

## Tenancy Fraud Policy (Housing)

<b>Policy</b>	Tenancy Fraud Policy
<b>Scope:</b>	This policy applies to all tenants of St Albans City and District Council (SADC) as well as any persons accessing the Housing Register or making a Homeless Application.
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<b>Statute:</b>	<ul style="list-style-type: none"> <li>• Fraud Act 2006</li> <li>• Prevention of Social Housing Fraud Act 2013</li> <li>• Housing Acts 1985, 1988 &amp; 1996 Homelessness Reduction Act 2017</li> <li>• Theft Act 1968</li> <li>• Proceeds of Crime Act 2002</li> <li>• Forgery and Counterfeiting Act 1981</li> <li>• Regulation of Investigatory Powers Act 2000 (RIPA)</li> <li>• Data Protection Act 2018 (GDPR)</li> <li>• Criminal Procedures and Investigations Act 1996</li> <li>• Police and Criminal Evidence Act 1984 (PACE)</li> <li>• Social Housing (Regulation) Act 2023</li> </ul>
<b>Related Policies:</b>	<ul style="list-style-type: none"> <li>• Tenancy Strategy</li> <li>• Tenancy Policy</li> <li>• Allocation Policy</li> <li>• Vulnerable Residents and Reasonable Adjustments Policy.</li> <li>• The Council's Anti-Fraud, Anti- Bribery and Anti-Corruptions Strategy</li> <li>• Anti-Money Laundering</li> <li>• Whistleblowing</li> <li>• Equality Policy</li> </ul>

<b>Contents:</b>	<b>Page</b>
<i>Introduction.....</i>	<i>3</i>
<i>Purpose.....</i>	<i>3</i>
<i>Key Legislation.....</i>	<i>3</i>
<i>Examples of Tenancy Fraud.....</i>	<i>4</i>
<i>Impact of Tenancy Fraud.....</i>	<i>4</i>
<i>Prevention.....</i>	<i>5</i>
<i>Detection.....</i>	<i>5</i>
<i>Investigation.....</i>	<i>6</i>
<i>Monitoring and Scrutiny.....</i>	<i>7</i>
<i>Partnership Working.....</i>	<i>7</i>
<i>Confidentiality.....</i>	<i>7</i>
<i>Equality and Diversity.....</i>	<i>8</i>
<i>Publicity.....</i>	<i>8</i>
<i>Review and Complaints.....</i>	<i>8</i>

## **Introduction**

This Policy outlines the procedures by which St Albans City & District Council investigate and responds to potentially fraudulent activities related to tenancies, such as subletting, false applications, and other breaches of tenancy agreements.

The terms 'we', 'us' and 'our' refer to St Albans City and District Council (SADC).

The terms 'you' and 'your' refer to Council Housing Tenants and Licensees.

## **Purpose**

This policy sets out our approach for addressing potential and actual tenancy fraud working within relevant Government legislation. We are committed to swiftly and efficiently combating unlawful subletting and misuse of tenancies, ensuring our housing resources are allocated to individuals with legitimate social housing requirements.

The policy also outlines obligations relating to the legal framework we are required to work within in this area. Our tenancy fraud policy aims to deliver a consistent and balanced approach to all tenancy fraud cases. We prioritise safeguarding our housing inventory and allocation system from misuse through the implementation of robust, efficient, and prompt housing management processes.

This Policy aims to raise awareness of social housing fraud and its impact on both housing waiting list and local communities. Additionally, we aim to maximise the availability of council properties by seeking to recover unlawfully rented and unoccupied homes.

We take a zero-tolerance approach to tenancy fraud, taking swift enforcement action and where appropriate prosecuting those proven to have committed tenancy fraud.

## **Key Legislation**

The Prevention of Social Housing Fraud Act 2013 (PoSHFA) criminalises the unauthorised subletting or parting with possession of social housing. It made the subletting of the whole of a social rented dwelling a criminal offence and introduced two new criminal offences:

1. Where the tenant sublets or parts with possession of a property or ceases to occupy the property, knowing that it is a breach of tenancy. A person convicted of this offence can be fined an unlimited amount.
2. Where a tenant dishonestly and in breach of tenancy, sublets without consent and ceases to occupy the property as their only or principal home. A person convicted of the second offence can be imprisoned for up to two years and/or fined an unlimited amount.

This Act gives the Local Authority the power to request information from private sector organisations for social housing fraud investigations. They include banks, building societies, suppliers of credit, water and sewerage undertakers, providers of gas and electricity services and telecommunications companies. This Act also gives local authorities the ability to prosecute in cases of unlawful subletting and gives the Court the authority to order the

tenant to pay back any profit made from unlawful subletting.

