

Taunton Deane Borough Council

Tenant Services Management Board– 19 March 2012

Social Housing Fraud Consultation

Report of the Tenant Services Development Officer

(This matter is the responsibility of Executive Councillor Jean Adkins)

1. Executive Summary

This report aims to give the Tenant Services Management Board the opportunity to shape Housing Services' response to the Communities and Local Government (CLG) Social Housing Fraud Consultation. The purpose of the consultation is to invite views on whether existing legislation needs to be strengthened and if so how that might be done to reduce the prevalence of tenancy fraud in social housing. The consultation does not aim to remove social landlords' ability to pursue each case as a civil matter, it is designed to explore if they require a wider range of enforcement tools.

2. Introduction to Social Tenancy Fraud

Information from the CLG shows that there are currently 1.8 million households on the waiting list for social housing and another 250,000 social households that are legally defined as overcrowded. It is also estimated that there are at least 50,000 social homes in England being unlawfully occupied. Of all the social housing stock in London 2.5% is unlawfully occupied with 1% of social housing stock everywhere else being unlawfully occupied. The financial cost of this fraud has been estimated at being around £900 million per year.

The higher frequency of unlawful occupation in London is most likely based on the higher difference in social and market rent. It is easier for a tenant to make a substantial profit whilst continuing to pay the social rent to the landlord. In areas where there is less of a profit to be made, unlawful occupation is often due to tenants helping friends and family to access social housing.

To add to the difficulties of combating tenancy fraud there appears to be no such thing as a typical tenancy fraudster or a typical type of property that is involved. However many social landlords have found that if tenancy fraud is detected there are often other types of fraud occurring as well.

3. Tackling Tenancy Fraud within the Existing Law

Unlawful occupation through tenancy fraud can take a number of forms and is divided into either a civil matter or criminal offence.

3a. Civil Matters:-

Subletting

Currently in certain circumstances, social tenants are allowed to take in lodgers or sublet part of their properties, however subletting of the whole property is not allowed. A tenant who has unlawfully sublet the whole of the property remains a tenant until such time as they leave or are evicted as a result of possession proceedings. If the tenant is no longer in living at the address it makes possession easier to obtain.

As subletting is treated similar to the breach of any contract, landlords can apply to a court to solve the problem for example by a possession order. Landlords can recover damages and costs for cases of subletting although the prospects of recovering any damages that are awarded are not very strong.

Key-Selling

Key-selling is less common than subletting and involves the legal tenant severing all ties with a property in return for a lump sum payment. Key-selling also constitutes a breach of contract and landlords can recover possession through a court.

Unauthorised Assignment (including by mutual exchange)

Assignment is the name for the formal legal transfer of the letting agreement from one tenant to another. Following a valid assignment, the new tenant takes on the rights and responsibilities of the previous tenant. Assignment of a tenancy is only possible in certain circumstances.

Unauthorised assignment occurs in the following circumstances:

- If a tenant goes ahead with an exchange without first obtaining the landlords consent, the exchange will be treated as an invalid assignment.
- If the tenant obtains the landlords consent by deception e.g. providing false information, landlords can take action for possession on the basis that there has been a breach of the tenancy agreement and that the assignment is legally ineffective.

Wrongly Claimed Succession

When a social tenant dies, there are certain circumstances in which a spouse or family member can succeed to the tenancy. Some people seek succession to a social home by wrongly claiming to fulfil the necessary criteria. If this occurs a landlord can seek possession as they would against a trespasser after serving a notice to quit.

3b. Criminal Offences:-

Right to buy fraud/right to acquire

This type of fraud involves the tenant providing misleading information when seeking to purchase the property they are renting from their social landlord for example on the length of time they have lived at the property. This type of fraud is illegal and can be dealt with in criminal courts.

Obtaining a Tenancy through False Statement

This is when a tenant knowingly or recklessly made a false statement in order to gain a tenancy. Section 171 of the Housing Act 1996 makes it an offence to provide false information, or knowingly withhold relevant information, in relation to an application for housing accommodation.

3c. Current Penalties:-

For civil matters, the consequences of tenancy fraud are limited to the:

- Loss of the tenancy
- Damages
- Costs

Criminal liability and penalties such as fines or imprisonment are not available within the existing law.

3d. Landlords Method of Detection:-

Landlords currently use a variety of tactics to detect and tackle tenancy fraud. The main ones are:

Dedicated Staff

An increasing number of landlords take the view that employing specialist officers to deal with tenancy fraud is the most effective way of recovering properties.

Tenancy Audits

Many landlords conduct tenancy audits which involves knocking on tenants doors to verify who is living at the property and if it's the right person. Completing a tenancy audit can be very time and resource intensive, so some landlords audit only a proportion of their stock each year or by targeting properties in specific locations.

