

Consultation on social housing fraud - responses

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

We broadly agree with this proposal as it will give investigating officers a wider range of tools and sanctions in this area.

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

Yes. This may act as a deterrent as well as a penalty.

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

The penalties stated seem to be in line with the sanctions for Housing Benefit and other benefit fraud. Repayment to the landlord is welcomed.

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

Yes as long as this encompasses other specified issues such as long term non-occupation (without permission to do so), giving false information to obtain a social rented home and following criminal prosecution for Housing and other benefit fraud.

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

Yes.

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

Yes as long as the costs of the prosecution are not borne by the local authority unless it chooses to do so. This could result in the HA giving the local authority nomination rights to any property subject to this action.

Do you agree that a mandatory gateway should be introduced?

Yes

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

Yes, investigatory powers are effectively useless unless these are included. Also needs to include employers and GPs, DWP, Inland Revenue, Schools, Child Support Agency, Academic institutions.

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?

It would be reasonable to start possession proceedings after a period of one month following appropriate investigations if there is no valid reason for non-occupancy.

Appropriate reasons for non occupancy: As above plus (landlord informed in all cases) caring for ill relatives, extended holidays abroad, fixed term employment abroad, study away from the home (short term), respite care periods.

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

Yes

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.?

All of the above plus intent, public interest factors (use in areas where this is a major issue), dishonesty test & resources put in to investigation and prosecution

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

Wherever prudent and possible following a judgement made on each individual case taking in to account the above factors.

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?

As an estimate this would be prudent and possible in 20 – 30% of cases based on actions taken over the last couple of years.

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?

100 – 150 per year to banks, employers, GPs, utility companies, DWP, Inland Revenue, Schools, Child Support Agency, Academic institutions.

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

We have no response to make on this.

Other comments:

One of the major barriers to prosecuting housing fraud and recovering homes for (mainly) non-occupation is the ability of the tenant to claim that they had an intention to return and simply move back in. Some

thought needs to be given in this area as the case law tends to facilitate this and therefore legal services and the courts are reluctant to take cases to court and give possession orders or prosecute respectively.

It is often the case that people who have had a property illegally sub let to them (whether they are aware of this or not) often want priority for housing in return for giving evidence. This is because they will potentially lose their home and will not generally be eligible for housing if they are not in priority need. It may be appropriate to be able to offer other incentives rather than a social rented home e.g. financial incentives once a property is repossessed etc.

Incentives for neighbours to give evidence may also be appropriate – financial as above, priority for a move, substantial vetting of incoming tenant.

Consideration also needs to be given to genuinely unwitting victims of social housing fraud. Housing organisations need to be prepared to give advice and assistance and to signpost to other agencies that may be able to do this as appropriate.