

For General Release

REPORT TO:	CABINET 20 January 2014
AGENDA ITEM:	9
SUBJECT:	Unlawful subletting (Tenancy Fraud)
LEAD OFFICER:	Hannah Miller, Deputy Chief Executive & Executive Director Adult Services Health & Housing
CABINET MEMBER:	Councillor Dudley Mead, Deputy Leader (Statutory) (Capital Budget and Asset Management) and Cabinet Member for Housing
WARDS:	All Wards
CORPORATE PRIORITY/POLICY CONTEXT: Delivering high quality public services Improving value for money Crime prevention This proposal supports the achievement of corporate priority C – protect resident priorities – by contributing to a reduction in social housing tenancy fraud resulting increase in the properties available to tenants who are entitled to them.	

FINANCIAL IMPACT

The Council has a limited number of properties available to let and lettings are prioritised according to housing need. Implementation of the recommendation could result in a number of properties that are currently unlawfully sublet being returned to the Council and offered to those on the waiting list. The cost being in the region of £90,000 per property when taking into account the potential housing benefit fraud and the cost of keeping other households in temporary accommodation rather than being housed in permanent accommodation.

The cost for the key amnesty would be minimal. The exercise will draw attention to the recent law changes and raise awareness and greater understanding of what unlawful subletting is and the harm it causes. A period of amnesty will offer a short period of reprieve to those committing tenancy fraud in advance of the Council taking further measures in due course.

KEY DECISION REFERENCE NO.: this is not a key decision

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below

1. RECOMMENDATIONS

The Cabinet is recommended:

- 1.1 To implement an amnesty in the month of February 2014 for Council tenants who unlawfully sublet or part with possession of the whole of their accommodation.
- 1.2 To agree to depart from the Council's enforcement policy by not intending to start criminal proceedings for unlawful subletting against those who surrender their tenancy during the amnesty.

2. EXECUTIVE SUMMARY

- 2.1 This report sets out the benefits of running a publicity campaign and key amnesty to help tackle unlawful subletting within the Council's housing stock.

3. DETAIL OF YOUR REPORT

- 3.1 New legislation came into effect on 1st October 2013 making unlawful subletting a criminal offence. A tenant found guilty of dishonestly subletting their property could now face a two year prison sentence and/or an unlimited fine. Further, the offender may be ordered to pay the landlord an amount representing the profit made by the offender as a result of the conduct constituting the offence.
- 3.2 The majority of social housing tenancy fraud committed is unlawful subletting. Tenants who sublet their property are breaching their tenancy conditions. It is estimated that around 98,000 properties (nationally) may be subject to some form of tenancy fraud costing the tax payer £900m a year. Tenancy fraud creates longer waiting lists for residents in need of a home.
- 3.3 Croydon is part of a Tenancy Fraud Forum made up of local housing associations and neighbouring authorities to share and promote good practice. The Council was successful in bidding for funding from DCLG to tackle tenancy fraud and, as part of our application, stressed the work the council has done to raise awareness of tenancy fraud and to publicise our successes in prosecuting for fraud.
- 3.4 To promote the new powers introduced to deal with tenancy fraud some authorities, such as Camden and Sutton, and housing associations such as Amicus have run publicity campaigns promoting key amnesties. The main purpose of these exercises has been to advise and warn people that unlawful subletting is now a criminal offence and could carry a prison sentence and an unlimited fine. The proposed key amnesty would run for a month (February 2014), during which time the Council would not intend to commence legal

proceeding for unlawful subletting against anyone who vacates and surrenders their tenancy during that month.

- 3.5 The enforcement policy referred to in this report relates to the new provisions set out in the Prevention of Social Housing Fraud Act 2013 that came into effect on 1st October 2013. Under these provisions the Council can initiate criminal proceedings against those who unlawfully sublet their accommodation which can result in a two year prison sentence and/or an unlimited fine as well as losing their home. Prior to these new powers (i.e. before it became unlawful to sublet) the Council's enforcement policy was to take action to repossess the property and where appropriate seek an order for any outstanding monies owed.
- 3.6 To date, Camden and Sutton report recovering a number of properties as a result of the key amnesty. They have also received an increase in the number of referrals and properties reported as being potentially unlawful sublet.
- 3.7 If agreed, it is proposed to run a publicity campaign and key amnesty in the New Year during February 2014. Posters informing residents of the changes in legislation and the penalties would be put up in council blocks and on estates. There would be a telephone reporting line for residents to contact the Council. The Council would also record how many cases are reported as a result of the exercise.
- 3.8 Costs would be low as flyers and posters can be produced in-house and distributed (i.e. placed on notice boards in each block) and put up by neighbourhood wardens and caretakers. The exercise will draw attention to the recent law changes and raise awareness and greater understanding of what unlawful subletting is and the harm it causes. A period of amnesty will offer a short period of reprieve to those committing tenancy fraud in advance of the Council taking further measures in due course.
- 3.9 At the end of the key amnesty, further publicity would follow with articles in Open House and reminders to residents, staff and contractors on what to look out for to spot unlawful subletting. Success stories of properties recovered would be publicised and form part of the feedback to the DCLG to highlight this Council's success in tackling tenancy fraud across the borough.

