



Version

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# Tenancy Fraud Policy

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<b>Scope:</b>	This policy applies to all tenants of Welwyn Hatfield Borough Council as well as any persons accessing the Housing Needs Register.
<b>Effective Date:</b>	TBC 2020
<b>Review Date:</b>	TBC 2023
<b>Signed Off :</b>	TBC
<b>Author:</b>	ASB Team Leader
<b>Policy Owned by:</b>	Neighbourhood and Enforcement
<b>Statute:</b>	Fraud Act 2006 Prevention of Social Housing Fraud Act 2013 Housing Act 1985 Housing Act 1988 Theft Act 1968 Proceeds of Crime Act 2002 Forgery and Counterfeiting Act 1981 Regulation of Investigatory Powers Act 2000 (RIPA) Data Protection Act 2018 (GDPR) Criminal Procedures and Investigations Act 1996 Police and Criminal Evidence Act 1984 (PACE)
<b>National Standards</b>	Counter Fraud Standards and Profession New Approaches In Tackling Tenancy Fraud

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## 1 Scope

- 1.1 This policy applies to all tenants of Welwyn Hatfield Borough Council (WHBC) as well as any persons accessing the Housing Needs Register.

## 2 Policy Statement

- 2.1 The aim of the policy is to set out how we will deal with suspected cases of tenancy fraud. We will tackle unlawful subletting and tenancy misuse promptly and effectively, to ensure our housing stock is utilised by those with a genuine housing need.
- 2.2 The objective of the tenancy fraud policy is to ensure we provide a consistent and proportionate response to all cases of tenancy fraud.

## 3 Key Principles

- 3.1 Our priority is to prevent the misuse of our housing stock and allocations system by using robust, effective and timely housing management processes.
- 3.2 To raise awareness of social housing fraud and its impact on the housing waiting list and communities.
- 3.3 To maximise the availability of council properties by seeking to recover unlawfully rented and unoccupied homes.
- 3.4 To take a zero tolerance approach to tenancy fraud, taking swift enforcement action and prosecuting those proven to have committed tenancy fraud, where appropriate.

## 4 Key Legislation

- 4.1 **The Prevention of Social Housing Fraud Act 2013 (PoSHFA)** made the subletting of the whole of a social rented dwelling a criminal offence and introduced two new criminal offences:
1. Where the tenant sublets or parts with possession of a property or ceases to occupy the property, knowing that it is a breach of tenancy. A person convicted of this offence can be fined an unlimited amount.
  2. Where a tenant dishonestly and in breach of tenancy, sublets without consent and ceases to occupy the property as their only or principal home. A person convicted of the second offence can be imprisoned for up to two years and/or fined an unlimited amount.
- 4.2 This Act gives local authorities the ability to prosecute in cases of unlawful subletting and also gives the Court the authority to order the tenant to pay back any profit made from unlawful subletting.
- 4.3 **The Fraud Act 2006** states that a person is guilty of fraud if he is in breach of the following:
- a) Fraud by false representation
  - b) Fraud by failing to disclose information
  - c) Fraud by abuse of position

4.4 A person who is found guilty of fraud is liable, on conviction to a maximum sentence of 10 years imprisonment and/or a fine.

## 5 Examples of Tenancy Fraud

5.1 For the purpose of this policy the term 'tenancy fraud' refers to council-owned rented housing that is being used for a purpose other than it is intended. It may also be referred to as social housing fraud, unlawful occupancy, unauthorised occupancy or tenancy misuse.

5.2 Tenancy misuse does not refer to cases where tenant(s) have taken in a lodger or sublet part of their property with prior written consent from the council.