**The Fraud Act 2006 states that a person is committed of fraud if s/he is in breach of the following:**

- a) Fraud by false representation
- b) Fraud by failing to disclose information
- c) Fraud by abuse of position

A person who is found guilty of fraud is liable, on conviction to a maximum sentence of 10 years imprisonment and/or a fine.

## **Examples of Tenancy Fraud**

- Subletting the whole of the property (whether for profit or not) including through online platforms like Airbnb, estate agents or other third-party agencies.
- Sub-letting part of the property where it is prohibited under the tenancy agreement or requires the tenant to ask our permission first
- Fraudulently obtaining a social housing tenancy by misrepresentation as to identity or personal circumstances or not declaring interests in other properties.
- Withholding information or making a false statement when applying for a social housing tenancy.
- Non occupation by the tenant as their sole or principal home, including tenancy abandonment.
- Falsely claimed succession where a tenant dies and someone who is not eligible to succeed to the tenancy retains the property.
- Unauthorised assignment of the tenancy such as an unauthorised mutual exchange or transfer of tenancy without the landlord's permission.
- "Key selling" - where the tenant leaves the property and passes on the keys in return for a one-off lump sum payment or favour.
- Providing misleading information on identity or personal circumstances and not declaring interests in other property when purchasing a socially rented home under the 'Right to Buy'.

The above definitions are for guidance only and are not exhaustive. It should be noted that incidents may include behaviour not perpetrated by the tenant, or prospective tenant, which still result in fraudulent use or acquisition of a social housing tenancy.

## Impact of Tenancy Fraud

Tenancy fraud detrimentally affects SADC, tenants and sub-tenants. The properties that are fraudulently used result in several negative consequences, including:

- The property is more likely to be neglected and in a state of disrepair, leading to increased risk to the occupants and the Council incurring greater costs to rectify these repair issues.
- There is a greater likelihood that the property will be associated with anti-social behaviour and crime.
- The sub-tenant may be unaware of their situation, finding themselves at risk of financial losses, eviction and/or homelessness.
- SADC can incur significant and potentially irretrievable financial losses if a fraudulent 'Right to Buy' application is not identified. The loss of a property in this manner precludes it from being allocated to an applicant in genuine need.
- Applicants in genuine need are prevented from accessing social housing, leading to longer waiting times in overcrowded or temporary accommodation.

## Prevention

To reduce the risk of tenancy fraud occurring we will request that a declaration is signed to confirm true and accurate information has been provided and we will seek to verify any information provided by tenants and prospective tenants and in the following circumstances:

- Upon completing a homeless application or housing application form. The verification process will include requiring photo ID which remains on file, confirming residency history, income, local connection, bank statements, savings and any other property interests.
- Once an applicant has been shortlisted for a property.
- When a request is made to assign, succeed, or mutually exchange a tenancy or purchase through the right to buy.
- We may cross reference the data we receive with external agencies, such as Shared Anti-Fraud Service (SAFS) and the National Fraud Initiative (NFI) to ensure that the information provided is valid and authentic.
- We may also retain copies of identification provided during a housing application or at sign-up.
- We will provide information to staff and the public about tenancy fraud and its impact and on how to report it to us if they suspect it is taking place.

## Detection

- Photo ID for applicants will be checked and collected again when they sign their new tenancy agreement. If necessary to check new tenants' identity details on the housing application will also be cross referenced.
- New tenants will receive a visit from a Housing Officer within eight weeks of moving into their new property. This visit aims to verify that the tenant and their household members have moved in, and that the property is being occupied as intended.
- Tenancy audits will be carried out periodically to verify that residents are maintaining their properties in accordance with the terms of the tenancy agreement. These audits help us gather data on overcrowding and under-occupancy situations while also detecting possible tenancy fraud cases. We will often prioritise audits based on available intelligence and focus particularly on properties where we have experienced limited or no recent contact.
- SADC will implement comprehensive media awareness initiatives to highlight the consequences of tenancy fraud, educate the public about warning indicators, and to encourage reporting. We will additionally provide multiple accessible channels through which to report tenancy fraud.
- We will provide comprehensive training to our staff on detecting potential signs of tenancy fraud and how to report them. Our Anti-social Behaviour team will undergo specialised training to equip them with the necessary skills to thoroughly investigate reports, manage cases efficiently, and pursue legal action when required.
- SADC will participate in the Cabinet Office's National Fraud Initiative (NFI) which is an electronic data-matching program that brings together information from public sector organisations to identify and combat fraudulent activity.
- Other forms of data analysis may be carried out from time to time to identify potential fraud.

