



Tenancy fraud and data sharing

A guide for housing associations

A publication by the
Making Best Use of Stock Team

Chartered Institute
of Housing



The Chartered Institute of Housing

The Chartered Institute of Housing (CIH) is the professional body for people involved in housing and communities. We are a registered charity and not-for-profit organisation. We have a diverse and growing membership of over 22,000 people – both in the public and private sectors – living and working in over 20 countries on five continents across the world. We exist to maximise the contribution that housing professionals make to the wellbeing of communities. Our vision is to be the first point of contact for – and the credible voice of – anyone involved or interested in housing.

Chartered Institute of Housing
Octavia House, Westwood Way, Coventry, CV4 8JP
Tel: 024 7685 1700
Email: customer.services@cih.org
Website: www.cih.org

The **Making Best Use of Stock Team** provides free advice and guidance to local authorities and housing providers to support them in making the best use of existing stock. The team focuses on four core areas – using existing stock more effectively to meet housing need, tackling social housing fraud, making use of potential new freedoms and flexibilities and assisting providers in responding to the challenges they face in the tenancy and welfare reform. The team offers strategic advice and guidance and shares good practice to help you make the best use of existing resources and ultimately to help secure improvements in services delivered to tenants. Funding from the Department of Communities and Local Government has enabled the team to deliver their services to local authorities and housing providers without charge.

Making Best Use of Stock Team
Chartered Institute of Housing
Octavia House, Westwood Way, Coventry, CV4 8JP
Tel: 024 7685 1777
Email: mbus@cih.org
Website: www.cih.org/mbus

Author: Fleur Priest-Stephens, Making Best Use of Stock Advisor (CIH)

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Stephanie Toghil, CIH
Lee Cadman, Birmingham City Council
Nick Jennings, Huntingdonshire District Council
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Introduction

Sharing data can be a useful tool in detecting tenancy fraud. However, in some cases, concerns about the Data Protection Act 1998 (DPA) prevent organisations from making the best use of the information available to them. Housing associations, unlike local authorities, have limited statutory powers to access data which can sometimes hinder counter-fraud data sharing. This guide will outline good practice examples for sharing data which have been collected from leading providers in England. The aim is to inform discussion regarding data sharing procedures between housing associations and local authorities.

This guide covers:

- steps to prepare to share data to detect tenancy fraud
- how housing associations can share information with the local authority, the National Fraud Initiative and Credit Reference Agencies to detect tenancy fraud
- how housing associations can make ad-hoc requests for information about specific individuals from the local authority to detect tenancy fraud
- links to further information and good practice.

Any change in the way an organisation uses data should always be checked by the Data Controller responsible and legal advice should be sought where necessary.

What is 'tenancy fraud'?

Tenancy fraud refers to a situation where a registered tenant has breached certain terms of their tenancy agreement. It has been dealt with as both a civil and criminal matter by different housing associations and local authorities.

Tenancy Fraud is generally defined using three headings:

1. Not using the property as the 'sole or principal home'. This includes:
 - abandoning the property
 - succeeding or assigning the property, without the landlord's permission, after the registered occupier has moved out or died
 - unlawfully subletting the entire property.
2. Attempting to obtain a property using false statements, for example falsely claiming to be homeless.
3. Attempting to obtain a property by using false documents, for example using a forged passport or claiming to be someone else in order to access social housing.

What is 'personal data'?

Personal data is information that relates to a living individual who can be identified from the data. As far as this document is concerned personal data includes (but is not limited to):

- names
- date of birth
- Address
- contact details
- occupation
- financial information.

Data which can be shared

When investigating tenancy fraud and making requests for data it is important to know what records are available. When considering requests to share data all parties involved should ensure that the level of disclosure is proportionate and not excessive. The records which are most often shared when investigating tenancy fraud include:

- housing benefit information
- council tax benefit information
- electoral roll records
- homelessness applications
- library card records
- parking badge permit records.

Preparing to share data

To make sure local authorities and housing associations share data in line with the DPA there are some good practice measures which can be adopted. These include creating a 'data sharing agreement' which sets a framework for participating organisations for sharing data, and writing a 'Privacy Notice' which explains to tenants how their data will be shared and otherwise used.

