

SOCIAL HOUSING FRAUD: TENANCY AUDITS

This document is published by Practical Law and can be found at: uk.practicallaw.com/5-542-4685
Request a free trial and demonstration at: uk.practicallaw.com/about/freetrial

This note covers what a tenancy audit should contain and investigating possible tenancy fraud following an audit.

Andrew Lane, Barrister, Cornerstone and Practical Law Public Sector

CONTENTS

- What are tenancy audits?
 - Benefits of conducting tenancy audits
- Issues with tenancy auditing
- What should a tenancy audit cover?
 - Confirming who is residing at the property
 - Frequency of audits
 - Accessing a property as part of a tenancy audit
- Indications of unlawful subletting
 - Raising concerns about the condition of a property following an audit
- Investigation of alleged tenancy fraud following a tenancy audit
 - Sharing and protecting data

Social housing fraud is an increasing problem for social landlords with approximately 107,000 social housing homes being unlawfully occupied with a value of £178 million (*Audit Commission: Protecting the public purse 2013 (November 2013) (www.audit-commission.gov.uk/wp-content/uploads/2013/11/Protecting-the-public-purse-2013-Fighting-fraud-against-local-government.pdf)*). Discovery of this level of tenancy fraud is likely to be due to rigorous tenancy auditing procedures being adopted by social landlords to ensure that their properties are being occupied by the legal tenants.

This note explains what tenancy audits are, why they are useful and the related issues faced by landlords.

This note does not cover social housing fraud in detail or the Prevention of Social Housing Fraud Act 2013, for more information, see *Practice note, Social housing fraud: Prevention of Social Housing Fraud Act 2013 (www.practicallaw.com/8-553-5385)*.

WHAT ARE TENANCY AUDITS?

Tenancy audits enable landlords to check that their properties are used properly by the people who have

the right to live in them, and to identify situations where there has been misuse or fraudulent subletting.

Generally a tenancy audit will involve a representative of a landlord attending a social housing property and completing a questionnaire in relation to the tenant and their occupancy of the property. In addition, the representative may also use an audit as an opportunity to view and record the condition of a social housing property.

Benefits of conducting tenancy audits

Tenancy audits are a key tool for social landlords in ensuring that their housing stock is being used effectively and that their properties are not being occupied by those who do not have a right to do so. The National Fraud Agency estimated that in 2013 tenancy fraud cost councils £845 million and when combined with that experienced by housing associations, this gives a total loss of £1.8 billion in England, around five times the annual loss due to housing benefit fraud.

They also provide a means of ensuring that, where possible, tenants' housing needs and preferences can

RESOURCE INFORMATION

RESOURCE ID

5-542-4685

RESOURCE TYPE

Practice note

PUBLISHED DATE

25 July 2014

JURISDICTION

England, Wales



be met either by the social landlord or a third party, and any instances of tenancy fraud are dealt with as soon as possible to prevent large scale fraud taking place and any associated problems potentially arising from illegal subletting (such as rent arrears, damage to the premises or anti-social behaviour).

ISSUES WITH TENANCY AUDITING

There are a number of issues with many tenancy auditing procedures, which can often mean that in some areas tenancy fraud may not be investigated and may go unreported. Issues may lie with landlords choosing not to undertake tenancy auditing in their areas or may lie with the tenancy auditing procedures themselves where a decision has been made to undertake them.

Landlords may decide not to undertake tenancy auditing in their areas for the following reasons:

- In some cases, landlords may actually benefit from illegal subletting (though see the issues concerning regulatory requirements set out below). For example, the person to whom the property has been sublet is actually a better tenant than the original tenant, specifically in relation to paying rent promptly and looking after the property. Also if the person who has rented the property under a subletting arrangement would otherwise be seeking assistance from a local housing authority under Part VII of the Housing Act 1996 then a landlord may see it as preferable for that person to remain in the illegally rented social housing property than to fall under the homelessness regime where they would be required to house them in any case.
- Tenancy fraud is not considered to be a corporate priority, possibly due to a lack of dedicated resources or lack of government incentives to investigate and recover properties where tenancy fraud is involved. Where the government has provided funding to local authorities (for example, £4 million was provided in 2010), the funds were spent primarily on dedicated investigative staff, data matching exercises, training and publicity (*NFA: Guide to tackling housing tenancy fraud, page 6* (www.gov.uk/government/uploads/system/uploads/attachment_data/file/118463/tackling-social-housing-fraud.pdf)).
- A poor understanding of the scale of tenancy fraud due to poor or non-existent tenancy auditing procedures.

- An unwillingness to become involved in the process of ending complex tenancies where a tenancy audit has suggested that tenancy fraud is involved.

WHAT SHOULD A TENANCY AUDIT COVER?

