

# Lodgers, Subletting and Tenancy Fraud Policy

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<b>1.0</b>	<b>SCOPE</b>
	<b>Purpose</b>
1.1.	<p>This document sets out whg's policy towards tenants who take in lodgers, sublet part of their home or sublet their entire home. It also explains how whg deals with tenancy fraud when it is discovered including:</p> <ul style="list-style-type: none"> <li>• false statements on applications for housing, mutual exchange or Right to Buy/Right to Acquire</li> <li>• statutory overcrowding</li> </ul>
1.2.	The policy aims to protect our assets, support our customers to sustain their tenancy, achieve best use of stock and prevent tenancy fraud from occurring.
1.3.	This policy applies to whg's Affordable, Social and Market rent tenants.
	<b>Legal and regulatory framework</b>
1.4.	<p><b>The Fraud Act 2006</b>            Wilfully misrepresenting circumstances or deliberately misleading someone in order to gain from threat misrepresentation may also be a criminal offence within the Meaning of the Fraud Act 2006. Therefore, whg may involve the Police or Local Authority in bringing criminal proceedings against individuals where it is satisfied that there is a criminal intent.  <a href="https://www.legislation.gov.uk/ukpga/2006/35/contents">https://www.legislation.gov.uk/ukpga/2006/35/contents</a></p>
1.5.	<b>Housing Act 1985 Part X:</b> statutory overcrowding levels, exemptions from overcrowding, and the penalties for both occupier and landlord for contravention.
1.6.	<b>Immigration Act 2014 (updated 2016):</b> liability of landlords to check the immigration status of subtenants and lodgers.
1.7.	<b>Prevention of Social Housing Fraud Act 2013:</b> criminal subletting of social housing has maximum penalty of £50,000 fine/ two years in prison.

	<ul style="list-style-type: none"> <li>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</li> <li>whg as landlord can apply to court for possession and take civil action to recover any profit and costs under an Unlawful Profit Order.</li> </ul>
1.8.	<b>Housing Act 1985 S15A:</b> loss of assured tenancy status if a tenant parts with possession of the property or sublets whole of the property.
1.9.	<b>Regulator of Social Housing - Tenancy Standard: 2.2.6</b> “Registered providers shall make sure that the home continues to be occupied by the tenant they let the home to in accordance with the requirements of the relevant tenancy agreement, for the duration of the tenancy, allowing for regulatory requirements about participation in mutual exchange schemes.”
<b>2.0</b>	<b>POLICY STATEMENT</b>
	<b>Definitions</b>
2.1.	<p>For the purposes of this policy specific terms are defined as:</p> <p><b>Lodger:</b> someone who does not have exclusive possession of any part of the property (i.e. the customer can access their room).</p> <p><b>Subtenant:</b> someone who has exclusive possession to part of the property (i.e. the customer cannot access their room without permission).</p>
	<b>What is Tenancy Fraud?</b>
2.2.	<p>The following list gives examples of tenancy fraud: -</p> <ul style="list-style-type: none"> <li>Giving false information in a housing application to improve the chances of getting a property, for example, falsely claiming to be living with a relative or failing to disclose a change of circumstances.</li> <li>False succession where the tenancy is taken over, often on the death of the tenant, by someone who falsely claims to have been living there for some time, for example, a person succeeding on the death of a relative or where succession rights have been exhausted.</li> <li>Key selling - where the tenant moves out and is paid to hand over the tenancy to someone else. Unlawful subletting – for profit or for a friend.</li> <li>Right to Buy fraud – falsely claiming the Right to Buy and associated discounts as a result of misrepresenting who lives in the property.</li> <li>Obtaining tenancies by deception or misrepresenting housing need to obtain greater priority for housing.</li> </ul>
	<b>Prevention of Tenancy Fraud</b>

