

REPORT TO:	DATE	CLASSIFICATION	REPORT NO.	AGENDA NO.
Audit Committee	20 March 2012			5.4
REPORT OF: <b>Corporate Director, Resources</b>  ORIGINATING OFFICER(S):  <i>Minesh Jani, Head of Audit and Risk Management</i>		<b>Department for Communities and Local Government Consultation – “Social Housing Fraud”</b>  <b>Ward(s) Affected: N/A</b>		

## 1. Summary

- 1.1. This report updates the Audit Committee on the Government’s plans for dealing with Social Housing Fraud.

## 2. Recommendation

- 2.1. The Audit Committee is asked to note the report and to consider the draft response to the consultation at Appendix A.

## 3. Background

- 3.1. Social Housing Fraud involves such matters as unlawful sub-letting or passing on of social housing tenancies and fraudulent applications to succeed to tenancies. It could also be held to include fraudulent applications for access to social housing through the common housing register. The Department for Communities and Local Government (DCLG) raised concerns about Social Housing Fraud in its publication “Tackling Unlawful Subletting and Occupancy: Good Practice Guidance for Social Landlords” (November 2009).
- 3.2. Since its publication both the Secretary of State for Communities and Local Government and the Minister for Housing and Local Government, the National Fraud Authority and the Audit Commission have stressed the cost such fraud represents to the public purse and the need for local authorities and social landlords to put in measures to detect and deter such fraud.

- 3.3. The Audit Commission in its recent publication, "Protecting the Public Purse 2011" has estimated that there may be 50,000 properties in England that may be unlawfully occupied, and that for London, the percentage of properties may be up to 5% of the capital's housing stock. The National Fraud Authority estimates the cost of tenancy fraud as £900M per annum.
- 3.3. In response to this type of fraud, the Audit Committee has previously received reports indicating that the Council has established a Corporate Fraud Team which includes 3 officers (currently supplemented by one agency employee funded by Tower Hamlets Homes but working under the Corporate Fraud Manager) whose primary function is to investigate sub-letting and other housing fraud and recover properties.
- 3.4 The DCLG launched a formal consultation on the topic of Social Housing Fraud on 11 January 2012 with an end date of 4 April 2012. This consultations seeks the views of interested bodies on whether stronger measures need to be considered to enable social housing fraud to be tackled more robustly and whether criminal rather than purely civil penalties should apply to those committing such fraud.
- 3.5 The Council's proposed response is attached at Appendix A and the Consultation Document in its entirety can be found at Appendix B.

#### **4. Scope of the Consultation**

- 4.1 The main areas where landlord views are being sought are:
- whether a new criminal offence should be created in relation to Social Housing Fraud;
  - what should be the definition of tenancy fraud;
  - consideration of whether local authorities' powers should be extended to cover tenancy fraud and related issues;
  - whether defined powers to request disclosure of data to assist in the investigation of Social Housing Fraud should be introduced; and
  - how people living away from their homes should be considered.
- 4.2 To illicit landlords' views on its proposals, the consultation document sets out, under the main points highlighted above, thirteen questions. The authority's response to these is set out in Appendix A below.

**5. Comments of the Chief Financial Officer**

5.1 These are contained within the body of this report.

**6. Concurrent Report of the Assistant Chief Executive (Legal Services)**

6.1 There are no immediate legal implications arising from this report.

**7. One Tower Hamlets**

7.1 There are no specific one Tower Hamlets considerations.

7.2 There are no specific Anti-Poverty issues arising from this report.

**8. Risk Management Implications**

8.1 This report highlights changes in the governance of the Council. The proposals set out in this document will result in how the organisation deals with tenancy fraud. There are no specific risk implications at this stage.

**Draft Response to DCLG Consultation on Social Housing Fraud**

**Date: 4th March 2012**

**Background**

The Department for Communities and Local Government (CLG) is consulting on proposals intended to reduce the level of tenancy fraud within the social housing stock. The consultation period concludes on the 4th April 2012.

Under proposals set out in the consultation document, Social housing fraud, illegal sub-letting will become a criminal act and tenants who abuse the social housing system by unlawfully subletting their property could face a fine of up £50,000 or two years in prison. The measures are intended to be a strong deterrent to tenants and increase landlords' ability to detect and prosecute those responsible for social housing fraud. The consultation document also includes proposals to allow social landlords to obtain any profits made from fraudulent sub-letting.

Tower Hamlets is a borough with a high level of housing need, we have a housing waiting list of over 23,500 households, of which some 9,000 live in over-crowded conditions. Social housing tenancy fraud deny many of those households access to a decent home; therefore the council is fully supportive of any measures which will prevent the inappropriate use of social housing through illegal sub-letting.

Attached is an outline draft of a response to the questions set in the consultation document, compiled mainly by the Council's Corporate Fraud Team. Ultimately we seek to put together a single response which represents the collective view of the council and its social housing landlord partners. We welcome all view on this consultation. Please send all responses, by 28th March 2012 to:

[Anthony.jones@towerhamlets.gov.uk](mailto:Anthony.jones@towerhamlets.gov.uk).

## **RESPONSE TO SOCIAL HOUSING FRAUD CONSULTATION QUESTIONS**

### **Question 1 - *Do you agree that a new criminal offence should be created?***

The authority agrees that a new criminal offence related to Social Housing Fraud should be created. We hold that the misuse of social housing represents not only a huge cost to the public purse as stated in Chapter 1 of the consultation document but also impacts on the ability of social landlords to meet genuine housing need. There is, therefore, a harmful effect on communities.

