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Social Housing Fraud - the penalties

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Primary (housing fraud) criminal offences

- **Housing Act 1996:**
 - s.171 False statements and withholding information
 - s.214 False statements, withholding information and failure to disclose change of circumstances
- **Fraud Act 2006:**
 - s. 1 Fraud
 - s.2 Fraud by false representations
 - s.3 Fraud by failing to disclose information
 - s.4 Fraud by abuse of position
- **Prevention of Social Housing Fraud Act 2013:**
 - s.1 sub-letting / parting with possession (secure tenancies)
 - s.2 sub-letting / parting with possession (assured tenancies)

Housing Act 1996

- **171—False statements and withholding information.**(1) A person commits an offence if, in connection with the exercise by a local housing authority of their functions under this Part—(a) he knowingly or recklessly makes a statement which is false in a material particular; or(b) he knowingly withholds information which he reasonably required it should give in connection with the exercise of those functions.(2) A person commits an offence under this section in relation to a summary conviction to a fine not exceeding level 5 on the standard scale.
- **214.—False statements, withholding information and failure to disclose change of circumstances.**(1) It is an offence for a person, with intent to induce a local housing authority to believe in connection with the exercise by that authority of its functions under this Part, or to obtain accommodation or assistance in accordance with the provisions of this Part, or is entitled to accommodation or assistance of a particular description—(a) knowingly or recklessly to make a statement which is false in a material particular; or(b) knowingly to withhold information which the authority reasonably required it should give in connection with the exercise of those functions.(2) If before an applicant receives notification of the local housing authority's decision on his application there is any change of facts material to his case, he shall notify the authority as soon as possible.The authority shall explain to every applicant, in ordinary language, the duty imposed on him by this subsection and the effect of subsection (3).(3) A person who fails to comply with subsection (2) commits an offence unless he showed that he was not given the explanation required by that subsection or that he had some other reasonable excuse for non-compliance.(4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Fraud Act 2006

- **Fraud offences at sections 2-4**
 - Fraud by false representation – section 2
 - Fraud by failing to disclose information – section 3
 - Fraud by abuse of position – section 4
- **A person who is guilty of fraud is liable**
 - (a)on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or to both);
 - (b)on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine (or to both): section 1(3)

Prevention of Social Housing Fraud Act 2013

"An Act to create offences and make other provision relating to sub-letting and parting with possession of social housing; to make provision about the investigation of social housing fraud; and for connected purposes."

- New criminal offences – sections 1 & 2
- Unlawful Profit Orders – sections 4 & 5
- New Housing Act 1988 provision – section 6
- Power to require information – sections 7 & 8

Sub-letting criminal offences: ss. 1-2

- **Major offence:** (either way – up to 2 years)
 - dishonestly sub-lets / parts with possession of whole, **or** of part where without L consent (no reference to 'consent' for s. 2);
 - it's a breach of tenancy; and
 - T ceases to occupy as only or principal home
- **Minor offence:** (summary - fine)
 - as above save (1) no need to show dishonesty, and (2) T must know it's a breach of tenancy
- Section 1 = secure tenancies; Section 2 = (PRP/RSL assured tenancies) **not** shared ownership tenancies

What is "Dishonesty"?

- Not *R v Ghosh* [1982] QB 1053 test:
 - (1) Would the defendant's behaviour be regarded as dishonest by the ordinary standards of reasonable and honest people? If yes,
 - (2) Was the defendant aware that his conduct was dishonest and would be regarded as dishonest by reasonable and honest people?
- Ivey v Genting Casinos t/a Crockfords* [2017] UKSC 67 paras. 62, 74 per Lord Hughes:
"Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct state of the law and their Lordships agree."

2 statutory defences to minor charge

- T sub-lets / parts with possession & ceases to occupy as only or principal home because of violence or threats of violence by a person residing in, or in the locality of, the dwelling-house—
 - towards the tenant, or
 - towards a member of the family of the tenant who was residing with the tenant immediately before the tenant ceased to occupy the dwelling-house.
- T sub-lets / parts with possession and is—
 - a person entitled to apply to the court for an order giving P a right to occupy the dwelling-house or to have the tenancy transferred to P, or
 - a person in respect of whom an application may be made to have the tenancy transferred to P or to another person to be held for P's benefit.

Sentencing

- Purpose of Sentencing (Criminal Justice Act 2003, s.142(1)):
 - Punishment of offenders.
 - Reduction of crime (including its reduction by deterrence).
 - Reform and rehabilitation of offenders.
 - Protection of the public.
 - The making of reparation by offenders to persons affected by their offences.
- See sentencing guidelines from the Sentencing Council
- Fraud, Bribery and Money Laundering Offences definitive guideline came into force in October 2014

Sentencing guidelines

- Determine offence category based on culpability & harm (A, B, C)
- Assess loss –categories 1 to 5 (e.g. category 4 = £5000-£20,000; cat 5 is <£5000)
- Assess harm –high, medium or lesser (can affect category selection)...check table
- The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the guideline for Reduction in Sentence for a Guilty Plea (where [first hearing is on or after 1 June 2017, or first hearing before 1 June 2017](#)).