Data sharing agreements

A data sharing agreement, in this context, outlines a set of rules and guidelines for how the local authority and the housing association will share data with each other. Usually, data sharing agreements are far-reaching and will apply to lots of different types of data, not just to cover tenancy fraud – although some organisations have written specific tenancy fraud agreements.

Data sharing agreements are voluntary, so both parties have the option to withhold data even when it has been requested and to end agreements as they see fit.

Each party in the data sharing agreement is responsible for collecting, storing and sharing the data in line with the DPA. If the decision is made to share data it is the responsibility of all parties to make sure this is done securely.

Case study: SELHP Data Sharing Protocol

The South East London Housing Partnership created a data sharing protocol for the local authorities and registered providers taking part in their tenancy fraud project. The protocol gives clear information about data sharing between partners in order to detect fraud. The London Boroughs of Bexley, Bromley, Lewisham and Southwark, together with the registered providers Affinity Sutton, Gallions, Lewisham Homes, Hexagon and Peabody, all signed up to the protocol. The protocol explains both the legal framework for sharing data and the procedure for sharing. The document includes a standardised application form template which is used by all the partners to request data relating to tenancy fraud. The protocol also details the time frame in which requests will be dealt with by each partner as well as a schedule for the protocol to be reviewed. The document states the legal obligations and responsibilities for handling and storing data and information about what happens if the protocol is breached.

The Information Commissioner's Office has produced a statutory code for data sharing which includes detailed guidance on data sharing agreements. The guide can be found on their website (see page 15).

Privacy Notice

A Privacy Notice (also known as a fair processing notice) is a statement that explains what data is being collected, what it will be used for and with whom it may be shared.

Local authorities and housing associations will already have a Privacy Notice in place to cover data collected for purposes such as administering benefits and services. Privacy Notices usually have a wide scope and apply to the use of all personal data within an organisation.

A number of local authorities and housing associations who share data to detect tenancy fraud have amended their existing Privacy Notices to include details of how they will use data to reflect this. On the other hand, some have found that the scope of their existing notices already covers data sharing to detect tenancy fraud.

Case study: Birmingham City Council Privacy Notice

Birmingham City Council has published their full Privacy Notice on their website. The Privacy Notice outlines why data is collected, what it is used for and the bodies with which the data is shared. It also includes information on data matching carried out by the local authority in order to check for fraud or error. Birmingham have produced a clear and accessible notice which explains to service users how their data is used, their rights, and the local authority's obligation to keep their data secure.

The Privacy Notice is one of a range of measures employed by Birmingham City Council to detect and prevent fraud, working in partnership with their registered provider partners.

Housing associations and local authorities intending to share data should review their Privacy Notices individually and assess if any changes are needed.

The Information Commissioner's Officer has produced a Code of Practice for Privacy Notices which can be found on their website.

Sharing data

After the data sharing agreement is in place and the Privacy Notice has been written, there are a range of ways that data can be shared by local authorities and housing associations to detect tenancy fraud. These include large-scale 'data matching' and one-off cases where individual records are checked. Examples of how data has been shared are outlined below.

Data matching with the local authority

Housing associations might want to compare their tenant records against information held by the local authority to check that the information held by both organisations match. This large-scale sharing of information is called **data matching**.

Example

A housing association and a local authority want to routinely share names, addresses and details of benefit claims of tenants and service users to detect tenancy and benefit fraud. Sharing data like this could highlight cases where a tenant's name might not match the name of the person registering for benefits at an address. This might suggest that the property has been sub-let, or is being used as a 'giro drop'.

The legal basis for data matching

Sharing data for detecting tenancy and also benefit fraud has been achieved by some housing associations and their local authorities by using Schedule 2, paragraph 6 (1) of the DPA 1998. It suggests that sharing data between a local authority (such as housing benefit records) with a housing association (known as 'a third party') can be permitted if the data is shared for legitimate reasons, such as detecting tenancy fraud. When housing providers have used this section of the DPA to justify data matching they have supported this action with a privacy statement which includes a broad mention of anti-fraud measures.

What the Data Protection Act 1998 says

Schedule 2, Paragraph 6 (1) of the DPA:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case because of prejudice to the rights and freedoms or legitimate interests of the data subject."