4. RECENT STEPS TAKEN TO TACKLE HOUSING FRAUD

- 4.1 Over the last 12 months around 50 cases of social housing fraud have been prevented with right to buy applications and illegal successions blocked and properties illegally sublet or occupied recovered.
- 4.2 The Council has been proactive in detecting and dealing with fraudsters. It has also taken steps to raise awareness about housing fraud through press releases, posters to advertise the fraud hotline, articles in Open House and letters to national housing journals.

5. CONSULTATION

- 5.1 There is no requirement or need to consult with tenants regarding this proposal.

6. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

1 Revenue and Capital consequences of report recommendations

	Current year	Medium Term Financial Strategy – 3 year forecast		
	2013/14	2014/15	2015/16	2016/17
	£'000	£'000	£'000	£'000
Revenue Budget available				
Expenditure	0	0	0	0
Income	0	0	0	0
Effect of decision from report				
Expenditure	0	0	0	0
Income	0	0	0	0
Remaining budget	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Capital Budget available				
Expenditure	0	0	0	0
Effect of decision from report				
Expenditure	0	0	0	0
Remaining budget	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

2 The effect of the decision

Whilst it is not expected that the number of people coming forward to take advantage of the key amnesty will be high, the exercise should generate increased reporting and greater awareness and understanding of what tenancy fraud is and the harm it causes.

3 Risks

The main potential risk is that those who are unlawfully subletting are alerted to the fact that the Council are taking a range of initiatives to identify and stop unlawful subletting and consequently become more devious in their attempts to remain undiscovered. The other risk is the possibility of a lack of results from initiative.

4 Options

Other than the current range of anti-fraud activities in place there are no other options to take into consideration.

5 Future savings/efficiencies

As stated above, implementation of the recommendation could result in a number of properties that are currently illegally sublet being returned to the Council. The saving being in the region of £90,000 per property when taking into account potential housing benefit fraud and the cost of keeping households in temporary accommodation rather than being housed in permanent accommodation.

Approved by Paul Heynes, Head of Finance – DASHH, Chief Executives Department on behalf of the Director of Finance)

7. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

- 7.1 The Council Solicitor comments that the Prevention of Social Housing Fraud Act 2013 came into effect on 1st October 2013. It gives the Council the power to prosecute a new criminal offence of unlawful subletting (by assured and secure tenants) in social housing. A summary offence with a fine up to £5,000 and also a further offence of doing so dishonestly which is an either way offence with a sentence of up to 2 years imprisonment and/or unlimited fine. If an offence is committed the Court must consider making an "unlawful profit order". This is an order requiring the offender to pay the landlord an amount representing the profit made by the offender as a result of the conduct constituting the offence. It also gives landlords the ability to apply for an "unlawful profit order" via civil proceedings. Further, the Act provides that assured tenants who unlawfully sublet the whole of their dwelling cannot subsequently regain their security of tenure.
- 7.2 The Council has carefully considered whether it is appropriate to depart from its enforcement policy in this instance. It is recognised that the Council should not fetter its discretion. For the reasons detailed in the report, in these circumstances it is appropriate to run a key amnesty for 1 month as part of a range of measures to tackle tenancy fraud to enable the Council to protect the public purse and effectively use the limited number of properties it has available to discharge its statutory duties.

8. HUMAN RESOURCES IMPACT

- 8.1 There are no immediate HR issues that arise from the recommendations of this report for LBC staff

(Approved by: Michael Pichamuthu on behalf of Heather Daley, Director of Workforce)

9. EQUALITIES IMPACT

- 9.1 An initial equality analysis was undertaken and concluded that there are no direct equalities issues that arise from the recommendation.

10. ENVIRONMENTAL IMPACT

- 10.1 There are no direct environmental issues that arise from the recommendation.

11. CRIME AND DISORDER REDUCTION IMPACT

- 11.1 There are no direct crime and disorder issues that arise from the recommendation of this report.

12. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 12.1 To help reduce unlawful subletting within the Council's housing stock

13. OPTIONS CONSIDERED AND REJECTED

- 13.1 No other options were considered as part of this initiative.

CONTACT OFFICER: David Sutherland, Director Croydon Landlord Services

BACKGROUND PAPERS

Initial Equality Analysis

Prevention of Social Housing Fraud Act 2013
<http://www.legislation.gov.uk/ukpga/2013/3/contents>