

Haringey Council

Report for:	Cabinet 12 November 2013	Item number	
--------------------	-----------------------------	--------------------	--

Title:	Prevention of Social Housing Fraud Act 2013; RIPA 2000 and Benefit Fraud - delegation of functions
---------------	--

Report authorised by :	Director of Corporate Resources <i>J. Power 4/11/13</i>
-------------------------------	--

Lead Officer:	Anne Woods, Head of Audit and Risk Management Tel: 020 8489 5973 Email: anne.woods@haringey.gov.uk
----------------------	--

Ward(s) affected: ALL	Report for: Non-Key Decision
------------------------------	-------------------------------------

1. Describe the issue under consideration

1.1 To inform Cabinet about issues relevant to the use of the newly introduced Prevention of Social Housing Fraud Act 2013.

1.2 To recommend relevant departmental scheme of delegations are updated for various counter-fraud activities to include appropriate authorisations for nominated officers.

2. Cabinet Member for Finance and Carbon Reduction Introduction

2.1 The Prevention of Social Housing Fraud Act 2013 created the new criminal offence of unlawful subletting by assured and secure tenants in social housing. The rationale behind the Act is to ensure that social housing is occupied by those in the greatest housing need.

2.2 The Council needs to use the powers within this Act to maximise the effectiveness of its counter-fraud strategies and make social housing available to those applicants in most need. I am satisfied that the Council would benefit from the powers afforded to it under the Act and on that basis I recommend that Cabinet to approve its use.

2.3 Relevant updates to the various departmental schemes of delegation are also in accordance with respective statutory requirements and are recommended for approval.



Haringey Council

3. Recommendations

3.1 The Cabinet notes the enactment of the Prevention of Social Housing Fraud Act 2013 and agrees its use by the Council as part of its overall counter-fraud strategy;

3.2 The Cabinet approve the following delegations to officers and consequent changes to the Constitution (at Appendix E Officer Scheme of Delegation) as set out at Appendix 1 to this report:

- (a) delegated authority to the Head of Audit and Risk Management to institute fraud prosecutions under the Prevention of Social Housing Fraud Act 2013;
- (b) delegated authority to the Head of Audit and Risk Management to authorise all action to recover overpayments and monies lost through fraudulent claims in relation to Housing Benefit and the Council Tax Reduction Scheme including powers to impose administrative penalties, to prosecute and to bring proceedings in relation to fraudulent claims; and
- (c) delegated authority to the Assistant Director for Operational Services and Community Safety to be permitted to authorise the obtaining of communications data under s.21-25 of RIPA 2000 prior to judicial approval.

4. Other options considered

4.1 Not applicable.

5. Background Information - The Prevention of Social Housing Fraud Act 2013

5.1 The Prevention of Social Housing Fraud Act 2013, covering England and Wales, received Royal Assent on 31 January 2013 and was brought fully into force in England on 15 October 2013 (The Prevention of Social Housing Fraud Act 2013 (Commencement) (England) Order 2013 SI 2013/2622).

5.2 There are various different types of tenancy fraud (including obtaining a tenancy through false statement and unauthorised assignment). The Prevention of Social Housing Fraud Act 2013 is primarily concerned with strengthening the powers of social landlords to tackle tenants who sublet the whole of their dwellings for a profit. Current estimates put the number of unlawfully sublet social housing dwellings at around 98,000 at a total cost to social landlords of over £900m. The Audit Commission reports that social housing fraud is the single largest category of fraud loss in local government, in terms of value.



5.3 The Prevention of Social Housing Fraud Act:

- creates new criminal offences of unlawful subletting by assured and secure tenants in social housing;
- gives local authorities powers to prosecute in cases of unlawful subletting;
- enables courts to order the recovery of any profit made from unlawful subletting from tenants; and
- provides that assured tenants who unlawfully sublet the whole of their dwelling cannot subsequently regain their security of tenure.

