

**Notice of meeting of
Decision Session - Cabinet Member for Health, Housing and Adult
Social Services**

To: Councillor Simpson-Laing
Date: Wednesday, 28 March 2012
Time: 4.30 pm
Venue: The Guildhall, York

AGENDA

Notice to Members – Calling In

Members are reminded that, should they wish to call in any item on this agenda, notice must be given to Democracy Support Group by:

10.00 am on Tuesday 27 March 2012 if an item is called in before a decision is taken, or

4.00pm on Friday 30 March 2012 if an item is called in after a decision has been taken.

Items called in will be considered by the Scrutiny Management Committee.

Written representations in respect of items on this agenda should be submitted to Democratic Services by 5pm on **Monday 26 March 2012**.

1. Declarations of Interest

At this point Members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

2. Minutes (Pages 1 - 4)

To approve and sign the minutes of the meeting held on 24 January 2012.

3. Public Participation

At this point in the meeting, members of the public who have registered their wish to speak at the meeting can do so. The deadline for registering is **5pm on Tuesday 27 March 2012**.

Members of the public may register to speak on:

- an item on the agenda;
- an issue within the Cabinet Member's remit;
- an item that has been published on the Information Log for the current session. Information reports are listed at the end of the agenda.

4. Response to Communities and Local Government 'Social Housing Fraud' consultation document (Pages 5 - 38)

The government are consulting on proposals to reduce the prevalence of Fraud within the stock of social housing. The report provides a response to the government's proposals and invites the Cabinet Member to endorse and comment on these proposals

5. Response to Communities and Local Government 'Allocation of accommodation: guidance for local housing authorities in England' (Pages 39 - 52)

The government are consulting on a proposals in respect of statutory guidance to local authorities on the allocation of social housing and proposed regulations designed to improve access to social housing for former and serving armed forces personnel. The report provides a response to the government's proposals and invites the cabinet member to endorse and comment on these proposals.

6. Urgent Business

Any other business which the Chair considers urgent under the Local Government Act 1972

Information Reports

No information reports have been published on the information log for this session.

For more information about any of the following, please contact the Democracy Officer responsible for servicing this meeting.

- Registering to speak
- Written representations
- Business of the meeting
- Any special arrangements
- Copies of reports

Democracy Officers:

Names: Catherine Clarke and Louise Cook (job share)

Contact Details:

- Telephone – (01904) 551031
- E-mail – catherine.clarke@york.gov.uk and louise.cook@york.gov.uk

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Further information about what's being discussed at this meeting

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The majority of councillors are not appointed to the Cabinet (39 out of 47). Any 3 non-Cabinet councillors can 'call-in' an item of business from a published Cabinet (or Cabinet Member Decision Session) agenda. The Cabinet will still discuss the 'called in' business on the published date and will set out its views for consideration by a specially convened Scrutiny Management Committee (SMC). That SMC meeting will then make its recommendations to the next scheduled Cabinet meeting in the following week, where a final decision on the 'called-in' business will be made.

Scrutiny Committees

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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City of York Council

Committee Minutes

MEETING	DECISION SESSION - CABINET MEMBER FOR HEALTH, HOUSING AND ADULT SOCIAL SERVICES
DATE	24 JANUARY 2012
PRESENT	COUNCILLOR SIMPSON-LAING

32. DECLARATIONS OF INTEREST

The Cabinet Member was invited to declare at this point in the meeting any personal or prejudicial interests she might have in the business on the agenda.

No interests were declared.

33. MINUTES

RESOLVED: That the minutes of the last Decision Session of the Cabinet Member for Health, Housing and Adult Social Services held on 20 December 2011, be approved and signed as a correct record.

34. PUBLIC PARTICIPATION

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

35. THE AFFORDABLE HOMES FRAMEWORK AND PROGRAMME 2011-15: OPPORTUNITIES AND CHALLENGES

The Cabinet Member considered a report that advised her of the framework under which the Affordable Homes Programme 2011-15 had been agreed by the Homes and Communities Agency.

Officers outlined the opportunities and challenges the Framework brings for affordable housing delivery in York and gave details of the Affordable Homes Programme 2011-15.

Officers discussed the impact of the Affordable Rent model on homes managed by housing associations in York and the potential changes to the council's affordable housing policy on private developments.

The Cabinet Member recommended option 4 and stated that properties in York must be affordable for citizens to rent.

RESOLVED:

- (i) That the introduction of the national Affordable Homes funding framework be noted.
- (ii) That the impact of the Affordable Rent model on existing and new housing association homes in the city be noted.
- (iii) That the investment in new affordable housing in York by housing associations during 2011-15 be welcomed.
- (iv) That option 4 to make changes to the affordable housing policy be noted in particular:
 - Existing S106 and lease agreements, stipulate no change to current policy for social rented homes to remain on re-let as social rented.
 - New S106 and lease agreements, stipulate that Affordable Rent levels are capped at no more than 60% of market rents for one bedroom homes and 55% of market rents for two, three and four bedroom homes.

Reason: To give a clear and consistently applied policy steer so that housing associations, developers, the Homes and Communities Agency, council officers and other interested parties have clarity on the council's policies regarding the Affordable Rent model and its application in York especially on S106 developments and on schemes developed on council owned land.

36. A REVISED REGULATORY FRAMEWORK FOR SOCIAL HOUSING IN ENGLAND FROM APRIL 2012

The Cabinet Member consider a report that outlined the proposed changes to the Tenant Services Authority's (TSA) published consultation document on a revised regulatory framework for social housing in England.

Officers gave an update and asked the Cabinet Member to approve the proposed response to the consultation document.

The Cabinet Member noted and thanked officers for the work they had done on this and for attending the Residents Federation.

RESOLVED: That option 1 be agreed:

To submit the letter at Annex 1, to ensure CYC's consultation response is considered prior to the new social housing regulator's approach being finalised.

Reason: To ensure CYC's consultation response is considered prior to the new social housing regulator's approach being finalised.

Cllr Simpson-Laing, Cabinet Member
[The meeting started at 4.30 pm and finished at 4.53 pm].



**Decision Session: Cabinet Member for
Health, Housing and Adult Social Services**

28 March 2012

Report of the Assistant Director of Housing and Public Protection

**Response to Communities and Local Government 'Social Housing
Fraud' consultation document**

Summary

1. The government are consulting on proposals to reduce the prevalence of Fraud within the stock of social housing. The report provides a response to the government's proposals and invites the cabinet member to endorse and comment on these proposals

Background

2. This consultation is aimed primarily at Local Authorities. Housing Associations, social housing tenants, social tenants and organisations holding data that may be relevant on tenancy fraud situations.
3. The consultation poses 13 questions around strengthening landlords' powers to tackle tenancy fraud. It is specifically interested in views about creating a new criminal offence for tenancy fraud
4. The document suggests that the incidents of tenancy fraud in social housing outside of London is estimated at least 1% of the stock. Based on these estimates it could be argued that there are in the region of 80 properties which could be affected in the City's council stock.
5. With more than 3,000 applicants on the waiting list the authority needs to insure that it is vigorously taking action against perpetrators of housing fraud.
6. The consultation period is 11th January 2012 to 5 pm on 4th April 2012.

