

## PERTH AND KINROSS COUNCIL

## Housing and Health Committee

29 January 2014

## Policy for Tackling Tenancy Fraud in Council Housing

## Executive Director (Housing and Community Care)

**PURPOSE OF REPORT**

The purpose of this report is to present and seek Committee approval for a new policy on tackling tenancy fraud in council housing. The reduction in social housing combined with the shortage of affordable accommodation has led to an increased likelihood of tenancy fraud occurring. Perth & Kinross Council is committed to making the best use of available stock for those in genuine housing need; implementation of the policy will support the Council to fulfil this commitment.

**1. BACKGROUND / MAIN ISSUES**

- 1.1 This report presents a new policy for tackling tenancy fraud which is a term used to group together ways in which a person may misuse or obtain their social housing tenancy. In May 2013 Audit Scotland undertook a review of the Council's main financial systems which included gaining assurance that there are systems of internal control which provide an adequate means of preventing or detecting material misstatement, error, fraud or corruption. In respect of housing rents, Audit Scotland identified that there were no controls operated by the Council to establish if council houses were the subject of unauthorised sub-lets. As a result actions to tackle tenancy fraud were proposed and accepted, one of which was the development of a policy. This policy will also contribute to the Council's response to Police Scotland's initiative to tackle serious and organised crime. Fraudulently obtaining a tenancy is often linked to the use of the property for obtaining benefits or for criminal activity. Integrity issues within large public sector bodies have also been highlighted in the media and our processes and supervision will be strengthened to mitigate this risk.
- 1.2 In 2010 the National Fraud Authority (NFA) in England worked with the Chartered Institute of Housing (CIH) to consult English local authorities and RSLs to identify guiding principles that could be adopted by all social landlords. As a result the CIH produced 'A Guide to Tackling Housing Tenancy Fraud'. This best practice document - [CIH How to Tackle Tenancy Fraud](#) - has informed the drafting of the policy document for Perth and Kinross Council.
- 1.4 In Perth and Kinross during the financial year 2012/13 only one tenancy fraud was identified through investigating intelligence provided by neighbouring residents, the property was recovered without having to take legal action. This is one property, however, that could have been allocated to someone in genuine housing need from the outset thus reducing temporary accommodation costs.

- 1.5 Tenancy fraud presents a significant challenge to social housing providers and preventing fraud and tenancy misuse is a priority that is becoming increasingly high on the political agenda. The 'public purse' must be protected and steps taken to determine the scale of this problem. Recent information from the Scottish Local Authority Investigators Group estimated that the total monetary loss for Scottish Local Authorities ranges between £322million and £537 million per year and could involve nearly 30,000 social sector tenancies.

## **2. PROPOSALS**

- 2.1 This new policy takes a firm approach to tackling tenancy fraud but also recognises the need to be supportive to those who have been the victim of fraud themselves.
- 2.2 The aim of the policy is to eliminate any misuse of the Council's housing supply arising from tenancy fraud, whereby unauthorised households reside in Council housing to which they are not entitled, or obtain council housing which they do not use as their sole or principal home.
- 2.3 The objectives are to:
- Prevent tenancy fraud
  - Detect tenancy fraud
  - Recover properties that are being occupied by unauthorised occupants
- 2.4 Within the policy emphasis has been placed on rigorous identification checks at the pre-tenancy stage, after sign up and during the life of a tenancy. Publicity and promotion to encourage 'whistleblowing' is also recommended as well as raising awareness and training for staff.

## **3. CONCLUSION AND RECOMMENDATION**

- 3.1 The investigation of potential cases of tenancy fraud continues to be an ongoing activity with housing staff working closely with the Housing Benefit section and other social landlords and agencies as necessary. Until recently however this activity has not been formally monitored. Through implementation of the new policy identification of cases and outcomes will be reported through the Neighbourhood Services Performance Framework and presented to Senior Management and Members through the Business Management and Improvement Plan Key Monitoring arrangements.
- 3.2 The policy will be effective from April 2014 and will be reviewed in March 2015.
- 3.3 Committee is asked to approve the new Tackling Tenancy Fraud Policy, as attached at Appendix 1.