### **Question 2 - *What would you consider to be a suitable maximum penalty for a Crown Court conviction for tenancy fraud?***

The authority considers that the penalties proposed in Paragraph 59 in respect of proceedings in Magistrates Court and Crown Court are appropriate. We hold that there needs to be a suitable deterrent.

### **Question 3 - *Do you agree with our core proposal to give a broad definition to ‘tenancy fraud’? Which forms should be included?***

The authority is in agreement with the proposal that a broad definition should be given to “tenancy fraud”.

The main forms mentioned in consultation should be included in this definition. In addition we would recommend:

- including fraudulent succession claims under S87 of the Housing Act 1985; this should apply not only where the fraud is discovered after the succession has taken place but should also be made an offence where the fraudulent claim has been made and rejected whether the applicant then abandons the claim or if the landlord needs to take civil action for possession;
- Section 171 of the Housing Act 1996 makes it an offence attracting a fine up to Level 5 on the standard scale to make a false statement or to withhold information reasonably required in respect of an application to be placed on the Housing Register. This is an offence whether or not the application has resulted in the applicant gaining a tenancy. Ground 5 of Schedule 2 to the Housing Act 1985 allows that the Court may grant possession where the landlord was induced to grant a tenancy by a false statement made recklessly or knowingly by the tenant or a person acting on the tenant’s instigation. We are of the view that where a tenancy has been granted as a result of a fraudulent housing application this should now be included in the offence proposed in Paragraph 59.

**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?***

We agree that restitutionary payments should be introduced and should be available in both the civil and criminal courts. Awards made by the Courts in such circumstances could be used to fund the process of investigating housing fraud and reduce the cost burden on landlords.

**Question 5 - *Should local authorities have the power to prosecute for tenancy fraud?***

Given the role of local authorities as local housing authorities it appears reasonable that their powers should be extended to allow for bringing criminal prosecutions for Social Housing Fraud and this could allow the local authority to bring prosecutions on behalf of housing associations. Although such powers could be granted to housing associations (their position as “public bodies” seeming to have been settled since R (Weaver) v London & Quadrant 2009) Local Authorities have experience in prosecutions and are in partnership with most housing associations operating in their boroughs.

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

We agree that a mandatory gateway should be introduced. A major obstacle to successful investigation is the difficulty experienced in gaining evidence. Many agencies are unwilling to disclose data even where this is permitted under the terms of the Data Protection Act 1998.

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

We agree that a mandatory gateway should cover banks, building societies and utility companies. In addition we believe that this should also cover:

- estate agents and letting agencies;
- educational establishments: schools, colleges, universities;
- employers;
- HRMC;
- DWP;
- UKBA;
- DVLC;
- Child Benefit Agency;
- other local authorities; and
- residential social landlords.

**Question 8 - *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?***

There needs to be statutory clarity relating to the "intention to return". Certainly absence from the tenanted home where this is for a stay in hospital, visiting relatives whether in the UK or overseas, for the purposes of work either in the UK or overseas for instance should be permitted providing that the landlord is notified at the earliest opportunity of the absence and the landlord has acknowledged the notification. For visits or for work this should be prior to departure. We feel that it would, however, be appropriate to place a time limit on such an absence. We suggest such notified absence should be allowable for an initial period of 1 year with extensions to this period when supported by evidence and a firm statement of intent to return. However, this cannot be indefinite and a maximum limit on absence from the home could be, say, 3 years.

Where, however, no notice has been given to the landlord and it has been discovered that the tenant is living elsewhere then we hold that no defence of "intention to return" should be allowed where the absence can be shown to exceed, say, six months.

Mere absence from or abandonment of the tenancy would not constitute fraud.

**Question 9 - *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?***

That the Housing Act 1998 in relation to Assured Tenancies contains no provision analogous to S93 of the Housing Act 1985 is an anomaly which makes the process of dealing with Social Housing Fraud by housing associations more difficult to tackle. We agree that in this respect assured tenancies should be brought in line with secure tenancies.

There are a number of differences between assured and secure tenancies, most notably grounds for possession. There may grounds for consultation as to whether these should be rationalised.

**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?***

There are a number of factors which we would consider such as the age or other vulnerability of the tenant. Generally we would consider prosecution where:

- there is sufficient evidence to meet the burden of proof in the criminal courts;
- it is in the public interest to so do;
- there has been deception (e.g. the social tenant letting the property has posed as a home owner or the let has been made through an estate agent or other accommodation agency).

**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?***

The authority believes that a majority of tenancy fraud cases will still be concluded with a voluntary termination of the tenancy. The main issue which will restrict the number of cases taken to court is the volume of data needed to obtain a criminal conviction. It is likely that criminal action will be taken in cases where there is evidence of persistent illegal subletting over a period of time, or organised activity or marked profiteering.

**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?***

This is difficult to quantify. Experience shows that each case involves different avenues of enquiry. It has been clear to us, however, that our ability to resolve investigations speedily would be enhanced by the ability to require disclosure of data from more data controllers. Our Social Housing Fraud team is currently investigating nearly 200 cases. On this basis we might make a potential 800+ data requests per year.

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

The only figure we can quote here is taken from the Freedom of Information, Appropriate Limit and Fees Regulations 2004 and equates to £25 per hour. In reality a response to the nature of enquiry we would be likely to receive would take no more than ten minutes to respond to. We would not see any data requests we receive from other Local Authorities as cost issue as there is reciprocation.