Consultation

7. In preparing this response there has been consultation within the housing department, views have been sought from Veritau (internal auditors) who have been working closely with estate managers to uncover housing fraud within the council stock.

Options

8. Option 1:

To submit 1 response contained in appendix 1

9. Option 2:

To suggest amendments to the proposed response.

Analysis

Option 1

10. The responses detailed in option 1 takes account of the views of departments and staff currently engaged in tackling social housing fraud as well as other related fraud activities. It also takes account of the wider duties, responsibilities and strategies of Housing Services as well as the Council.
11. The current work undertaken in this area is fraught with many issues which can stifle successful actions and positive outcomes. These range from the reluctance of incumbent occupants and neighbours to become involved in legal proceedings with no real benefit to them to the inability to access solid corroborative evidence from other organisations which support legal action which can often be costly, especially if challenged.
12. Any measure which support this process or act as a deterrent are to be welcomed.

Council Plan

13. The outcome of this consultation document will affect the tools available to free up housing stock that is being sub-let fraudulently

or not occupied so that it is available for individuals and families who have been assessed as being in housing need. Specifically *'Addressing housing need to ensure that vulnerable people have supply to meet their needs'*.

Implications

14. **Financial** Legal actions can be expensive especially where defended. The Council may be able to recover sums via restitutionary payments.
15. **Human Resources (HR)** None
16. **Equalities** Any changes to the approach taken to tackle housing fraud as a result of any government changes will be subject to a equalities impact assessment.
17. **Legal** None
18. **Crime and Disorder** None
19. **Information Technology (IT)** None
20. **Property** None
21. **Other** None

Risk Management

22. This is a consultation document therefore there are no known risks

Recommendations

23. The Cabinet Member is asked to consider: the detailed response in Appendix 1 and agree to submission.

Reason: To allow officers to submit a response to the government's consultation document.

Contact Details

Author:

Denis Southall
Housing Landlord Manager
Communities &
Neighbourhoods
Tel No. 01904 551298

Chief Officer Responsible for the report:

Steve Waddington
Assistant Director of Housing and Public
Protection

**Report
Approved**

 y

Date 8 March 12

Wards Affected: *List wards or tick box to indicate all*

All

 x

For further information please contact the author of the report

Background Papers:

Social Housing Fraud Consultation

Annexes:

Annex 1: Response to consultation document

Annex 2: Social Housing Fraud Consultation

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.

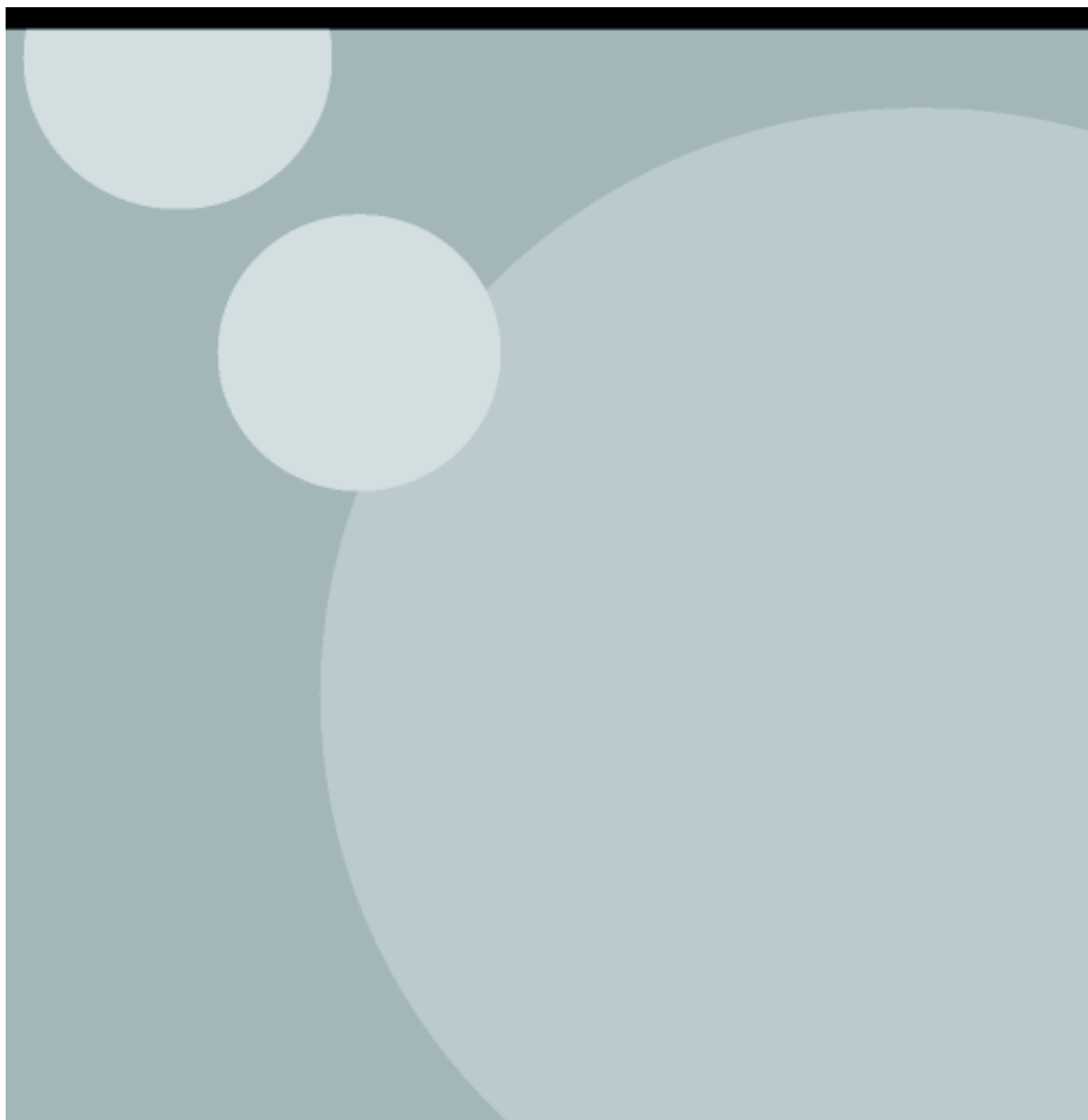
Incentives for neighbours to give evidence may also be appropriate – financial as above, priority for a move, substantial vetting of incoming tenant.

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.