**Author(s)**

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**Approved**

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## 1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

*The undernoted table should be completed for all reports. Where the answer is 'yes', the relevant section(s) should also be completed. Where the answer is 'no', the relevant section(s) should be marked 'not available (n/a)'.*

<b>Strategic Implications</b>	<b>Yes / None</b>
Community Plan / Single Outcome Agreement	<b>Yes</b>
Corporate Plan	<b>Yes</b>
<b>Resource Implications</b>	
Financial	<b>None</b>
Workforce	<b>None</b>
Asset Management (land, property, IST)	<b>None</b>
<b>Assessments</b>	
Equality Impact Assessment	<b>None</b>
Strategic Environmental Assessment	<b>None</b>
Sustainability (community, economic, environmental)	<b>None</b>
Legal and Governance	<b>Yes</b>
Risk	<b>Yes</b>
<b>Consultation</b>	
Internal	<b>Yes</b>
External	<b>Yes</b>
<b>Communication</b>	
Communications Plan	<b>No</b>

### 1. Strategic Implications

#### Community Plan / Single Outcome Agreement

1.1 The Community Plan and Single Outcome objectives are all relevant to this report:

- Giving every child the best start in life
- Developing educated, responsible and informed citizens
- Promoting a prosperous, inclusive and sustainable economy
- Supporting people to lead independent, healthy and active lives
- Creating a safe and sustainable place for future generations

#### Corporate Plan

1.2 As above. The five Corporate Plan objectives are all relevant to this report.

### 2. Resource Implications

#### Financial

2.1 None arising from this report.

### Workforce

- 2.2 None arising from this report.

### Asset Management (land, property, IT)

- 2.3 None arising from this report.

## **3. Assessments**

### Equality Impact Assessment

- 3.1 As a social landlord we have a duty to perform all aspects of our housing services so that: every tenant and other customer has their individual needs recognised; is treated fairly and with respect; and receives fair access to housing and housing services.
- 3.2 Perth and Kinross Council is committed to equality of opportunity and will ensure that its tenancy fraud policy and procedures will not unfairly discriminate against people on grounds of sex or marital status, racial grounds, disability, age sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.
- 3.3 The housing service has facilities to provide for:
- Translation and interpretation for people whose first language is not English
  - Sign language facilities for people who are profoundly deaf
  - Large text or audio tapes for people who are visually impaired
- 3.4 There are many other reasons why people may have difficulties accessing our services. These may include dyslexia, illiteracy and mental illness. It is the duty of all staff to ensure these issues are taken into account and to make sure information is appropriately communicated in ways those individuals can understand.

### Strategic Environmental Assessment

Not Applicable

### Legal and Governance

- 3.5 There are changes proposed in the Housing (Scotland) Bill, which was published on 21 November 2013, in relation to assignation, subletting and joint tenancies. If implemented the new legislation will introduce a twelve month qualifying period which will minimise contrived circumstances.

### Risk

- 3.6 The risk of not identifying or investigating tenancy fraud is that those who are not eligible to receive housing services continue to occupy housing properties while those who are eligible and are on the housing waiting list are not able to be placed in permanent housing. This could in turn create additional costs to the council in terms of temporary accommodation.

## **4. Consultation**

### Internal

- 4.1 The Head of Legal Services and the Head of Finance have been consulted about this report.

### External

- 4.2 The Tenant Committee Report Panel has been consulted on this report. They consider this policy to be clear and straightforward, and if approved and implemented, will work well. This could result in more houses being available to those on the Housing Register and them being allocated to people who really need them.
- 4.3 Police Scotland have also been consulted on the content of the report.

## **5. Communication**

- 5.1 The new policy will be put on the Council's website and will be circulated to housing staff. The public will also be made aware through press releases and an article in the tenants magazine 'On the House'.

## **2. BACKGROUND PAPERS**

- 2.1 'A Guide to Tackling Housing Tenancy Fraud', Chartered Institute of Housing'

## **3. APPENDICES**

- 3.1 Appendix 1: Policy for Tackling Tenancy Fraud



# **Policy for Tackling Tenancy Fraud**

## **Neighbourhood Services**

**January 2014**

## **Introduction**

Perth and Kinross Council, in partnership with its common housing register partners allocates social housing as per its statutory duties contained in the Housing (Scotland) Act 2001 i.e. to those in housing need and to those who will use it as their only or principal home. See PKC Allocations Policy which is available on the council's website.

