

REPORT TO:	Housing & Community Services Committee	AGENDA ITEM: 7
DATE OF MEETING:	8th March 2012	CATEGORY: DELEGATED
REPORT FROM:	Director of Operations	OPEN
MEMBERS' CONTACT POINT:	Bob Ledger (ext 5775)	DOC:
SUBJECT:	Social Housing Fraud: Consultation	REF:
WARD(S) AFFECTED:	All	TERMS OF REFERENCE: HCS14

1. Recommendation

1.1 That Members:

- a. Note the '*Social Housing Fraud*' consultation document
- b. Consider and agree a response to the 13 consultation questions as detailed in this report for submission to the Department for Communities and Local Government (DCLG) by 4th April 2012.

2. Purpose of Report

- 2.1 To consider the Government's proposals to reduce the prevalence of fraud within the social housing stock.
- 2.2 To agree a response to the thirteen consultation questions as detailed in this report to DCLG by 4th April 2012.

3. Consultation

- 3.1 The DCLG has produced a consultation document to invite views on whether the existing legislation needs to be strengthened, and if so, how it should be done, to reduce the prevalence of tenancy fraud in social housing.
- 3.2 The DCLG states that there are over 1.8 million households on the waiting list for social housing and another 250,000 social households are statutorily overcrowded. It is estimated that there are at least 50,000 social homes in England being unlawfully occupied.
- 3.3 The consultation document states that the problem of tenancy fraud is concentrated in London and states that in the rest of the country it may only affect 1% of the stock. In South Derbyshire no cases of formal subletting or the selling or passing of keys have come to light in recent years. In the last ten years there have been a couple of cases where we, as landlord, have not been formally noted of a death of a tenant and family members have continued to occupy. When these have come to light each case was judged on its merits but use of the criminal law would have inappropriate as a sanction.
- 3.4 Although the term 'unlawful occupation' is commonly used to mean the sub-letting of the whole of the home by the tenant, it also covers other activities such as key-selling

and unauthorised succession. All of which involves someone living in the home that should not be there.

- 3.5 A number of social landlords have increased their efforts to 'crack-down' on tenancy fraud, which has resulted in an increase in the number of social homes being recovered for their proper use.
- 3.6 Most forms of unlawful occupation, including sub-letting are currently civil matters rather than criminal offences. This means that while the 'profit' that can be reaped by abusing a social tenancy can be very lucrative, the legal consequences for breaking the rules are very minor.
- 3.7 In addition to this lack of effective deterrent, tenancy fraud investigators argue that they do not have sufficient investigatory powers meaning that they can only detect a fraction of the homes being unlawfully occupied.
- 3.8 There is no intention to remove social landlords' ability to pursue each case as a civil case, rather, the DCLG wish to explore if they require a wider range of enforcement tools.
- 3.9 The consultation document is divided into 3 main chapters, in which the consultation questions are based. Chapter 1- Extent and nature of the problem; Chapter 2 – Tackling tenancy fraud within the existing law; and, Chapter 3 - Strengthening landlords powers to tackle tenancy fraud.
- 3.10 The main points covered in the '*Social Housing Fraud: Consultation*' document can be found at Appendix A
- 3.11 The consultation is only concerned with the law as it affects England.
- 3.12 Copies of the full consultation document are available at:
<http://www.communities.gov.uk/publications/housing/socialhousingfraud>

4. Proposed SDDC response

- 4.1 Consultees are invited to respond in particular to the following questions. Draft responses are in italics below the question for members to agree or change as appropriate.

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

If the consequence of the fraud were more substantial this may act as more of a deterrent. This Council would therefore support the extension of the remedies available to it in dealing with cases of tenancy fraud.

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

Your suggestion of a maximum custodial sentence of two years and a fine of £50,000 seem appropriate.

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

It is this Council' views that there are different scales of offence. For instance selling the keys to another party is a clear fraud which is inherently different to misleading the landlord on the amount of time a carer lived with the tenant in a succession case. However the effect of both actions is to deprive someone on the housing waiting list in genuine need. Our view is that the definition can be broad to include the (as an example) incorrect succession cases and this can only help to reiterate the point to all that these are serious matters.

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

We agree that they should be available in both courts. Why should the law abiding rent payers pick up the costs of actions to retrieve properties that are illegally occupied?

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

Yes.

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

It follows that if the landlord is given the power to investigate and prosecute in the courts it needs to be given the tools to enable that to be readily done.

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

Yes. The key agencies are other statutory bodies and financial organisations.

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?

Any new guideline should allow for exceptions relating to giving and receiving care, marital breakdown, etc. However as the norm any absences of more than one month should need the consent of the landlord.

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

Yes this anomaly should be corrected.

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 the tenant, etc.? How often do you think you would pursue cases using the criminal rather than civil route?

Our actions in this regard would be extremely rare. We're as much interested in the deterrent value of new rules as their actual implementation value. Although ignorance of the law is no defence there is a distinction between this and where someone has knowingly defrauded the Council. In these cases and the intention has clearly been to personally benefit themselves financially, the Council would seek a criminal conviction.

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?

We would be more inclined to take court action if there was an opportunity to obtain restitutionary payments.

Q12. As a local authority, how many requests for data for matters related to tenancy fraud would you envisage submitting per year, and to what type of organisation would you expect the majority of your requests to be submitted?

Very low numbers. One or two cases a year at most and banks and building societies would be the more likely organisations.

Q13. As a data-holder, what do you believe would be the unit cost of processing a data request?

Most requests can be dealt with and authorised by a manager in under an hour i.e. a cost of less than £100.

4.2 Responses are required by DCLG by the **4th April 2012**.

5. Financial Implications

5.1 None arising directly from this report. .

6. Community Implications

6.1 The consultation document invites views on whether the existing legislation needs to be strengthened and if so, how that might be done to reduce the prevalence of tenancy fraud in social housing.

6.2 There is no intention to remove the social landlords' ability to pursue each case as a civil matter, rather than the wish to explore whether a wider range of enforcement tools is required.

6.4 The Framework contributes to the Council's Corporate Plan objectives of 'Safe and Secure' and 'Value for Money'.

7. Background Papers

7.1 DCLG 'Social Housing Fraud: Consultation' which can be downloaded from <http://www.communities.gov.uk/publications/housing/socialhousingfraud>