

# **MEMORANDUM OF UNDERSTANDING IN RELATION TO LEGACY PROSECUTIONS, COMPLAINTS, OMBUDSMAN INVESTIGATIONS CONCERNING THE REGISTRATION OF HOUSES IN MULTIPLE OCCUPATION**

## **Purpose**

- 1.1 The purpose of this document is to clarify the roles and responsibilities between the Northern Ireland Housing Executive ('NIHE') and Belfast City Council ('BCC'), as the lead Council for the Northern Ireland HMO Service, in respect of the management and processing of legacy prosecutions, formal complaints and complaints to the Public Services Ombudsman for Northern Ireland (Ombudsman) where the complaint relates, either wholly or in part, to actions taken by NIHE prior to the commencement of the Houses of Multiple Occupation Act (Northern Ireland) 2016 ("the 2016 Act") on 1 April 2019.
- 1.2 The relevant council is the council for the area within which the HMO is situated.

## **Enforcement Action**

- 2.1 It is acknowledged that on 1 April 2019 there will be a number of enforcement cases in respect of alleged offences under the Housing (Northern Ireland) Order 1992 which have not reached a conclusion.
- 2.2 By virtue of Article 3 of the Houses in Multiple Occupation (Commencement and Transitional Provisions) Order (Northern Ireland) 2019, a house in multiple occupation that has been registered immediately before 1 April 2019, in accordance with a registration scheme under Article 75B of the Housing (Northern Ireland) Order 1992, shall be treated for all purposes of the Houses in Multiple Occupation Act (Northern Ireland) 2016 as having been issued with a licence under section 7 of that Act. In light of this provision, the parties agree that all pending enforcement cases and investigations shall be transferred to the relevant council on 1 April 2019.
- 2.3 BCC Legal Services shall take over conduct of any extant prosecution cases on 1 April 2019 unless otherwise agreed in advance.
- 2.4 BCC shall be responsible for any costs, fees or other monies incurred in relation to those prosecution cases for which it takes over conduct save for any legal fees incurred prior to 1 April 2019, unless otherwise agreed in advance.
- 2.5 Where BCC has taken over conduct of the prosecution case, any legal fees incurred prior to the 1 April 2019, will be paid by NIHE on receipt of the relevant Bill of Costs and vouching documentation in accordance with the terms of the NIHE third party contract.

## **Formal complaints**

- 3.1 Where a complaint is received by BCC in relation to how NIHE administered the registration scheme prior to 1 April 2019 (the Registration Scheme), BCC shall seek the expressed consent of the complainant to notify NIHE of the complaint or that part of the complaint which relates to its administration of the Registration Scheme. Alternatively, BCC may advise

the complainant to lodge their complaint or part of the complaint, which relates to the administration of the Registration Scheme, directly with NIHE, for investigation.

- 3.2 Where BCC has received such consent, to forward a complaint or part of a complaint to NIHE, which relates to its administration of the Registration Scheme, it shall do so within 2 working days. Any complaint or part of complaint so referred, will be investigated by NIHE.
- 3.3 BCC shall not forward the complaint or that part of the complaint which relates to the administration of the Registration Scheme, including any relevant supporting documentation, to NIHE, unless it has the expressed consent of the complainant.
- 3.4 BCC and the relevant council will cooperate fully where necessary with the NIHE in its investigation of a complaint to the extent that it relates wholly or in part to its administration of the Registration Scheme prior to 1 April 2019 and provide all reasonable assistance in terms of the provision of all relevant information, documentation and access to staff in connection with same.

