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THURSDAY 25TH MAY

Housing

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Tenancy Fraud Forum

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Housing Stream - Day 2

10:20

- Open Source for Tenancy Fraud

- Aleks Sorsa (Former ITS)

10:55

- Building a Tenancy Fraud Case – What can I do?

- J. Napier (RBKC)

11:25

- Refreshments & Exhibition

12:00

- Using NPO's to tackle Reluctant Payers

- A. Herring (Pinsent Masons)

12:35

- The Investigatory Powers Act: what it means for tenancy fraud

- S. Cooper & C. Lomas (NAFW)

13:05

- Lunch & Exhibition

14:10

- The IUC – Putting them in the hot seat.

- S. Toghill & M. Neumann

14:45

- Preparing Criminal & Civil Cases

- V. Smith (Devonshire's)

15:15

- Refreshments & Exhibition

15:50

- Financial Recovery of Costs

- V Williams (LB Islington)

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Open Source for Tenancy Fraud

Aleks Sorsa

FORMER ITS

TRAINING

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Aleks has had an accomplished career within the world of Investigations with Oxford City Council, with years of experience which saw his journey from Apprentice, Intelligence Officer to Investigation Officer. He has extensive experience in civil and criminal investigations and also provided services for counter-fraud consultancy and risk assessments. During his time with Oxford City Council, Aleks was also a trainer through ITS Training to share his experience across the country. He currently works as an Ethics and Compliance Analyst for WSP, one of the world's leading engineering and professional services companies.

What is Open Source?

Information available to the public

Public Domain information

The internet

NEWS

Facebook

TikTok

Twitter

News content

Social Media

Online Communities and Forums

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(c) NICONF and speakers

1

What to use and when

1. Internal System Checks – This will help you search!

2. Search Engines for Tracing

3. Social Media Sites







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When and how to use OSNIT?

Early stages of an investigation – Least intrusive as publicly available!

✓ Use covert profiles – Otherwise risk tipping off...

✓ Screenshot/ Screen Record what you can

✓ Get as MUCH information as you can

x Don't use your own profile

x Don't interact with anyone

x Don't revisit any pages

x Don't throw any materials away - CPIA

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Case study

Anonymous Referral

The woman and her young daughter at 53a Willow Grove, Edenbridge TN8 5QY, hasn't been seen at the house for over a year. I think they are living in Spain where her partners family are from.

She has been renting out the property to various people, some who arrive just for a week at a time with suitcases and leave again like they are on holiday.

More recently (3 months ago) - a man called Joe has moved in. He is rude to the neighbours and has been dumping broken furniture in the street. He has said that he has taken over the tenancy and is here to stay.

Tenancy Details

Tenant (sole) – Ms Maria Dodge, D.O.B – 12/05/1978

Household details – Daughter – Sophia Lopez D.O.B 19/03/2014

Tenancy start date: 03/04/2019

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Questions?



(...or come and speak to us on the II S stand!)

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Contact Us

Email Mike@its-training-uk.com

Post a question on www.niog.org.uk

Call us on 0330 022 8262



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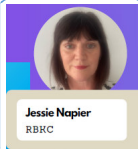
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Jessie Napier
RBKC

How to build a tenancy fraud case – what can I do?

Jessie Napier is the Housing Investigation Manager at Royal Borough of Kensington and Chelsea. Jessie has worked in social housing for nearly 20 years – 16 of those in housing fraud with a long career in Camden council and most recently managing the team at the Royal Borough of Kensington and Chelsea – one of the most sought after places to live in London. Imagine how much you can illegally charge for your council property?



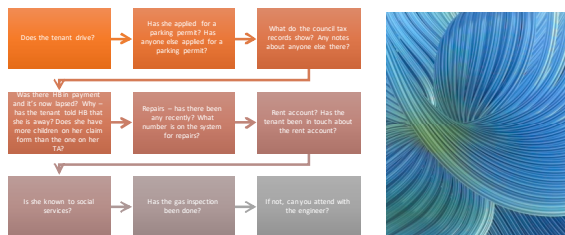
How to build a tenancy fraud case – what can I do?

