

Title	Lodgers, Subletting and Tenancy Fraud Policy
Document Owner	Director of Housing
Approval	Policy Group - March 2017
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Corporate Aim	<ul style="list-style-type: none"> • Create great neighbourhoods where people and communities flourish • Deliver a strong business fit for today and prepared for tomorrow
Applies to whg only	

1. PURPOSE AND AIMS

- 1.1 The purpose of this Policy is to explain how customers who hold a specific tenancy agreement can get consent to use their whg property and who can live with them, specifically when:
- taking in lodgers; or
 - subletting to sub tenants and how we deal with illegal sub-letting.
- 1.2 In addition the Policy aims to explain how we share data and how whg deals with tenancy fraud where:
- false statements for housing, mutual exchange applications and the right to buy/right to acquire applications are discovered;
 - overcrowding a property temporarily or intentionally is discovered;
 - a false claim to succession on the death of a customer is made; and
- 1.3 We will approach the delivery of this Policy to protect our assets, support our customers to sustain their tenancy, achieve best use of stock and prevent tenancy fraud from occurring where possible.

2. SCOPE

Lodgers and Subletting

- 2.1 This Policy applies to customers holding specific tenancy agreements where there is a right to take in lodgers and/or sublet part of the property subject to consent, noted in **Appendix 1**.
- 2.2 All customers obtaining consent to sublet part of their home and/or take in a lodger are responsible for the conduct and behaviour of the lodger/sub tenant during their occupancy.

Tenancy Fraud

- 2.3 For issues relating to tenancy fraud, this Policy applies to all whg customers.
- 2.4 The Policy does not apply to lodgers or sub tenants as there is no tenancy agreement contract between them and whg.

3. LEGAL REQUIREMENTS

Context - Subletting

- 3.1 The law changed in 2013 with the introduction of the Prevention of Social Housing Fraud Act, which made subletting a criminal offence, punishable by fines of up to £50,000 and on conviction, up to 2 years in prison, dependent upon the nature of the case.
- 3.2 The Local Authority has statutory powers to prosecute someone for tenancy fraud, the evidence of which is admissible in civil proceedings, should whg apply for possession of the property.
- 3.3 whg can apply to court for possession and take civil action to recover Unlawful Profit Costs.
- 3.4 whg will pursue possession of a property where tenancy fraud is identified.

4. DEFINITIONS

- 4.1 For the purpose of this Policy lodgers and sub tenants are defined as:

Lodgers: someone who does not have exclusive rights to any part of the home and where the tenant has access to their room

Sub tenants: some one who rents part of a dwelling from a tenant (who is not the owner), but has no legal right to a tenancy.

5. POLICY

Getting Consent – Subletting and Taking in a Lodger

- 5.1 If the tenancy agreements allows, a customer must ask for consent to sublet part of their property or take in a lodger. We will not give consent to sublet or take in a lodger if:
 - it would mean there is overcrowding in the property;

- someone who is a lodger or sub tenant breaches our Restricted Access Policy;
 - any person would breach any age or other criteria for occupation of the home determined by us (acting reasonably) from time to time; or
 - we have reasonable cause to believe that a person being taken in has committed anti social acts of a type set out in the conditions of tenancy, or has allowed such acts to be committed by anyone visiting or residing in the home in that the tenant did not take such steps to prevent it.
- 5.2 whg will not give consent for a customer to sublet the whole of the home to another person and move out of the property. Should this be discovered, we will deem the tenancy as ended and apply to court for possession of the property.
- 5.3 If the customer leaves, the sub tenant must also leave. If they do not they will be classed as an unauthorised occupier and we will apply for possession of the property.
- 5.4 In all cases, customers must tell us the name, age and gender of the lodger(s) or sub tenant.
- 5.5 Customers obtaining consent must tell the Council's Housing Benefit section as taking in a lodger and/or subletting may affect benefit entitlement.
- 5.6 Customers obtaining consent must also obtain evidence from the sub tenant/lodger that they can demonstrate their immigration status, with leave to remain. Any tenancy agreement issued to a sub tenant by a whg customer will not be valid or enforceable.
- 5.7 If there is a change in occupancy by a lodger or sub tenant, further consent must be requested to sublet and/or take in a lodger.
- 5.8 If lodgers or subletting is discovered where there is no consent, we will take legal advice on a case by case basis.

