



Social Housing Fraud

The Prevention of Social Housing Fraud Act 2013

The Act, which came into force on 15 October 2013, created criminal offences of unlawful subletting by secure and assured tenants. It gives local authorities wider powers to prosecute those guilty of social housing fraud. It also provides that assured tenants of social landlords, who unlawfully sublet or part with possession of their social housing, lose security of tenure permanently.

The Act introduces "Unlawful Profit Orders" (UPOs) which can be used by local authorities to require defendants to pay the profits of their unlawful subletting to the landlord.

There are civil, and criminal, remedies available to you under the Prevention of Social Housing Fraud Act 2013.

The Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014

These Regulations, which came into force on 28 March 2014, accompany the Prevention of Social Housing Fraud Act 2013. They give more power to local authorities who are investigating social housing fraud offences. They make it a criminal offence for someone to refuse or fail to provide information related to social housing fraud when required to do so.

How are the new offences being investigated so far?

The focus appears to be on civil proceedings rather than criminal the non-criminal sanctions are seen as generally adequate and effective, with the UPOs in the civil courts being the most common.

It is envisaged that the criminal offences will be used by local authorities and others to prosecute the more serious cases of illegal subletting, which justifies the extra costs and high standard of proof, but the real benefit of the sector specific legislation will be seen in the Civil Court.

Types of fraud prevalent in the social housing sector

There are a number of forms which social housing fraud could take. Some examples are:

Unlawful subletting: When a tenant lets out their council or housing association property without the knowledge or permission of their landlord.

Obtaining housing by deception: When a person obtains a council or housing association property by giving false information in their application.

Wrongly claimed succession: When someone who is not entitled tries to take over the tenancy following the tenant's death.

Key selling: When a tenant passes on their property keys to someone who takes over the tenancy illegally in return for a one-off payment.

Abandonment: When a tenant does not use the property as their principal home and lives elsewhere, thereby depriving someone who needs social housing from benefitting from the property.

Right to buy fraud: When a tenant provides false information in their "right to buy" application in order to secure the purchase of their council house or flat at a considerable discount and/or occupies and seeks to buy more than one property in different geographies.

Employee fraud: When an employee fiddles expenses claims and/or transactions for their own personal benefit.

Abuse of trust: When someone defrauds money from vulnerable tenants.

Fraud by contractors: When contractors seek payment for services not provided or seek higher payments than those previously agreed.

Procurement fraud: When employees and bidders collude together to influence the outcome of a procurement and/or the terms of a contract award.

What can be done to investigate fraud?

- Encourage “tip offs” and report the matter to the police.
- Work closely with local authorities and other social landlords.
- Visit the property, including at unsociable hours.
- Collect witness and documentary evidence.
- Use online tools.
- Ensure that your employees are familiar with the evidence required.
- Carry out regular tenancy audits.
- Consider bringing in fraud investigators and/or seeking legal advice.

Civil remedies available to you

In addition to the criminal remedies available, and the civil remedies under the sector specific legislation, there are also civil remedies available to you. These include:

- the tort of deceit and fraudulent misrepresentation;
- action relating to breach of, or rescission of, a tenancy agreement;
- seeking damages for breach of contract; and/or the equitable remedies

How we can help you

You need to be seen, from a governance point-of-view and from a reputational perspective, to be taking action to fight fraud and to prevent/recover overpayments. We can help you combat fraud by:

- Providing advice on the strengths of your case and further steps which you could take to augment your case.
- Drafting pre-action correspondence to seek to broker an early settlement.
- Helping you to assess if further action is justified and to make that action as cost effective as possible.

- Dealing with legal proceedings where settlement (through correspondence, negotiation, mediation or other means) has not been successful.
- Publicising the outcome of your fraud response work to ensure it has a deterrent effect.
- Reviewing your policies and procedures.

Other related services we provide

- Help with contract management and/or termination.
- Reputation management (such as responding to media reports and social media comment).
- Procurement advice (such as advising on excluding providers and upon how to handle procurement challenges).
- Assistance with intellectual property disputes.
- Advice on the impact of insolvency on supply chains and the options available to you.

For more information, please contact:



JANE BARKER
Associate
020 8780 4783
jane.barker@capsticks.com



CHARLOTTE RAWSON
Lawyer
01962 678 378
charlotte.rawson@capsticks.com



JOHN TIPPETT-COOPER
Lawyer
020 8780 4650
john.tippettcooper@capsticks.com

Capsticks
www.capsticks.com
 @capstickslp

London
1 St George's Road,
London SW19 4DR
T +44 (0)20 8780 2211
F +44 (0)20 8780 1141
DX 300118 - Wimbledon Central

Birmingham
35 Newhall Street,
Birmingham B3 3PU
T +44 (0)121 230 1500
F +44 (0)121 230 1515
DX 13003 - Birmingham

Leeds
Toronto Square, Toronto Street,
Leeds LS1 2HJ
T +44 (0)113 322 5560
F +44 (0)113 242 2722
DX 713112 - Leeds Park Square

Winchester
Staple House, Staple Gardens,
Winchester, SO23 8SR
T +44 (0)1962 678 300
F +44 (0)1962 678 311
DX 2532 - Winchester