Tenancy audits have the following main purposes:

- To ensure that the tenant is occupying the premises as their only or principal home.
- To clarify the make-up of the household for benefit and allocations purposes.

A tenancy audit comprising a personal visit is likely to be the best way of clarifying who is residing in a property as well as ensuring that any issues with the condition of the property itself are revealed.

Confirming who is residing at the property

In order to confirm who is residing in the property, a visiting officer should do the following:

- Check the tenant's proof of ID. This includes checking the tenant's photograph, where this has been provided at the start of the tenancy (for example, *One Housing Group's Tenancy Fraud Policy (2013)* (www.onehousinggroup.co.uk/sites/default/files/Tenancy%20Fraud%20Policy%202013.pdf) requires prospective tenants and shared owners to provide a passport-sized photograph to keep with their tenancy file).
 - Check the tenant's date of birth, contact details and signature to confirm that they match those on the landlord's records.
 - Check the utility bills to confirm that the tenant is the account holder.
 - Look at all of the rooms at the property to confirm occupation and to check their condition. For example, where the tenancy lists the property as being occupied by a sole tenant if there are belongings there which suggest that more than one person is living there then this may be an indicator of tenancy fraud.
- As a matter of good practice, those conducting tenancy audits should also consider asking where appropriate whether:
- The tenants have any interest in downsizing, mutual exchange or moving into sheltered accommodation or accommodation for the elderly.

- The tenant is interested in exercising the right to buy or the right to acquire (see [Flowchart, Right to buy \(www.practicallaw.com/1-525-0446\)](#) and [Practice note, Right to buy: the process \(www.practicallaw.com/1-540-4750\)](#)).

Dealing with vulnerable tenants

It is important that those conducting tenancy audits are trained to deal with vulnerable tenants and are aware of any potential issues before undertaking an audit. This may involve:

- Ensuring that a translator is available where the tenant's first language is not English.
- Providing a BSL interpreter where the tenant has hearing difficulties.
- Having the ability to provide all of the information relating to the audit in alternative formats (such as Braille).

Frequency of audits

How frequently a landlord should conduct its tenancy audits will depend on the size of its housing stock and how long each audit is likely to take. As an example, [Enfield Homes' Tenancy Audit Policy \(August 2012\) \(Tenancy_Audit_Policy_approved__160812_final.pdf\)](#) allows for an annual validation check on 20% of all of its stock.

The frequency of a landlord's tenancy audit procedures should have been subject to external consultation as a matter of best practice (see [Practice note, Decision-making by public bodies: avoiding legal challenge \(www.practicallaw.com/6-383-9998\)](#)). However, outside of any regular, periodic investigations, a landlord should also ensure that it has the discretion to undertake audits in response to specific concerns and investigate properties and the facts surrounding their occupation on an ad hoc basis.

The Chartered Institute of Housing's briefing note, ["How to...tackle tenancy fraud" \(www.cih.org/resources/PDF/Policy%20free%20download%20pdfs/How%20to%20tackle%20tenancy%20fraud.pdf\)](#) highlighted the example of Peabody Housing Association which carries out unannounced estate "blitzes" targeting homes in neighbourhoods where there are concerns about fraudulent behaviour for intensive tenant audits. The housing officers in these cases wear high visibility vests and usually received a number of "tip-offs" from residents which are then followed up.

Accessing a property as part of a tenancy audit

There is no automatic right of access for the purposes of a tenancy audit as most initial visits should be unannounced in order to ensure that an accurate assessment of who is living at the property and the condition of the property is made. It is therefore important that tenancy agreements provide for tenancy audits to take place both on a regular and ad hoc basis.

However, if a landlord suggests appointments or interviews to a tenant, either at a property or at the landlord's housing office, then as a matter of good practice a tenant should have the right to change the dates and times of these on request.

INDICATIONS OF UNLAWFUL SUBLETTING

Formal audits are not usually carried out at random but are likely to be carried out as a result of specific concerns or as part of a regular tenancy auditing process. Concerns about unlawful subletting include:

- Neighbour concerns and reports, including complaints of frequent visitors or communal damage in blocks of flats (especially regular vandalism to door entry systems).
- Reports of overcrowding in smaller units.
- Rent arrears or payment by a non-tenant (or indeed a large credit on the rent account, which could indicate that the tenant has been absent from the property for a prolonged period).
- Council tax arrears.
- Lack of repair requests or conversely reports from contractors.
- Failure to respond to letters from the landlord.
- Failure to give a landlord access for annual gas safety check.
- Requirement by tenant for notice before any visits to the property.
- Repeated requests for replacement keys and communal door fobs.

