

# TENANCY FRAUD POLICY

## **1. Purpose**

- 1.1 Red Kite Community Housing operates in Buckinghamshire where social housing is in short supply. We are therefore committed to ensuring we make best use of our homes and that means that our homes are let to tenants in housing need and lived in by those tenants and their families.
- 1.2 The purpose of this policy is to outline the position Red Kite Community Housing has regarding the prevention and detection of tenancy fraud within its homes.
- 1.3 Tenancy fraud undermines the purpose of social housing, is illegal, deprives those in genuine need of accommodation, and imposes additional costs on the Red Kite Group. This policy aims to ensure fair and equitable distribution of housing resources and protect the interests of our tenants and the broader community.

## **2. References**

- 2.1 This policy has been drafted in line with our vision and values, relevant legislation, and best practice.

## **3. Responsibilities**

- 3.1 The Head of Community is responsible for ensuring that this policy is kept up to date and consistent with any new Red Kite strategies. It will be reviewed every three years or following a change in legislation or regulatory requirements, to ensure that it remains fit for purpose.
- 3.2 The Head of Community is responsible for ensuring that this policy is adhered to through the implementation of the related procedure and auditable documentation.
- 3.3 All relevant Red Kite staff will receive training on this policy, tenancy fraud awareness, and procedures for handling suspected cases, all colleagues are responsible to be vigilant for the signs of tenancy fraud. Communication and awareness campaigns will be conducted to inform tenants and the public about the consequences of tenancy fraud.

## **4. Legal & Regulatory Framework**

- 4.1 **Housing Act 1985 (as amended by the Housing and Regeneration Act 2008)**
- 4.2 The Housing Act 1985 sets out the legal framework for social housing in England, including the responsibilities and powers of local authorities and housing associations in providing and managing social housing. Section 95 of the Act provides powers to terminate tenancies if it is established that tenancy fraud has occurred.
- 4.3 **Prevention of Social Housing Fraud Act 2013**

- 4.4 The Prevention of Social Housing Fraud Act 2013 (PoSH) specifically addresses social housing fraud, it introduced offenses related to fraudulent subletting and other unauthorised occupancy. The Act makes it a criminal offense to sublet or part with possession of a social housing home without proper authorisation.
- 4.5 Where the tenant sublets or parts with possession of a home or ceases to occupy the home, knowing that it is a breach of tenancy. A person convicted of this offence can be fined an unlimited amount.
- 4.6 Where a tenant dishonestly and in breach of tenancy, sublets without consent and ceases to occupy the home as their only or principal home. A person convicted of the second offence can be imprisoned for up to two years and/or fined an unlimited amount.
- 4.7 PoSH enables Local Authorities the ability to prosecute in cases of unlawful subletting on Red Kite's behalf and provides the Court the authority to order the tenant to pay back any profit made from unlawful subletting; these are referred to as Unlawful Profit Orders (UPO). These are available in both criminal and civil proceedings. Red Kite will work with relevant Local Authorities (Buckinghamshire Council in the main) to refer cases of Tenancy Fraud for potential prosecution via our ongoing close working partnership with them.
- 4.8 **Localism Act 2011**
- 4.9 The Localism Act 2011 grants local authorities and housing associations more flexibility in managing their housing stock. Under Section 154 of the Act, Red Kite has the power to recover a home if it is reasonably believed to have been obtained through fraud.
- 4.10 **Fraud Act 2006**
- 4.11 The Fraud Act 2006 is a general law that deals with fraud offenses. It covers actions such as false representation, failing to disclose information, and abuse of position. Housing Associations may use this Act in cases where tenancy fraud involves dishonest actions or misrepresentation. A person who is found guilty of fraud is liable, on conviction to a maximum sentence of 10 years imprisonment and/or a fine.
- 4.12 **Proceeds of Crime Act 2002**
- 4.13 The Proceeds of Crime Act 2002 enables the recovery of assets obtained through criminal conduct, including tenancy fraud. Housing Associations may seek civil recovery under this Act to recover losses resulting from fraudulent actions.
- 4.14 **Criminal Law Act 1977**
- 4.15 The Criminal Law Act 1977 provides powers of entry and search with a warrant for the purposes of obtaining evidence relating to offenses. Housing Associations may need to work with law enforcement under this Act to investigate suspected tenancy fraud cases.

#### 4.16 **Housing Benefit Regulations**

4.17 Housing Benefit Regulations set out the rules and eligibility criteria for claiming housing benefit. Housing Associations can use these regulations working with Local Authorities to verify tenants' entitlement to benefits and cross-reference this information to identify potential cases of tenancy fraud.

