

NFA response to government consultation on social housing fraud

March 2012

Introduction

The National Federation of ALMOs (NFA) represents 55 ALMOs which manage over 800,000 council homes across 54 local authorities. As part of the management service ALMOs provide, they are often responsible for tackling tenancy fraud within the stock they manage and for taking action against the perpetrators of such fraud in partnership with their parent local authorities.

The instances of tenancy fraud seem to vary significantly across the country, with it being a fairly significant issue in London, a concern in the South-East and Midlands, and not considered to be much of an issue in the North of the country. This variation perhaps reflects the difference in the “value” of a social housing tenancy in different parts of the country. Our comments are therefore based on information from those members across the country who are facing the problem of social housing tenancy fraud.

Summary

ALMOs work in close partnership with their parent councils in tackling fraud, and the NFA welcomes the government’s proposals to create a new criminal offence for social housing tenancy fraud. It agrees that it would give local authorities and their ALMOs a useful additional tool in dealing with tenancy fraud and could provide a strong deterrent to tenants or others in a position to commit tenancy fraud.

The NFA would also like to see ALMOs given the rights of audience in court proceedings as originally envisaged in the Legal Services Act but still not implemented. ALMOs will often be the organisation leading in respect of investigating tenancy fraud and taking action against perpetrators of fraud within the council’s housing stock and may also offer this service to local housing associations.

There still seems to be a big disparity between organisations in their approach and success in tackling social housing fraud, and we believe the government should continue to support the spreading of good practice in this area. The NFA believes that good practice with regard to data matching and the use of all available information sources (including organisations own data sources) can make a significant difference in the fight against fraud, where it exists.

Consultation questions

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

Yes, on balance, the NFA believes that creating a new criminal offence would give local authorities and their ALMOs a useful additional tool in dealing with tenancy fraud and could provide a strong deterrent to tenants or others in a position to commit tenancy fraud. Criminalisation would allow organisations the opportunity to

have a sustained publicity campaign and present a very clear message on the issue.

It should be noted, however, that whilst criminalisation may be a deterrent for some tenants considering committing tenancy fraud and entirely appropriate for some serious cases, it would also require a greater degree of proof and possibly take longer than a civil resolution. Some of our members have raised concerns that taking a criminal case might actually make it harder to get the keys back, which as managers of social housing, is their main priority. It is also important to note that in some cases a criminal case would still not be appropriate in terms of the individual facts of the case, the costs involved and the intention or vulnerability of the tenant. The NFA, therefore, believes that the option for both needs to be retained, and local authorities and their ALMOs need the discretion over when to use criminal or civil proceedings in their action against fraud.

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

The NFA believes that the government's proposals for a maximum penalty for tenancy fraud of 2 years imprisonment and a £50,000 fine seem reasonable for the most severe cases where there is evidence of clear criminal activity and intent to defraud on a large scale.

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

The NFA agrees with the proposals to give a broad definition to tenancy fraud and would want to ensure that all types of tenancy fraud would be captured by the definition.

Members have suggested the following additions to the specified list:

- Cases where a prospective tenant has made a false statement in their application for housing. As under current Housing Act 1996 the prosecuting authority has to bring about proceedings within six months of the offence taking place. On many occasions the offence does not come to light until after six months have passed, therefore making it impossible to pursue criminal action under this legislation
- Cases where the social home is not their principle home
- Fraudulent succession.

Our members are generally of the opinion that it is not necessary to include Right to Buy fraud as it is sufficiently covered by the Fraud Act.

4. Do you agree that restitution payments should be introduced and, if so, should they be available in both the civil and the criminal court?

The NFA agrees that restitution payments should be introduced, and they should be available in both civil and criminal courts. This would help cover the cost of taking legal action as well as providing a further deterrent for the perpetrators of organised tenancy fraud.

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

The NFA believes that councils should have the power to prosecute for social tenancy fraud (in their own stock as well as in housing association stock). This would build on their power to prosecute in cases of housing benefit fraud (these are often linked to social housing tenancy fraud) and could be done on behalf of a housing association where the resulting void could be given to the local authority to nominate someone for.

The NFA would also like to see ALMOs given the rights of audience in court proceedings as originally envisaged in the Legal Services Act, but still not implemented despite previous assurances that this would be implemented. ALMOs will often be the organisation leading in respect of investigating tenancy fraud and taking action against perpetrators of fraud within the council's housing stock and may also offer this service to local housing associations.

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

The NFA believes very strongly that a mandatory gateway should be introduced for social housing tenancy fraud cases.

We believe that, while recognising issues of privacy, data-sharing is an enormously important tool in uncovering fraud and easier access to information held by other organisations is potentially the most useful tool to uncover and deal with tenancy fraud. NFA members have highlighted the problems they have had in many cases where information requests have been refused because of data protection concerns, and this has jeopardised their investigations on a number of occasions.

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

The NFA agrees that the mandatory gateway should cover the organisations listed above. Other organisations that should be included are:

- All financial institutions including mortgage providers
- Insurance companies
- Employers
- Landlords
- Private letting agents and estate agents
- All benefit administering bodies (including DWP)
- Revenue and Customs
- Other local authorities and all local authority departments
- Education providers
- The Home Office
- DVLA
- Police (for information specific to fraud)
- NHS (for address information not medical records)
- Mobile phone companies.

8. How should the ‘intention to return’ be amended? What would be 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?

The NFA believes a clear definition of the appropriate amount of time for which a tenant could be absent and what constitutes an ‘intention to return’ would make it easier both to prosecute and to communicate the rules to tenants and prospective tenants. However, based on discussions with members, it is clear that local authorities across the country have different rules on an appropriate period of time for which a tenant could be absent ranging from 3 to 12 months and wish to retain this local discretion.

Therefore, amendments could include government guidelines on a normal maximum absence by tenants in both categories, but allow for landlord discretion to authorise further absence depending on the circumstances of the individual case.

Consideration could also be given to allow landlords the option to let the property for the period of absence on an assured shorthold basis, if the absence is for a period of six months or more. This may help provide additional affordable temporary accommodation in some areas of the country.

The definition of necessary and voluntary is very similar across the country.

The NFA suggests the following definitions:

- a) Necessary
 - Illness of tenant or immediate family member
 - Hospital stay
 - Prison sentence
 - Domestic abuse

- b) Voluntary
 - University attendance
 - Extended holiday
 - Re-location of employment
 - New relationship.

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

The NFA agrees that assured tenancies should be brought in line with secure tenancies in relation to tenancy fraud.

10. 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?

The NFA would support its members working in partnership with their parent local authorities to determine each case on its merits, in line with their own prosecution

policies. The types of things they would look at, when deciding on whether to pursue a criminal case, would tend to be the intention behind the fraud, the seriousness of the case, whether it was a one off or part of wider fraudulent behaviour together with the strength of evidence and the cost involved to the public purse. A tenant's history, vulnerability, family circumstances and the amount of money involved would also be factors.

11. 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?

The NFA believes that members would decide each case on its merits as outlined above.

12. As a local authority, how many requests for data for matters related to tenancy fraud would you envisage submitting a year, and to what type of organisation would you expect the majority of your requests to be submitted?

The NFA cannot comment on this question.

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

The NFA cannot comment on this question.