



Tenancy Fraud Policy

Approved: 12th October, 2022

CONTENTS

1. INTRODUCTION	1
2. PURPOSE	1
3. WHAT IS TENANCY FRAUD?	1
4.1. Illegal / Unlawful Sub-Letting	2
4.2. Abandonment.....	3
4.3. Obtaining Housing by Deception.....	3
4.4. Unlawful Succession	3
4.5. Key Selling	3
4.6. Right to Buy/Acquire Fraud.....	3
4.7. Benefit Fraud.....	3
5. APPROACH TO TENANCY FRAUD	4
5.1. Prevent	4
5.2. Detect	5
5.3. Investigate.....	5
5.4. Pursue	5
5.5. Publicity	6
6. PROSECUTION.....	6
6.1. The Evidential Test.....	6
6.2. The Public Interest Test.....	7
7. RELATED LEGISLATION.....	7
8. STAFF.....	8
9. CONTINUAL IMPROVEMENT	8
10. REVIEW.....	8

1. INTRODUCTION

Tenancy fraud presents a serious challenge to the Council and its ability to effectively manage and allocate properties. In order to prevent the misuse of the housing stock and ensure that properties are correctly allocated to those most in need, it is recognized that there must be a robust framework in place to tackle fraud wherever and whenever it arises.

2. PURPOSE

This policy sets out the aims and objectives of the Council to ensure that customers reasonably comply with their tenancy obligations, whilst setting out our redress through legal remedies where, following an investigation, reports of tenancy fraud are proven. The Council has a limited number of properties available to let and allocations are prioritised according to housing needs. As a responsible Housing Provider we have a duty to make best use of public resources and ensure our homes are properly managed and are occupied by people legally entitled to live there.

Fundamentally individuals and households who commit tenancy fraud prevent people on the NBBC Homes system from accessing social and affordable housing.

The Council aims to prevent and detect fraud, and the Council will take robust action against anyone found attempting to defraud them. Any tenant who commits tenancy fraud, may lose their tenancy, be ordered to pay the Council any unlawful profit gained by illegally subletting their property and additionally face prosecution in the criminal court.

We will provide information to tenants and stakeholders on how to identify and report concerns relating to tenancy fraud.

3. WHAT IS TENANCY FRAUD?

The term “fraud” is usually used to describe depriving someone of something by deceit, which might either be misuse of funds or other resources, or more complicated crimes like false accounting or the supply of false information.

Fraud was introduced as a general offence and is defined within The Fraud Act 2006. The Act details that a person is guilty of fraud if he commits any of the following:

- Fraud by false representation; that is if a person:
 - (a) dishonestly makes a false representation, and
 - (b) intends, by making the representation:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- Fraud by failing to disclose information; that is if a person:
 - (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
 - (b) intends, by failing to disclose the information:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- Fraud by abuse of position; that is if a person:
 - (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,

- (b) dishonestly abuses that position, and
- (c) intends, by means of the abuse of that position:
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

In addition, the Act introduced new offences in relation to obtaining services dishonestly, possessing, making, and supplying articles for the use in frauds and fraudulent trading applicable to non-corporate traders.

Fraud Act offences will apply to any false application for housing or Right to Buy, but also in any matter where an individual has misrepresented any fact or document to obtain, or attempt to obtain, a property from the Council.

In addition, the Prevention of Social Housing Fraud Act 2013 (POSHFA) specifically created the offence of unlawful subletting and granted robust powers of investigation to Local Authorities. These powers allow the Council to obtain information from financial institutions and utility companies without the tenant's knowledge or permission in not only subletting cases, but any matter where there is an alleged offence under the Fraud Act 2006 as defined above.

In relation to cases of unlawful subletting, POSHFA also gives social landlords authority to apply to courts for an Unlawful Profit Order (UPO) – the Council may apply for any profit made, usually the difference between the rent charged by the Council and the amount charged to the unlawful tenant. UPO's can be applied for via both Civil and Criminal courts.