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Social Housing Fraud Consultation



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Social Housing Fraud Consultation

January 2012
Department for Communities and Local Government

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Ministerial Foreword

Social housing is an extremely valuable asset. It provides millions of people with a stable, low cost home to help them get on with their lives. For those same reasons it is also in much demand. With 1.8m households on the waiting list, it is vital not only that each social home goes to a household who needs it, but also that it continues to be occupied by the household to whom it was given.

Unfortunately, a small minority of tenants try to cheat the system. Whether it be through subletting a home they have been allocated, often making a large profit in the process, or lying about their circumstances to get an allocation in the first place, their abuse of social housing not only deprives of a settled home those in genuine need who play by the rules, it also comes at a considerable cost to the taxpayer. The National Fraud Authority estimates that tenancy fraud costs around £900m per year. Replacing the social homes that are being unlawfully occupied – to house those who have effectively been displaced by tenancy fraudsters – would cost several billion pounds.

In recent years, many social landlords have stepped up their efforts to tackle fraud in their stock. Our investment of £20m has led to an increase in the number of homes being recovered, but there is still a long way to go. More landlords need to wake up to the problem, and central Government needs to play its part too by ensuring landlords have the powers they need to detect and prosecute fraudsters. At the moment, the incentive to a tenant to cheat is much greater than both the risk of detection and the penalty incurred. This cannot continue.

These proposals are about fairness. I want to make clear to anyone choosing to cheat that they will be found out and can be punished as a criminal. I also want to clear the obstacles that discourage landlords from taking action, giving them the powers they need and closing the legal loopholes that allow those who abuse their tenancies to keep them.

I am determined that social landlords should be able to make best use of their stock in a way which best meets the needs of their local area. Cutting down on fraud is a key part of ensuring this happens.



Rt Hon Grant Shapps MP
Minister for Housing and Local Government

The consultation process and how to respond

Scope of the Consultation

Topic of this consultation:	Social housing fraud.
Scope of this consultation:	This paper seeks views on Government proposals to reduce the prevalence of fraud within the stock of social housing.
Geographical scope:	The scope of this consultation is limited to England. Regulation of social housing is a devolved matter in Wales and the Department for Communities and Local Government will continue to consult the Welsh Government as it develops the proposals.
Impact Assessment:	An impact assessment will be published shortly.

Basic Information

To:	The consultation is aimed at anyone who might be affected by these proposals. We are especially keen to hear the views of local authorities (regardless of whether they own stock), housing associations, social tenants and organisations holding data that may be relevant to tenancy fraud situations.
Body responsible for the consultation:	The consultation is being run by the Affordable Housing, Management & Standards Division within the Department for Communities and Local Government.
Duration:	This consultation will run for 12 weeks from Wednesday 11th January 2012 to 5pm on 4th April 2012.
Enquiries:	For enquiries, please contact: Graham.knapper@communities.gsi.gov.uk Tel. 0303 444 3667
How to respond:	By email to: socialhousingfraud@communities.gsi.gov.uk Or by post to: Social Housing Fraud Consultation Department for Communities and Local Government Zone 1/J9, Eland House Bressenden Place London. SW1E 5DU.

After the consultation:	A summary of the responses to consultation will be published on the Department's website within three months of the end of the consultation period.
Compliance with the Code of Practice on Consultation:	The consultation period has been set at the standard twelve weeks.

Introduction

1. At a time when there are 1.8m households on the waiting list for social housing and another 250,000 social households are statutorily overcrowded, it is conservatively estimated that there are at least 50,000 social homes in England being unlawfully occupied¹. Recent work has suggested that the number could be significantly higher than this².
2. While the term ‘unlawful occupation’ is most commonly taken to mean the subletting of the whole of a home by the tenant³, it also covers other activities such as key-selling (where the tenant leaves the property and passes on the keys in return for a one-off lump sum payment) and unauthorised succession (where someone misrepresents their circumstances in order to qualify to succeed to the tenancy following the previous tenant’s death). Each case involves someone living in the home who should not be there.
3. Many social landlords have recently stepped up their efforts to crack down on tenancy fraud; this has resulted in an increase in the number of social homes being recovered for their proper use. Feedback from landlords has shown clearly that the problem is not just confined to London and other big cities, and it is an issue for both local authorities and housing associations.
4. In spite of the encouraging progress that has been made, it is apparent that further, stronger measures need to be considered.
5. Most forms of unlawful occupation, including subletting, are civil matters rather than criminal offences. This means that while the profit that can be reaped by abusing a social tenancy can be extremely lucrative, the legal consequences for those breaking the rules tend to be relatively minor – in most proven cases the legal tenant is simply required to give back the keys to a property in which they do not live. In addition to this lack of an 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.

¹ “Protecting the Public Purse 2010 – Fighting fraud against local government and local taxpayers” Audit Commission, October 2010

² <http://www.experian.co.uk/assets/identity-and-fraud/social-housing-tenancy-press-release.pdf>

³ It should be noted that the taking in of lodgers and subletting part of a social home is allowed in certain circumstances. Page 29 of the following guidance provides further details on this: <http://www.communities.gov.uk/documents/housing/pdf/1396431.pdf>

6. The purpose of this consultation is therefore 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. Importantly, we do not intend to remove social landlords' ability to pursue each case as a civil matter; rather, we wish to explore if they require a wider range of enforcement tools.
7. The extent of the problem is discussed in chapter one, the existing law in chapter two and the proposals for dealing with the problem in chapter three.
8. The consultation is aimed at anyone who might be affected by these proposals. We are especially keen to hear the views of local authorities (regardless of whether they own stock), housing associations, social tenants and organisations holding data that may be relevant to tenancy fraud situations.
9. This paper is concerned only with the law as it affects England.
10. This consultation is conducted in line with the Code of Practice on Consultation and falls within the scope of the Code.

Chapter 1

Extent and nature of the problem

11. The Audit Commission has estimated that there are at least 50,000 unlawfully occupied social homes in England - 2.5% of stock in London and 1% of stock elsewhere. Since increasing their efforts to reduce tenancy fraud, many London landlords have said that they believe the rate there to be at least 5%. The National Fraud Authority has estimated that tenancy fraud costs around £900m per year. Replacing those unlawfully occupied social homes – to provide homes for those households who have effectively been displaced by tenancy fraudsters - would cost several billion pounds.
12. The reason for the difference in frequency of unlawful occupation between London and the rest of the country is most often attributed to the higher difference in the capital between social rent and market rent. With the former being, on average, less than 50% of the latter, a tenant in London can make a substantial profit by charging market rent to the subtenant while they continue to pay the much lower level of social rent to the landlord. Cases of tenants making in excess of £10,000 per year per property have been uncovered by some London landlords.
13. In areas of the country where there is little difference between the two types of rent, it appears that subletting is less often for profit than in London and more often as a favour to friends or family to help them 'jump the queue'. Some landlords believe that succession fraud is more prevalent than subletting in their stock.

