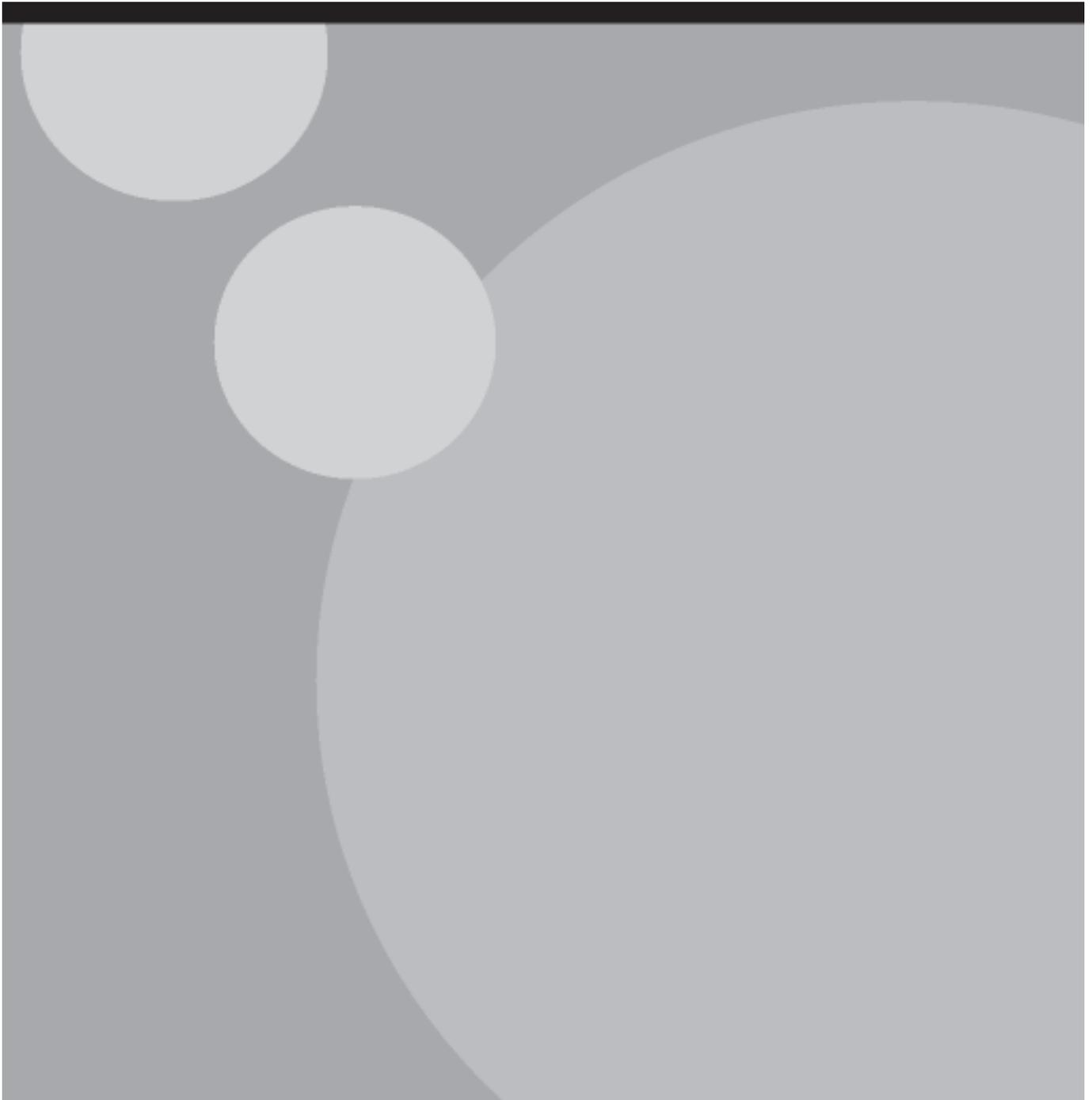




Social Housing Fraud

Summary of responses to consultation and next steps





Social Housing Fraud

Summary of responses to consultation and next steps

July 2012
Department for Communities and Local Government

© Crown copyright, 2012

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

This document/publication is also available on our website at www.communities.gov.uk

Any enquiries regarding this document/publication should be sent to us at:

Department for Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU
Telephone: 030 3444 0000

July, 2012

ISBN: 978-1-4098-3568-4

Contents Page

Section 1: Introduction.....page 5

Section 2: Summary of responses..... page 6

Section 3: Responses to questions.....page 7

Section 4: Next steps.....page 12

Section 1

Introduction

- 1.1 On 11 January the Government published a consultation paper on proposals to reduce the incidence of fraud relating to social housing in England.
- 1.2 The consultation paper sought views on: introducing a new criminal offence of tenancy fraud and the penalties on conviction; introducing restitutionary payments; providing local authorities with the power to prosecute for tenancy fraud; creating a new mandatory gateway for information sharing linked to criminal prosecutions; how greater clarity could be introduced around 'intention to return'; bringing the rules for loss of status for assured tenants in line with those for secure tenants; and how and when proposed new powers might be used.
- 1.3 The consultation process closed on 4 April.
- 1.4 We have now considered all the responses received. Sections 2 and 3 of this document summarise responses to the consultation. Section 4 sets out next steps in the light of consultation responses.
- 1.5 We are grateful to organisations across a number of sectors and individuals who took the time to respond to this consultation.
- 1.6 Copies of this document are available on the Department for Communities and Local Government website at www.communities.gov.uk
- 1.7 Enquiries about the document should be addressed to: graham.knapper@communities.gsi.gov.uk