Sentencing guidelines (2)

- Suspended sentence factors:
 - Realistic prospect of rehabilitation
 - Strong personal mitigation
 - Significant harmful impact on others of custody
- See community order guidance

Example sentences - 2018

- Dudley Council: Fraud Act ss.2&3 – allocation fraud (already owned house) – 6 months suspended 2 years
- Lambeth LBC: Fraud Act – RTB fraud (not living there) – 16 months suspended 2 years
- BPHA: Fraud Act (sub-letting shared ownership) - 12 months suspended 18 months – 120 hours unpaid work

Compensation/Profit recovery

- Proceeds of Crime Act 2002 – s. 6 (confiscation orders)
- Powers of Criminal Courts (Sentencing) Act 2000 – s.130 (compensation orders)
- Prevention of Social Housing Fraud Act 2013 – ss.4-5 (unlawful profit orders)
- Fines – see Criminal Justice Act 1982, s.37
- Tort of Deceit/restitutionary remedies
- Legal costs

Confiscation Orders

" The legislation is intended to deprive defendants of the benefit they have gained from relevant criminal conduct, whether or not they have retained such benefit, within the limits of their available means. It does not provide for confiscation in the sense understood by schoolchildren and others, nor does it operate by way of fine. "

Lord Bingham in R. v May (Raymond George) [2008] UKHL 28; [2008] 1 A.C. 1028

1. Does the defendant have a criminal lifestyle?
2. Has the defendant benefited from the relevant criminal conduct?
3. If so, what is the value of the benefit the defendant has so obtained?
4. What sum is recoverable from the defendant?

Confiscation orders (2)

- Available only in the Crown Court
- Committal for sentence
- S.70 POCA transfer
- By application of prosecutor or of court's own motion
- Amount = benefit (unless insufficient assets)

Compensation orders

- Powers of Criminal Courts (Sentencing) Act 2000, section 130
- Compensating personal injury, loss or damage as a result of offence (eg temporary accommodation costs to LA)
- No upper limit to those aged 18 or over
- Priority over fines
- Consideration of defendant's income/assets
- See R v Stapylton (Ben) [2012] EWCA Civ 728; [2013] 1 Cr App R (S) 12

Criminal Justice Act 1982, s.37

- Level on the scale Amount of fine

| | |
|---|--------|
| 1 | £200 |
| 2 | £500 |
| 3 | £1,000 |
| 4 | £2,500 |
| 5 | £5,000 |
- Note, however, that as a result of the Legal Aid, Sentencing & Punishment of Offenders Act 2012, s.85 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015/664 the Level 5 is no longer a maximum for most practical purposes

Unlawful Profit Orders ss. 4-5

- Discretionary
- What was total amount received by sub-letting (or best estimate): Poplar HARCA v Begum [2017] EWHC 2040 (QB); [2017] HLR 42
- Deduct from this sums received by L in rent for period of offence
- Can receive UPOs in criminal and / or civil proceedings
- Usually part of possession claim but can be separate

Example sentences - 2018

- Lambeth LBC: Fraud Act - RTB – compensation order £158,576.92 – costs £1920
- BPHA: Fraud Act – subletting – confiscation order £41,990.95
- Greensquare Housing Association – subletting – fine £500 – UPO £9,768.68 – costs £480

Final example

- Mr and Mrs O originally applied for a council home in September 1998 but bought their own home in Woolwich in 2000
- 2-bed local authority flat allocated to them in 2002
- In 2003 they even bought themselves a second two-bedroom house and started renting out the 2000 purchased house as well as the council flat
- Mr O is a 56-year-old project manager, working for a large housing association and earning in the region of £50,000 per year
- Over the next decade and a half, the couple managed to make a profit of more than £24,000 by renting out the property given to them by the council
- Eventually in 2015 the housing provider started to have suspicions about the pair and their scheme was uncovered
- When first questioned in 2015, the pair denied any wrongdoing and said they made no money, but finally on May 30 in 2018, the pair pleaded guilty to fraud at Woolwich Crown Court
- Mr and Mrs O were also ordered to pay Greenwich Council and Charlton Triangle Homes, who rented the property on behalf of the council, a total of £24,568.87 plus legal costs of £7,656.00. They were also ordered to undertake 200 hours of unpaid community work

Any questions?

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