In order to speed up the audit process, some landlords take a photo of the tenant when the tenancy is issued and keep it on file. When the tenant's home is then audited a simple reference to the file can substantially reduce the amount of time needed to verify that person's identity.

Data Matching

An increasing number of landlords are using data matching to identify fraud. This cross checking of different types of records usually starts by doing an internal match of the various records they keep before going on to use a credit reference agency.

Tip-Offs

Around half of all identified cases of unlawful occupation are said to be detected thanks to information supplied by members of the public. Local residents are often best placed to notice if new neighbours arrive or the old ones move away. While tip offs are an invaluable source of information, they represent only the start of the process that will rely on one of the tools mentioned to verify tenancy fraud and then build a credible case.

Data Sharing Powers

The Data Protection Act 1998 requires organisations to process personal data in a fair and proportionate way and to only share data if strict criteria have been met. Tenancy fraud investigators use a section of the Data Protection Act to obtain data from other organisations, however the act does not force (compel) organisations to supply the personal data when asked. Due to this the tenancy fraud investigators find it difficult to obtain data from organisations and often get an inconsistent or no response.

4. CLG Consultation Questions & TDBC Estate Management Staff Response

When reviewing the questions below please refer to the separate Appendix A to this report.

Q1. Do you agree that a new criminal offence should be created?

Yes, it will be a deterrent for those people considering tenancy fraud and will prompt those committing tenancy fraud to stop.

Q2. What would you consider to be a suitable maximum penalty for a Crown court conviction for tenancy fraud?

6 months imprisonment for Crown court as sentences above this are unlikely to be given for tenancy fraud.

Q3. Do you agree with our core proposal to give a broad definition to 'tenancy fraud'? Which forms should be included?

Yes, a broad definition should be created to include all the forms of tenancy fraud listed in the consultation document.

Q4. Do you agree that restitutionary payments should be introduced and, if so, should they be available in both civil and the criminal court?

Yes and they should be available in both civil and criminal court.

Q5. Should local authorities have the power to prosecute for tenancy fraud?

Yes, but housing associations should be given the power to prosecute as well.

Q6. Do you agree that a mandatory gateway should be introduced?

Yes

Q7. Do you agree that a mandatory gateway should cover banks, building societies and utility companies? Should other data holders be included?

A mandatory gateway should cover those listed above as well as: educational services, social services, council tax departments and Department of Works and Pensions (DWP).

Q8. How should the 'intention to return' be amended? What would be an appropriate period of time for which a tenant could be absent? What would constitute a necessary absence and what would constitute a voluntary absence?

Tenants should not be absent from their property for longer than 8 weeks.

A necessary absence should include: family bereavement, domestic violence, prison, serious illness, and stays in nursing homes.

A voluntary absence should include: extended holidays and living with a partner.

Q9. Should assured tenancies be brought in line with secure tenancies, meaning that status cannot be regained once the whole of the property has been sublet?

Yes, it should be the same for both secure and assured tenancies.

Q10. As a social landlord, which factors would you consider when deciding whether to pursue a case using the criminal rather than civil route, e.g. strength of evidence, length of time the home had been unlawfully occupied, amount of money involved, history of tenant, etc?

All factors would be taken into consideration, however strength of evidence and if other types of fraud are also being committed would be key factors in making a decision.

Q11. As a social landlord, how would the creation of a new criminal offence influence the likelihood of you taking cases of tenancy fraud to court rather than simply accepting a tenant's voluntary termination of their tenancy?

There was a mixed response amongst staff in estate management:

Some staff would be happy with the voluntary termination of the tenancy as the property would be back under TDBC control.

Others would still take the case of tenancy fraud to court to act as a further deterrent and to show that TDBC takes tenancy fraud seriously.

5. Finance Comments

Even though this proposal is only at the consultation stage, there is a potential that TDBC may have to provide extra resources to implement these changes.

6. Legal Comments

This issue has legal implications as it involves criminal and civil proceedings.

7. Community Safety Implications

There are no community safety implications.

8. Partnership Implications

There is a potential for a wide range of partners to be compelled to share information with TDBC.

9. Recommendations

The Tenant Services Management Board is asked to:

- Note the proposals on social housing fraud consultation; and
- Provide their comments on the proposals to shape housing services response to the CLG due on the 4th April 2012.

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Social Housing Fraud Consultation

APPENDIX A

Tenant Services Management Board
19th March 2012

Strengthening Landlords' Powers to Tackle Tenancy Fraud

- Landlords investigating tenancy fraud make two points:
 - The potential legal consequences for a tenant who commits tenancy fraud are inadequate and do not act as a meaningful deterrent; and
 - The lack of access they have to data means that their powers of detection and prosecution are severely limited.
- The Government is concerned that these points contribute to the fact that tens of thousands of social homes are being misused.