Current rates of recovery

14. Results from social landlords have shown quite clearly that tenancy fraud is not confined to London. While London landlords have, generally, been tackling the problem for a little longer than those elsewhere (some recovering in excess of 100 properties a year), recent grant funding from central Government has encouraged landlords nationwide to address the problem. Despite often being less experienced and having fewer staff dedicated solely to tenancy fraud, some landlords outside London have recovered more than 50 properties each per year and expect that figure to grow as they build their levels of expertise.
15. While no data are collected centrally on the success rates of housing associations, the number of unlawfully occupied local authority-owned homes recovered is recorded. Around 1000 local authority-owned properties were recovered in 2008/09. The figure for 2010/11 was

approximately 1800. A number of landlords have also indicated that the number of voluntary tenancy terminations increased when they began to publicise their crackdowns. These are not included in the above figures.

16. Central Government has also promoted joint working between local authorities and the housing associations in their areas. Often having more resource, experience and expertise, it is not uncommon for a local authority to undertake work in a housing association's stock in return for nomination rights to any properties they recover. In some cases, local authorities have used grant funding given by central Government solely to investigate the stock of the housing associations in their area. In light of the fact that many housing associations have recently increased their commitment to tackling tenancy fraud, it is a reasonable assumption that the number of housing association homes being recovered has increased over the past couple of years.
17. It is important to note that, despite this encouraging upward trend in the rate of recovery, many social landlords believe that they are still merely scratching the surface.

Profiles

18. Feedback from landlords strongly suggests that there is no such thing as a typical tenancy fraudster. An exercise carried out by a landlord in the Midlands, for example, showed that their investigatory work, albeit based around a relatively small number of tenancies, did not have a significantly disproportionate impact on any particular social group. There is also no typical 'recovered' home - while some landlords target high-rise properties, others focus their efforts on family-sized homes or those in central locations.
19. Many landlords have reported that when they uncover tenancy fraud they also uncover other types of fraud. Housing Benefit and Council Tax Single Person Discount fraud appear to be the most common related types, with visa overstays and serious organised crime also having been detected.

Subtenants

20. Although it is often believed that the person who is occupying the home in place of the legal tenant is fully aware of and complicit in the deception, it has been found that in many instances this is not the case. Where a member of the public has answered an advert in the newspaper or gone through a letting agent, there is often a presumption on their part that everything is legitimate, especially when they are charged market rent for the property and have paid a deposit in advance. The first time many of these subtenants are aware that their 'landlord' is in fact the named tenant of a social home is when the

housing provider contacts them during a tenancy audit or following a tip-off from a neighbour.

21. Many of these subtenants are able to provide detailed information about their stay in the property and so are often valuable sources of evidence for the housing provider when seeking to evict the named tenant.
22. Landlords have reported that virtually no subtenants subsequently present themselves to the council as homeless when they leave the property, while feedback has shown that only around 5% of named tenants asked to be rehoused once they have been evicted for tenancy fraud. In many cases, councils refuse to add them to the waiting list as they no longer consider they owe the now ex-tenant the main homelessness duty, deeming that person to have made themselves intentionally homeless.

Chapter 2

Tackling tenancy fraud within the existing law

23. Tenancy fraud takes a number of forms. Below is a list and brief explanation of the main types of tenancy fraud:

Civil matters

Subletting

24. While current law allows, in certain circumstances, social tenants to take in lodgers or sublet part of their properties, subletting the whole of the property is prohibited. This form of tenancy fraud is a civil matter only. In this sense it is no different from any other breach of civil statutory rules or of a contract. As with any other breach of contract, a landlord can apply to the court for a remedy, i.e. possession.

25. 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. However, if they are no longer in occupation then they may lose their status (becoming a common law tenant, i.e. one without statutory protection) which makes possession easier to obtain.

26. A landlord could also recover damages and costs in cases of unlawful subletting. However, the amount of financial compensation would be limited by the fact that rent was still being paid to the landlord at the expected rate, and the prospects for recovery of any damages awarded would not be particularly strong.

Key-selling

27. The practice of key-selling differs from that of subletting in that, in practice if not in law, the legal tenant usually severs all ties with the property in return for a lump-sum payment. While this practice is believed to be less common than subletting, it similarly constitutes a breach of contract and the landlord can recover possession in the same way.

Unauthorised assignment (including by mutual exchange)

28. Assignment is the formal legal transfer of the letting agreement from one tenant to another. The effect of a valid assignment is that, broadly,

the new tenant takes on the rights and responsibilities of the previous tenant.

29. Assignment of a tenancy is only possible in certain circumstances. If there is an unauthorised assignment, e.g. the tenant goes ahead without first obtaining the landlord's consent, the exchange will be treated as an invalid assignment. If the tenant obtains the landlord's 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

30. When a social tenant dies, there are certain circumstances in which a spouse or family member can succeed to the tenancy. While the category of person who can succeed is wider for secure than assured tenancies, for both types there is a requirement that the successor was living with the tenant at the time of the tenant's death (and for certain categories of people for at least a year prior to the tenant's death).
31. Some people seek succession to a social home by virtue of claiming to fulfil the criteria when they were in fact either not residing with the previous tenant for the necessary period of time or do not fall into the category of person entitled to succeed. A landlord can then seek possession as they would against a trespasser after serving a notice to quit. The occupant can defend possession proceedings by claiming that they have succeeded legitimately.

Criminal offences

Right to acquire/Right to buy fraud

32. This type of fraud involves the tenant providing misleading information when seeking to purchase the property they are renting from their social landlord regarding such details as how long they have lived in the property.
33. As a general rule, this type of fraud is illegal and can be dealt with in the criminal courts.
34. It should be remembered that wherever tenancy fraud is undetected, the registered tenant may ultimately attempt to purchase the property under the right to buy or right to acquire and so obtain a significant discount on the price.

Obtaining a tenancy through false statement

35. This is where 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.

Current penalties

36. For civil matters, the consequences of tenancy fraud are limited to the loss of the tenancy, damages and costs, subject to the practical limits on the latter two mentioned above. Criminal liability (and penalties such as fines or imprisonment) is not available in the existing law.
37. Confusion often arises when the media report that a person has been jailed for subletting. In fact, subletting is often linked to types of fraud that are in themselves criminal (e.g. housing benefit fraud), and in such cases criminal penalties can be handed down specifically for that criminal act rather than for the subletting itself.
38. Recently, some social landlords have attempted to pursue instances of subletting as criminal offences using the Fraud Act 2006, but we are not aware that any defended case dealing solely with subletting has been successful. The Fraud Act offences require the accused person to have actively made a false representation, failed to disclose information where there is a legal duty to do so, or dishonestly abused a position which requires him or her to safeguard someone else's financial interests.
39. Although it is conceivable that some cases of tenancy fraud might fall within these provisions, there are very many (likely most) that would not. This is because tenancy fraud can be carried out without positive misrepresentations being made to the landlord, i.e. the tenant is silent on the matter rather than actively telling the landlord they are not doing it; there are no generally-applicable legal duties of disclosure (except in relation to housing benefit), i.e. the tenant is under no obligation to inform the landlord that the tenancy agreement has been breached or, where something is prohibited in statute, that the law has been broken; and the landlord and tenant relationship is not usually seen as one where the tenant has special responsibilities to look after the landlord's financial interests (unlike, for example, a trustee).
40. Therefore, it is the Department's view that there would be significant practical barriers to reliance on these offences to create any specific or general deterrence against tenancy fraud.

