

Tonbridge and Malling Borough Council

Social Housing Fraud – consultation response April 2012

Consultation Question
<p>Question 1. Do you agree that a new criminal offence should be created?</p>
<p>Yes. It would assist if the offences are drawn from similar legislation covering Benefit fraud (Under the Social Security Administration Act as well as the Fraud Act). If offences are to be made either way then the ability to have a 3 or 6 month time frame to issue summons from the date the authority became aware of the offence would help (known as a secretary of state certificate). At present, time bars within the housing act prohibit criminal action being taken if the offence took place over a year from the date of offence.</p>
<p>Question 2. What would you consider to be a suitable maximum penalty for a Crown court conviction for tenancy fraud?</p>
<p>As recommended in the consultation document.</p>
<p>Question 3. Do you agree with our core proposal to give a broad definition to 'tenancy fraud'? Which forms should be included?</p>
<p>We agree with the suggested broad definition. However, this does not address abandonment (which would need to be reckless abandonment), and also changes of circumstance. At present, someone who is allocated social housing can purchase a property of their own and rent it out without the need to give up their social tenancy.</p>
<p>Question 4. Do you agree that restitutionary payments should be introduced and, if so, should they be available in both the civil and the criminal court?</p>
<p>Yes both. As with the Proceeds of Crime Act, the burden of proof is on the balance of probability at criminal court so can be applied at both Magistrates and County Court. Processes are in place for assumptions to be made if information not provided</p>

within the Proceeds of Crime Act and it would assist if the assumptions can be reproduced within this proposal. Again these powers will need to be linked with the powers that are given to investigate Proceeds of Crime Act, as without similar powers a financial investigation will fail.

Question 5. Do you agree that powers of prosecution should be extended in this way?

Yes. Local authorities have inbuilt skills through the prosecution of benefit fraud within the Benefit Investigation Teams and Legal Team. However, these skills are likely to be lost between 2013 and 2015 when the Single Fraud Investigation Service moves Benefit investigations away from Local Authorities.

Tonbridge and Malling Borough Council do not have any housing stock but do have a regulatory duty to manage applications for social housing through the housing register. It is through these applications that property can be obtained fraudulently. If a property is obtained legitimately but then is sublet or abandoned, the offence would relate to the Housing Association. If Local Authorities had the power to prosecute we would need the ability to finance this from Housing Associations when dealing with their offences.

There are two reasons why it would be important to prosecute tenancy fraud:

The moral argument

There are currently 1905 households registered for social housing within Tonbridge and Malling. The average waiting time for those who were housed in the last 12 months ranged from 8 to 22 months depending on property size. Recovering properties that have been obtained fraudulently will help to minimise the waiting time for those in genuine need.

The financial argument

The cost of temporary bed and breakfast accommodation in the current year to date totals £60,832.92. Although this is met primarily by Housing Benefit it is nonetheless publicly funded (and with the introduction of Universal Credit, Housing Benefit will be removed from Local Authority payment).

Question 6. Do you agree that a mandatory gateway should be introduced?

Yes this provides clear guidance to lawyers and data protection officers of organisations on what is and isn't allowed.

Question 7. Do you agree that a mandatory gateway should cover banks, building societies and utility companies? Should other data holders be included?

Yes, a mandatory gateway will assist with investigations. This works well within benefit investigations, authorisation is provided by delegated powers through the Chief Executive or 151 Officer, and a database and spreadsheet of access points is maintained. Depending how the Single Fraud Investigation Service affects this database will influence how this sensitive access is controlled.

Further evidence sources to assist will include, employers, HM Revenues and Customs (HMRC), Department for Work Pensions, credit reference data and register of electors.

Employers will hold current addresses. HMRC will provide data on addresses, employment, property owned, and interest bearing bank accounts held. This will also assist in data matching exercises.

DWP data would also assist in investigating tenancy fraud. At present access to the Customer Information System and DWP data held by local authorities is only allowed for benefit purposes, despite fair processing notices which advise that customers' housing applications will be checked against other data within the organisation. Guidance has been provided to restrict the use of DWP data to benefit fraud and administration of Housing and Council Tax benefits only.

Credit reference data although available under Data Protection if mandatory will avoid any challenge.

Access to the Register of Electors is restricted, but if covered by a mandatory gateway, specific access is implied. This will remove any uncertainty over its use.

Question 8. 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?

Within the benefits regulations there are clear time frames when a person can be away from a property - either 13 or 52 weeks depending on the circumstance, and if they intend returning to the property. For example, a person who goes into respite care generally plans to return home, but not if they move into residential care. Best practice is set out within the HB & CTB regulations.

Question 9. Do you agree that assured tenancy status should not be able to be regained once the whole of the property has been sublet?

Yes

Question 10. 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?

Tonbridge and Malling Borough Council is not a social landlord, however if powers to prosecute were granted (including on behalf of Housing Associations) then we would be guided by the Code for Crown Prosecutors, which provides guidance on when to progress a criminal case, taking into account the evidential and public interest test.

There may be a small increase in prosecutions, however the majority will still be taken through civil courts to recover the property or obtained through voluntary means.

The seriousness of the offence would be considered on the basis of gain made from the fraud, public interest, likely deterrent and cost of prosecution against likely sentencing.

Question 11. 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?

Tonbridge and Malling Borough Council are not a social landlord however if powers to prosecute were granted (including on behalf of Housing Associations) then the most serious cases would be considered for criminal court but the offences would be advertised locally to act as a deterrent against people considering subletting, key selling and abandoning their properties.

Obviously there would be cost implications associated with taking cases of tenancy fraud to court, which the Council would only be able to resource on behalf of housing association partners with appropriate financial support from either the housing association

itself or from Government.

Question 12. 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?

Current levels (prior to rolling out any awareness and reporting mechanism) would indicate we have about 5 - 10 case that have been investigated in 2011/12. Each case has required checks with estate agents, MoD, credit reference agencies, and other Council departments. The number of cases investigated may increase once there is more awareness. This authority's location is of a lower risk than other areas.

Question 13. As a data-holder, what do you believe would be the unit cost of processing a data request?

Cost is around £2.72 per request per data source (revenue system one source, benefits another source, credit reference data etc). Based on hourly rate of £41.16 per hour or approximately £0.68p per minute. Requests for information per source take around 4 minutes.