Criminal Enforcement

- The Government is considering whether making social housing tenancy fraud a criminal offence is necessary and reasonable.
- Criminal penalties could take the form of a fine, a custodial sentence or both.
- Measures could also be introduced to allow any profits to be confiscated and to be repaid to the landlord (restitutionary payments).
- If created the new criminal offence should be able to be tried in either a Magistrates or a Crown Court with the proposed **maximum** sentences below:
 - Magistrates Court – 6 months imprisonment & a fine of up to £5,000
 - Crown Court – 2 years imprisonment & a fine of up to £50,000

Questions....

- Do you agree that a new criminal offence should be created?
- What would you consider to be a suitable **maximum** penalty for a Crown Court conviction for tenancy fraud?

The Definition of 'Tenancy Fraud'

- o It is being questioned whether a broad definition of tenancy fraud would be appropriate, including at least the main forms listed in the report which are:
 - o subletting the whole property
 - o key selling
 - o unauthorised assignment
 - o wrongly claimed succession

Questions....

- o Do you agree with the core proposal to give a broad definition to 'tenancy fraud?'
- o Which forms should be included?

Allowing Restitutionary Payments to be made to Social Landlords

- The Proceeds of Crime Act can be used to confiscate money made from certain kinds of criminal activity; however this money is given to the state not the person/organisation that was subjected to the criminal activity.
- It is proposed to allow restitutionary payments to be made to the social landlord in whose stock tenancy fraud was committed.
- These payments would allow a landlord to recoup in both civil and criminal cases any money the tenant made misusing the landlord's property.

Questions....

- Do you agree that restitutionary payments should be introduced and;
- If so, should they be available in both civil and criminal court?

Extending Powers of Prosecution

- Local authorities already have the power to bring criminal prosecutions for some activities set out in law and committed in their area such as housing benefit fraud.
- The proposal to extend local authorities' powers would add tenancy fraud to the list of offences.
- It is not proposed to extend this power to housing associations as they are not classified as public sector bodies.

Questions....

- Do you agree that powers of prosecution should be extended in this way?

Compelling Organisations to Share Data with Local Authorities

- Social landlords currently have few powers to obtain the data necessary to detect and tackle tenancy fraud effectively.
- Making tenancy fraud a criminal offence would **not** oblige dataholders to share information.
- Some existing legislation includes 'gateways' which allows information to be disclosed or received for particular purposes.
- There are two types of 'gateways':
 - > Permissive Gateways – creating a discretionary power to disclose or receive data.
 - > Mandatory Gateways – compelling data to be transferred in certain circumstances.

Compelling Organisations to Share Data with Local Authorities

- The Government is considering creating a 'mandatory gateway' to ensure local authorities could access data relevant to their investigation from certain named organisations.
- Under a 'mandatory gateway' organisations are obliged to provide data on request and face a criminal penalty for non compliance.
- It is proposed that as a minimum organisations covered by a mandatory gateway include:
 - Banks
 - Building Societies
 - Utility Companies
- Local authorities already have the power to force data holders to supply data for other matters. Therefore a mandatory gateway for tenancy fraud would be an extension of their powers rather than creating new.

Questions....

- Do you agree that a mandatory gateway should be introduced?
- Do you agree that a mandatory gateway should cover banks, building societies and utility companies?
- Should other data holders be included?

Reviewing the 'Intention to Return'

- Currently a tenant can live away from their property for a substantial period of time and still maintain their tenancy.
- Clarity is needed on when an 'intention to return' can prevent a landlord from gaining possession of a home not being occupied by the tenant.
- Any new rules would seek to differentiate between voluntary and unavoidable or necessary absences such as stays in hospital.

Questions....

- What would constitute a reasonable period of time for a tenant to be absent before a landlord could legitimately seek possession and
- What would constitute valid reasons for a tenant's non-occupancy?

Secure and Assured Tenancies

- When a secure tenant sublets the whole of their property, they lose their secure tenancy status and cannot regain it even when the sub tenancy ends.
- An assured tenancy (such as those provided by housing associations) is lost only for as long as the assured tenant is no longer occupying the property as their only or principle home.
- It is proposed that assured tenancies are brought in line with secure tenancies, meaning that once the whole property has been sublet, the status of secure or assured tenancy cannot be regained.

Questions....

- Do you agree that assured tenancy status should not be able to be regained once the whole of the property has been sublet?

Possible use of New Powers

- The CLG is keen to hear how landlords would use any new powers they were given, especially regarding the frequency with which they would demand data using a mandatory gateway and the number of times they would choose to use criminal rather than civil prosecution.
- As a social landlord, which factors would you consider when deciding whether to pursue a case using the criminal rather than civil route? e.g.
 - Strength of evidence
 - Length of time the property has been unlawfully occupied
 - Amount of money
 - History of tenant

Questions....

- As a social landlord, how would the creation of a new criminal offence influence the likelihood of you taking cases of tenancy fraud to court rather than simply accepting a tenant voluntary termination of their tenancy?