Intention to return

41. While it is a condition of both a secure and an assured tenancy that the property must be used as the tenant's only or principal home, case law has established that a tenant can live elsewhere but still retain the tenancy to the property if they can prove they intend to return to it. This

intent can be demonstrated by such means as keeping furniture or other possessions in the home.

42. The courts currently apply a case-by-case approach – a sufficiently long absence will create a presumption that the tenancy has been abandoned, but the tenant can refute this by showing a ‘substantial, formal, outward and visible sign’ of an intention to return within a reasonable time. However, landlords have said that, in practice, the intention to return defence has allowed tenants to be away for years at a time and still retain their tenancy. This in turn can deter landlords from pursuing cases against non-occupying tenants.

Landlords’ methods of detection

43. At present, landlords use a variety of tactics to detect and tackle tenancy fraud. The main ones are:

Dedicated staff

44. An increasing number of landlords take the view that employing specialist officers is the most effective way of recovering properties, although their use is still far from universal. Generally, a dedicated officer should be aiming at recovering between 25 to 30 properties a year, although some officers recover as many as 50. It is often the case that a larger number of homes are recovered in the first year of work, reducing thereafter as there are fewer ‘easy wins’.

Tenancy audits

45. Many landlords conduct tenancy audits, i.e. knocking on tenants’ doors to verify occupation. Doing this can be very time and resource intensive, so most landlords audit only a proportion of their stock each year or adopt a risk-based approach by targeting properties in specific locations.
46. 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 subsequently audited, a simple reference to the file can reduce substantially the amount of time needed to verify that person’s identity.

Data matching

47. An increasing number of landlords are using data matching to identify fraud. Many start by doing an internal match of the various different sets of records they keep before going on to use a credit reference agency. In addition to highlighting cases of a tenant being registered at more than one address, such checks can flag up instances of bank

accounts being registered at multiple addresses and even tenants who have died.

Tip-offs

48. Around half of all identified cases of unlawful occupation are believed 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. Raising awareness via posters, leaflets or adverts in local newspapers can therefore be invaluable.
49. While tip-offs are an invaluable source of information, they represent only the start of a process that will rely on one of the tools mentioned above to verify tenancy fraud and then build a credible case.

Data sharing powers

50. The Data Protection Act 1998 requires organisations to process personal data in a fair and proportionate way. Eight principles govern the handling of personal data and strict criteria need to be met if data is to be shared. Under this Act, data sharing must be fair and lawful.
51. Currently, tenancy fraud investigators use section 35⁴ of the Act to obtain data from other organisations. However, this section does not allow them to *compel* organisations to supply personal data when asked, and there is also no general statutory power to share data on which the requesting body can rely.
52. As a result, many tenancy fraud investigators find it difficult to obtain data from other organisations. Some have commented that getting data can depend on the interpretation of legislation by the individual person handling the request, and as a result there is a lack of consistency of response. Others have commented that some organisations refuse even to consider requests for non-criminal matters.
53. While section 29(3) of the Act can be used for criminal offences, like section 35 it does not require those asked for data to comply with the request.

⁴ Section 35 (2) of the Data Protection Act 1998: Personal data are exempt from the non-disclosure provisions where the disclosure is necessary: a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or b) for the purpose of obtaining legal advice

Chapter 3

Strengthening landlords' powers to tackle tenancy fraud

54. Landlords investigating tenancy fraud make two main points:
- a) the potential legal consequences for a tenant who commits tenancy fraud are inadequate and do not act as a meaningful deterrent; and
 - b) the lack of access they have to data means that their powers of detection and prosecution are severely limited.
55. Parallels are often drawn with housing benefit fraud, where financial penalties and custodial sentences are available to courts and investigators have wide access to data - their powers include being able to compel (rather than just request) third parties such as the suspect's employer, landlord, banks and utility companies to provide reasonable information on receipt of a request from an authorised officer.
56. The Government is concerned that the current legal consequences for tenancy fraudsters and investigatory powers available to social landlords contribute to the fact that tens of thousands of social homes are being misused.
57. Nothing contained in the proposals below would remove a social landlord's ability to prosecute tenancy fraud as a civil matter, rather they would be able to consider what the best enforcement approach is in the context of each particular case.

- **Criminal enforcement**

58. We are considering whether a new criminal offence of social housing tenancy fraud is necessary and proportionate. Criminal penalties could take the form of a fine, or a custodial sentence, or both. In addition, measures could be introduced to allow for any profits to be confiscated and for a restitutionary payment to be made to the landlord.
59. If a new criminal offence were to be created we propose that it should be able to be tried either in the Magistrates Court or in the Crown Court. The maximum sentence the Magistrates Court could impose would be 6 months imprisonment and a fine of £5,000. A Crown court can impose substantially greater penalties. As a starting point we are proposing that a suitable maximum penalty for tenancy fraud might be two years imprisonment and a fine of up to £50,000.

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?

- **Give a broad definition to ‘tenancy fraud’**

60. We are considering whether a broad definition of ‘tenancy fraud’ would be appropriate. We would want to include at least the main forms, e.g. subletting the whole, key-selling and unauthorised assignment. We would welcome views on whether other forms of tenancy fraud should be covered by a new criminal offence and, if so, which ones.

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

- **Allow restitutionary payments to be made to social landlords**

61. Currently, the Proceeds of Crime Act can be used to confiscate money made from certain kinds of criminal activity; however, this money goes back to the state rather than to the person or organisation against whom the offence was committed.

62. We propose allowing restitutionary payments to be made to the social landlord in whose stock tenancy fraud was committed. Payments of this nature would allow a landlord to recoup, in both civil and criminal cases, any money the tenant made using the landlord’s property (independent of any loss to the landlord). Such an order could be made at the discretion of the court trying the offence, and any sum ordered to be paid could be recovered from the defendant as a debt owed to the landlord.

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

- **Extend local authorities’ powers of prosecution to cover tenancy fraud related issues**

63. Local authorities already have the power to bring criminal prosecutions for housing benefit fraud, certain road traffic offences and other offences set out in statute and committed in their area. This proposal would add tenancy fraud to the list of matters for which they have the power to prosecute.

64. We do not think it would be practicable to give the same power to housing associations without raising questions around their possible reclassification from private sector to public sector bodies, although common law gives them the right to bring private prosecutions in respect of criminal offences.

