

Cheltenham Borough Council

Cabinet – 21 January 2020

Prosecution of Housing and Tenancy Fraud on behalf of Social Housing Providers

Accountable member	Cabinet Member Corporate Services, Councillor Alex Hegenbarth
Accountable officers	Darren Knight, Executive Director People and Change
Ward(s) affected	All
Key/Significant Decision	No
Executive summary	To provide Cabinet with a report summarising how Cheltenham Borough Council may assist with the prevention, detection and prosecution of housing and tenancy fraud on behalf of Social Housing providers.
Recommendations	That Cabinet: 1. Notes the contents of the report; 2. Endorses the use of appropriate enforcement powers and those powers set out in the Prevention of Social Housing Fraud Act 2013; and 3. Supports the prosecution (where appropriate) of housing and tenancy fraud offences committed in relation to properties owned by the Authority or Social Housing providers within the Borough.
Financial implications	Overall the financial impact is expected to be cost neutral to the Council. The resultant recovery of properties and financial benefits are set out in 1.4 below. Contact officer: Paul Jones, Executive Director Finance and Assets Paul.Jones@cheltenham.gov.uk

Legal implications	<p>Under the Prevention of Social Housing Fraud Act 2013 Local Authorities can prosecute for offences relating to tenancy fraud. The Act empowers Local Authorities to prosecute in relation to properties let by the Local Authority or in cases where the social housing is let by Registered Social Landlords. A Local Authority can also prosecute in respect of tenancy fraud whether or not the property is located in the Local Authority's area.</p> <p>Contact officer: Sarah Farooqi, One Legal</p> <p>Sarah.Farooqi@teWKesbury.gov.uk</p>
HR implications (including learning and organisational development)	<p>There are no direct HR implications.</p> <p>Contact officer: Julie McCarthy, HR Operations Manager</p> <p>Julie.McCarthy@cheltenham.gov.uk 01242 264355</p>
Key risks	<p>The Council is required to work in partnership with other public sector organisations proactively to tackle fraudulent activity in relation to the abuse of public funds.</p>
Corporate and community plan Implications	<p>The Council is committed to an effective counter fraud and anti-corruption culture, by promoting high ethical standards and encouraging the prevention and detection of fraudulent activities, thus supporting corporate and community plans.</p> <p>In administering its responsibilities this Council has a duty to prevent fraud and corruption within its District, to protect the interests of the local community and prevent wrongdoing. In supporting the providers of social housing the Council is promoting a message of zero tolerance and ensuring affordable housing is available for those genuinely in need.</p>
Environmental and climate change implications	<p>None.</p>
Property/Asset Implications	<p>None directly arising from the report.</p> <p>Contact officer: Dominic Stead, Head of Property Services</p> <p>Dominic.Stead@cheltenham.gov.uk</p>

1. Background

- 1.1. Housing and Tenancy Fraud is identified as being one of the highest risk areas within the public sector causing significant loss to the public purse.
- 1.2. The Counter Fraud Unit (CFU) reviews housing lists across the partnership to assist in keeping temporary housing costs to a minimum.

- 1.3. At the time of writing the CFU delivers counter fraud services to a number of (not all) Social Housing providers across the Borough. They investigate allegations relating to unlawful subletting, false housing applications, key selling, abandonment, right to buy / right to acquire and wrongly claimed succession / transfer of tenancies.
- 1.4. The Cabinet Office has estimated the following savings to Social Housing Providers and Councils:
 - tenancy fraud - £93,000 per property recovered based on average four year fraudulent tenancy. This includes temporary accommodation for genuine applicants, legal costs to recover the property, re-let cost and rent foregone during the void period between tenancies.
 - right to buy - £65,000 per application withdrawn based on average house prices and minimum right to buy discount.
 - housing waiting list misrepresentation - £10,000 per applicant removed based on 1 year local temporary accommodation cost for genuine applicants. The national fraud initiative applies a more conservative estimate of £3,240 per case for future losses prevented as a result of removing an applicant from council housing waiting list.

2. Main Points

- 2.1. Some of the activities outlined in 1.3 above are in breach of the Prevention of Social Housing Fraud Act 2013 (POSHFA) which introduced specific criminal offences in relation to tenancy fraud.
- 2.2. POSHFA enables Local Authority employees to obtain information where there has been alleged fraudulent activity and, where this is found, gives Local Authorities powers to prosecute.
- 2.3. The CFU utilises these powers and other appropriate legislation to investigate such fraudulent activity on behalf of Social Housing providers.
- 2.4. POSHFA permits a Local Authority to investigate and prosecute for dwelling-houses not owned by it and/or situated outside of its area. However, due to the local impact, it would be preferable, where possible, for the Local Authority with responsibility for the area in which the property is situated to undertake the proceedings.
- 2.5. Where other legislation is utilised for prosecution proceedings, such as the Fraud Act 2006 or the Housing Acts, the CFU will still have undertaken an investigation and obtained evidence as Local Authority employees. Any potential prosecution proceedings relating to that case would need to be undertaken by the investigating Local Authority as the prosecuting body.
- 2.6. In exceptional circumstances, where the Counter Fraud Unit has undertaken an investigation for a Social Housing provider in relation to a property that falls outside of the Borough, the Local Authority may still consider undertaking a prosecution if appropriate to do so.
- 2.7. Any legal fees and costs associated with such investigations would be met by the client housing provider and would therefore contribute towards the costs of the Local Authority's legal team. Overall the financial impact is expected to be cost neutral to the Local Authority.
- 2.8. Where the property is not owned by the Local Authority we will seek to recover the legal costs from the Social Housing provider.

2.9. Prosecutions will only be considered where the public interest test is met with due consideration to the welfare of individuals.

2.10. The Local Authority's Corporate Enforcement Policy provides that enforcement action may not be appropriate in relation to older offenders, offenders with disabilities or in cases where the offender lacks mental capacity.

3. **Alternative Options**

3.1. POSHFA permits Local Authorities to investigate and prosecute for dwelling-houses not owned by it and/or situated outside of its area.

3.2. For cases relating to offences under this legislation, a case relating to properties situated within the Borough could be investigated and prosecuted by another Local Authority.

4. **Consultation**

4.1. The matter was subject to consultation with One Legal and the Executive Leadership Team.

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Appendices	1. Risk assessment

Risk Assessment

Appendix 1

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
1	The Council must fulfil its duties and responsibilities when considering and taking any enforcement action.	Council		1	1	1	Accept	One Legal to ensure prosecutions are approved in accordance with legislative requirements		Executive Director People and Change	
<p>Explanatory notes</p> <p>Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p>Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											