

# Housing and Tenancy Fraud Policy

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## **1. INTRODUCTION**

- 1.1. Tenancy fraud presents a serious challenge to the Council and its ability to effectively manage and allocate properties. In order to prevent the misuse of the housing stock and ensure that properties are correctly allocated to those most in need, it is recognised that the Council must have a robust framework in place to tackle fraud wherever and whenever it arises.
- 1.2. This policy should be read with the Council's Counter Fraud and Anti-Corruption Policy and the Corporate Enforcement Policy.

## **2. SCOPE**

- 2.1. This policy applies to all tenants of the Council's properties and those accessing the housing register and identifies the relevant services which have a key role in the prevention and investigation of all aspects of housing and tenancy fraud.

## **3. PURPOSE**

- 3.1. This policy sets out the aims and objectives of the Council in ensuring that tenants adhere to their tenancy obligations, and the Council's approach where allegations of housing and tenancy fraud are proven. The Council has a limited number of properties available to let and allocations are prioritised according to housing needs. As a responsible Social Housing Provider, the Council has a duty to make the best use of public resources and ensure the Council's homes are properly managed and that they are occupied by people legally entitled to live there.
- 3.2. Individuals and households who commit tenancy or right to buy fraud prevent people on the Gloucestershire Homeseeker Plus System from accessing social and affordable housing. By tackling housing and tenancy fraud the Council aims to maximise the availability of properties and ensure they are available to those individuals who are assessed as being in need of social and affordable housing
- 3.3. The Council has a zero tolerance approach to fraud and employ dedicated fraud investigation officers to prevent, detect and investigate allegations of fraud. Any tenant who commits housing or tenancy fraud may lose their tenancy and may also have to pay the Council any unlawful profit gained. In addition they may face prosecution in the criminal court.

## **4. WHAT IS TENANCY FRAUD?**

- 4.1. The term "fraud" is usually used to describe depriving someone of something by deceit, which might either be misuse of funds or other resources, or more complicated crimes like false accounting or the supply of false information.
- 4.2. Fraud was introduced as a general offence and is defined within The Fraud Act 2006. The Act details that a person is guilty of fraud if they commit any of the following:
  - Fraud by false representation; that is if a person:
    - (a) dishonestly makes a false representation, and
    - (b) intends, by making the representation (i) to make a gain for them self or another, or (ii) to cause loss to another or to expose another to a risk of loss.

- Fraud by failing to disclose information; that is if a person:
    - (a) dishonestly fails to disclose to another person information which they are under a legal duty to disclose, and
    - (b) intends, by failing to disclose the information (i) to make a gain for them self or another, or (ii) to cause loss to another or to expose another to a risk of loss.
  - Fraud by abuse of position; that is if a person:
    - (a) occupies a position in which they expected to safeguard, or not to act against, the financial interests of another person
    - (b) dishonestly abuses that position, and
    - (c) intends, by means of the abuse of that position (i) to make a gain for them or another, or (ii) to cause loss to another or to expose another to a risk of loss.
- 4.3. In addition, the Act introduced new offences in relation to obtaining services dishonestly, possessing, making, and supplying articles for the use in frauds and fraudulent trading applicable to non-corporate traders.
- 4.4. Fraud Act offences will apply to any false application for housing or Right to Buy, but also in any matter where an individual has misrepresented any fact or document to obtain, or attempt to obtain, a property from the Council.
- 4.5. False statements and withholding information in connection with an application for housing is also an offence that may be prosecuted.
- Section 171 of the Housing Act 1996
    - (1) A person commits an offence if, in connection with the exercise by a Local Authority of their functions under this part—
      - (a) he knowingly or recklessly makes a statement which is false in a material particular, or
      - (b) he knowingly withholds information which the authority have reasonably required him to give in connection with the exercise of these functions.
    - (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- 4.6. In addition, the Prevention of Social Housing Fraud Act 2013 (POSHFA), specifically created offences of unlawful subletting of a social housing property.
- Section 1 Unlawful sub-letting: Secure Tenancies
    - (1) A tenant of a dwelling-house let under a secure tenancy commits an offence if—
      - (a) in breach of an express or implied term of the tenancy, the tenant sublets or parts with possession of (i) the whole of the dwelling-house, or (ii) part of the dwelling-house without the landlord's written consent,
      - (b) the tenant ceases to occupy the dwelling-house as the tenant's only or principal home, and
      - (c) the tenant knows that the conduct described in paragraph (a) is a breach of a term of the tenancy.
    - (2) A tenant of a dwelling-house let under a secure tenancy commits an offence if—
      - (a) dishonestly and in breach of an express or implied term of the tenancy, the tenant sub-lets or parts with possession of (i) the whole of the dwelling-house, or (ii) part of the dwelling-house without the landlord's written consent,
      - (b) the tenant ceases to occupy the dwelling-house as the tenant's only or principal home