65. In the event that local authorities could prosecute for tenancy fraud matters, it would be possible for them to do so on behalf of housing associations.

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

- **Introduce powers for investigators to compel certain named categories of organisation to comply with local authorities' requests for data**

66. As already indicated, social landlords currently have comparatively few powers to obtain data necessary to detect and tackle tenancy fraud effectively. While criminalisation alone would remove any doubt about the legality of sharing data, it would not *oblige* dataholders to do so.

67. Some existing legislation includes explicit 'gateways' by which information can be disclosed or received for particular purposes. Such gateways may be permissive (creating a discretionary power to disclose or receive data) or mandatory (compelling data to be transferred in certain circumstances). We are considering whether to create a mandatory gateway that would ensure local authorities could access data relevant to their investigations from certain types of named organisation. Organisations obliged to provide data on request would face a criminal penalty for non-compliance. We propose a penalty similar to that currently in place for non-compliance with data requests for housing benefit fraud investigation purposes.

68. As with powers of prosecution, and for the same reclassification reasons, we would not look to give this power to housing associations. However, a local authority would be able to use any new data access powers to investigate potential fraud in a housing association's stock.

69. There are already many examples of joint working throughout the country between the two types of providers. One common arrangement involves a local authority using its resources to investigate a housing association's stock in return for nomination rights to any properties recovered. We envisage joint working arrangements being extended to enable housing associations to benefit from any new powers given to local authorities.

70. While we would welcome views on which categories of organisation should be covered by a mandatory gateway, we propose that it should include, as a minimum, banks, building societies and utility companies. Feedback from landlords has suggested that they hold data that would be important in detecting fraud.⁵

⁵ Data sharing can be mutually beneficial. Defra will shortly be consulting on measures to tackle bad debt in the water industry. Proposed measures include encouraging holders of data on occupancy to share data with water companies to enable them to effectively pursue

71. It is important to note that local authorities already have the power to oblige data-holders to supply data for other matters. Therefore, pursuing this option would not so much be granting a new power as extending the application of an existing one.

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?

- **Review the ‘intention to return’**

72. In order to prevent cases whereby a tenant can live away from the property for a substantial period of time and still maintain their tenancy, we would look to clarify when an ‘intention to return’ can prevent a landlord from gaining possession of a home not being occupied by the tenant.

73. There will clearly be times when a tenant has a very good reason for not living in the property, e.g. a stay in hospital, and any new rules would seek to differentiate between voluntary and unavoidable or necessary absences.

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?

- **Level the playing field for secure and assured tenancies**

74. When a secure or introductory tenant sublets the whole of their property, they necessarily lose their secure or introductory status and cannot regain it even if the sub-tenancy is subsequently ended. However, an assured tenancy is lost only for as long as the assured tenant is no longer occupying the property as their only or principal home.

75. We propose that assured tenancies be brought into line with secure tenancies, meaning that status cannot be regained once the whole of the property has been sublet.

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

76. We are 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 a criminal rather than a civil prosecution. We would also like to hear from holders of data about the costs of processing requests for data.

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?

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 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?

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

Questions

- Q1. Do you agree that a new criminal offence should be created?
- Q2. What would you consider to be a suitable maximum penalty for a Crown court conviction for tenancy fraud?
- Q3. Do you agree with our core proposal to give a broad definition to 'tenancy fraud'? Which forms should be included?
- Q4. Do you agree that restitutionary payments should be introduced and, if so, should they be available in both the civil and the criminal court?
- Q5. Should local authorities have the power to prosecute for tenancy fraud?
- Q6. Do you agree that a mandatory gateway should be introduced?
- Q7. Do you agree that a mandatory gateway should cover banks, building societies and utility companies? Should other data holders be included?
- 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?
- 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?
- 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?
- 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?
- 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?
- Q13. As a data-holder, what do you believe would be the unit cost of processing a data request?

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**Decision Session: Cabinet Member for Health,
Housing and Adult Social Services**

28 March 2012

Report of the Assistant Director of Housing and Public Protection

**Response to Communities and Local Government ‘Allocation of
accommodation: guidance for local housing authorities in England’**

Summary

1. The government are consulting on a proposals in respect of statutory guidance to local authorities on the allocation of social housing and proposed regulations designed to improve access to social housing for former and serving armed forces personnel. The report provides a response to the government’s proposals and invites the cabinet member to endorse and comment on these proposals

Background

2. This consultation is aimed primarily at Local Authorities. Housing Associations, social housing tenants and waiting list applicants, as well as voluntary and community organisations representing tenants and applicants are also expected to have an interest.
3. The consultation poses 16 questions around prioritising service personnel, those wishing to move when under occupying social housing, housing for adopters and fosters and overcrowding and also look to give some priority to those who are either in paid work, actively seeking employment or are contributing towards their community.
4. While on their own these priorities appear minor they must be considered alongside the other demands and restrictions placed upon allocations policies and availability of social housing
5. The consultation period is 5 January 2012 to 5 pm on 30 March 2012.

Consultation

6. In preparing this response there has been consultation with the housing department, views have been sought from CYC Tenants & Leaseholders Open Day, York Homeless Forum and the views of partner organisations of the North Yorkshire Home Choice (NYHC) choice based lettings (CBL) scheme, relevant Local Authority members and Chief Officers.
7. The NYHC Board at a meeting on 22nd February supported a joint response from all NYHC partners, however acknowledged that where individual partners felt it appropriate, individual responses would also be submitted. Scarborough BC intend to submit an individual response
8. The consultation response document is currently with all partner agencies for final comments and ratification. There may be some slight amendments to Appendix 1 as a result of this; a verbal update will be given at the meeting.

Options

9. Option 1 – To submit 1 response in current form NYHC sub region contained in appendix 1
10. Option 2 – To amend the response and submit an individual response from CYC.

Analysis

11. Detailed consultation and consideration has resulted in the response set out in Appendix 1. This looks at the wider issues of housing demand and need in the region and gives a realistic response to the consultation questions.
12. Discussion relating to the main questions around giving priority to former service personnel resulted in the general view that it was felt the current system whereby NYHC offers an open waiting list to all service personnel but where the allocation of property is based on need was the most appropriate.

13. It was also felt that the current system to encourage people to downsize was satisfactory although additional incentives may be beneficial in specific cases.
14. At consultation it was agreed that while it would be beneficial to assist workers and those seeking work into social housing there are significant constraints upon the stock and this may not be practical as it may be detrimental to those who are vulnerable or in significant housing need.

Council Plan

15. The outcome of this consultation document will affect the way housing need is determined in the city and is directly linked to the council's priority to build strong communities. Specifically *'Addressing housing need to ensure that vulnerable people have supply to meet their needs'*.