5.3 Examples of tenancy fraud include, but are not exhaustive:

- a) **Fraudulently obtaining a social housing tenancy** by misrepresentation as to identity or personal circumstances or not declaring interests in other properties.
- b) **Withholding information** or making a false statement when applying for a social housing tenancy.
- c) **Unlawful subletting**, including subletting the whole property or multiple sublets within one property while ceasing to occupy the same.
- d) **Non occupation** by the tenant as their sole or principal home, including tenancy abandonment.
- e) **Falsely claimed succession** where a tenant dies and someone who is not eligible to succeed to the tenancy retains the property.
- f) **Unauthorised assignment** of the tenancy such as an unauthorised mutual exchange or transfer of tenancy without the landlord's permission.
- g) **"Key selling"** - where the tenant leaves the property and passes on the keys in return for a one off lump sum payment or favour.
- h) **Providing misleading information** on identity or personal circumstances and not declaring interests in other property when purchasing a socially rented home under the 'Right to Buy'.

## 6 Impact of Tenancy Fraud

6.1 Tenancy fraud detrimentally affects WHBC, tenants and sub-tenants and the consequences of fraudulently used properties includes:

- i. The property is more likely to be neglected and in a state of disrepair, leading to WHBC incurring greater costs to rectify these issues.
- ii. There is a greater likelihood that the property will be associated with anti-social behaviour and crime.
- iii. The sub-tenant may be unaware of their situation, finding themselves at risk of financial losses, eviction and/or homelessness.
- iv. WHBC can incur significant and potentially irretrievable financial losses if a fraudulent 'Right to Buy' application is not identified. The loss of a property in this manner precludes it from being allocated to an applicant in genuine need.
- v. There is a risk to reputation for failing to investigate tenancy fraud as well as a cost burden of investigation and court proceedings.

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- vi. Applicants in genuine need are prevented from accessing social housing, leading to longer waiting times in overcrowded or temporary accommodation.

## 7 Prevention of Tenancy Fraud

- 7.1 To reduce the risk of tenancy fraud occurring we will request that a declaration is signed to confirm true and accurate information has been provided and we will seek to verify any information provided by tenants and prospective tenants and in the following circumstances:
  - i. Upon completing a housing application form and, having met the criteria, being awarded a Band C priority or above (Band D priority is verified at 18 months after an application is made or when an applicant is over 60). The verification process will include requiring photo ID which remains on file, confirming residency history and any other property interests.
  - ii. Once an offer of accommodation has been accepted.
  - iii. When a request is made to assign, succeed or mutually exchange a tenancy.
  - iv. When a flexible tenancy is reviewed at the end of the flexible five year term.
  - v. When an application for the 'Right to Buy' is made.
- 7.2 We may cross reference the data we receive with external agencies, such as the National Anti-Fraud Network to ensure that the information provided is valid and authentic. We may also retain copies of identification provided at sign-up. The council also provides data for the National Fraud Initiative (NFI) which is an exercise that matches electronic data within and between public and private sector bodies to prevent and detect fraud.

## 8 Detecting Tenancy Fraud

- 8.1 All new tenants will be contacted within eight to twelve weeks of moving into their new home by a Neighbourhood Officer or Income Officer to ensure that the tenant and their household has moved in and that the property is occupied.
- 8.2 Tenancy audits will be undertaken on a periodic basis to ensure that the property is being maintained within the terms of the tenancy agreement, to capture statistics on overcrowding and under-occupancy and also to identify any potential tenancy fraud. Audits will be prioritised according to intelligence as well as targeting properties where we have had limited or no contact.
- 8.3 WHBC will undertake publicity campaigns across a range of media to highlight the impact of tenancy fraud, raising awareness of the signs and to encourage reporting. We will also offer a variety of channels through which to report tenancy fraud.
- 8.4 We will ensure that staff are trained to detect and identify when tenancy fraud may be being committed and how to report it. Our Anti-social Behaviour team will receive specialist training to enable them to investigate and case manage reports effectively through to legal action.
- 8.5 We will participate in the Cabinet Office's National Fraud Initiative (NFI) which is an exercise to electronically match data provided by public and private sector bodies to prevent and detect fraud.