4. DEFINITIONS

For the purpose of this policy, Tenancy Fraud is defined as:

- Non occupation by the tenant(s) as their only or principal home ie abandonment.
- Wrongly claimed succession.
- Unauthorised assignment of a tenancy including mutual exchange or transfer of a tenancy without permission from the Council.
- 'Key selling' – where the tenant leaves a property and passes the key onto someone else either for a fee or not.
- Fraudulently obtaining a tenancy by misrepresentation of identity or circumstances.
- Unlawful subletting.
- Fraudulent Right to Buy Application.
- Any breach of the Tenancy Agreement held with the Council.

4.1. Illegal / Unlawful Sub-Letting

A tenant moves out and sub-lets their home without the landlord's knowledge or permission. They often continue paying rent for the property directly to the Council, but charge the person they are sub-letting at a much higher rate. It is unlawful and unfair to sublet and profit from a home which we could give to someone legally entitled to live there. Unlawful subletting is a

criminal offence and includes the tenant moving out and leaving relatives in the property too. Tackling unlawful subletting is key to giving social housing to those who are in greater need.

4.2. Abandonment

Not using the property as the principle home is an expressed tenancy condition and failure to do so constitutes tenancy fraud. An example of this is where a tenant moves in with a new partner but holds on to their tenancy as 'insurance' in case the relationship breaks down, or allows siblings or other family members to remain in the property when they leave (see Sub-Letting above).

4.3. Obtaining Housing by Deception

A person is allocated a home by making a false application. Examples of this can include providing false information in their application, not telling the Council they are renting another property, not declaring that they own another property (in this country or abroad) or giving false information about who lives with them.

4.4. Unlawful Succession

Someone wrongly claiming succession may occur when a tenant dies and someone, who is not entitled to, tries to take over the tenancy. For example, they might say they lived in the property with the tenant before they died, when in fact they were living elsewhere. The Council's Tenancy Agreement and the Succession Policy clarify contractual and statutory considerations when a tenant dies.

4.5. Key Selling

When the tenant of the property is paid to pass their keys to another person and in return receive a one-off payment. The original tenant then does not occupy the property and has effectively miss sold it to another person. The tenant in this scenario should hand the keys back to the Council and on occasions we may support a targeted key amnesty.

4.6. Right to Buy/Acquire Fraud

When someone applies to buy their social rented home at a discounted price and:

Provides false information

Have unlawfully applied to purchase where the property has been subject to tenancy fraud

Have entered into an agreement with a third party to buy the property on their behalf for a cash incentive

4.7. Benefit Fraud

When somebody knowingly, or dishonestly, receives benefit when they are not entitled to it. Some typical examples of this are when somebody fails to correctly declare their income and / or capital savings, fails to report a change in their circumstances, gives false information in relation to their claim.

Staff should also be aware of the following possible issues where investigations will normally be Police led:

CSE (Child Sexual Exploitation)

Human trafficking

Cuckooing

Any concerns regarding Benefit Fraud should be reported in the first instance to the Corporate Fraud officer for investigation.

In respect of other internal policies, there may also be occasions where tenants breach planning regulations as well as their tenancy and it is important that the Council addresses such matters in a cohesive manner for the benefit of the Council and the community.

5. APPROACH TO TENANCY FRAUD

In delivering an effective response to tenancy fraud, the housing service will work in partnership with corporate resources to assist fraud detection and will play a part in the county wide tenancy fraud approach with other social landlords.

- Prevent: apply robust verification to all applications for housing and RTB
- Detect: seek to identify fraudulent activity and encourage stakeholders/tenants/staff to report any concerns
- Investigate: use both proactive and reactive processes to reveal evidence
- Pursue: interview tenants and where appropriate recover the property and/or commence legal proceedings
- Publicise: ensure that our activities are reported both internally and externally to reassure our customers and also to deter other people from abusing our services
- Have trained staff ensure that our employees have the skills required to identify fraud and the support thereafter to investigate

5.1. Prevent

Establishing preventative measures are the most cost effective way of tackling tenancy fraud; the focus of this will be on verifying information provided by the tenant when applying for social housing, when signing up for a new tenancy or when there is a change of circumstances to the household or income details.