Implications

16. The implications arising from this report are:
 - **Financial** None
 - **Human Resources (HR)** None
 - **Equalities** Any changes to the NYHC allocations policy as a result of new guidance will require the council to conduct an equalities impact assessment
 - **Legal** None
 - **Crime and Disorder** None
 - **Information Technology (IT)** None
 - **Property** None
 - **Other** None

Risk Management

17. This is a consultation document therefore there are no known risks

Recommendations

18. The Cabinet Member is asked to:
 - Approve options 1 and agree the detailed response in Appendix 1.

Reason: To ensure that CYC views are included within the consultation response to the DCLG

Contact Details

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Chief Officer Responsible for the report:

Steve Waddington
Assistant Director of Housing and Public
Protection

**Report
Approved**



Date 14th March 2012

Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report

Background Papers:

CLG consultation document 'Allocation of accommodation: guidance for local housing authorities in England' Published 5/1/2012

Annexes:

Annex 1 Response to consultation document

Response on behalf of North Yorkshire sub regional Choice Based lettings Board / partners: Ryedale DC, Selby DC, City of York, Scarborough BC, Hambleton BC, Richmondshire BC, Craven DC, Yorkshire Coast Homes, Broadacres Housing Association , Yorkshire Housing.

1. Does your allocation scheme/transfer policy already provide for social tenants who are under-occupying to be given priority?

Current North Yorkshire Home Choice (sub regional Choice Based Letting NYHC) common allocation policy does provide for social tenants under occupying.

NYHC gives gold band to applicants presently under-occupying a home owned by a local authority or housing association that is situated within the partnership area. If they are willing to move to a property with at least two fewer bedrooms and gives silver band to applicants who are presently under-occupying a home owned by a local authority or housing association that is situated within the partnership area. If they are willing to move to a property with at least one less bedroom.

City of York Council has used and will continue to use other incentives to encourage downsizing but do not feel this will have a have a significant effect on releasing properties. Tenants are not actively wanting to downsize in large numbers and even if willing to do so often the want properties that are one bedroom larger than their needs. Other partners do on occasions use incentives. There is concern about the potential increase in demand for smaller properties as the effect of the proposed welfare benefit reforms take hold as this will also encourage people through financial constraints to downsize. The impact of this will vary across the region due to demographics, housing need and available / appropriate housing stock

2. Do you intend to revise your allocation scheme in order to make it easier for under-occupying social tenants to downsize to more appropriately sized accommodation?

NYHC choice based lettings system is transparent and easy to use. Help is available to assist where needed. NYHC does not intend to review the allocation policy for this specific reason of under-occupation

but it may be considered at later date when policy is reviewed. Overall believe NYHC has adequate incentives in place by virtue of banding but may need to look at barriers to down sizing eg low level rent arrears, availability of suitably sized properties

3. If so, what changes to your allocation scheme will you be considering – to make it easier for under-occupying tenants to downsize?

While not specifically looking to amend the policy the consultation highlighted the concerns of agencies and suggested that may need to main stream initiatives such as removals / decorations to encourage downsizing. There was some sympathy towards giving higher priority towards those wishing to downsize but felt unrealistic with all other demands and reasonable preference. It was felt that although the present policy is very generous in terms of prioritising those who are downsizing by two beds, there will need to be a review of what priority we give to those in silver band, as these are likely to be the ones most affected by proposed welfare reforms.

CYC/ NYHC may consider exceptional / individual cases freeing up a very large property (recently had 1 x 6 bedroom property) through use of emergency band to enable a move to their own choice of accommodation. Any future review of the NYHC policy will look at issue which gives customers the opportunity to bid for a property one bedroom above need – important that while this flexibility is important for some people it light of current welfare benefit proposals important that social tenants are aware of financial implications if housing benefit does not meet full rental costs (proposed “bedroom tax’) and who need to move as can not afford rented property.

4. Do you agree that members of the armed forces and former service personnel should not be disqualified on residency grounds? Is 5 years from the date of discharge an appropriate time limit for this restriction? If not, what would be a more appropriate period?

There was significant discussion around this question – largely because people were not clear about the meaning.

North Yorkshire has a large forces presence at Cattterick Garrison, Imphal Barracks and RAF Leeming and the present legislation and guidance already puts significant pressures on the housing authorities. NYHC is an open list – so anyone who is eligible (according to

immigration law, habitual residency test) and not excluded from register as result of arrears or anti-social behaviour can apply for housing but allocations are then made on need. Felt the proposed Housing Act 1996 (additional preference for former Armed Forces Personnel) Regulation 2012 to give ex-service personnel additional preference would be unworkable as put too much pressure on housing stock. Already in Richmondshire DC (where Catterick Garrison is situated) 40% of allocations are made to ex-service personnel or military wives.

Priority on NYHC is given according to need. Anyone is able to join NYHC but allocation of a property depends on need and if all equal in need further tie break taken into account including local connection to the partnership area

There was some recognition that local connection criteria should take account of forces personnel who are from the local area but have been stationed outside of the area so no longer meet the residence criteria. In addition they may no longer have family here (died, moved away) It seems unfair that they cannot qualify for local connection but someone who has been stationed at local barracks (eg Catterick) for 6 months does.

As per national agreement anyone living in barracks in local area is given local connection – subject to general criteria (6 out of 12 months, 3 out of 5 years etc). For NYHC local connection is to the partnership area (primarily North Yorkshire). Being stationed abroad only gives local connection if lived here 6 out of last 12 months, 3 out of 5 years of family connection.

Consultation considered HM Forces should not be treated any differently from other people in housing need. There was significant debate about the injustice of favouring service personnel over other services – nurses, fire personnel . It was felt that it was not reasonable to 'waive' local connection for 5 years as during this time many ex-forces personnel would establish a legitimate connection to an area and so should not be treated differently from anyone else. Felt 12 months is a reasonable amount of time to have local connection following discharge

5 Does the draft guidance provide sufficient clarity on how to implement the new power for housing authorities to set their own allocations qualification criteria? If not, in what areas would more guidance be useful?

Guidance is clear

6. Do you agree that the bedroom standard is an appropriate measure of overcrowding for the purpose of according reasonable preference? If not, what measure do you consider would be more appropriate?

Yes the following guidance is clear. No alternative measure required

The bedroom standard allocates a separate bedroom to each:

married or cohabiting couple

adult aged 21 years or more

pair of adolescents aged 10-20 years of the same sex

pair of children aged under 10 years regardless of sex.

but consultation raised several concerns that require flexibility in particular around considering

- disability
- health and care needs
- what constitutes a bedroom as legally a bedroom can be a room that is also used as a living room eg. dining room and should this be taken into account?
- bedroom size and property layout as the bedroom standard only disregards rooms that are less than 50sqm.
- risk issues around siblings sharing
- Unborn children are not taken into account and do not see any reason to change this.

7. Should this guidance provide advice on how to define 'overcrowding' for the purpose of according additional preference? If so, would an appropriate measure be two bedrooms or more short of the bedroom standard?