2.3	<p>whg will proactively work to prevent tenancy fraud from occurring. When Tenancy Fraud is identified whg will take action.</p> <p>whg will take the following action to prevent tenancy fraud:</p> <ul style="list-style-type: none"> <li>• Ensure that at pre tenancy sign up a full review of the incoming applicant and application form is undertaken to confirm it is accurate and reflects the applicant's current circumstances and housing need.</li> <li>• Carrying out verification checks such as examining proof of identity and ensuring that a person has the Right to Rent as outlined in the Immigration Act 2014.</li> <li>• Keep copies of original identification provided at sign up on file.</li> <li>• Investigate any reports of suspected tenancy fraud received from neighbours and/or partner agencies</li> <li>• Conduct welcome visits following sign up and subsequent 9-month visits for new tenancies.</li> <li>• Checking occupation history for any new tenant or anyone who has applied for RTB or RTA, requested to assign the property, succeed a tenancy or anyone who has requested a mutual exchange.</li> <li>• Providing training for Community Housing Officers to identify potential signs of Tenancy Fraud.</li> </ul>
	<b>Enforcement</b>
2.4	<p>Community Housing will follow their internal procedures for enforcement and whg will take all suspected incidents of fraud seriously and will fully investigate all reports. Where there is evidence that fraud is occurring, legal advice shall be sought, and action taken in line with tenancy breach. whg will also work with the Police as deemed necessary for them to take legal action as part of any criminal proceedings. In all cases of suspected fraud, the fraud register will be updated. whg has a zero tolerance to tenancy fraud.</p>
	<b>Consent – Subletting and Taking in Lodgers</b>
2.5	<p>If their specific tenancy agreements allow, a tenant may sublet part of their property or take in a lodger. The tenant will require whg's written consent to do so, depending on their tenancy agreement. whg will not give consent to sublet or take in a lodger if:</p> <ul style="list-style-type: none"> <li>• It would mean there is overcrowding in the property;</li> <li>• the lodger or subtenant would breach our Restricted Access Policy;</li> <li>• the lodger or subtenant would breach any age or other criteria for occupation of the home determined by us (acting reasonably) from time to time; or</li> </ul>

	<ul style="list-style-type: none"> <li>we have reasonable cause to believe that the lodger or subtenant has committed, or allowed a visitor or household member to commit, antisocial acts of a type set out in the conditions of tenancy.</li> </ul>
2.6.	whg will not give consent for a tenant to sublet the whole of the home to another person and move out of the property.
2.7.	If the tenant leaves, any lodger or subtenant must also leave. If they do not, they will be classed as an unauthorised occupier and whg will apply for possession of the property.
2.8.	Tenants must tell us the name, age and gender of any lodger or subtenant. Tenants must also obtain evidence from the lodger/subtenant of Right to Rent.
2.9.	Tenants are responsible for the conduct of the lodger/subtenant, and any of the lodger/subtenant's visitors, during their occupancy.
2.10.	Tenants in receipt of housing-related benefits must advise the relevant benefit authority of any changes in occupancy of the home, including any lodgers or subtenants.
2.11.	Tenants must get whg's consent for any further lodgers or subletting if there is a change in occupancy. If a tenant takes in a lodger or sublets without consent, whg will take appropriate action and treat as a tenancy breach.
2.12.	Lodgers and subtenants do not have a tenancy agreement with whg, and any tenancy agreement issued to them by our tenant will not be valid or enforceable.
	<b>Tenancy Fraud – Subletting</b>
2.13.	If whg identify that a tenant has sublet the whole of their property, we will deem the tenancy has ended and apply to court for possession. whg will not accept a surrender of tenancy for a sublet property without vacant possession.
2.14.	whg may apply for an Unlawful Profit Order where appropriate. whg may also refer any evidence to the relevant local authority for prosecution.
	<b>Tenancy Fraud – False Declarations</b>
2.15.	If whg discover or suspect a tenant or applicant has made a false statement on a housing, mutual exchange or Right to Buy/Right to Acquire application, whg will investigate this as potential tenancy fraud.
2.16.	whg will consider action on a case-by-case basis. This may include possession action and/or referral to the local authority for action against tenancy fraud.

