

CABINET

COUNCILLOR PAUL TAYLOR
CORPORATE SERVICES PORTFOLIO HOLDER

30 MAY 2017

REPORT NO. FIN1722

KEY DECISION? ~~YES~~/NO

THE PREVENTION OF SOCIAL HOUSING FRAUD ACT 2013

SUMMARY AND RECOMMENDATIONS:

To provide a mechanism to allow the Council to exercise investigatory and enforcement powers on behalf of Registered Providers under the Act.

Cabinet authorises the Solicitor to the Council to:

1. Agree the terms for undertaking investigative and enforcement work with Registered Providers to enable the powers to be used under the Prevention of Social Housing Fraud Act 2013
2. To prosecute offences under the Act and, where appropriate, apply for Unlawful Profit Orders on behalf of Registered Providers.

1. INTRODUCTION

- 1.1 One of the key recommendations from the Audit Commission's Protecting the Public Purse 2013 report is for local authorities to work in partnership to reduce fraud by considering how best to maximise the benefit of the Prevention of Social Housing Fraud Act 2013, including closer partnership working with local housing associations. The Council is currently working with First Wessex, A2 Dominion and Thames Valley Housing Associations who are major stakeholders.

2. BACKGROUND

- 2.1 According to the Audit Commission's report, *Protecting the Public Purse (PPP) 2012* (published in November) the Commission estimated that social landlords had lost control of the allocation of nearly 98,000 properties in England, which was a substantial increase from its 2011 estimate of 50,000 properties. Further, in March 2012, the National Fraud Authority (NFA) estimated that tenancy fraud cost local housing authorities around £900m per year.
- 2.2 The NFA, in association with the Chartered Institute of Housing, had previously published *The Guide to Tackling Tenancy Fraud* in 2011. The Guide made a number of recommendations, among them, that:

- All landlords should **ascertain the level of unlawful occupation** in their stock; and
- That more local authorities should **provide a fraud investigatory service** to housing associations in return for nomination rights to homes recovered

2.3 The act is intended to create additional deterrents to unlawful subletting in the form of offences.

3. **SUMMARY OF THE MAIN PROVISIONS OF THE PREVENTION OF SOCIAL HOUSING FRAUD ACT 2013**

3.1 The legislation creates two criminal offences in relation to both secure and assured tenants of social housing:-

Section 1 - lesser offence (unlawful subletting) – where the tenant no longer occupies the property as her/his only or principal home and sublets or parts possession of all or part of it in the knowledge that this is in breach of tenancy. A person convicted of this offence is liable on summary conviction to an unlimited fine.

Section 2 - the more serious offence occurs if the tenant acts dishonestly in the sub-letting/parting with possession. A person convicted of this offence is liable:

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both)
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both)

3.2 Local authorities have a discretionary power to prosecute these offences and associated offences such as aiding, abetting or conspiracy, whether or not they are the social landlord and for properties, both within and outside our area. Registered Providers do not have the power to prosecute as, prior to the Act coming into force, there was agreement that local authorities should take this role as, giving housing associations the power to prosecute would have jeopardised their status as non-public bodies.

3.3 The legislation enables the courts (both civil and criminal) to order the recovery of any profit made from unlawful subletting from tenants (Unlawful Profit Orders) and if the subletting is proved, then the assured tenancy comes to an end and cannot be revived. This means the tenants cannot regain security by simply evicting the sub tenant and taking possession of the property again.

4. **IMPLICATIONS**

Risks

4.1 With all litigation there is always the risk that a prosecution will not be successful but the Council will operate within the CPS prosecutor's code to

minimise this risk. Agreement will need to be reached with registered providers before exercising these powers to safeguard Council resources.

Legal Implications

- 4.2 The Act sets out the legislative powers available. There are no other legal consequences.

Financial and Resource Implications

- 4.3 There will be as yet undetermined implications in terms of additional work for Legal Services, depending on the number of prosecutions.
- 4.4 Agreement will need to be reached with the Registered Provider to cover the Council's reasonable legal and investigation costs. The Council will also seek to have nomination rights to the returned properties.

Equalities Impact Implications

- 4.5 This legislation aims to ensure that social housing, once provided, remains available for those in social housing need and is therefore aiming to reduce housing inequalities.

5 CONCLUSIONS

- 5.1 The legislation envisaged that councils were to undertake the enforcement role on behalf of registered providers. The Council needs to be able to act when requests are received from its partner Registered Provider's. This includes investigating and taking formal action where there is sufficient evidence including prosecutions.

BACKGROUND DOCUMENTS:

- Audit Commission Protecting the Public Purse 2013
- Prevention of Social Housing Fraud Act 2013
- Information sharing Agreement - Registered Providers and Rushmoor Borough Council

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