5.4 Under the Act, the authority to prosecute rests with local authorities and legal proceedings cannot be brought under this legislation by other social landlords, including arms length management organisations. The Council will need to consider the impact of this on existing investigation and legal resources if the local authority were required to act on behalf of housing associations.

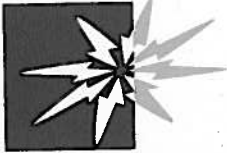
5.5 It is therefore proposed that the operational responsibility for investigation and prosecution of cases in respect of social housing fraud rests with the Head of Audit and Risk Management.

6. RIPA and Benefit Fraud update

6.1 A report on the use and implementation of the Regulation of Investigatory Powers Act 2000 (RIPA) was provided to Cabinet on 10 September 2013 and a list of officers was approved to authorise directed surveillance and the use of covert intelligence under s.28 and S.29 of RIPA 2000 prior to judicial approval.

6.2 These sections of RIPA relate specifically to the use of directed surveillance. The Council also has the facility under s. 21-25 of RIPA to apply for certain types of communications data: the 'who, when and where' of communications, such as a telephone billing or subscriber details. All applications must be authorised by a Justice of the Peace before they can take effect. This requirement applies to all areas of RIPA, including communications data and the relevant sections of the Act were omitted from the September Cabinet report. Approval is now sought for delegated authority to the Assistant Director for Operational Services and Community Safety to be permitted to authorise the obtaining of communications to cover this aspect of RIPA. The officer nominated has been trained in the use and application of RIPA.

6.3 The operational responsibility for investigation and prosecution of cases in respect of fraudulent benefit claims rests with the Head of Audit and Risk Management. Previously this was with the Head of Revenues, Benefits and Customer Services and Cabinet are requested to approve the Head of Audit and Risk Management to be permitted to authorise, under delegated



Haringey Council

authority, all action to recover overpayments and monies lost through fraudulent claims in relation to Housing Benefit and the Council Tax Reduction Scheme including powers to impose administrative penalties, to prosecute and to bring proceedings in relation to fraudulent claims.

7. Comments of the Chief Financial Officer and Financial Implications

7.1 There are no direct financial implications arising from this report if operational procedures remain the same. The work within internal audit and other departments to undertake and manage social housing fraud prosecutions in accordance with statutory requirements for Council-owned properties can be contained and managed within the relevant revenue budgets.

7.2 If the Council was requested to take on additional responsibility for the prosecution of cases for other social landlords' properties, the resources required to complete this work would need to be evaluated.

8. Legal Implications

8.1 The functions under these Acts are executive and any delegations to officers must be approved by the Cabinet as set out at Part 4 Section F paragraph 1.5 and Part 3 Section E paragraph 6.04 of the Constitution. These changes should be reported to the Full Council for noting only.

8.2 There are no specific legal implications arising out of this report.

9. Equalities and Community Cohesion Comments

9.1 There are no direct equality implications arising out of this report.

10. Head of Procurement Comments

10.1 Not applicable.

11. Policy Implications

11.1 There are no direct implications for the Council's existing policies, priorities and strategies.

12. Reasons for Decision

12.1 Cabinet approval is required for the delegations to officers to enable the Council to effectively carry out its counter-fraud functions.

13. Use of Appendices

13.1 Appendix 1 – Constitutional changes

14. Local Government (Access to Information) Act 1985

14.1 Not applicable

APPENDIX E – SCHEME OF DELEGATION TO OFFICERS
Section 3 – Directorate of Corporate Resources

Section 3 Directorate of Corporate Resources – Scheme of Delegation to Officers

To the Director of Corporate Resources

All the Financial, Legal, Information and Communication Technologies, Benefits and Local Taxation, Customer Services, Audit and Procurement functions of the Council except matters which are:

- (i) Key Decisions,
- (ii) Expressly reserved to the Cabinet or Cabinet Committee within its terms of reference
- (iii) Included on the Forward Plan
- (iv) Expressly reserved to full Council within its terms of reference
- (v) Expressly reserved to a non-executive Committee or Sub-Committee within its terms of reference
- (vi) Expressly excluded from the scheme of delegation to officers under paragraphs 4.01 and 4.02 of Part 3 Section E of the Constitution. Such an exclusion will not apply where the power to set fees or charges is specifically delegated in the statutory or non-statutory delegations listed below.