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## 9 Enforcement and Action

- 9.1 We have a range of responses available to tackle tenancy fraud. The actions we will take to ensure effective enforcement of this policy are to:
- i. Investigate 100% of tenancy fraud cases reported to us.
  - ii. Act promptly, commencing investigations within seven working days of receiving the tenancy fraud report. The type of investigation and action taken will be dictated by the type of tenancy fraud alleged.
  - iii. Log all reports and actions taken on our case management system.
  - iv. WHBC may undertake covert surveillance, which is a legitimate tool in fraud investigations, in accordance with our obligations under the Regulation of Investigatory Powers Act 2000.
  - v. Where it is suspected that a criminal act may have taken place, trained officers may conduct interviews under caution and in accordance with the Police and Criminal Evidence Act 1984.
  - vi. If we determine there is no reasonable action that can be taken to deal with an issue reported to us then we will inform the complainant and provide an explanation as to why this is the case. We will also close a case where there is no evidence to progress it and no further action can reasonably be taken.
  - vii. Work with other agencies, including but not limited to; NAFN Data and Intelligence Services, the Department of Work and Pensions (DWP) and the Police.
  - viii. In some cases it may be considered appropriate to allow the tenant to return the keys of the property with no need for further court action.
  - ix. For tenants who do not surrender the property the Anti-social Behaviour Team will commence legal action by issuing a Notice to Quit and/or a Notice Seeking Possession, as appropriate and instruct our legal team to commence Possession Proceedings.
  - x. Undertake criminal prosecutions under PoSHFA 2013, where a property has been found to sublet without consent and the tenant(s) cease to occupy their property as their only or principal home.
  - xi. We may apply for an Unlawful Profit Order (UPO) in cases where a tenant has been found to have made a profit from letting whole or part of their home.

## 10 Supporting Sub-Tenants

- 10.1 If a sub-tenant is discovered during an investigation the council will support the household by offering advice and assistance which may be in the form of completing homeless application if applicable and applying to join the Housing Waiting List. They will be advised of the legal process the council will take in gaining possession of the property so that they are aware of the time scale involved for them to vacate the property.

## 11 Data Sharing and Matching

- 11.1 WHBC shares relevant information with third parties for the purposes of preventing, investigating and tackling tenancy fraud.

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- 11.2 When sharing personal information we will comply with all aspects of the General Data Protection Regulations (GDPR) and the Data Protection Act (DPA) 2018. The council's GDPR privacy notices can be found on the council's website at [www.welhat.gov.uk](http://www.welhat.gov.uk)
- 11.3 WHBC will participate in data matching exercises with the National Fraud Initiative and other parties, where relevant to detect possible cases of fraud. Data matching refers to the process where a provider compares the data they hold on a tenant to data held by another organisation. This data includes such as their address history, or where a claim for benefits has been made at a property which is not their social rented home.

## 12 Information Sharing

- 12.1 We are party to a number of information sharing agreements with organisations such as the Police, the DWP and Hertfordshire County Council safeguarding boards. This is to allow us to lawfully share information for purpose of preventing, detecting and tackling fraud, which is a crime. We will comply with the relevant legislation when doing so.
- 12.2 When we share information we will ensure that the transfer of information is done safely, stored appropriately and is not shared with a third party without permission unless there is a legal basis for doing so.
- 12.3 When we receive Freedom of Information or Subject Access Requests we will deal with these lawfully and within the guidance from the Information Commissioner's Office.

## 13 Working in Partnership

- 13.1 Partnership working is essential to successful prevention and detection of tenancy fraud and we will work with a variety of agencies including statutory, non-statutory and voluntary sector organisations.
- 13.2 We will work with other social housing providers operating within Welwyn Hatfield, especially where WHBC has nomination rights to their properties, to take the same zero tolerance approach to tenancy fraud that we have adopted.
- 13.3 Recognising that some investigations cannot be managed by one agency alone, we will attend regular partnership meetings to enable the exchange of information between key community partners.