Due to the national shortage of affordable housing it is believed that the incidence of tenancy fraud is increasing. As tenancy fraud reduces the availability of housing for those who are in genuine need and who are entitled to assistance from the Council and its partners, the Council is committed to preventing and detecting tenancy fraud and taking appropriate action to repossess properties which have been obtained fraudulently or are not being used as the tenant's sole or principal home.

Failure to act on tenancy fraud has an impact on the Council, individuals and communities as follows:

### **Impact on the Council**

- Inability to make best use of stock
- Increased use of temporary accommodation
- Increased use of properties being used for illegal activities
- Increased number of incidents of overcrowding or under occupation of existing housing stock
- Reduced ability to tackle homelessness
- Increased risk of damage to the property due to lack of access to undertake maintenance and repair
- Reduced potential for resident involvement

### **Impact on individuals and communities**

- Those in greatest need are unable to access secure and stable social housing tenancies
- Impact on health and education for those living in unsuitable housing conditions
- The public pay for the cost of fraud through increased national and local taxation

The Council is aware that where a property is repossessed this may result in making a household homeless. It is also aware that in some cases, unauthorised occupants can have been misled by the legal tenant into believing that they had a legal right to occupy the property, and as such, did not knowingly commit tenancy fraud themselves. Therefore, in the application of its Tenancy Fraud Policy the Council is committed to applying a sympathetic albeit thorough investigative approach that will give all parties the opportunity to explain their involvement, and will provide, appropriate housing advice and assistance, to eligible households, as per its statutory duty.



In some cases, however, the Council will consider applying penalties against households who have knowingly committed tenancy fraud. Penalties include:

- Placing the housing application in a lower priority group than would normally have been the case.
- Legal action, where such action is considered to be cost and time effective and in the public interest.

### **Scope of the Policy**

The Policy describes the actions, duties and responsibilities of Perth and Kinross Council staff and management to prevent and detect tenancy fraud, and recover properties that are being occupied by unauthorised households or are not being used as the tenant's sole or principal home.

The Policy applies to all cases of tenancy fraud in all residential properties owned or managed by Housing and Community Care.

### **The Scottish Social Housing Charter**

This policy reflects the Council's commitment to the Scottish Social Housing Charter, specifically:

#### **1. Equalities**

Every tenant and other customer has their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.

#### **2. Communication**

Social landlords manage their businesses so that tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides.

#### **3. Neighbourhood and community**

Social landlords, working in partnership with other agencies, help to ensure that tenants and other customers live in well-maintained neighbourhoods where they feel safe.

#### **4. Housing Options**

Social landlords work together to ensure that:

- People looking for housing get information that helps them make informed choices and decisions about the range of housing options available to them
- Tenants and people on housing lists can review their housing options.
- People at risk of losing their homes get advice on preventing homelessness.

## **5. Access to Social Housing**

Social landlords ensure that people looking for housing find it easy to apply for the widest choice of social housing available and get the information they need on how the landlord allocates homes and their prospects of being housed.

## **6. Homeless People**

Local councils perform their duties on homelessness so that homeless people get prompt and easy access to help and advice; are provided with suitable, good-quality temporary or emergency accommodation when this is needed; and are offered continuing support to help them get and keep the home they are entitled to.

### **1. The Aim of the Policy**

- 1.1 The principal aim of the policy is to eliminate any misuse of the Council's housing supply arising from tenancy fraud, whereby unauthorised households reside in Council housing to which they are not entitled, or obtain council housing which they do not use as their sole or principal home.

### **2. Objectives of the Policy**

- 2.1 The key policy objectives are to:
- Prevent tenancy fraud
  - Detect tenancy fraud
  - Recover properties that are being occupied by unauthorised occupants

### **3. The Policy**

#### **What is Tenancy Fraud?**

- 3.1 Tenancy fraud generally falls into 2 categories:
- Not using the property as the "sole or principal home". This includes:
    - Non-occupation of the property
    - Succeeding to, assigning or exchanging the tenancy without the landlord's permission
    - Unlawfully subletting the property
  - Attempting to obtain a property using false statements and/or documents that misrepresent the actual circumstances of the applicant.