Without prejudice to the generality of the delegation above, there are included in this delegation to the Director all the statutory and non-statutory functions delegated to the designated officers below. The Director has authority to exercise the powers delegated to all officers reporting to him/her and Assistant Directors, the Chief Financial Officer and the Heads of Service have the same authority in relation to all officers reporting to them.

Schedule of abbreviations used for designated officers

Director of Corporate Resources	DCR
Head of Legal Services	HLS
Assistant Director Finance	ADF
Chief Financial Officer	CFO
Head of Corporate Finance	HCF
Head of Corporate Procurement	HProc
Head of Benefits & Local Taxation & Customer Services	HBLTCS
<u>Head of Audit & Risk Management</u>	<u>HRM</u>
Risk & Insurance Manager	RIM
Pensions Manager	PM

In the event that any of the designated officer posts above are renamed or the duties varied, then the powers delegated to that post in this section of the scheme will continue to be delegated to the post that substantially fills the duties of the original post.

APPENDIX E – SCHEME OF DELEGATION TO OFFICERS
Section 3 – Directorate of Corporate Resources

Those delegated powers, where prior consultation with, or instructions from, a Member or Member body are required before officers can exercise the powers, are shown with an asterisk * in the right hand column

Non-statutory delegations

Insurance Matters	
Power to arrange insurance cover within the financial limits for officers under Contract Procedure Rules or beyond those financial limits in accordance with Cabinet/Committee instructions	CFO* RIM*
Power to negotiate, to agree or reject and to pay claims against the Council, whether or not covered by insurance, in consultation with legal advisers and the relevant Service managers	CFO RIM
Power to exercise discretion, in consultation with legal advisers and the relevant Service managers, to make ex gratia payments, without admitting liability.	CFO RIM

Salaries, Wages, Pensions, Compensations etc.	
Power to make salary payments or to approve and control any alternative arrangements	CFO
Power to approve the terms of release of people aged 55 or over and made redundant or retired early with a claim on the pension scheme provided this is within the limits of Council policies and the decision applies to officers below Deputy Chief Officer level. This includes decisions on voluntary early retirement, early payment of deferred benefits, waiver of actuarial reductions on compassionate grounds, awards of increased membership on early retirement on efficiency grounds and reductions of contributions after 40 years service. Decisions which are outside Council policies or apply to Chief Officers or Deputy Chief Officers are referred to the Corporate Committee.	CFO
All administering authority decisions which do not incur costs in excess of those costs already funded and are consistent with existing policies	CFO PM
Authority to meet pensions fund managers, AVC scheme providers, custodians and other specialist external advisors on a regular basis for the purposes of performance monitoring and reporting findings back to the Corporate Committee on a quarterly basis	CFO
Power to agree the admission and terms of admission and the cessation of other bodies into the Council's Pension Scheme in consultation with the Chair of the Corporate Committee	CFO*

Payment of Accounts etc.	
Power to deal with or approve alternative arrangements for dealing with all certified expenditure matters	CFO
Power to approve the draft Council's Accounts and Accounting Policies by 30 June each year.	CFO
Power to approve the draft Pension Fund Accounts by 30 June each year	CFO

Other Financial Matters	
Power to exercise the functions of the duly authorised representative of the	CFO

APPENDIX E – SCHEME OF DELEGATION TO OFFICERS
Section 3 – Directorate of Corporate Resources