	<b>Overcrowding</b>
2.17	Overcrowding is deemed as allowing more occupants to reside at the property than the maximum capacity allows as per the tenancy agreement and may constitute an offence on the part of both the tenant and the landlord depending on the circumstances of the case.
2.18	whg will address overcrowding as a result of allowing lodgers or subletting on a case-by-case basis. Actions may include seeking possession of the property.
<b>3.0</b>	<b>PERFORMANCE MEASURES</b>
3.1.	whg will keep a record of all requests for subletting and/or taking in a lodger, and incidents of tenancy fraud with outcomes.
<b>4.0</b>	<b>EQUALITY AND DIVERSITY</b>
4.1.	Potential for equality impact has been considered as part of a separate equality assessment; overall there are no anticipated negative impacts relating to equality but monitoring procedures will include equality analysis in addition to performance.
<b>5.0</b>	<b>TRAINING AND DISSEMINATION</b>
5.1	The Community Housing, Lettings, Community Safety and Neighbourhood Services Teams will receive training in the detection of tenancy fraud, as well as regular briefings on specific cases and learning outcomes.
5.2	whg will consider running campaigns to raise awareness amongst customers that tenancy fraud is not acceptable, and that formal action will be taken where tenants are found guilty. These campaigns will take form of promotional material publicised through whg's website, leaflets, posters and newsletters. whg will reinforce the importance of not committing tenancy fraud to our customers.
<b>6.0</b>	<b>MONITOR AND REVIEW</b>
6.1.	All incidents of suspected tenancy fraud are reported to the Governance Team in line with the Anti Money Laundering and Fraud Policy. Monthly monitoring is conducted by a Regional Community Housing Manager. Action will be taken if we have sufficient evidence.

6.2.	whg may 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 at <a href="http://www.whg.uk.com/privacy-statement">www.whg.uk.com/privacy-statement</a>
6.3.	The Director of Housing and Customer Services monitors our Policy and accompanying procedures on an annual basis and considers customer feedback, to ensure whg adhere to good practice. The Policy is reviewed formally every three years.
<b>7.0</b>	<b>ASSOCIATED DOCUMENTS, POLICIES AND PROCEDURES</b>
7.1	<p>Documents, policies and procedures associated with this policy are:</p> <p>Internal Documents:</p> <ul style="list-style-type: none"> <li>• Tenancy agreements</li> <li>• Anti-Social Behaviour Policy</li> <li>• Allocations Policy</li> <li>• Rent Arrears Recovery Policy</li> <li>• Right to Buy/Right to Acquire Policy</li> <li>• Anti Money Laundering and Fraud Policy</li> <li>• Restricted Access Policy</li> <li>• Tenancy Changes Policy</li> <li>• Abandonment Policy</li> </ul> <p>External Documents:</p> <ul style="list-style-type: none"> <li>• Prevention of Social Housing Fraud Act 2013</li> <li>• Immigration Act 2016</li> <li>• Data Protection Act 2018</li> <li>• Housing Act 1985 and 1988</li> <li>• The Fraud Act 2006</li> </ul>

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<b>Legal advice</b>	<ul style="list-style-type: none"> <li>- Seeking Unlawful Profit Orders</li> <li>- Local authority prosecution approach</li> <li>- Surrender of tenancy implications if lodger/subtenant in situ</li> </ul>
<b>Consultation</b>	<ul style="list-style-type: none"> <li>- Policy sent to Legal, Lettings, Community Safety, Community Housing colleagues, Policy Reading Group, Corporate Director of Housing and IT. Comments have been incorporated into the policy.</li> </ul>
<b>Approved by</b>	Policy Group December 2023
<b>Review Date</b>	December 2026
<b>Corporate Plan aim</b>	Deliver high quality homes and services for our customers
<b>Equality Assessment</b>	December 2023
<b>Key changes made</b>	<ul style="list-style-type: none"> <li>- Inclusion of definition of tenancy fraud</li> <li>- The Fraud Act 2006</li> <li>- Numbering amended</li> <li>- Emphasised the definition of overcrowding</li> </ul>