#### **Ombudsman Cases**

- 4.1 Where a complaint or any part of a complaint is made to the Ombudsman relating to how NIHE administered the Registration Scheme prior to 1 April 2019, NIHE will maintain carriage of that complaint or that part of the complaint. BCC and the relevant council will cooperate fully where necessary with the investigation of that complaint or part of that complaint by NIHE and provide all reasonable assistance in terms of the provision of all relevant information, documentation and access to staff in relation to the subject complaint.
- 4.2 Where a complaint or any part of a complaint relating to how NIHE administered the Registration Scheme prior to 1 April 2019 has been upheld by the Ombudsman, NIHE acknowledges that the making of any recommended consolatory payment or compensation is the responsibility of NIHE to the extent that it relates solely to actions of NIHE prior to 1 April 2019.
- 4.3 Where a complaint or any part of a complaint relating to how BCC and the relevant Council administered the 2016 Act, following 1 April 2019, has been upheld by the Ombudsman, BCC and the relevant Council acknowledge that the making of any recommended consolatory payment or compensation is the responsibility of BCC and the relevant Council to the extent that it relates solely to actions of BCC and the relevant Council following 1 April 2019.

#### **Judicial Review**

- 5.1 NIHE will retain all current judicial review challenges including those that may arise as a result of a decision taken by NIHE prior to 1 April 2019 and for which the time limits for making a leave application remain viable but for which no formal notification has been received by NIHE prior to 1 April 2019.
- 5.2 BCC and the relevant council will provide all reasonable assistance to NIHE, in terms of the provision of all relevant information, documentation and access to staff, to enable its response to and defence of any threatened judicial review challenge or resulting application in connection with same.

## **Removal of Statutory Charge**

- 6.1 NIHE, will on request from an owner of a HMO property, seek to remove Statutory Charges placed on HMO properties, if appropriate, which were registered by NIHE prior to 1 April 2019. NIHE will pay the relevant fee for the removal of such charges.
- 6.2 On receipt of a request to remove a Statutory Charge, NIHE shall request BCC to verify in writing that the charge relates to a HMO property, and that due to expiry of the relevant period the charge should now be removed.

## **Requests for access to personal data and information submitted and received under the General Data Protection Regulation / Data Protection Act 2018, Freedom of Information Act or Environmental Information Regulations 2004**

- 7.1 It is recognised that both NIHE and BCC will have its own information governance protocols and guidelines and these should be adhered to for the purposes of this document.
- 7.2 Between 1 April 2019 and 31 August 2019 all data and/or information relating to or in connection with Registration Scheme applications, renewals and or registrations and held by NIHE, was transferred to BCC for the purposes of administering the 2016 Act.
- 7.3 From 1 April 2019 all access to the Registration Scheme database was removed from NIHE staff with remote access granted and restricted to certain BCC staff pending its electronic transfer on or before 1 November 2019 to a BCC system.
- 7.4 For the avoidance of doubt, NIHE does not hold that data and/or information referred to in 7.2 and 7.3 above within the meaning of the General Data Protection Regulation / Data Protection Act 2018, Freedom of Information Act or Environmental Information Regulations 2004. That data and/or information is now held by BCC.
- 7.5 Where a request is received by NIHE which relates to Registration Scheme applications, renewals and or registrations as mentioned above, NIHE shall advise the applicant that NIHE is no longer responsible for such functions and does not hold the data and/or information requested. Furthermore, NIHE shall advise the applicant that BCC is now responsible for these functions and may hold the data and/or information requested.
- 7.6 Where a request is received by NIHE which relates to Registration Scheme applications, renewals and or registrations, NIHE shall advise the applicant to re-direct their request to BCC; either to the NIHMO unit or the Information Governance Unit ([foi@belfastcity.gov.uk](mailto:foi@belfastcity.gov.uk)).
- 7.7 NIHE shall not forward an applicant's request directly to BCC, unless they have the expressed consent of the applicant concerned, to do so. Where NIHE has received such consent to forward a request to BCC, it shall do so within 2 working days.

Signed \_\_\_\_\_

Siobhan McCauley

Director of Regional Services

For and on behalf of the Northern Ireland Housing  
Executive

Date \_\_\_\_\_

Signed: *Siobhan Toland*

Siobhan Toland

Director of City and Neighbourhood Services

For and on behalf of Belfast City Council as Lead  
Council

Date: 23 April 2020