Council as the corporate member of Alexandra Palace Trading Limited	
Power to select the managers of the Council's internal funds and negotiate management fees	CFO
Power to make financial arrangements for the leasing of vehicles and equipment	CFO
Power to manage the authority's loan debt in accordance with all relevant legislation and guidance	CFO
Power to respond to annual expenditure proposals submitted by the following bodies (if applicable):- Greater London Authority London Pension Fund Authority Lee Valley Regional Park Authority North London Waste Authority London Councils Greater London Magistrates Courts Authority Environment Agency	CFO
Power to authorise all action to recover overpayments and monies lost through fraudulent claims in relation to Housing Benefit and <u>the Council Tax Benefit Reduction Scheme</u> including powers to impose administrative penalties, to prosecute and to bring civil proceedings in relation to fraudulent claims	HBLTCS <u>HRM</u>
Power to manage Council borrowings and investments within limits set by the Council	CFO
Authority to manage the Capital Programme flexibly and to make adjustments to the phasing of approved projects within the limits of available capital resources	CFO
Authority in consultation with the Assistant Chief Executive- Policy, Partnerships, Performance and Communication and the appropriate Cabinet Member to approve the submission of bids to the European Social Fund	CFO*
Power to certify grant claims and statutory returns to Government and European Union bodies where this certification is required from, or on behalf of, the Chief Financial Officer	CFO HCF
Power to remove contractors from Selective Tendering Lists when they have ceased trading or have requested to be removed. Power to suspend any contractor from the Lists in cases of serious breach of contract or unsatisfactory service delivery pending final decision by the relevant Director for contracts valued at £250,000 (two hundred and fifty thousand) or less and by the Cabinet for contracts valued over £250,000 (two hundred and fifty thousand).	HProc

Legal Matters	
Power to authenticate any notice, order, assent, demand or other document or copy document, which the Council are authorised or required by, or under, any Act or any instrument made thereunder, to give, make or issue	HLS
Power to obtain particulars of occupiers of, and other persons interested in, land and of persons authorised to manage or arrange for the letting of land	HLS

APPENDIX E – SCHEME OF DELEGATION TO OFFICERS
Section 3 – Directorate of Corporate Resources

Power, notwithstanding delegations to other officers/services, to authorise, institute, defend, compromise, or adjourn any form of legal proceedings or statutory procedure and to make or defend any appeal in criminal or civil proceedings where such action is desirable to protect the Council's interests	HLS
Power to authorise other officers to represent the Council in civil or criminal proceedings	HLS
Power to issue or serve any statutory notice on instructions from a designated officer who has delegated power to issue or serve such a notice	HLS
Powers to take any action or sign any document under the Land Registration Rules, including the release of mortgages or charges, in order to carry out authorised instructions from other Services	HLS

Statutory delegations

The statutory delegations listed in the Schedule below include all local authority functions (whether expressed as a power, duty, discretion or otherwise) under the sections/parts of the Acts listed in the left hand column. These include any related Schedules, or the whole Act if so stated, and all subordinate legislation arising under the listed Acts. The fact that certain subordinate legislation is expressly listed and other subordinate legislation is not listed does not affect the generality of this delegation. The statutory delegations include all subsequent legislative amendments and additions to the listed provisions. Except where a power is expressly stated to be a "Limited Delegation", the delegations are not limited, conditioned or qualified in any way by the descriptions of the powers in the middle column which are for information only.

With the exception of the statutory powers that are shown in the right hand column as delegated to specified officers "only", all the powers listed below are delegated to each Service Manager, Group Manager and Team Leader reporting to the specified Head of Service, Assistant Director or the Director.