The Council will conduct verification checks at various changes in the lifecycle of a tenancy, including:

- Application for social housing.
- Sign up to a new tenancy.
- As part of a tenancy audit.
- Application for assignment, mutual exchange or succession.
- Changes to the tenancy such as household composition or a request for an addition to the tenancy.
- Right to Buy Application.

Photographic evidence will take priority however if this is not readily available original documents will be requested such as:

- Medical card with National Insurance Numbers.
- P45, P60 or payslip.
- Birth, marriage, adoption certificates.
- UK certificate of naturalisation.
- Passport.

- UK photo driving licence.

5.2. Detect

We will regularly monitor information we are legally entitled to access, including shared data from government agencies focusing on tenancy and housing benefit fraud, credit rating and financial agencies, other social landlords and legally constituted anti-fraud partnerships. We will also monitor our own tenancy and property records to identify alerts, trends and issues that may indicate instances of fraud.

5.3. Investigate

We will undertake thorough investigations into any alleged fraudulent activity – these will include credit checks, utility checks, verification of facts with other internal departments, such as benefits, and conduct unannounced visits where appropriate. At all time we will be mindful of relevant legislation such as:

- Data Protection Legislation / Regulations - regulates obtaining, processing and holding data about specific, identifiable persons.
- Human Rights Act 1998.
- Regulatory Investigation Powers Act 2000 (RIPA) and the Investigatory Powers Act 2016.
- Criminal Procedures Investigatory Powers Act 1996 (CIPA)
- Police and Criminal Evidence Act 1984 (PACE)

We will work in partnership where applicable with statutory agencies such as the Police, the Department for Work and Pensions and the Border Agency, and consider Memoranda of Understanding with any other relevant body.

Once all evidence has been gathered, interviews (under caution or not) will be conducted by the most appropriate agency, and Housing Services will ensure that where applicable, notices are served to recover a tenancy to enable it to be allocated to a new household.

5.4. Pursue

Where a tenancy fraud has been detected and thoroughly investigated we will consider the following actions:

- Civil action by the serving of either Notice of Seeking Possession (NOSP), Notice to Quit (NTQ) and Notice of Possession Proceedings (NOPP) or Injunction. The issuing of Notices will be served in order to gain Possession of the property.
- Criminal action, where appropriate, as well as civil recovery of the tenancy.
- Working closely with the relevant agencies to maintain district intelligence.

Before taking any action, the Council will undertake a proportionality assessment to determine whether it is reasonable to take such action, and will consider the impact and vulnerability of the customer as well as give consideration to any other related policies.

5.5. Publicity

We will provide accessible information explaining what tenancy fraud is and how to report it in our tenant's handbook, leaflets, newsletter and website. The Council will produce articles in our tenants' newsletters to inform regarding reporting and any recovery of properties and/or prosecutions

The Council will publish any successful action internally to demonstrate to staff our commitment to the protection of our housing stock, and encourage others to be aware of tenancy fraud and consider press releases when appropriate.

We will also use other publicity campaigns to give advice and information to our residents.

It should also be noted that those convicted for tenancy fraud may be excluded from the housing register and Possession Proceedings will be instigated if a tenancy agreement is already in force.

6. PROSECUTION

The Council will use discretion in deciding whether to initiate a prosecution. Other approaches to enforcement can sometimes promote compliance with legislation more effectively. However, where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may be appropriate.

Each case will be treated as unique and considered on its own facts and merits with due consideration to the Equality Act 2010 and the Human Rights Act 1998. All the circumstances surrounding the case will be considered including the social benefits and costs associated with bringing the matter to the attention of the Courts.

The prosecution of offenders will be used judiciously but, without hesitation, against those businesses or individuals where the law is broken and the health, safety, well-being or amenity of the public, employees and consumers are subject to serious risk.