### **3.2 Not using the property as sole and principal home –**

#### **Non-occupation**

Examples of non-occupation include:

- The tenant claims the property as their principal home, but instead uses it as a second property. They may have a legal interest in other property (or properties).
- The registered tenant lives at a different address, usually with a partner or family.
- The property is kept in reserve for the tenant to return to if their personal circumstances change.
- The registered tenant lives at a different address and uses the property as a base for claiming certain benefits or for criminal activity.
- The registered tenant allows someone else to live at the property. That person pays “rent” either to the registered tenant or to the council, but the council is unaware that the person paying rent is not the registered tenant.

#### **Succeeding to, assigning or exchanging the tenancy without the landlord’s permission**

Examples include:

##### **Succession**

Although in some cases the unauthorised occupant may believe they do have a legal right to occupy the property under the rules of succession, in some other cases unauthorised occupants will misrepresent their relationship to the previous tenant, or misrepresent how long they had lived there in order to succeed to the tenancy fraudulently. For example, they might say they lived with the tenant before they died, when in fact they were living elsewhere.

##### **Assigning**

Fraudulently assigning the tenancy involves the tenant giving their tenancy to someone without obtaining permission from the landlord. Assignment, like Succession can take place within the conditions of the tenancy agreement, but all criteria must be satisfied in order to make the assignment lawful.

In some cases the unauthorised occupant may believe the tenancy has been legally assigned and that they have a legal right to occupy the property.

## **Exchanging the tenancy**

A legitimate exchange requires that both parties are entitled to a Short Scottish Secure tenancy and that permission for the exchange has been granted by the landlords of both parties. In many cases the landlord of both parties will be Perth and Kinross Council, but exchanges can also be made between tenants of other registered social landlords.

Fraud occurs if either party misrepresents their circumstances in order to obtain a mutual exchange; or the parties exchange properties without written permission.

## **Unlawfully subletting the property**

Unlawful sublets include cases where the tenant claims to live at the property, but instead lets all or part of it out without landlords' consent. Sometimes this involves "key selling" i.e. the authorised tenant charges the unauthorised occupant a fee for the keys to the property. This can be in addition to the unauthorised occupant paying "rent" to the tenant or to the landlord.

In some cases, the sub-tenant may not be aware that the arrangement has not been sanctioned by the Council / RSL and that they are, therefore, unauthorised occupants.

## **Attempting to obtain a property using false statements and/or documents that misrepresent the actual circumstances of the applicant**

This includes:

- Misrepresentation of circumstances – such as failing to declare a legal interest in other property; fraudulently claiming to have responsibility for dependents.
- Providing false identification – including using false documents or misrepresenting identity by using another persons' documents

## **4 Preventing and Detecting Tenancy Fraud**

- 4.1 The most effective way of tackling tenancy fraud is to prevent it taking place in the first place. In order to minimise the incidence of Tenancy Fraud, Perth and Kinross Council will implement rigorous prevention and detection procedures at the application, assessment and lettings stages. This approach is also applied to assignation, exchange or succession; and also during the life of the tenancy.
- 4.2 These procedures are set out in the staff Tenancy Fraud Procedure and include:
  - Rigorous identity checks at the application and sign-up stages; and also during the life of the tenancy if fraud is suspected. Increasingly

housing providers are taking photographs of their tenants at sign up and during tenancy audits to prevent tenancy fraud. Having a recent colour photograph of tenants linked to their tenancy agreement which can be viewed by a visiting officer is a simple way to check that the person residing in the property is the registered tenant.

- Examining signatures provided by the tenant and comparing them to those on other documents
- Previous address checks to verify identity as well as explore whether the applicant has a legal interest in any other properties
- Cross referencing with other organisations and council teams whose information on PKC tenants/ housing applicants can support or contradict information that the tenant/applicant has given to PKC. Examples of useful data sources include Council Tax, Housing benefits, other Local Authorities and RSLs.
- Settling-in visits to ensure the legal tenants (and only the legal tenants) have taken up occupancy
- Verification visits during the life of the tenancy to ensure the occupants are still the legal tenants
- Staff awareness raising and training in prevention procedures and investigation techniques
- Regularly reviewed and revised procedures
- Publicity and promotion to encourage “whistle blowing”
- PKC will pursue data pooling with other housing providers

## **5. Taking Action Against Perpetrators of Tenancy Fraud**

### **5.1 Where Tenancy Fraud is proven Perth and Kinross Council will:**

- Take prompt action to recover possession of the property
- Consider legal action against perpetrators of the tenancy fraud. Where the unauthorised occupants of the property have a housing need they will be assisted to make a legitimate application for social housing and, if necessary, will be accommodated in temporary accommodation under the terms of the Homeless legislation.
- Consider penalties under the Housing Allocations policy.