#### 4.18 **Red Kite Tenancy Agreement specifics**

4.19 The Red Kite tenancy agreement clearly states that subletting, assigning, or transferring the tenancy without proper authorisation is strictly prohibited. More information on this can be found under the "Your Rights" and "Your Obligations" sections of our Tenancy Agreements. The clauses detailed under these provisions will be used as Red Kite see fit to disrupt, prevent, or stop tenancy fraud.

### 5. **Definitions**

#### 5.1 **Definition of Tenancy Fraud**

5.2 Tenancy fraud refers to any dishonest or unlawful actions taken by tenants or unauthorised occupants to gain or retain a home provided by Red Kite. Common forms of tenancy fraud include, but are not limited to:

- Subletting: The illegal subletting of the home (for profit or not) including through entities such as 'Air B&B', estate agents, or other third-party agencies
- partial subletting of the home where it is prohibited under the tenancy agreement or requires the tenant to ask permission first
- non-occupation: Leaving the home vacant while occupying alternative accommodation
- false information: Providing false information or documentation to obtain a tenancy or maintain eligibility for housing
- key selling: Selling or exchanging keys to the home with unauthorised individuals.
- unlawful Assignment: Transferring or assigning the tenancy to someone else without proper authorisation
- mutual exchange: fraudulent mutual exchange - giving false information to obtain a home.

### 6. **Key Principles**

#### 6.1 **Preventing Tenancy Fraud**

6.2 We let Red Kite homes in accordance with our Allocations Policy as well as in line with the nominations agreements we have with Local Authorities. We will mainly let our homes through the Choice Based Lettings Scheme for the area.

6.3 Where a prospective tenant comes to us via the local authority checks will have been carried out on right to rent and identification which we rely on.

6.4 Red Kite will carry out identification/ right to rent checks on prospective tenants who:

- made an application directly for a home through us
- tenancy changes
- made an application for the Right to Buy or Right to Acquire
- requested to assign their tenancy
- requested to succeed a tenancy
- tenancy renewals
- tenancy conversions
- been party to a mutual exchange application

#### 6.5 **Tenancy Agreement Clauses**

6.6 The Red Kite tenancy agreement clearly states that subletting, assigning, or transferring the tenancy without proper authorisation is strictly prohibited. More information on this can be found under the “Your Rights” and “Your Obligations” sections of our Tenancy Agreements.

#### 6.7 **Occupancy Checks and Inspections**

6.8 Regular occupancy checks (Home Checks) and home inspections will be carried out to ensure that tenants are residing in the home and to identify any unauthorised occupants. Tenants will be notified of these checks in accordance with the terms of their tenancy agreement.

#### 6.9 **Reporting Tenancy Fraud**

6.10 Red Kite will ensure that it makes it easy to report suspected tenancy fraud and run regular communications campaigns on this important subject to raise awareness. Anyone who is concerned regarding individuals being involved with or are a victim of tenancy fraud can report suspected tenancy fraud cases without fear of reprisals as per the details that can be found at a <https://redkitehousing.org.uk/your-home/tenancy-fraud/>. All reports are treated confidentially and investigated promptly.

#### 6.11 **Detecting Tenancy Fraud**

#### 6.12 **Data Analysis and Matching**

6.13 Red Kite will share (give and receive) relevant information with third parties for the purposes of preventing, investigating, and tackling tenancy fraud. When sharing information, we will comply with all aspects of the Data Protection Act and the General Data Protection Act Regulation (GDPR). We will also share information:

- to meet our legal obligations
- in connection with legal proceedings (or where we are instructed to do so by Court order)
- to protect the vital interests of an individual (in a life-or-death situation).

6.14 Working with Local Authorities may include, but not be limited to; cross-referencing housing benefit data, council tax records, and other relevant information, as well as our own internal research to identify potential cases of tenancy fraud.

6.15 **Collaboration with External Agencies (Partnership Working)**

6.16 Where necessary and within the bounds of applicable laws and regulations, Red Kite will collaborate with external agencies, to investigate suspected cases of tenancy fraud.

6.17 Subject to the provisions of the GDPR/Data Protection Act 1998, where appropriate, Red Kite will share information regarding our tenants with Local Authorities and other agencies to detect, investigate and take legal action in cases of suspected Tenancy Fraud. This includes sharing information and working with partners where service level agreements are in place and/or where it is proportionate, legal, and appropriate to share information. Partners include but are not limited to: Local Authorities, the Police, and other Registered Social Landlords

6.18 We will work with partner organisations such as Buckinghamshire Council as this allows for joined up work and shared resources in tackling tenancy fraud as well as enhancing our joint co-operation and learning.

6.19 **Tenancy Review and Renewal**

6.20 During tenancy reviews and renewals, tenants will be required to provide up-to-date information about their household composition and occupancy status. Inconsistent or suspicious information will be subject to further investigation.

6.21 **Confidentiality**

6.22 Under the Data Protection Act 1998/GDPR and the Human Rights Act 1998, all personal information, however received, is treated as confidential.

