive information that they request from a Scottish public authority, as defined in the Act, subject to certain exemptions such as the need for the protection of personal data, commercial sensitivity or national security.

Although not bound by the Freedom of Information Act (which does not extend to RSLs), SHA will abide by the spirit of the legislation. In general terms, SHA will respond positively to written requests for information, from whatever source and for whatever reason, unless:

- The request is vexatious (see below);
- The Association has already complied with the request;
- The request is identical or substantially similar to a request previously received from the same individual;
- The information is covered by an exemption from the requirements set out in the Freedom of Information Act, and summarised below.

The Association reserves the right not to comply with vexatious requests. It will have regard to the following principles described in Scottish Ministers' Code of Practice on the Act, should it ever consider that a request could be vexatious:

- SHA is not obliged to comply with a vexatious request;
- SHA will decide whether requests are vexatious;
- Irritation or nuisance caused by the applicant should not, by himself or herself, justify deciding that an application is vexatious;
- SHA will not deem a request for information as vexatious simply to avoid dealing with it;
- SHA will provide justification for its decisions to the applicant, based on clear-cut reasoning.

SHA must be clear about the definition of a "vexatious request".

In cases where such a request is considered vexatious by the recipient of the request, the recipient should always ensure that legal opinion is sought before categorising it as such.

The other main exemptions relevant to SHA are where the information:

- Is otherwise accessible;
- Is intended for future publication (within 12 Weeks of the request being received);
- Is commercially sensitive;
- Is related to investigations in respect of a potential prosecution or civil proceedings;
- Is likely to prejudice the prevention or detection of crime;
- Would be likely to substantially inhibit the free and frank provision of views for the purpose of deliberation;
- Would substantially prejudice the governance of the Association;
- Concerns the operation of immigration controls, civil proceedings or the collection of any tax or duty;
- Relates to the categories of information covered by the Data Protection Act 1998, where disclosure is regulated. In the event of any conflict between the Freedom of Information Act provisions and the Data Protection Act requirements, the Data Protection Act takes precedence;
- Whose disclosure is prohibited under other legislation or any contractual obligation, or would constitute contempt of court.

## 8.2. PROCEDURES FOR RESPONDING TO REQUESTS FOR INFORMATION

The Association will respond to any request for information as soon as possible and within a maximum of 20 working days, unless it is prevented from doing so by the guidelines on Confidentiality as described in this Policy. This timescale is consistent with the Freedom of Information (Scotland) Act 2002. The timescale applies both to requests where information is provided in full, and requests, which are covered by an exemption and are refused; in the event of a refusal, an explanation must be provided.

Information requests, which relate to published material, or matters already deemed to be in the public domain (i.e. all items specified in Section 5 of the Policy) could be approved as a matter of routine.

Information not published can also be made available. Staff members are expected to exercise reasonable judgment in responding to information requests. While the Association's Policy is based on the presumption of making information freely available, staff must also ensure they do not disclose information which would be regarded as confidential or commercially sensitive, as described in this Policy.

If staff members have any doubt about whether ad hoc information requests can be met within the terms of the Policy, they should seek authorization from their departmental manager. Staff should also inform their line manager if they intend to refuse a request for information, explaining the reasons for their view.

### **8.3. CHARGING FOR PROVIDING INFORMATION**

The Association's general policy is not to charge for the copying of documents, which are requested. SHA will not charge for providing copies of any of the information listed in Section 5 of the Policy. However SHA will charge a fee for each Data Protection request requiring a search for information on an individual (see SHA's Data Protection Policy). The fee level shall be notified to the individual or organisation requesting the information in advance of any transaction.

However, for certain general requests, such as copies of archived information or a large volume of material, SHA must also take account of the fact that the staff resources associated with providing information is met by tenants' rents. It reserves the right to charge for the cost of providing information, or to refuse to provide information, in the following circumstances:

- If an information request will absorb significant staff resources either because of the nature of the request, or if copy material is requested with a frequency which affects the Association's ability to manage its day-to-day business;
- If the person requesting information is not a SHA tenant or service user. For example, the Association receives a high number of requests from students seeking information for research purposes, and is not always able to meet such requests without compromising service standards for tenants.

In setting charges, SHA will have regard to regulations issued by Scottish ministers.

SHA may also decide to allow the person who has asked for information to view it at its offices, but without providing copies.

The policy on charging will be reviewed in the light of experience, and in light of further guidance issued on the Freedom of Information (Scotland) Act 2002.

### **8.4. REQUESTS FOR INFORMATION FROM THE MEDIA**

As a matter of policy, SHA will respond openly to requests for information from the media. However, in order to manage the release of information and to ensure that the release is consistent with SHA's interests, a set of procedures has been drawn up. These procedures authorise designated persons only to speak to the media. Any request from the media for information should be dealt with in accordance with these procedures and referred to the designated persons.

## **9. CONFIDENTIALITY**

### **9.1 INFORMATION REGARDED AS CONFIDENTIAL**

SHA, while fully committed to the principles of openness and accountability, also recognises the need, and in some cases the statutory duty, to maintain confidentiality in respect of certain information and activities.

In general terms, the following information will be regarded as confidential:

- Personal information held about individuals (Committee of Management members, tenants and other customers), subject to the right of the individuals concerned to have access to the information held on them;
- Personal information held about members of staff relating to their employment, such as selection, remuneration, or any grievance and disciplinary action;
- Matters relating to the business of SHA and its subsidiaries that are defined as commercially sensitive (see below);
- Matters related to legal disputes or actions concerning the Association;
- Matters relating to the business of SHA's and its subsidiaries' funders, partners and contractors and other third parties with which SHA has or may have a business or commercial relationship, which have been provided to SHA in confidence;
- Items deemed on their individual merits to be confidential.