- [illegible]

How to build a tenancy fraud case – what can I do?

- ✓ Housing file – what does it say? Has the tenant told the housing department anything Le going away?
- ✓ Young daughter – child school age? If so, is she registered in a LA school?
- ✓ Partner? Has she ever been married? What's the next of kin details? Mobile number? (who's is it?)
- ✓ Where did the tenant come from? Check housing application – was there ever a partner on there? Has she more children on a new application? Does she need bigger accommodation? Who is the father?
- ✓ Various people – so visit early morning or evening and see who is there – **not on your own**. Try to get in to counter an anticipated return argument. You won't find the place the same next time....
- ✓ Neighbours – speak to as many as possible – someone will know something... Flat B probably not happy with the situation unless they are involved. Will they be a witness?

How to build a tenancy fraud case – what can I do?



External checks

- Home office checks - is the tenant abroad? How long for? She can only have one principal home.
- Credit checks - where is their credit registered?
- Is it active credit, defaulted or closed?
- Bank statements – enough to suspect a sub-let so apply for bank statements. Is there any subletting money and where are the tenant's transactions? You can go back further with banks....
- Utilities – who is paying them?
- Tracecam – who is registered at the property? Other names listed throughout the tenancy?
- Does the tenant have an alternative address?
- Electoral roll – who is on the forms and have they been filled in recently?

Defences

Holiday and coming back? That's allowed but not if she is sub-letting so focus on that. You cannot get security back you sub-let regardless of whether you come back or not.

Friend staying temporarily – where do they usually live?

Away for family bereavement – how long for?

Working away temporarily – where is the child?

I told you I was going away? Did she?

How to build a tenancy fraud case – what can I do?



- What now - get more information....
- If you have done several visits but not found anyone at home - change your times.
- If you have found everything and can't find enough evidence - what then?
- Call them to discuss? If they are not in the country, call them anyway. What have you to lose? (Case by case basis).
- Does she work in the UK? (not claiming so how is she supporting herself and family)?
- Where do her children go to school?
- When is she returning?
- Where does she stay when she is away and what is the address and details? Does she own a property elsewhere?
- Who is living in her property in her absence?
- Can you prove that she has established a life elsewhere?

Questions?



Jessie Napier – Housing Investigation Manager
Royal Borough of Kensington and Chelsea

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REFRESHMENTS



Back in 30 Minutes!



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Using NPO’s to tackle the reluctant players



Andrew Herring
PINSSENT MASON

Andrew is the current Chair of the Midlands Fraud Forum and a litigation partner in the international and award-winning law firm, Pinsent Masons LLP. Andrew is also a member of the West Midlands Police & Crime Commissioner's Fraud Board and the Commercial Fraud Lawyers Association, as well as a regular contributor to the Fraud Advisory Panel's counter-fraud campaigns. He is passionate about tackling the scourge of fraud in the UK. The focus of Andrew's practice is high value, complex, multi-party disputes, investigations and injunctions. He is listed as a 'notable practitioner' in Chambers & Partners and has acted for clients on a wide variety of claims at all levels of the High Court including the Court of Appeal and UK Supreme Court. He is part of Pinsent Masons' Band 1 ranked civil fraud and asset recovery team (Legal500).





Using Norwich Pharmacal Orders to tackle the reluctant players

Andrew Herring – Pinsent Masons
and Chair, Midlands Fraud Forum
25 May 2023

A purpose-led professional services
business with law at the core

Agenda

1. Tenancy Fraud holidays sub-letting – the problem

2. Investigating holiday sub-letting fraud

3. Civil Fraud litigation

4. Norwich Pharmacal Orders – an introduction

5. The Royal Borough of Kensington & Chelsea –v- Airbnb Payments UK Limited [2022] EWHC 2209 (Ch)

6. Conclusions



Sub-letting tenancy fraud

Tenancy Fraud Forum:

“... when a social tenant sublets part or the whole of a property even if that is to a family member without profit. This is also a criminal offence which attracts a custodial sentence and or a fine under the Prevention of Social Housing Fraud Act 2013 and the Fraud Act 2006. Sub-letting can occur anywhere including housing which is regarded as 'hard to let'. In more recent times, this offence also commonly occurs by sub-letting a property through Airbnb and other similar online booking sites. Social landlords can also ask the courts to order the tenant to pay back the unlawful profits they have made from the sub-letting and many are very successful in doing so receiving sums in the tens of thousands of pounds.”

Holiday sub-letting

- Breach of tenancy conditions
- Criminal act under the Prevention of Social Housing Fraud Act 2013: a criminal offence for tenants to illegally sub-let a property or part of a property belonging to a council, private registered social housing provider or a registered social landlord.
- Prosecutions for tenancy fraud have also been undertaken under various statutes in addition to the 2013 Act itself, including the Fraud Act 2006, the Theft Acts 1968 and 1978 and the Proceeds of Crime Act 2002
- National Fraud Authority has recommended to councils that they should ascertain the level of unlawful occupation in their stock.
- A local authority will have different legal redress and legal proceedings open to it, including:
 - Eviction of the tenant
 - Retaking possession of the property
 - Prosecution of the tenant
 - Claim for unlawful profit order against the tenant

Investigation challenges

- Some of the issues include:
- Social housing audits undertaken primarily for safeguarding and fire safety reasons, not to investigate tenancy fraud
 - Unannounced visits may not be successful in gaining entry
 - Announced visits enable a tenant to prepare
 - Visits ought to be outside normal work hours to be improve chances of success
 - Residents willingness to participate is challenging
 - Specialist audits are extremely resource intensive
 - Limited specialist trained tenancy fraud investigation officers available
 - Short term lettings are necessarily more difficult to identify
 - Councils often rely on tip-offs from the public (e.g. anti-social behaviour)

Civil Fraud litigation

- Proceedings can be commenced urgently including obtaining immediate ancillary relief (Freezing Injunction, Search Order, Passport delivery up) sometimes within hours
- Greater control over claim, timetable and publicity
- Quicker
- Lower evidential burden – ‘balance of probabilities’ and no jury
- Greater scope for recovery of losses – hit them where it hurts.
- Potentially greater number of targets
- Enforceability of English judgments abroad
- Does not preclude subsequent criminal proceedings
- Incentive for fraudsters to settle
- Still an effective signal to potential wrongdoers
- Admissibility of civil judgments in criminal proceedings

“Freeze, Seize & Squeeze”

Norwich Pharmacal Orders (NPO)

- NPOs are named after the House of Lords decision in *Norwich Pharmacal v Customs and Excise Commissioners* [1974] AC 133
- A civil disclosure order in England & Wales
- Allows information to be obtained from third parties who have become innocently ‘mixed up’ in wrongdoing
- To help victims to investigate, pursue those ultimately responsible and recover their losses

Some examples:

- To trace misappropriated money and identify unknown recipients by disclosure of bank statements and other bank account information
- To check asset ownership at the Land Registry and other sources
- To trace the proceeds of intellectual property infringements such as counterfeiting;
- To obtain IP address information from an internet service provider or website operator, helping to identify an individual who has anonymously posted defamatory content or engaged in illegal file-sharing;
- To require a party who has received the applicant's confidential information to reveal their sources
- To require a digital currency wallet to disclose the ownership of accounts to investigate cryptocurrency theft



NPO Criteria – the legal tests

1. Show that there is a good arguable case that there has been wrongdoing
2. Show that the victim needs the order to take action against the wrongdoer
3. Show that the respondent has been ‘mixed up’ or involved in the wrongdoing
4. Show that the respondent is likely to have relevant documents or information
5. Show that granting the order is necessary and proportionate



NPO Procedure

Timing?