Schedule of Statutory Delegations

Law of Property Act 1925		
Sections 115 & 120	Power to sign receipt on discharge of mortgage	HLS
London Building Acts 1939		
Sections 6 & 11	Powers to name streets and to number buildings in streets	HLS
Marriage Acts 1949 and 1994		
The whole Acts and Regulations made under these Acts including The Marriages (Approved Premises) Regulations 1995 (S.I. 1995/510)	Limited Delegation: Power to determine applications for approval of premises for ceremonies and to impose conditions and power to recommend the scale of fees for applications for the approval of premises for civil marriages/civil partnerships and for the attendance of the Superintendent Registrar, Registrar of Marriages or their	HLS*

APPENDIX E – SCHEME OF DELEGATION TO OFFICERS
Section 3 – Directorate of Corporate Resources

	deputies at ceremonies, such fees to recover all the Council's costs and to be approved by the relevant Cabinet Member	
Attachment of Earnings Act 1971		
Sections 3 & 4	Powers to apply to Court for attachment of earnings orders and administration orders in respect of debtors	HLS
Sections 7, 9 & 15	Powers to secure compliance with orders served on the Council in respect of Council employees and to notify Court of change of employees' earnings or of employment	CFO
Local Government Act 1972		
Sections 114, 119, 140, 146, 148 & 168	Powers to take security from officers, to make payments to deceased officers' estates, to insure Members against accidents, to transfer securities on the alteration of the name or area of the Council, to keep the General Rate Fund Account and to make financial returns to the Secretary of State	CFO
Sections 222 & 223	<ul style="list-style-type: none"> • Power, when considered expedient for the promotion or protection of the interests of Borough residents, to (i) prosecute, defend or appear in any legal proceedings and to institute civil proceedings in the Council's name, and (ii) to make representations in the interests of the inhabitants in Council's name at any public inquiry under any legislation • Power to authorise any officer to prosecute, defend or appear on the Council's behalf in Magistrates Court proceedings 	HLS only
Local Government Superannuation Act 1972		
Sections 7 and 12 and all Local Government Superannuation Regulations under the Act including S.I. 1997/1612	Functions relating to the Pension Scheme including the maintenance, management, investment and valuation of the Pension Fund and arrangements with respect to membership, contributions, benefits and payments under the Scheme	CFO PM
Greater London Council		

APPENDIX E – SCHEME OF DELEGATION TO OFFICERS
Section 3 – Directorate of Corporate Resources

(General Powers) Act 1973		
Sections 26, 27 & 28	Powers in relation to the recovery of non-domestic rates from certain owners, tenants and lodgers, including charging on land, charging interest and enforcing charges	CFO HBL TCS
Greater London Council (General Powers) Act 1974		
Section 16	Power to enter into agreements affecting land	HLS
Local Land Charges Act 1975		
Whole Act	All functions relating to local land charges	HLS
Local Government (Miscellaneous Provisions) Act 1976		
Sections 16 & 29	Powers to serve requisitions for information and to apply for the repayment of unclaimed compensation paid into Court	HLS
Local Government Finance Act 1988		
Part III	Functions in relation to non-domestic rating	CFO HBL TCS
Sections 114, 114A & 115(6)	Duty to report to the Council or Cabinet in the event of an unlawful decision or expenditure and power to authorise entering into certain agreements incurring expenditure during a prohibition period	CFO only
Social Security Contribution and Benefits Act 1992 Social Security Administration Act 1992 Housing Act 1996 Social Security Act 1998		
The provisions of the Acts and all Regulations under the Acts relating to Housing Benefit and Council Tax Benefit including the Housing Benefit Regulations 2006 and the Council Tax Benefit Regulations 2006	Power to operate a Housing Benefit and a Council Tax Benefit Scheme including functions relating to handling claims, assessing entitlements, making payments, recovery of over-payments and obtaining information	HBL TCS
<u>Social Security Administration Act 1992</u>		
<u>Part VI</u>	<u>Power to authorise action to recover</u>	<u>HRM</u>

APPENDIX E – SCHEME OF DELEGATION TO OFFICERS
Section 3 – Directorate of Corporate Resources