Case study: Huntingdonshire District Council and Luminus Group

Huntingdonshire District Council has entered into a data sharing protocol with housing provider Luminus Group. The data sharing protocol sets out clear guidelines for what data is to be shared, why and how. Similar to other local authorities, Huntingdonshire decided to conduct large-scale data matching with Luminus Group to identify potential cases of both tenancy fraud and housing benefit fraud. The files are encrypted and sent securely from Luminus Group to the Council. Tenant data held by Luminus Group is then matched against data held by Huntingdonshire District Council. Where discrepancies are identified the Council liaise with Luminus Group to advise the details of any mismatched data and then determine on a case by case basis how that matter will be resolved.

Other guidance

The Information Commissioner's Office has produced a checklist which should be considered before data is shared (see page 8) if housing associations and local authorities want to share data to detect tenancy and benefit fraud.

Further information

For more information about data matching with the local authority, speak to the nominated Data Controller in the Council, or visit the Information Commissioner's Office website.

The ICO data sharing checklist – systematic data sharing

Is the sharing justified?

Key points to consider:

- What is the sharing meant to achieve?
- Have you assessed the potential benefits and risks to individuals and/or society of sharing or not sharing?
- Is the sharing proportionate to the issue you are addressing?
- Could your objective be achieved without sharing personal data?

Do you have the power to share?

Key points to consider:

- the type of organisation for which you work
- any relevant functions or powers of your organisation
- the nature of the information you have been asked/are asking to share
- any legal obligation to share information.

If you decide to share

It is good practice to have a data sharing protocol in place. The data sharing protocol should cover the following issues:

- what information needs to be shared
- the organisations involved
- what you will need to include in your Privacy Notice
- measures to ensure adequate security is in place to protect the data
- what arrangements are in place for individuals to access their personal data if they request to
- agreed common retention periods for the data
- processes to ensure secure deletion takes place.

'Data Sharing Checklist – systematic data sharing' taken from ICO Data Sharing Code of Practice (2011)

Data matching with Credit Reference Agencies

A housing association might want to compare some or all of their tenants' records against financial information such as credit card applications, mobile phone contracts or store-card applications as a way of checking who is living in the property. This process is known as a credit reference check and they are carried out by registered Credit Reference Agencies (CRA).

Example

Housing association X drew up a list of 100 properties they thought were 'at risk' of tenancy fraud. This included properties where there had been no access for gas safety checks or no contact with the tenant for 12 months.

Housing association X arranged a contract with a CRA and securely sent the 100 records to be checked and matched against financial records in a credit reference check.

The CRA confirmed that of the 100 records that they checked, 90 showed no mismatches in the data. This meant that those 90 people had not registered for a service, like a mobile phone contract, or joined the electoral roll at an address other than their social rented property within the last 12 months.

For the remaining 10 records, the credit reference check showed that those people had registered for a financial service at a property different to the address of their social rented home. This could indicate that the tenant has moved out of the social rented property, and may have abandoned it or sublet it unlawfully.

Housing association X was able to target the 10 addresses for further fraud investigation. Using CRAs can help housing associations focus their resources more effectively by screening out what might be false leads.

The legal basis for CRA Data Matching

Some CRAs rely on gateways for data sharing within the DPA that apply to the investigation of a criminal act – Section 29.3 (see section 'Other measures' for further details). Housing associations usually engage with CRAs via their local authority because of the local authority's statutory powers to investigate a fraud-related offence.

If a housing association intended to use a CRA to detect tenancy fraud it is advisable that this is discussed with their local authority. As with any changes to the way data will be shared within or by an organisation, housing associations should liaise with their legal team before they enter into any data sharing arrangements.

Data matching and National Fraud Initiative

The National Fraud Initiative (NFI) is a wide-reaching data matching exercise which runs every two years. Since 1996 the NFI has been used to identify fraud and overpayments in the public sector totalling nearly £664 million.

The NFI has recently extended an invitation to housing providers to join the scheme which can offer a range of data matches designed to identify potential tenancy fraud. Previously the NFI has been used by housing associations to identify cases of unlawful subletting, fraudulent claims for social housing and fraudulent right-to-buy applications.