- The court application can be made during existing civil proceedings or as a precursor to further action
- On Notice or Without Notice

Where?

- High Court of England & Wales

Documentation?

- A Court application or Part 8 Claim Form
- A draft Court Order
- A supporting Witness Statement and exhibits
- Correspondence with the Respondent if issuing 'on notice'

Costs?

- Costs to make the application (court fee, solicitor, barrister)
- Costs to comply with the Order

Practical Considerations

Confidentiality?

- Gagging Orders
- Confidentiality undertakings

Liabilities?

- Cross undertaking in damages

Use?

- Specify the use of the disclosed information in the application: e.g. civil damages claims; criminal reporting; regulatory requirements; employment disciplinary action and tribunal claims...



RBKC -v- Airbnb Payments UK Limited

- July 2022 before Mr Justice Zacaroli in Birmingham High Court
- NPO granted against Airbnb over 2 council blocks in Kensington & Chelsea to investigate unlawful sub-letting fraud
- Court persuaded that this fraud being committed, but significant practical difficulties in investigating using traditional methods
- Airbnb met the 5 criteria for an NPO application:
 - "compelling evidence" of wrongdoing
 - Airbnb "undoubtedly facilitates the wrongdoing"
 - Airbnb has the relevant information and documents
 - Satisfied it was just to make the NPO, for reasons including public interest, deterrent effect, no other source of the data being requested, Airbnb did not know it was facilitating wrongdoing, limited scope of the NPO, Airbnb could apply to recover its costs
 - "GDPR considerations did not appear to be a significant factor against the grant of this application"

RBKC -v- Airbnb Payments UK Limited

- [2022] EWHC 2209 (Ch)
- The disclosure granted:
 - For 2 specific council blocks:
 - The name(s) of each host account holder and the address of each associated property listed for rental on Airbnb
 - Airbnb's payment and/or transaction history for each such account holder

Kim Taylor Smith, Kensington and Chelsea's lead member for housing, said: "There is a huge demand for social housing in our borough and it's simply not fair that people in genuine need are being denied a place to call home because others are illegally subletting their council properties to make money."

"Tenancy fraud is not a victimless crime. It costs the public purse an average of £42,000 a year for each home and this welcome collaboration with Airbnb will help us to clamp down on it in our borough."

Airbnb's response

Theo Lomas, head of government relations for Northern Europe at Airbnb, said: "We want to work with councils to remove social housing. However the current situation is complex and costly, and requires a court order to avoid breaking GDPR rules."

"This is yet another example of the need for the UK to update its rules and introduce a single registration system, so authorities have the information they need to tackle bad actors and return housing to those in need."

Fraud! Illegal Airbnb sub-letting payments to be identified by council

LandlordTODAY

Airbnb to help London council catch social housing sub-letters

Airbnb to work with councils to expose tenancy fraudsters

Evening Standard

NEWS

Conclusion

- Innovative use of the civil fraud litigation toolkit to fight public sector fraud
- Data led investigation methodologies
- Ongoing RBKC investigations arising from Airbnb disclosure
- Collaborative working with the private sector through legal means
- Court Orders ensuring investigation obtains information safely
- Specialist legal advice required to navigate risks and potential liabilities

<https://www.tenancyfraudforum.org.uk/>

Andrew Herring

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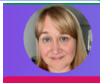
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Sarah Cooper
NAFN



Carly Lomas
NAFN

The Investigatory Powers Act: what it means for tenancy fraud

NAFN Data and Intelligence Services is a nationally recognised centre of excellence for the acquisition and sharing of data and intelligence for the public sector. NAFN is one of the UK's largest shared services providing data, intelligence and best practice to support verification, criminal investigations and debt recovery. It has a customer base of almost 500 member organisations including local government, housing associations and other public authorities.

Sarah Cooper has almost fifteen years' experience with NAFN, in her role as Service Team Manager, Sarah manages the service delivery team in the provision of all aspects of the service, including general and authorised officer enquiries and the acquisition of communication data.