Legal advice will be taken to ensure that only those cases presenting a realistic prospect of conviction will be pursued. The Council will have due regard to the availability of any defences and to any explanation, apology or other issue referred to by the suspect by way of mitigation.

The decision to prosecute will take into account the criteria set down in the Code for Crown Prosecutors, issued by the Crown Prosecution Service. Both stages of the 'Full Code Test' as set out in the Code for Crown prosecutors will be applied as set out below:

6.1. The Evidential Test

There must be sufficient evidence to provide a realistic prospect of conviction and the evidence must be admissible and reliable.

In determining the sufficiency of evidence, consideration should be given to the following factors:

- i) Availability of essential evidence;
- ii) Credibility of witnesses – are they likely to be seen as credible witnesses and whether they are likely to be consistent and fail under cross-examination? – are they willing to attend as witnesses? – could they be 'hostile' witnesses?
- iii) Where the case depends in part on admissions or confessions, regard should be had to their admissibility;

- iv) Where two or more defendants are summonsed together, the sufficiency and admissibility of evidence available against each defendant, in the event that separate trials are ordered.

In determining the admissibility of evidence, regard should be given to the requirements of the Police and Criminal Evidence Act 1984 and the Criminal Procedure and Investigations Act 1996 and associated Codes of Practice.

6.2. The Public Interest Test

When satisfied that sufficient evidence is available, consideration must be given to whether the public interest requires a prosecution.

The following considerations should apply:

- i) Seriousness of the offence – the degree of detriment or potential detriment to consumers, employees or the environment. Current public attitudes to the particular breach of law should be considered.
- ii) The age of the offence – less regard will be paid to this if the length of time could be attributable to the defendant themselves, the complexity of the case or the particular characteristics of the offence that have contributed to the delay in its coming to light.
- iii) The age, circumstances or mental state of the offender – less regard to this is given if there is a real possibility of repetition or the offence is of a serious nature. Whether the defendant is likely to be fit enough to attend Court should also be considered.
- iv) The willingness of the offender to prevent a recurrence of the problem. If the circumstances that give rise to the offence have subsequently been rectified and there is little likelihood of a recurrence then the case may be dealt with more appropriately by other means.
- v) The ‘newness’ of the legislation transgressed may be a consideration, especially where the offence is of a technical nature, and future compliance may be obtained by less formal means.
- vi) Important but uncertain legal points that may have to be tested by way of prosecution.

7. RELATED LEGISLATION

- The Housing Act 1985
- The Data Protection Act 2018 – regulates obtaining, processing and holding data about specific, identifiable persons.
- Prevention of Social Housing Fraud Act 2013 (PoSHFA) – provides powers to obtain information which may assist the Council to take possession of a property, pursue unlawful profit and recoup funds.
- Forgery and Counterfeiting Act 1981.
- Human Rights Act 1998.
- Regulatory Investigation Powers Act 2000 (RIPA) and the Investigatory Powers Act 2016.
- Fraud Act 2006.
- Criminal Procedures Investigatory Powers Act 1996 (CIPA).

- Police and Criminal Evidence Act 1984 (PACE).
- Civil Procedure Rules (CPR).

8. STAFF

We will ensure that we employ suitable staff to carry out these service functions within Tenant Services by providing appropriate training and support.

Our housing services contractors will be trained and advised to operate under the same principles applying to staff.

All staff will be given training which will be updated on a periodic basis particularly when changes are made to the current legislations. All staff receive Fraud Awareness training.

Staff will be encouraged to report any suspicions of fraud to their Line Manager who will provide advice, encouragement and feedback throughout the life of an investigation.

9. CONTINUAL IMPROVEMENT

We will continue to work with partner organisations to promote the tackling of tenancy fraud and share best practice to improve our performance.

Training will ongoing for new and existing staff to maintain the momentum. It is also recognised that the Council must use its investigation outcomes to future proof the service.

10. REVIEW

This policy will be reviewed annually, or amended subject to any change in legislation, within three months.