## Investigation

We have a range of responses available to tackle tenancy fraud. The actions we will take to ensure effective enforcement of this policy are to:

- Investigate 100% of tenancy fraud cases suspected by us or reported to us.
- Act promptly, starting investigations within seven working days of receiving the tenancy fraud report. The nature of the alleged tenancy fraud will determine the type of investigation and the course of action taken.
- Log all reports and actions taken.
- In compliance with our duties under the Regulation of Investigatory Powers Act 2000, SADC may engage in covert surveillance, which is a legitimate tool in fraud investigations.

- SADC may conduct interviews in accordance with the Police and Criminal Evidence Act 1984, when there is suspicion that a criminal act may have taken place.
- If we determine there is no reasonable action that can be taken to deal with an issue reported to us, then we will close the case. This is where there is no evidence to progress it, and no further action can reasonably be taken.
- Work with other agencies, including but not limited to; NAFN Data and Intelligence Services, the Department of Work and Pensions (DWP) and the Police.
- In certain cases, it might be deemed appropriate to allow the tenant to return the keys of the property with no need for further court action.
- For tenants who fail to vacate the property, SADC will commence legal action by issuing a Notice to Quit and/or a Notice Seeking Possession, as appropriate and instruct our legal team to start Possession Proceedings.
- SADC will undertake criminal prosecutions under PoSHFA 2013, when it is discovered that a property has been sublet without permission and the tenant or tenants no longer use the property as their primary or only residence.
- If it is determined that a tenant has profited from renting out all or a portion of their house, SADC may apply for an Unlawful Profit Order (UPO).

## **Monitoring and Scrutiny**

Cases are monitored by the Tenancy management team and summary information is reported to the Housing Departmental Management Team monthly. This is then periodically reported into the Housing and Inclusion Committee for additional monitoring and scrutiny.

## **Joint Working**

SADC shares relevant information with third parties for the purpose of preventing, investigating and tackling tenancy fraud.

When you share your personal information, we ensure full compliance with all aspects of the General Data Protection Regulations (GDPR) and the Data Protection Act (DPA) 2018. The SADC's GDPR privacy notices can be found on the Council's website at <https://www.stalbans.gov.uk/>.

The Shared Anti-Fraud Services (SAFS) is instructed by the Council to serve as a preventive measure to support the Council's commitment to identifying and combating tenancy fraud by using shared expertise, training, and information to target fraudulent activity throughout the entire district.

## **Confidentiality**

Tenancy fraud can be reported anonymously via our website and via our staff intranet. The details of the person reporting the fraud will remain confidential unless the reporting person(s) advises the investigating officer that they are happy for their details to be shared.

Dealing with anonymous reports can be challenging, especially when there is limited information provided. Before deciding whether we can investigate the case, we will determine how serious the report is. This may include speaking with partners like SAFS or Council Tax to see if they have any additional information that we can act upon.

## **Equality and Diversity**

SADC will treat all customers and staff with fairness and respect. We strive to value diversity and work to promote equality and tackle unlawful discrimination.

We are committed to assisting customers to access information about their homes and services in a way that best meets their needs.

We will meet the requirements relating to equality and diversity laid down in the Equality Act 2010 by working to:

- Eliminate discrimination, harassment and victimisation
- Advance equality of opportunity and
- Foster good relations between all our residents, service users and staff.

SADC is committed to welcoming and valuing diversity, promoting equality of opportunity and tackling unlawful discrimination. We will not discriminate against staff, customers or others based on their sex, sexual orientation, marital status, pregnancy and maternity, gender reassignment, race, religion, belief, disability or age (collectively referred to as protected characteristics in the Equality Act 2010).

The Council aims to provide homes and services that meet the diverse needs of customers. We believe that all customers should be able to access housing, support and care services with the same ease and that the quality of our service is the same high standard for all.

An Equality Impact Assessment was conducted for this policy, and no protected characteristic or group was found to be impacted negatively.

## **Publicity**

A copy of this policy can be found on SADC's website. This is also available in print copy on request. SADC will be launching media awareness campaigns to draw attention to the problem of tenancy fraud and promote reporting. We may also publicise cases where we have successfully recovered a property where tenancy fraud was taking place.

## **Review and Complaints**

Tenants have the right to have their case investigated if they are not happy with how SADC or its contractor(s) handled it.

Residents should follow the Council's complaint policy; further details can be found on our website. Tenants also have the right to escalate a complaint to the Housing Ombudsman.

Tenants can seek independent legal advice should our investigations result in potential tenancy enforcement action or prosecution.