My name is Carly Lomas and I joined NAFN Data and Intelligence Service in November 2020 as an Intelligence Officer and oversee communications data (PNC Single Point of Contact). Previous to this position I spent 8 years working for Bury Council as an Audit and Monitoring Officer, writing and identifying fraud in relation to personal budgets and returning misapplied funds on behalf of the council.

I also worked in project management for 8 years prior to this on various European and UK education based funding incentives for businesses as a project coordinator responsible for delivering the projects and the management of grant funds.

My role at NAFN includes all forms of data work, Authorised Officer tasks under CTIS and PNCRA, reviewing and processing AMP application enquiries and any other duties which fall under the intelligence officer role.



The Investigatory Powers Act: what it means for tenancy fraud

www.nafn.gov.uk



- Communications data acquisition
- Local Authorities - NAFN
- Housing Association investigations only if conducted by partner LA
- Independent authorisation for all



Investigatory Powers Act 2016



What is Communication Data?

WHO

WHEN

WHERE

HOW

!! NOT CONTENT !!





Applicable crime purpose

Entity Data	Event Data
For the purpose of preventing or detecting crime	For the purpose of preventing or detecting serious crime

"an offence for which an adult is capable of being sentenced to 12 months or more in prison"





Key principles ➡ **Necessity, Proportionality, Collateral Intrusion**

Necessity

- The offence
- Brief circumstances
- Data sources
- Objectives/aims of the application

Proportionality

- How the data will benefit the investigation
- The period for which data is required
- Less intrusive means

Collateral Intrusion

- Risk and minimisation



Applicant



Approved Rank Officer



SPOC



OCDA



What data is available?

What do you have?

- Telephone number
- Social media account
- IMEI
- Email address
- SIM card number
- Postal address
- Website
- Bank account
- IP address

What could you get?

- Subscriber
- Top up history
- Customer notes
- IP address log on history
- Call Data
- Mobile data
- IMEI cross search
- Postal operator information
- Mandatory service registration/access data





Objectives - Communication Data?

- Connect a device to an individual
- Connect an individual to a locality
- Identify associates of an individual
- Identify what services an individual is using





CASE STUDY

Maria Dodge is the tenant at 53a Willow Grove, Edenbridge TN8 5QY.

It is alleged that she is residing in Spain whilst numerous individuals have spent time living at the address over a period of 12 months.

The allegation states that three months ago a man named Joe moved into the address and has indicated to neighbours that he intends to continue living there.





CASE STUDY

Question: Is Maria Dodge living in Edenbridge, Spain, or elsew here?

- Mobile phone
 - Entity data to confirm phone user
 - Events data: call data and mobile data – bed and breakfast – regular localities
- Speculative enquiry with postal operators
- Royal Mail – redirection information

Question: Has Maria Dodge been using websites or social media to advertise the property for short term lets?

- Social Media site eg Facebook or Advertising website eg Gumtree
- Entity data to confirm phone user
- IP address log on history
- IP address resolution





CASE STUDY

Question: Is Maria Dodge in regular communication with Joe indicating a landlord/tenant relationship?

- Mobile phone
 - Entity data to confirm phone user
 - Events data – associates – timing – frequency
 - Consequential entity – confirm user of associate numbers
- Bank statements (POSHFA)
 - Enquiry to Monzo to identify account holder related to regular payments to Maria

Question: Is Joe living in Edenbridge?

- Mobile phone
 - Entity data to confirm phone user
 - Events data: call data and mobile data – bed and breakfast – regular localities
- Speculative enquiry with postal operators





sarah.cooper@nafn.gov.uk
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spoc@nafn.gov.uk



www.nafn.gov.uk

✓ Communications Data training
✓ IPA v/s DPA training
✓ CPD accredited

Any Questions?



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LUNCH

Back in 60 Minutes!





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The Interview Under Caution



Mike Neumann
ITS TRAINING
UK LTD



Stephanie Toghill
TFE

Mike started his career working in the field of fraud prevention and detection. He has investigated a large variety of crimes at both local and national level. His experience includes organised crime, complex and high value investigations, surveillance and case management systems (including HCNES).