Tenancy audits taking place outside of normal working hours are a useful approach for those investigating possible unlawful subletting cases, as may (in appropriate cases) joint visits with other relevant

agencies involved (for example, in respect of housing benefit or universal credit fraud).

Raising concerns about the condition of a property following an audit

Issues with a property that has been illegally sublet may include:

- Disrepair.
- Unauthorised tenant improvements.
- Illegal use (for example, the growing of cannabis plants).

In addition to (or instead of) concerns about occupation or benefit fraud, a visiting officer may conclude a tenancy audit with the following:

- Details of disrepair to be dealt with by the landlord.
- Requests for information concerning transfer or the right to buy or acquire.
- Concerns about a tenant's benefit entitlement (particularly in the light of the changes following the passing of the Welfare Reform Act 2012).
- Indications that the tenant requires additional support (for example, in relation to benefits, debt advice or as regards to mental health or addiction issues).

Registered providers must publish clear and accessible policies which outline their approach to tackling tenancy fraud (see *Homes & Communities Agency: Regulatory Framework for social housing in England from April 2012* (<http://www.homesandcommunities.co.uk/ourwork/regulatory-framework>)). Registered providers must ensure that the property continues to be occupied by the tenant to whom it is let in accordance with the requirements of the tenancy agreement and for the duration of the tenancy. Allowance is made for regulatory requirements about participation in mutual exchange schemes (*paragraph 2.6, Tenancy Standard, Homes & Communities Agency: Regulatory Framework for social housing in England from April 2012, page 22*).

INVESTIGATION OF ALLEGED TENANCY FRAUD FOLLOWING A TENANCY AUDIT

Investigation of alleged fraud following a tenancy audit is likely to involve numerous parties and agencies.

In order to ensure efficient use of resources, proper organisation of an investigation is essential and may involve:

- Ensuring that there are trained staff available to deal with instances of tenancy fraud.
- Joint working with relevant agencies such as the DWP and local authorities (if a private registered provider) and the establishment of information-sharing protocols. Alongside this, local authority and private registered provider landlords should consider working jointly in such cases to ensure that they are aware of any issues relating to particular tenants.
- Data matching, to check names of benefit recipients against the premises' records.
- Photographing tenants at the allocation stage and again during the tenancy audit.
- Awareness training and publicity to make staff and the neighbourhood aware of tenancy fraud and tenancy audits so they can report potential signs of subletting and tenant absence.
- A dedicated officer or team to collate reports and information.
- Identifying a point of contact (such as a telephone hotline or dedicated website) for external reports of subletting, and the use of newsletters and social networking to publicise this.
- Considering the issue of tenancy fraud when involved in other activities such as repair activity, gas safety inspection or assignment or transfer discussions.
- Use of information services companies such as Experian, where a more targeted and detailed investigation is warranted.
- Routinely checking listings websites (for example, Gumtree) to see if any of the landlord's stock is being advertised when it should not be.

Sharing and protecting data

When investigating an instance of tenancy fraud following or in relation to a tenancy audit, a key consideration for landlords is likely to be whether they can share the tenant's data with other agencies (such as the DWP) and how the data can remain secure.

The Data Protection Act 1998 (DPA 1998) is the key legislation (see *Practice note, Overview of UK data protection regime* (www.practicallaw.com/7-107-4765)).

Under the DPA 1998, personal data may be processed where it is necessary for the purposes of the “legitimate interests” of the data controller or third party to whom the data is disclosed (*paragraph 6(1), Schedule 2*). The Information Commissioner has produced two checklists, which provide guidance on the process of deciding whether to share personal data. For more information, see *ICO: Data sharing checklists (2011)* (http://ico.org.uk/for_organisations/data_protection/topic_guides/~/_media/documents/library/Data_Protection/Practical_application/data_sharing_checklists.ashx).

Section 29(3) of the DPA 1998 is also used by trained, accredited fraud investigators (that is, when the case has obviously justified serious consideration). Under that section, personal data is exempt from the non-disclosure provisions where the disclosure is for the

prevention or detection of crime, the apprehension or prosecution of offenders, or assessment or collection of any tax.

Disclosure of personal data is also allowed where it is necessary for the purpose of (or in connection with) legal proceedings or for the purpose of obtaining legal advice (*section 35(2)* (<http://uk.practicallaw.com/9-508-9182?pit=>), DPA 1998).

Outside of the DPA 1998 regime, the Law Commission has recently consulted on the obstacles to data sharing between public bodies and how data sharing can be used to provide better services to citizens (see *Legal update, Law Commission consultation on obstacles to data sharing between public bodies* (www.practicallaw.com/9-543-0825)). The outcome of this consultation is likely to result in changes to data sharing and potentially make it easy for bodies such as private registered providers and local authorities to share information relating to tenancy fraud and the outcomes of tenancy audits.