	<u>overpayments and monies lost through fraudulent claims in relation to Housing Benefit including powers to impose administrative penalties, to prosecute and to bring civil proceedings in relation to fraudulent claims</u>	
Local Government Finance Act 1992		
<u>Section 13A</u> <u>Schedule 1A</u>	<u>Power to operate a Council Tax Reduction Scheme including functions relating to handling claims, assessing entitlements, making payments, recovery of over-payments and obtaining information</u>	HBL TCS
Sections 33 and 34	Limited Delegation: Power to determine the Council Tax Base, i.e. Item T or item TP in consultation with the Cabinet Member	* CFO only
Sections 16, 17 & 65 and Schedules 2, 3, 4 & 4A	Powers to respond to notices from aggrieved persons, to serve completion notices in respect of buildings and in relation to the administration and collection of Council Tax, civil penalties and the enforcement and the recovery of sums due and the duty to consult persons or bodies representing those subject to non-domestic rates about the Council's expenditure proposals	CFO HBL TCS
All Regulations under the Act including the Council Tax (Administration and Enforcement) Regulations 1992 <u>and the Council Tax Support Schemes (Prescribed Requirements) (England) Regulations 2012</u>	Functions in relation to the administration and enforcement of Council Tax <u>and the Council Tax Reduction Scheme</u> including requests for information, demand notices, liability orders and proceedings to enforce payment	CFO HBL TCS
<u>Regulations under the Act including the Council Tax Reduction Schemes (Detection of Fraud and Enforcement) (England) Regulations 2013</u>	<u>Functions in relation to the recovery of overpayments and monies lost through fraudulent claims in relation to the Council Tax Reduction Scheme including powers to impose administrative penalties, to prosecute and to bring civil proceedings in relation to fraudulent claims</u>	HRM
<u>Regulation of Investigatory Powers Act 2000</u>		
<u>Sections 28 and 29</u>	<u>Power to authorise directed surveillance</u>	CFO

APPENDIX E – SCHEME OF DELEGATION TO OFFICERS
Section 3 – Directorate of Corporate Resources

	<u>or the conduct and use of a covert human intelligence source for the purpose of preventing or detecting crime</u>	ADF only
Local Government Act 2003		
Sections 14, 25 & 27	Powers to supply information requested by the Secretary of State and to report to the Council on (i) the robustness of estimates for the purpose of budget calculations and the adequacy of proposed financial reserves and (ii) the inadequacy of a controlled reserve	CFO only
Licensing Act 2003		
Section 181	Limited Delegation: In consultation with the Chair of the Regulatory Committee, power to make arrangements to deal with cases under the Act remitted by the Magistrates Court to the Council for decision	HLS* only
Gambling Act 2005		
Section 207	Limited Delegation: In consultation with the Chair of the Regulatory Committee, power to make arrangements to deal with cases under the Act remitted by the Magistrates Court to the Council for decision	HLS* only
Fraud Act 2006		
Sections 1 to 16	All powers to enforce against and prosecute any offence under this Act relating to the Directorate's functions	HBL TCS HRM
Commons Act 2006		
Section 1	Keeping a register of common land and town and village greens	HLS
<u>Prevention of Social Housing Fraud Act 2013</u>		
<u>Whole Act</u>	<u>All powers to enforce against and prosecute any offence under this Act</u>	HRM

APPENDIX E – SCHEME OF DELEGATION TO OFFICERS
 Section 4 – Directorate of **Place and Sustainability**

Section 4 - Directorate of Place and Sustainability - Scheme of Delegation to Officers

Statutory delegations

Schedule of Statutory delegations

Regulation of Investigatory Powers Act 2000		
<u>Section 21-25</u>	<u>Power to authorise the obtaining and disclosure of communications data</u>	<u>DDOSCS</u>
Sections 28 and 29	Power to authorise directed surveillance or the conduct and use of a covert human intelligence source for the purpose of preventing or detecting crime	<u>DP&S DDOSCS</u> <u>HCS AD-SF</u> <u>HNS</u> <u>Only</u>