- 4.7. Under the 2014 POSHFA Regulations, Authorised Officers within Local Government can obtain information from third party organisations to assist in intelligence and evidence gathering in tenancy and right to buy fraud investigations.

## **5. DEFINITIONS**

### **5.1. Illegal / Unlawful Sub-Letting**

- 5.2. A tenant moves out and sub-lets their home without the landlord's knowledge or permission they often continue paying rent for the property directly to the Council, but charge the person they are sub-letting at a much higher rate. It is unlawful and unfair to sublet and profit from a home which the Council could allocate to someone legally entitled to live there. Unlawful subletting is a criminal offence and also includes the tenant moving out and leaving relatives in the property or where there is no profit made. Tackling unlawful subletting is key to providing social housing to those who are in greatest need.

### **5.3. Abandonment**

- 5.4. Not using the property as the only and principal home is an expressed tenancy condition and failure to do so constitutes tenancy fraud. Tenants must notify the Council if they are going to be away from the property for longer than six (6) weeks.

### **5.5. Obtaining Housing by Deception**

- 5.6. A person is allocated a home by making a false application. This can include providing false or incomplete information to the Council in their application, or failing to declare their circumstances have changed since first completing an application for housing.

### **5.7. Unlawful Succession**

- 5.8. A false claim or a failure to provide complete information in a claim to succeed to a tenancy following the death of a tenant. The Tenant Services' Tenancy Agreement and the Succession Policy clarify contractual and statutory considerations when a tenant dies.

### **5.9. Key Selling**

- 5.10. When the tenant of the property is paid to pass their keys to another person and in return receives a one-off payment. The new unlawful occupier will continue to pay the rent for the property but does not have a tenancy agreement with the Council.

### **5.11. Right to Buy/Right to Acquire Fraud**

- 5.12. When someone applies to buy their social rented home at a discounted price and:
- Provides false information.
  - Has entered into an agreement with a third party to buy the property on their behalf for a cash incentive.
  - Has failed to report a change in circumstances that means they have breached their Tenancy Agreement and are no longer eligible.

### **5.13. Council Tax Discount/Exemption Fraud**

- 5.14. Where there is evidence of other acts of fraud against the Council such as Housing Benefit or Council Tax Support fraud this will be referred to the appropriate team to investigate in parallel with any housing and tenancy fraud investigation.

## **6. VULNERABLE TENANTS**

- 6.1. Staff should also be aware of the following possible issues during any investigation:
- CSE (Child Sexual Exploitation)
  - Human trafficking
  - Cuckooing
  - Safeguarding and welfare concerns
- 6.2. Any concerns should be reported to a colleague, the relevant Line Manager, or the Counter Fraud and Enforcement Unit who will assist in making the appropriate referral.
- 6.3. Cuckooing is a practice where criminal gangs take over the home of a vulnerable person(s) and use it to facilitate exploitation – this is usually connected with drug dealing but may also be associated with sex work/human trafficking, weapons storage or financial abuse. When investigating subletting or key selling allegations officers should have regard to the potential for vulnerable tenants to be ‘cuckooed’.
- 6.4. Where applications under the right to buy/acquire schemes are received, officers should have particular regard for vulnerable/elderly tenants who may have been coerced or be the subject of financial abuse.