Absent Customers

- 5.9 If a customer is absent from their home for longer than 28 days, they must tell us as soon as possible, giving an emergency contact, who is a key holder, ensuring the rent is paid and the property is secure, with a date they intend to return.
- 5.10 There are many reasons why a customer is absent from their home, so each case will be dealt with on a case by case basis.

Criteria to investigate tenancy fraud

- 5.11 We share data with other organisations through the necessary protocols to enable the detection and prevention of fraud, noted in the Privacy Statement which can be found <https://www.whg.uk.com/privacy-statement>

We will respond to reports of any housing and tenancy related fraud and work in partnership with agencies where fraud is uncovered, so that our homes are occupied by those entitled to a home.

- 5.12 The Immigration Act 2014 (updated 2016) introduced the liability of landlords to check the immigration status of sub tenants and lodgers. We will ask for information in accordance with guidance published by government.

False statements on applications for Housing, Mutual Exchanges and Right to Buy/Right to Acquire

- 5.13 All applicants applying for a home, mutual exchanges or to buy/acquire their home sign a statement to confirm the information in the application is true and correct. How we deal with applications is dealt with through the Allocations Policy, the Mutual Exchange Policy, and the Right to Buy/Right to Acquire Policy.
- 5.14 If false statements are discovered, we will take legal advice and consider a response on a case by case basis. This may also include making a referral to the Local Authority to investigate the case further, should fraud be suspected.

Overcrowding

- 5.15 If overcrowding occurs and is of a temporary nature, due to the ill health of a relative or support is being offered for a short period of time, we will offer advice where possible to help alleviate the overcrowding situation.
- 5.16 Where overcrowding is intentional, and consent to sublet or taking in a lodger has caused overcrowding leading to an application for housing, whg may take legal advice and ensure a proportionate response within the law.

False Claims of Succession

- 5.17 For successions, once succession rights have been exhausted, any further claim for succession may be considered as a false claim. We will offer support to the unauthorised occupier to leave the property, so it can be let to the next person who is entitled to it.

- 5.18 Should the unauthorised occupier refuse to leave the property, we will apply to the court for possession. We will consider if a charge for use and occupation is appropriate on a case by case basis.

6. PERFORMANCE MEASURES AND TARGETS

- 6.1 We will keep a record of all cases where there is a request for subletting and/or taking in a lodger, and incidents of tenancy fraud with outcomes.

7. MONITORING AND REVIEW

- 7.1 The Director of Housing will monitor our Policy and accompanying procedures on an annual basis and take into account customer feedback, to ensure we adhere to best practice. The Policy will be reviewed formally every three years.

8. ASSOCIATED DOCUMENTS

Internal Documents:

- Tenancy agreements
- Anti Social Behaviour Policy
- Allocations Policy
- Rent Arrears Recovery Policy
- Right to Buy/Right to Acquire Policy
- Fraud Prevention Policy
- Restricted Access Policy

External Documents:

- Prevention of Social Housing Fraud Act 2013
- Immigration Act 2016
- Data Protection Act 1998
- Housing Act 1985 and 1988

Appendix 1 – Consent and Tenancy Types

Type	Subletting	Consent required	Lodgers	Consent required
1 year fixed term general	X	-	X	-
5 year fixed term general	✓	Yes	✓	Yes
1 year fixed term affordable	X	-	X	-
5 year fixed term affordable	✓	Yes	✓	Yes
Assured Tenancy	✓	Yes	✓	Yes
Protected Assured Tenancy	✓	Yes	✓	No*
Starter Tenancy	X	-	✓	-
Assured Shorthold market Rent Tenancy (6 months)	X	-	✓	Yes

*conditional that no overcrowding occurs