The legal basis for NFI data matching

The NFI operates within a Code of Practice which ensures its use of data complies with the DPA and human rights law. If a housing association intended to use the NFI data matching service it is advisable that this is made clear in the Privacy Notice.

Further information

For further information about the NFI visit the Audit Commission's website (see page 15).

Individual cases of suspected tenancy fraud

When an individual person or household is suspected of committing tenancy fraud it might be necessary to request information from the local authority on a one-off basis, such as their individual housing benefit record.

What the Data Protection Act 1998 says

It is possible to share data in one-off circumstances without breaching the Data Protection Act 1998 by using a clause within the act, in Section 35 (2).

Section 35 (2) of the DPA 1998:

Personal data are exempt from the non-disclosure provisions where the disclosure is necessary –

- a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings) or*
- b) for the purpose of obtaining legal advice.*

Case study: Westminster Council

Westminster Council has produced data sharing guidance which outlines how data can be shared with their housing association partners. The guidance clarifies the legal obligations within the DPA as well as what types of data can be legally shared. The guide describes how housing association partners can make one-off requests for data from the Council. The guide stipulates terms for data sharing including a condition that the housing association have conducted preliminary investigations before making a request. The guide states that the Council will only release information if they are satisfied that the housing association has evidence that tenancy fraud may be occurring, and that they may intend to issue legal proceedings against the tenant. The guide also stipulates that requests will be examined on a case-by-case basis and each decision recorded in full.

Other guidance

According to Section 35 (2) of the DPA local authorities are allowed to share information, such as housing benefit records, if the local authority is satisfied that the information has been requested in relation to legal proceedings and to share it would be fair and reasonable. In this context this includes eviction proceedings in the Civil Court. This does not mean the housing association must issue legal proceedings only that at the time of the request they intended to do so.

However, it is important to note that Section 35 (2) of the DPA 1998 is 'permissive' – this means that the local authority is allowed to share the data without breaching the DPA; however it does not mean they are obligated to do so. Data Sharing Agreements between local authorities and housing associations can provide a controlled gateway for this type of data sharing by promoting responsible data handling.

The Information Commissioner's Office has produced a checklist to help housing associations and local authorities to decide whether or not to share data in one-off cases (see page 12).

The ICO data sharing checklist – one off requests

Is the sharing justified?

Key points to consider:

- Do you think you should share the information?
- Have you assessed the potential benefits and risks to individuals and/or society of sharing or not sharing?
- Has the exemption used in the request for information been used appropriately?

Do you have the power to share?

Key points to consider:

- the type of organisation for which you work
- any relevant functions or powers of your organisation
- the nature of the information you have been asked/are asking to share
- any legal obligation to share information.

If you decide to share

Key points to consider:

- What information do you need to share?
 - only share what is necessary
 - distinguish fact from opinion.
- How should the information be shared?
 - it must be shared securely
 - ensure that you are giving information to the right person.
- consider whether it is safe/appropriate to inform the individual that their information has been shared.

Record your decision

Record your data sharing decision and your reasoning.

If you shared the information you should record:

- what information was shared and for what purpose
- with whom it was shared
- when it was shared
- your justification for sharing
- whether information was shared with or without consent.

'Data Sharing Checklist – one off requests' taken from ICO Data Sharing Code of Practice (2011)

Example

Housing association B has received a tip-off from a caretaker that their tenant, Miss Y, has moved out and sub-let her two-bed flat to another family. The flat is in a multi-storey block which makes it difficult for the housing association to check with the neighbours about who is living in the property. The rent account shows that the rent is paid in cash and in advance.

The housing association would like to check the local authority housing benefit records to see who is claiming at the property, and if the registered tenant, Miss Y, is claiming benefit anywhere else. If Miss Y has moved out of the property and unlawfully sub-let it, housing association B intends to take eviction proceedings against Miss Y in the Civil Court.

Housing association B had a Data Sharing Agreement in place with the local authority and made a formal written request asking for the information, mentioning the exemption Section 35 (2) of the DPA 1998.

The local authority was satisfied that all the conditions for sharing the data legally were met and provided the information that had been requested. Local authority records confirmed that Miss Y was no longer claiming benefit at her social rented property, and a different person was claiming full housing benefit at the flat.