SHA will apply the following definition of commercially sensitive information, as produced by the Cabinet Office:

*"... information that has an intrinsic commercial value where the value depends upon its confidentiality being maintained, or where although it may not have an intrinsic commercial value, its disclosure might unreasonably disadvantage the organisation, or person to whom it relates, in the conduct of their lawful business, commercial, financial or professional affairs."*

## 9.2 SAFEGUARDING CONFIDENTIAL INFORMATION

In the interests of clarity, all papers prepared for consideration by the Committee of Management and its committees, which meet the criteria referred to above, will be marked as CONFIDENTIAL. As an additional safeguard, no names, addresses or other details, which would allow individuals concerned to be identified would be given in these papers. Confidential reports will be circulated to Committee of Management members under separate cover, and will be made available to staff on a 'Need to Know' basis only. Agendas will be organized to allow all confidential items to be considered at one point in the meeting, so that staff members and others not entitled to be party to the consideration of the matter can leave the room. Committee of Management discussions on these items will be recorded in a confidential minute, which will not form part of the publicly available record of the meeting.

Neither staff nor Committee of Management members should pass on confidential information to people who have no need or right to know it. All requests for information, which is covered by the above criteria, will be refused, with an explanation to the person or individual requesting the information as to why it cannot be provided. The timescale for responding to such requests is the same as that required for requests to which the organisation responds positively, i.e. 20 working days.

Where Committee of Management members receive an enquiry from a tenant or other customer, they should advise the person to contact the appropriate member of staff rather than dealing with the enquiry themselves. Confidential information must not be used for personal gain or benefit, nor passed to others who might use it in such a way.

Confidentiality has to allow for the exceptional circumstances where the law requires disclosure, or to safeguard individuals. The following exceptions will apply in relation to the disclosure of personal information:

- Where personal information is requested by the individual concerned, in circumstances covered by data protection legislation and SHA's data protection policy (see section 9.3).
- Where an individual has complained or appealed to the Association and a personal representation is being made to the relevant Committee as the final stage in the complaints or appeals procedure.
- Where the Association has a legal obligation to provide information to a third party, for example under a court order.
- Where information is requested by the police or other third party, covered by local protocols on sharing information.
- Where information is requested for the purposes of providing a reference.
- Where the individual concerned is deemed to be at risk or in need of care or support, and where the disclosure of information to relatives or other professionals is necessary to protect the individual.
- Where a Committee of Management member or employee has a serious concern about the wrongdoing or improper conduct within the organisation, and cannot raise it without breaching the guidelines (See SHA's Whistle blowing policy)

### **9.3. DATA PROTECTION**

SHA will comply with the Data Protection Act 1998, including any subsequent related legislation and all associated guidance, which regulate the use of personal data.

The Data Protection Act 1998:

- Requires those who record and use personal information to be open about their use of that information, and to observe sound practices about how the information is handled;
- Provides rights to individuals in relation to personal data or information held about them on computer and in most manual systems.

SHA has a policy on data protection, which sets out how the organization will meet the requirements of the legislation and observe best practice in data protection.

### **9.4. BREACHES OF CONFIDENTIALITY**

Breaches of this Confidentiality policy, whether inadvertent or deliberate, may, and in serious cases will, result:

- In the case of staff, in disciplinary action, in accordance with disciplinary procedures;
- In the case of Committee of Management members, in investigation and possible action under the Association's Code of Conduct for Committee of Management Members.

## **10. POLICY REVIEW**

SHA will review this policy every 3 years. More frequent reviews will be considered if, for example, there is need to respond to new legislation/policy guidance. Reviews will consider legislative, performance standard and good practice changes, and the experience of using this policy.

A summary of this policy will be published by SHA and will be displayed in SHA's reception area.

## **11. CUSTOMER SERVICE**

### **11.1 CONFIDENTIALITY**

All information given by customers in relation to this Policy will be treated as confidential and will not be discussed with third parties without their permission. SHA will comply with the requirements of the Freedom of Information Act 2002 and the Data Protection Act 1998 in this regard.

### **11.2 CUSTOMER SATISFACTION**

SHA is committed to a high level of customer satisfaction in the delivery of this Policy, seeking continuous improvement. Satisfaction with the full range of services provided by SHA will be measured regularly, including the effectiveness of the objectives of this Policy, and results will be disseminated to tenants and other service users.

In addition, SHA will carry out on-going customer satisfaction surveys into the effectiveness of the objectives of this Policy.

### **11.3. COMPLAINTS**

Our aim is to get it right first time, however, SHA has published its own Complaints Procedure. The procedure can be used where there is dissatisfaction with this policy or its operation. The Complaints Procedure is available as a separate document from SHA offices and, as with all our policies, can be made available on tape, in Braille, in large print or in translation.

## **12. LINKS WITH OTHER POLICIES**

### **OTHER SHA POLICIES**

The Openness and Confidentiality Policy should be read in relation to the following policies and other documents:

- Standing Orders
- Code of Conduct for Committee of Management Members
- Code of Conduct for Staff and Disciplinary procedures

- Whistle blowing Policy
- Data Protection Policy (see section 9.3)
- Elected Members Protocol.