No further guidance is needed. If the bedroom standard is not appropriate then existing criteria then would apply statutory guidance for severe overcrowding.

Consultation felt current policy adequate – that is 2 bedroom short would be our severe shortage and go into gold band and 1 bed would be overcrowded and go into silver band . Statutorily overcrowded

would come through Housing Standards and would go into gold. All policies should have written into it exceptions.

8. How does your allocation scheme currently define 'overcrowding' for allocation purposes? Does it, for example, use the bedroom standard, the statutory overcrowding standards in Part 10 of the Housing Act 1985, or another definition? If the last of these, please provide brief details.

Current definition in NYHC policy is similar to bedroom standard (only slight difference with ages of children sharing):

The following assumptions are made on overcrowding:

Each bedroom is assumed to be able to accommodate 2 people

Couples, married couples and civil partners will be expected to share a bedroom.

Single adults aged 21 or over will require their own bedroom.

A person aged 9 - 20 years will require a separate bedroom if they would otherwise have to share with the opposite sex.

A room intended as a bedroom but used for another purpose will still be classified as a bedroom

Discretion can be exercised by staff to adjust the number of bedrooms required if: -

- *The bedrooms in the property are particularly large or small*
- *A child requires their own bedroom due to disability.*
- *An applicant needs a bedroom for a carer or to facilitate specialist medical treatment.*

In cases of joint custody of a child or children, recent case law states that only in exceptional circumstances, such as where children have special needs, will it be reasonable for children who already have an existing home with one parent to be provided with another home to live with the other parent.

In cases where any child has a home elsewhere but chooses to live with another adult (eg sibling) this will be discounted when considering overcrowding

If an applicant with children wishes to apply for a property with the living accommodation at first floor or above, this is acceptable and is seen as a legitimate applicant choice.

Currently use slightly different interpretation of bedroom standard – but only around ages of children sharing.

It was felt there may be reason to adapt NYHC policy as it attempts to combine the bedroom standard and the space standard together but it was felt the statutory overcrowding standards in Part 10 of the Housing Act 1985, to be adequate and no additional guidance was needed for severe overcrowding. Statutorily overcrowded would come through Housing Standards and would go into gold.

Would be better to adopt just the bedroom standard with local discretions.

9. The Government proposes to regulate to require housing authorities to frame their allocation scheme to provide for former service personnel with urgent housing needs to be given additional preference for social housing. Do you agree with this proposal?

No was the overwhelming response from professionals, felt that service personnel should be treated same as other people and that greatest priority should go to those in greatest need, thus protecting the most vulnerable in society. If former service personnel with urgent housing needs were given additional preference for social housing then those others in the same housing need would inadvertently suffer. Social housing is a service which has emerged to address housing need and should not be seen as a reward or entitlement.

Consultation felt that it was important that service personnel received adequate support and help from forces prior to leaving to help secure accommodation.

If this is introduced in policy several questions were raised about when someone served, for how long, reason for discharge, did training count as 'serving'.

The requirement to give former service personnel with urgent housing needs additional preference for social housing seems to contradict the Localism Act and setting your own allocation policy to meet local need.

10. Does your allocation scheme already make use of the flexibilities within the allocation legislation to provide for those who have served in the armed forces to be given greater priority for social housing? If so, how does your scheme provide for this?

No they are not given greater priority but given priority based on their housing need and not by virtue of their given profession.

11. If not, do you intend to take advantage of the flexibilities in the allocation legislation to provide for former members of the armed forces to be given greater priority for social housing? If so, what changes might you be considering?

While there is a great deal of support for MOD and serving personnel and the contribution that bases and personnel make to society and the local economy, there is also a degree of tension in the community which have large forces presence regarding equal opportunities for local residents to access scarce and valuable housing resources . Again it was re-iterated that any policy needs to be fair and equal for all and it was felt that it would be inappropriate that former members of the armed forces to be given greater priority for social housing.

12. Does your allocation scheme already provide for some priority to be given to people who are in work, seeking work, or otherwise contributing to the community? If so, how does your scheme provide for this?

NYHC has good neighbour scheme to enable tenants with no housing need to move (as no cost to authority) thus promoting mobility, encourage mixed communities stable communities and social integration.

Consultation felt that 'those trying to help themselves' should not be discriminated against but also recognised the need to protect the more vulnerable in society.

There was concern that in prioritising workers there may be income criteria which may conflict with some organisations charitable status

13. If not, do you intend to revise your allocation scheme to provide for more priority to be given to people who are in work, seeking work, or otherwise contributing to the community? If so, what changes might you be considering?

It was felt this was very difficult as while social housing should not only be for most vulnerable and disadvantaged in society, there was a great deal of empathy towards giving more priority to people who are in work, seeking work, or otherwise contributing to the community as this is impossible to assess objectively. Poses major concerns about subjective / judgemental aspect of this proposal.

In addition some of those consulted felt that this proposal was contrary to Human Rights and Equalities Act as for some of the people not working is not a lifestyle choice and they should not be discriminated against as result of mental / physical ill health.

Concern in current economic climate about impact of ongoing recession, job losses, welfare benefit changes, possible increase in poverty for some families, increased unemployment and lack of job opportunities to give priority to those working when there are few job prospects.

Housing supply was also discussed as there was concerns that by prioritising those in work, who may have more housing options than others the burden on the already limited numbers of voids may result in back log of preference categories – ie it would push those in more need further down the list. This proposal appears to contradict the principles of flexibility in allocations policies and may encourage those who are high income earners to use Right to Buy.

14. Are there other ways in which housing authorities can frame their allocation scheme to meet the needs of prospective adopters and foster carers?

Across the region we want to encourage and support adoption and fosters but also want to make best use of limited family housing. NYHC currently has the provision for applicants to bid for properties one bedroom size above need – so prospective adopters and fosters can prepare for future household size. Feel this is in line with other couples expecting a child or that . consideration for an extra bedroom should be at the time that they were approved for a particular child. Issue raised that like all other applicants they have other housing options besides social housing so can go and rent a bigger property privately, or purchase with shared ownership etc. Felt foster carers should be given an additional bedroom, but again this should only be when they are approved. It may be that the use of fixed term tenancy for prospective adopters and fosters would be a solution so if the adopters and fosters prove to be unacceptable or cannot cope could end tenancy at review stage. The strengthening of alternative grounds for possession clearly set out in the act may also be advantageous. Perhaps give priority for downsizing again when or if necessary. NYHC would not agree with quotas as not always best use of stock.

15. Does the draft guidance provide sufficient clarity on the extent of flexibilities available to housing authorities when framing their allocation scheme?

Yes provides clarify in current state but NYHC does not agree with all flexibilities and would not wish to be legally bound by them in current format, although further guidance on excluding applicants from the register based on their financial status may be useful.

Drafted by B. Ward on behalf of NYHC 29/2/12

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