Housing association B issued Miss Y with a Notice to Quit at the property and she was evicted.

Other measures

In many cases the action taken by housing associations in response to tenancy fraud will be under civil law (for example eviction) not criminal law.

However, some local authorities have decided to work with housing associations and pursue cases of tenancy fraud in the Magistrates Courts. In these cases the local authority can use certain exemptions within the DPA which allow data to be shared for the purpose of preventing, detecting or prosecuting a crime, to investigate tenancy fraud.

Sometimes when a person breaches their tenancy agreement they also can be understood to have committed a criminal offence, as defined under the Fraud Act 2006, for example:

- attempting to gain a social tenancy using false documents
- misrepresenting their circumstances to keep a property to which they are no longer entitled
- misrepresenting their circumstances to succeed to a tenancy to which they are not entitled.

Where local authorities have decided to attempt to prosecute for a tenancy fraud related offence the investigation will generally reflect that of a typical benefit fraud investigation.

What the Data Protection Act 1998 says

Local authorities have used Section 29 of the DPA 1998 to access information about the person suspected of fraud in these circumstances.

Section 29 (1) of the DPA 1998:

“(1) Personal data processed for any of the following purposes –

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders, or

(c) the assessment or collection of any tax or duty or of any imposition of a similar nature,

are exempt from the first data protection principle (except to the extent to which it requires compliance with the conditions in Schedules 2 and 3) and section 7 in any case to the extent to which the application of those provisions to the data would be likely to prejudice any of the matters mentioned in this subsection.”

It is recommended that information should only be requested using Section 29 of the DPA by accredited fraud investigators, similarly the preparation of potential fraud cases should only be carried out by the duly authorised official. Attempting to gain access to information using the DPA incorrectly can potentially have serious consequences.

Section 35 of the DPA should be considered as the ‘default’ exemption cited by housing associations when investigating tenancy fraud. Section 29 can be used legitimately, but only in relation to investigating a potential crime and usually only by the local authority.

Further information

For more information about data sharing with the local authority, speak to the nominated Data Controller in the Council, or visit the Information Commissioner’s Office website.

Next steps – Social Housing Fraud consultation

The Department for Communities and Local Government launched a consultation on Social Housing Fraud in January 2012. The consultation outlines considerations on whether a new criminal offence of social housing tenancy fraud is necessary and proportionate.

Criminal penalties for social housing fraud could take the form of a fine, or a custodial sentence, or both. Criminalisation would also remove any doubt about the legality of sharing data to detect tenancy fraud and the consultation also mentions the potential to create new legal ‘gateways’ to facilitate data sharing.

At the time of writing the consultation period is on-going and due to close in April 2012. For more information about the consultation or to respond please visit the CLG website (see page 15).

Further information and resources

For more information about tenancy fraud please visit:

The Making Best Use of Stock webpage for information about how the MBUS team can support housing associations and local authorities in addressing tenancy fraud. Further information about case studies included in this document can also be accessed via the MBUS team www.cih.org/mbus

The CIH Housing Tenancy Fraud Guide for good practice relating to tenancy fraud www.cih.org/publication-free/display/vpathDCR//templatedata/cih/publication-free/data/Guide_to_tackling_tenancy_fraud

The CLG Good Practice guidance in tackling unlawful sub-letting www.communities.gov.uk/publications/housing/housingfraudguidance

The CLG Social Housing Fraud consultation document www.communities.gov.uk/publications/housing/socialhousingfraud

CIH Housing Practice magazine issue 7: Tackling Unauthorised Occupancy www.cih.org/housingpractice

Information Commissioner's Officer website www.ico.gov.uk/

Audit Commission's National Fraud Initiative website www.audit-commission.gov.uk/fraud/nfi/pages/default.aspx

Audit Commission's Protecting the Public Purse 2011 report www.audit-commission.gov.uk/localgov/nationalstudies/Pages/ppp2011_copy.aspx

For any queries or further details, please contact:

Fleur Priest-Stephens

Making Best Use of Stock Advisor

Chartered Institute of Housing

Octavia House

Westwood Way

Coventry CV4 8JP

Tel: 024 7685 1777

Email: mbus@cih.org