



COTSWOLD DISTRICT COUNCIL

Council name	COTSWOLD DISTRICT COUNCIL
Name and date of Committee	CABINET – 2 DECEMBER 2019
Report Number	AGENDA ITEM 8
Subject	HOUSING AND TENANCY FRAUD - PROSECUTION WORK ON BEHALF OF SOCIAL HOUSING PROVIDERS
Wards affected	ALL indirectly
Accountable member	Cllr Lisa Spivey Cabinet Member for Housing and Homelessness Email: Lisa.Spivey@cotswold.gov.uk
Accountable officer	Emma Cathcart, Counter Fraud Manager Tel: 01285 623356 Email: Emma.Cathcart@cotswold.gov.uk
Summary/Purpose	To consider a proposal that the Council undertakes prosecutions on behalf of Social Housing providers where the property is situated within the District and where the Counter Fraud Unit has undertaken the investigation.
Annexes	None
Recommendation/s	<p>a) <i>That Cabinet approves the proposal for the Council to provide legal advice, support and undertake advocacy services for prosecutions on behalf of Social Housing providers where:</i></p> <ul style="list-style-type: none"><i>i) The property is situated within the District; and</i><i>ii) The Counter Fraud Unit has undertaken the investigation;</i> <p>b) <i>That delegated authority be given to the Group Manager Legal Services to exercise the Council's enforcement powers to prosecute in each case taking into account both stages of the 'Full Code Test' as set out in the Code for Crown Prosecutors;</i></p> <p>c) <i>That, in exceptional circumstances, where the Counter Fraud Unit has undertaken an investigation for a Social Housing provider in relation to a property that falls outside of the District, the Group Manager Legal Services be given delegated to still consider undertaking a prosecution if it is considered expedient and appropriate to do so.</i></p>

Corporate priorities	<p>The Council is committed to an effective counter fraud and anti-corruption culture, by promoting high ethical standards and encouraging the prevention and detection of fraudulent activities, thus supporting corporate and community plans.</p> <p>In administering its responsibilities this Council has a duty to prevent fraud and corruption within its District, to protect the interests of the local community and prevent wrongdoing. In supporting the providers of social housing, the Council is promoting a message of zero tolerance and ensuring affordable housing is available for those genuinely in need.</p>
Key Decision	NO
Exempt	NO
Consultees/ Consultation	<p>Chief Finance Officer</p> <p>Legal Department</p> <p>Audit Committee</p>

1. BACKGROUND

- 1.1. Housing and Tenancy Fraud is identified as being one of the highest risk areas within the public sector causing significant loss to the public purse.
- 1.2. The Counter Fraud Unit (CFU) reviews housing lists across the partnership to assist in keeping temporary housing costs to a minimum.
- 1.3. The CFU currently delivers counter fraud services to a number of (but not all) Social Housing providers across the District. They investigate allegations relating to unlawful subletting, false housing applications, key selling, abandonment, right to buy / right to acquire and wrongly claimed succession / transfer of tenancies.
- 1.4. The Cabinet Office has estimated the following savings to Social Housing Providers and Councils:
 - tenancy fraud - £93,000 per property recovered based on average four year fraudulent tenancy. This includes temporary accommodation for genuine applicants, legal costs to recover the property, re-let cost and rent foregone during the void period between tenancies.
 - right to buy - £65,000 per application withdrawn based on average house prices and minimum right to buy discount.
 - housing waiting list misrepresentation - £10,000 per applicant removed based on one year local temporary accommodation cost for genuine applicants. The national fraud initiative applies a more conservative estimate of £3,240 per case for future losses prevented as a result of removing an applicant from council housing waiting list.

2. MAIN POINTS

- 2.1.** Some of the activities outlined in 1.3 above are in breach of the Prevention of Social Housing Fraud Act 2013 (POSHFA) which introduced specific criminal offences in relation to tenancy fraud.
- 2.2.** POSHFA grants Council employees the authority to obtain information where there has been alleged fraudulent activity and, where this is found, gives the Council powers to prosecute.
- 2.3.** The CFU utilises these powers and other appropriate legislation to investigate such fraudulent activity on behalf of Social Housing providers.
- 2.4.** POSHFA permits a Council to investigate and prosecute for dwelling-houses not owned by it and/or situated outside of its area. However, due to the local impact, it would be preferable, where possible, for the Council with jurisdiction to undertake the proceedings.
- 2.5.** Where this is not possible, the CFU may still undertake an investigation as Council employees and any potential prosecution proceedings relating to that case would need to be undertaken by the investigating Council due to Data Protection Legislation and other investigation regulations.
- 2.6.** Any legal fees and costs associated with such investigations would be met by the client housing provider and would therefore contribute towards the costs of the Council's legal team. Overall the financial impact is expected to be cost neutral to the Council.
- 2.7.** An agreed standard legal fee will apply in routine cases. Where the matter is more complex, fees may increase and, as such, an hourly rate will be applied.
- 2.8.** Prosecutions will only be considered where the public interest test is met with due consideration to the welfare of individuals.

3. FINANCIAL IMPLICATIONS

- 3.1.** If the Council agrees to provide legal support and advocacy services to Counter Fraud Unit clients with prosecutions for housing and tenancy fraud, the income generated could fund additional capacity costs of the Council's legal team. Overall the financial impact is expected to be cost neutral to the Council.
- 3.2.** The resultant recovery of properties and financial benefits are set out in 1.4 above.

4. LEGAL IMPLICATIONS

- 4.1.** Where the Counter Fraud Unit has undertaken an investigation on behalf of a Social Housing provider as an authorised Council Officer, the same Council must be the prosecuting body.
- 4.2.** The Council has a duty to prevent fraud and corruption in the District by assisting Social Housing providers to investigate and prosecute tenancy and housing fraud offences.

5. RISK ASSESSMENT

- 5.1.** The Council is required to work in partnership with other public sector organisations proactively to tackle fraudulent activity in relation to the abuse of public funds.
- 5.2.** Capacity will need to be managed within the legal department so that work in this area does not have a negative impact on work provision to the Council.

6. EQUALITIES IMPACT

- 6.1.** The Council's Corporate Enforcement Policy provides that enforcement action may not be appropriate in relation to older offenders, offenders with disabilities or in cases where the offender lacks mental capacity.

7. ALTERNATIVE OPTIONS

- 7.1.** POSHFA permits Councils to investigate and prosecute for dwelling-houses not owned by it and/or situated outside of its area.
- 7.2.** For cases relating to offences under this legislation, the case could be investigated and prosecuted by another Council for properties situated within the District.

8. BACKGROUND PAPERS

- 8.1.** None.