Section 2

Summary of Responses

2.1 188 responses were received from local authorities, arms length management organisations, private registered providers of social housing (and in a few instances joint responses), tenant and resident organisations, members of the public and other organisations with an interest including other private companies, representative bodies and the legal profession. The table below sets out the breakdown of the origin of responses:

Type of respondent	Number of responses
Local Authorities (including Arms Length Management Organisations)	87
Private Registered Providers	51
Local Authorities and Private Registered Providers jointly	6
Tenant and Resident Organisations	6
Members of the Public	9
Other Organisations	29
	188

Section 3

Responses to Questions

Question 1: Do you agree that a new criminal offence should be created?

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

Question 3: Do you agree with our core proposal to give a broad definition to 'tenancy fraud'? Which forms should be included?

3.1 Around 90% of respondents to the consultation were supportive of creating a new criminal offence of social housing tenancy fraud. A similarly large majority (88%) were in favour of this being broadly defined. In addition to those offences specifically listed as falling under a broad definition of tenancy fraud in the consultation document, wrongly claimed succession and more generally obtaining social housing by deception were widely mentioned.

3.2 Some respondents, while supportive of a criminal offence in some circumstances, noted the importance of distinguishing between those setting out to defraud the system and make a profit and those who, for example, were seeking to help family or friends without personal gain. Others noted the importance of careful definition, for example to prevent tenants escaping prosecution by not sub-letting a very small part of the property.

3.3 Some concern was expressed about including unauthorised assignments and wrongly claimed succession in any criminal offence on the basis that these were more likely to arise as a result of a failure to understand the law or tenancy agreements.

“We think it [a new criminal offence] sends a very clear message that tenancy fraud will not be tolerated and that it will be actively deterred and, where appropriate, severely punished.” (Local Authority)

“It is essential that there is a distinction in the law between those who vacate their property in order to lease it out of necessity, for example to care for a sick relative, and those who sublet for financial gain.” (Other Organisation)

3.4 Around 40% of respondents supported the maximum penalties for tenancy fraud set out in the consultation document. A significant number though suggested that penalties should mirror those in place for housing benefit fraud and a few expressed the view that the benchmark should be penalties for offences under the Fraud Act 2006. Many respondents offered specific suggestions with penalties of widely varying degrees of severity, with at one extreme a maximum fine of £100,000 and imprisonment of up to ten years.

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?

3.5 88% of respondents supported allowing restitutionary payments to be made to landlords. A slightly smaller (principally because fewer respondents answered this question) but still large majority (80%) supported the proposition that restitutionary payments should be available in civil as well as criminal cases.

3.6 There was a strong sense from respondents that allowing restitutionary payments to be made to landlords was not only an appropriate sanction against those who had profited from abusing their social tenancy, but would also provide an important incentive for landlords, or local authorities acting on their behalf, to take action.

“Whilst we agree that imprisonment and heavy fines should be available in the most serious cases the most important penalty will be a restitution payment to the landlord” (Other Organisation)

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

3.7 Approximately 88% of respondents were supportive of local authorities having specific power to prosecute for tenancy fraud. A few echoed the view expressed in the consultation document that the same power should not be extended to private registered providers for reclassification reasons. Instead the focus should be on effective joint working.

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

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

3.8 Roughly 90% of respondents supported the introduction of a mandatory data sharing gateway linked to criminal prosecutions for tenancy fraud. A similarly large majority (87%) agreed that the gateway should cover banks, building societies and utility companies.

3.9 Respondents suggested a large range of other private sector and public sector organisations to which the gateway should apply. These included, but were by no means limited to, insurance companies, telecoms and internet providers, letting agents, credit reference agencies, schools, TV Licensing, Driver and Vehicle Licensing Agency, Department for Work and Pensions and Her Majesty's Revenue and Customs. The need for flexibility in the light of experience and changes to organisations was stressed.

"We consider there needs to be a flexible approach to organisations that might hold relevant data." (Other Organisation)

Question 8: How should the 'intention to return' be amended? What would 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?

3.10 Around 85% of respondents were supportive of looking to clarify the circumstances in which, where a tenant was not living in their property, this would still be regarded as their only or principal home.

3.11 There were though a wide range of views about what period of absence would be appropriate, ranging generally from 28 days to a year. Equally there was a diversity of opinion about what might constitute a necessary as opposed to a voluntary absence. The large majority of respondents who addressed this question felt for example that moving temporarily to care for a relative fell into the former category whilst moving in with a partner fell into the latter. Views however differed about non-occupancy as a result of imprisonment, to undertake work or study elsewhere or to escape anti-social behaviour for example.