This includes:

- anything of a personal nature that is not a matter of public record about a tenant, leaseholder, applicant, staff, or board/committee member
- staff will ensure that they only involve other agencies and share information with the consent of the tenant concerned, unless:
  - it is for the purposes of investigating suspected Tenancy Fraud.
  - GDPR legal exemptions apply, negating the need for consent.
  - the information is necessary for the protection of children.
  - Red Kite is required to by law (for example Red Kite cannot withhold information if being questioned by the Police during a criminal investigation).

6.23 Where a person has made a report of suspected Tenancy Fraud, they should be aware that Red Kite will only be able to provide limited information on the investigation due to data protection considerations.



**6.24 Consequences of Tenancy Fraud**

**6.25 Termination of Tenancy**

6.26 If Red Kite establishes and proves tenancy fraud, we will look to end the tenancy as soon as is practicable, and the tenant (and any occupants) will be required to vacate the home. Legal action may be pursued by Red Kite to recover any losses incurred by Red Kite due to the fraud, using any of the mechanisms stated in section four (Legal & Regulatory Framework) of this policy.

6.27 Red Kite will signpost any victims of tenancy fraud to the relevant statutory and charitable bodies for advice and support.

**6.28 Tenancy Fraud Register**

6.29 Individuals found guilty of tenancy fraud may be added to Red Kites internal Tenancy Fraud Register, preventing them from obtaining social housing assistance from Red Kite in the future. Data will be controlled and stored in line with Red Kites GDPR/data retention responsibilities.

**6.30 Prosecution**

6.31 In cases of serious or persistent tenancy fraud, Red Kite reserves the right to pursue legal action, seeking criminal prosecution or civil recovery as appropriate, either independently or in conjunction with external partners.

6.32 Red Kite will seek financial redress wherever appropriate, which may include out of court settlements, unlawful profit orders (UPOs), third party money orders and unjust enrichment claims (this list is not exhaustive). Red Kite may seek to recover monies directly from the tenant(s) and other perpetrators via court orders either in partnership with the relevant Local Authority (Buckinghamshire Council primarily), or on its own depending on the relevant legislation used.

6.33 Red Kite will seek to secure debts where appropriate against assets for example, land registry charges against a private home, attachment of earnings or bankruptcy proceedings however the recovery method will depend on the type of fraud perpetrated (please note this list is not exhaustive).

**7. Policy Statement and Objectives**

7.1 The objective of this policy is to make clear that where Red Kite identifies tenancy fraud, it will take firm and appropriate action.

7.2 Our objective in relation to this policy is to ensure consistency, clarity and fairness in our approach when dealing with suspected tenancy fraud in our homes.

7.3 Red Kite will investigate all forms of tenancy fraud reported to us by staff, tenants, contractors, members of the public and external agencies. Our commitments are to:

- publicise tenancy fraud in our communications with tenants
- act promptly when investigating any allegations of suspected tenancy fraud
- train staff to identify potential tenancy fraud
- keep complainants informed where we are able to, and keep their identity confidential
- support complainants and witnesses if Red Kite need to go to court
- work with our partners to help detect and prevent tenancy fraud
- support vulnerable victims of tenancy fraud and signpost them to appropriate agencies.

## 8. **Related Policies and Strategies**

8.1 This policy directly supports, and is supported by, other policies, procedures, and strategies that we have in place. These include:

- Group Anti-Fraud Policy
- Whistleblowing Policy
- Gifts and Hospitality Policy
- Red Kite Tenancy Agreements
- Neighbourhood Management Policy
- Tenancy Policy
- Rent Collection and Debt Recovery Policy
- Allocations Policy



Staff roles listed in the **Competency Standards section** must be acquainted with contents of this document and have had documented instructions and training on its use. Authority to amend can only be undertaken by the **Process owner** with the relevant **Delegated approvals**.

For information on interpretations and instructions staff should contact the **Subject Matter expert** or **Process owner** and under no circumstances should any deviation be permitted without prior approval as above.

Document Controls			
<b>Version:</b>	1	<b>Effective date:</b>	April 2024
<b>Subject Matter expert drafter:</b>	Head of Community	<b>Process owner:</b>	Homes Manager Head of Community
<b>Related Pod</b>	Community Pod Relationship Pod	<b>Related Policy</b>	Tenancy Policy
<b>Review period</b>	3 years	<b>Next review due by:</b>	April 2027
Delegated approvals			
<i>The 3 lines of defence have been checked within the framework and are valid</i>			<input checked="" type="checkbox"/>
<b>Approved by EMT</b>	Sarah Mei Ying North, Director of Customer Services	<b>Approved Date:</b>	9 April 2024
<b>Approved by Board/ Committee/ RRT</b>		<b>Approved Date:</b>	