## **7. APPROACH TO TACKLING HOUSING AND TENANCY FRAUD**

- 7.1. The Council's Counter Fraud and Enforcement Unit is a team of trained and qualified intelligence and investigation officers, authorised under the 2014 POSHFA Regulations. The team work with officers within Housing Services to tackle housing and tenancy fraud. This is in line with the Council's Fraud Risk Strategy which sets out these principles:
- Acknowledge and Understand
  - Prevent and Detect
  - Pursue
  - Publicise and Deter
- 7.2. **Acknowledge and Understand**
- 7.3. Assessing and understanding fraud risks and the possible impact is important to establish priorities and an appropriate response. The Council is committed to supporting resource to tackle housing and tenancy fraud to maintain a robust response.
- 7.4. **Prevent**
- 7.5. Establishing preventative measures are the most cost-effective way of tackling tenancy fraud; the focus of this will be on verifying information provided by the tenant when applying for social housing, when signing up for a new tenancy and/or when there is a change of circumstances to the household or income details.
- 7.6. **Detect**
- 7.7. The Council will regularly monitor information we are legally entitled to access, including shared data from government agencies focusing on tenancy and housing fraud, credit rating and financial agencies, other social landlords and legally constituted anti-fraud partnerships, such as the Gloucestershire Landlords Tenancy Fraud initiative.

- 7.8. Tenancy audits will also be undertaken periodically to monitor our own tenancy and property records to identify alerts, trends and issues that may indicate instances of fraud.
- 7.9. **Pursue**
- 7.10. Where a tenancy fraud has been detected and investigated, the Council will consider the following actions:
- Civil action by the serving of either Notice of Seeking Possession (NOSP), Notice to Quit (NTQ) and Notice of Possession Proceedings (NOPP).
  - Criminal action, where appropriate, as well as civil recovery of the tenancy.
- 7.11. Prosecution will be considered where appropriate in line with the Council's Corporate Enforcement Policy.
- 7.12. **Publicity**
- 7.13. The Council will provide information explaining what tenancy fraud is and how to report it.
- 7.14. The Council may inform the media of prosecutions, with the aim of drawing their attention to the court case. After the case the Council may publicise any conviction which could serve to draw attention to the need to comply with legislation or help deter anyone tempted to break the law.

## 8. **DATA SHARING**

- 8.1. The Council will work with partners to share good practice and prevent and detect fraud. This includes other Council's, the Police, Social Housing Providers and others.
- 8.2. The Council will share relevant information with third parties for the purposes of preventing, investigating and tackling tenancy fraud. When sharing personal information, we will comply with all aspects of Data Protection Legislation.
- 8.3. The Council takes part in the Cabinet Office National Fraud Initiative. Details of this can be found here: <https://www.stroud.gov.uk/council-and-democracy/counter-fraud-bribery-and-corruption/>
- 8.4. The Tenant Services Privacy Notice can be found on the Council's website at: <https://www.stroud.gov.uk/council-and-democracy/about-the-council/access-to-information/privacy-and-cookie-policy/privacy-notice>
- 8.5. The Counter Fraud and Enforcement Unit Privacy Notice can be found on the Council's website at <https://www.stroud.gov.uk/council-and-democracy/counter-fraud-bribery-and-corruption/>

## 9. **STRATEGY AND POLICY REVIEW**

- 9.1. Housing Services and the Counter Fraud and Enforcement Unit will review and amend this Policy as necessary to ensure that it continues to remain compliant and meets legislative requirements and the vision of the Council.