## **6. Staff Training and Development**

- 6.1 The success of the Tenancy Fraud Policy and implementation of the associated procedures depend on the knowledge and skills of the staff implementing them.
- 6.2 Regular training will be provided to staff to ensure a consistent approach and make sure that staff are equipped and supported to carry out the roles expected of them.
- 6.3 A quality audit will be in place to check the effectiveness of the training and to ensure that procedures are followed consistently by all staff. Area Offices records of tenancy fraud investigations will be audited on a monthly basis.

## **7. Equal Opportunities**

- 7.1 Perth and Kinross Council is committed to equality of opportunity and will ensure that its tenancy fraud policy and procedures will not unfairly discriminate against people on grounds of sex or marital status, racial grounds, disability, age sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions. The housing service has facilities to provide for:
- Translation and interpretation for customers whose first language is not English.
  - Sign language facilities for people who are profoundly deaf.
  - Large text or audio tapes for people who are visually impaired.
- 7.2 There are many other reasons why people may have difficulties accessing our services. These may include dyslexia, illiteracy and mental illness. It is the duty of all staff to ensure these issues are taken into account to ensure that information is appropriately communicated in ways that individuals can understand.

## **8. Complaints**

- 8.1 Perth and Kinross Council operates a Complaints Procedure that is available to any individual of tenant who is not satisfied with the way their case has been dealt with. Details of the complaints procedure are detailed in the Council's 'Complaints Procedure' leaflet that is available from any Council office. <http://www.pkc.gov.uk/article/5731/Complaints>
- 8.2 Complaints about our tenancy fraud policy or procedures will be used to monitor and improve the service.

## **9. Legislative and Policy Framework**

- 9.1 The Council will ensure that the Tenancy Fraud Policy meets with legislative and good practice requirements in tackling tenancy fraud. The legislative requirements include the following:
- Housing Scotland Act 1987 (as amended by Housing Scotland Act 2001)
  - The Policy adheres to this Act in relation to admissions to the Housing List; persons who have priority for housing; allocations; proceedings for repossession; abandoned properties; succession and subletting. and mutual exchanges
  - Housing Scotland Act 2010
  - The Policy adheres to this Act in relation to repossession orders
  - PKC Common Housing Allocations Policy 2010
  - The Policy adheres to this Policy in relation to assessment of applications, verification, and suspensions.
  - Human Rights Act 1998

- Three of the Convention Rights have a particular role to play in the context of social housing. They are Article 6 (the right to a fair determination of civil rights), Article 8 (which includes the right to respect for a home), and Article 14 (enjoyment of the Convention Rights without discrimination).
- This Policy adheres to the Human Rights Act.
- Homelessness etc. (Scotland) Act 2003
- The Policy adheres to this Act in relation to the provision of advice to people whose home is at risk due to eviction
- Data Protection Act 1998 and Freedom of Information Act (Scotland) 2002
- The Policy adheres to this Act in relation to the handling of information about tenants, and respecting the privacy of tenants
- Children (Scotland) Act 1995 and National Guidance for Child Protection in Scotland 2010

## **10. Quality Assurance and Measuring Performance**

- 10.1 Monthly tenancy audits will be undertaken to confirm that the correct tenant is in residence (equating to 10% of stock each financial year). Quality assurance checks will also be undertaken monthly to ensure that procedures are being followed.
- 10.2 Performance on tackling Tenancy Fraud will be monitored through the Neighbourhood Services Performance Management Framework. There are no statutory indicators for this activity, but it is envisaged that the Housing Regulator may introduce indicators in the future. Measurements will include the number of:
- cases identified as potentially requiring investigation
  - cases investigated
  - outcomes including properties repossessed
  - households receiving housing options advice as a consequence of tenancy fraud action
  - households making homeless application as a consequence of tenancy fraud action

## **11. Consultation**

- 11.1 The Council will consult with tenants and other services and agencies in order to continually develop good practice in its tackling of tenancy fraud.

## **12. Reviewing this Policy**

- 12.1 This policy will be reviewed in March 2015 or as required due to legislative or regulatory change.