## 14 Confidentiality

- 14.1 Tenancy fraud can be reported anonymously on our website. The details of the person reporting the fraud will remain confidential unless the reporting person(s) advises the investigating officer that they are happy for their details to be shared.
- 14.2 Anonymous reports are often difficult to deal with, especially when information provided is limited. We will assess how serious the report is before we decide whether we can investigate the case. This may include speaking to partners such as Council Tax, to establish whether they have further information that we can act upon.

## 15 Monitoring

- 15.1 We will monitor tenancy fraud cases to ensure the correct application of the tenancy fraud policy.
- 15.2 We will monitor a key performance indicator of how many properties are recovered due to tenancy fraud at Operational Management Team Performance Meetings.

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15.3 This policy will be reviewed every three years, or where there have been significant changes to regulation or legislation to warrant a further policy review.

15.4 The Policy may also be reviewed sooner where there is a need to address operational issues, or where best practice has evolved and there is a need to incorporate this.

## **16 Equality and Diversity**

16.2 The council will treat all customers and staff with fairness and respect. We value diversity and work to promote equality and tackle unlawful discrimination.

16.3 We are committed to helping customers to access information about their homes and services in a way that suits individual needs.

16.4 We will meet the requirements relating to equality and diversity laid down in the Equality Act 2010 by working to:

1. Eliminate discrimination, harassment and victimisation
2. Advance equality of opportunity and
3. Foster good relations between all of our residents, service users and staff.

16.5 The council is committed to welcoming and valuing diversity, promoting equality of opportunity and tackling unlawful discrimination. We will not discriminate against staff, customers or others based on their sex, sexual orientation, marital status, pregnancy and maternity, gender reassignment, race, religion, belief, disability or age (collectively referred to as protected characteristics in the Equality Act 2010).

16.6 The council aims to provide homes and services that meet the diverse needs of customers. We believe that all customers should be able to access housing, support and care services with the same ease and that the quality of our service is the same high standard for all.

## **17 Publicity**

17.1 A copy of this policy will be placed on WHBC's website is available in print on request. It will be publicised to existing tenants via the Tenant's Newsletter, 'Your Voice'.

17.2 Awareness campaigns will be undertaken periodically to highlight the issue of tenancy fraud and encourage reporting. We may also publicise cases where we have successfully recovered a property where tenancy fraud was taking place.

## **18 Review of Decision and Complaints**

18.1 Any tenant who is not satisfied with the manner in which WHBC or its contractor(s) has delivered the service they have received regarding tenancy fraud has the right to have their case investigated.

18.2 Residents should follow the council's complaint policy if they wish to make a complaint about service standards.

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## Related Documents

Document	Link
<b>Connected Policies:</b>	<ul style="list-style-type: none"> <li>Anti-social Behaviour Policy</li> <li>Right to Buy Policy</li> <li>Complaints Policy</li> <li>Anti-Fraud and Corporate Enforcement Policy</li> <li>Data Protection Policy</li> <li>Anti-Money Laundering Policy</li> <li>Anti-Fraud and Corruption Strategy</li> </ul>
<b>Forms and Letters:</b>	
<b>Leaflets:</b>	<a href="#">Linked leaflets</a>

## Version history

<b>Version no.</b>	1	<b>Date effective:</b>	TBC
<b>Full / partial review?</b>	Full		
<b>Brief summary of changes:</b>			
<b>Staff consultation (teams):</b>	<ul style="list-style-type: none"> <li>Neighbourhood &amp; Enforcement</li> <li>Private Sector Housing Team</li> <li>Income &amp; Home Ownership Team</li> <li>Equality Steering Group</li> <li>Housing and Communities</li> </ul>		
<b>Resident consultation:</b>	<a href="#">Tenants Panel –</a>		
<b>Approved By Cabinet / Council:</b>	<a href="#">Date of full cabinet or council approval</a>		
<b>Author:</b>	Carla Claydon - ASB Team Leader		

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