3.12 A significant number of respondents felt that it was unhelpful to look at a specific period of absence or specific reasons. Each case needed to be looked at on its own merits. There was a significant body of case law that enabled the courts to make decisions in specific cases in the light of an established framework and attempts to overlay this with new rules could in practice prove unhelpful.

“The guiding principle should be that a tenant should not lose their social housing when they have a reasonable cause for temporary non-occupation. The courts should assess the veracity and merits of reasons given for non-occupancy or a case-by-case basis.” (Other Organisation)

Question 9: Should assured tenancies be brought into line with secure tenancies, meaning that status cannot be regained once the whole property has been sublet?

3.13 90% of respondents supported equalising the position for secure and assured tenancies with a strong sense that there was no good reason for the current distinction. Only a handful of respondents were opposed, reflecting in part a concern that this issue should not be looked at in isolation but in the context of differences between secure and assured tenancies more generally.

Q10. 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?

Q11. 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?

Q12. 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?

Q13. As a data-holder, what do you believe would be the unit cost of processing a data request?

3.14 Landlord respondents set out a range of reasons which would incline them towards a criminal prosecution in particular cases, but there were some common themes. The single most cited was the strength of the evidence against the tenant. The level of deception involved and scale of the fraud also came through as important factors along with a broader consideration of public interest.

3.15 Practical considerations: the cost and resources involved in a criminal prosecution; the likelihood of obtaining restitutionary payments; the

tenants history and vulnerability; and, (for private registered providers) the strength of the relationship with the local authority, were all seen as likely to weigh heavily.

3.16 A small minority of landlords suggested that they would pursue criminal prosecutions wherever possible but many more indicated that they would do so only in a minority of cases or exceptionally when the particular circumstances or the scale of the fraud justified that approach.

3.17 A few landlords set out the percentage of recent cases of tenancy fraud they would have been likely to pursue as a criminal prosecution. These were up to 40% of cases.

“In general housing providers would prosecute in cases which they feel would be an effective deterrent when publicised” (Other Organisation)

“Local authorities would decide on a case by case basis with common factors such as strength of evidence and whether it would be in the public interest to pursue a prosecution, something already happening in relation to benefit fraud (Other Organisation)

3.18 Landlords provided a wide range of estimates of how many data requests they would make each year under a new mandatory gateway, reflecting their current focus on tackling tenancy fraud and the extent of the problem locally. Estimates ranged from 2,000 requests in one inner London authority to a handful in some more rural authorities.

3.19 Landlords who expressed a view on what it would cost them as data holders to comply with a request for information under a mandatory gateway offered a wide range of figures. One response from the water industry noted that this was in practice simply an extension of existing powers to obtain information for benefit fraud and anticipated no significant new burden.

Section 4

Next Steps

- 4.1 We are publishing this analysis of consultation responses at the same time as Second Reading of a Private Member's Bill, introduced by Richard Harrington MP and supported by the Government, which will take forward key elements of our consultation proposals on tenancy fraud.
- 4.2 The text of the Bill can be found on the Parliament website, but in summary it will, subject to Parliamentary approval, create new criminal offences of unauthorised sub-letting with the prospect of imprisonment on conviction; give local authorities the power to prosecute these new offences both for other local authorities and on behalf of private registered providers as well as on their own behalf; provide for unlawful profit orders in both criminal and civil proceedings, which will require the person against whom the order is made to pay to the landlord any profit made from unlawful sub-letting; and, ensure that an assured tenant of a private registered provider permanently loses their assured status when they sub-let or part with possession of the whole of their property.
- 4.3 We have looked closely at the case for a broader new offence of tenancy fraud as suggested in the consultation. We consider, taking in particular into account the need to avoid creating new criminal offences when existing criminal sanctions may already be available, that a new offence is necessary only to address those situations where a tenant who is not in occupation unlawfully sub-lets or parts with possession (which would include key-selling).
- 4.4 We do not intend to seek to prescribe more closely the circumstances in which a period of absence from a property would mean it ceased to be a tenant's sole or principal home. Consultation responses showed a wide diversity of views on what should be considered a necessary or voluntary absence and a strong belief that individual circumstances needed to be looked at on a case by case basis. We do not think that in practice we could provide further clarity whilst retaining flexibility in a way that usefully complements the existing body of case law on this issue.
- 4.5 We consider that the creation of a mandatory gateway requiring certain bodies to provide relevant information is a key element both in detecting unauthorised sub-letting and in enabling successful criminal prosecutions. We also consider that the role a mandatory gateway should play in increasing the likelihood of being detected would have a significant deterrent effect.

4.6 We recognise though that this is a complex issue and any new mandatory gateway for tenancy fraud needs to be considered in the context of the Government's wider commitment to strengthen public sector bodies' ability to share data for the purposes of detecting and prosecuting fraud wherever it occurs.

4.7 We will therefore, working with the Home Office and other Government Departments, give further thought to the best and most efficient way of putting a mandatory gateway in place, with a view to legislating to deliver that, as well as a new offence for non-compliance with a request for data, when the right opportunity arises.