Stephanie is a founding member and Vice Chair of the Tenancy Fraud Forum. She also sits on the Executive Board for the London Borough 'Fraud Investigators' Group and heads up the Housing Investigations Team for Islington Council.

In 1999 he set up ITS Training. The company provides a complete training and consultancy service (including an extensive list of qualifications) and remains the company of choice for high quality investigative training. In addition to designing and delivering training, Mike is an executive coach and mentor, and speaks on such subjects as law, psychology and communication. Outside of ITS, Mike is a founder, and Chief Executive, of NIOG.

With over 15 years' experience in addressing tenancy fraud, Steph is a known specialist in her field. She has provided assistance to over 100 social housing providers on tenancy fraud, provided training, wrote guidance documents and advised on the creation of POFMA. Steph was also instrumental in pursuing and obtaining a landmark Norwich Pharmacal Order against Airbnb to obtain data from them regarding tenancy fraud.



THE INTERVIEW UNDER CAUTION

THE INTERVIEWER will be played by: Mike Neumann, ITS Training (UK) Ltd

Ms Maria Dodge will be played by: Stephanie Toghill, Tenancy Fraud Forum



The Caution

In England and Wales :

You do not have to say anything, but it may harm your defence if you do not mention, when questioned, something that you later rely on in court. Anything you do say may be given in evidence.

The Rules :

If it appears that a person does not understand the caution, the officer should go on to explain it in his or her own words.

How do you know? :

Ask them to tell you what the caution means!



The P.E.A.C.E model

Prepare

Engage and Explain

Account

Closure

Evaluation



It's all in the prep

Points to Prove

Explanations and Excuses

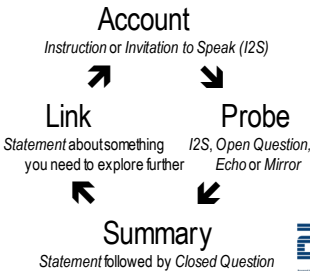
Already Established

Cover during the Interview

Exhibits to show

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Conversation Management



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Using Evidence

Would you :

- Ask, then show...
- Tell, then ask, then show... or...
- Show, then ask?

Remember the 'Rule of Threes'

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Closing down the interview

"What did you think we were going to talk about that we haven't?"

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Questions?



(...or come and speak to us on the ITS stand!)

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ITS can help you with...

- Housing Investigations Training
- Regular 'Training Conferences'
- Identity Verification training
- Fraud Prevention training
- Learning to spot liars
- Help to get started

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Contact Us

Email mike@its-training-uk.com

Post a question on www.niog.org.uk

Call us on 0330 022 8262





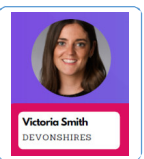
The Tenancy Fraud Forum



www.tenancyfraudforum.org.uk







Victoria Smith
DEVONSHIRES

Preparing your possession case for Court - Top tips for Investigators

Victoria is a Solicitor within the Housing Management and Property Litigation team at Devonshires Solicitors. Victoria advises Registered Providers and Registered Social Landlords on a range of housing matters, from housing conditions claims and possession proceedings, to anti-social behaviour injunction applications and criminal proceedings. Victoria has expertise on the Renting Homes (Wales) Act 2016 and matters involving the Housing Ombudsman, assisting with complaints and updating & drafting policies. Victoria specialises in tenancy fraud and obtaining Unlawful Profit Orders. She has assisted a number of large landlords with such matters, successfully obtaining Unlawful Profit Orders for over £145,000, £702,000 and £78,000.





Today we will look at:

- Non-occupation/abandonment
- Subletting
- Notices
- Gathering Evidence
- Unlawful Profit Orders
- Case Study



Non-occupation/abandonment
Secure Tenancy

s79 Housing Act 1985

(1) A tenancy under which a dwelling-house is let as a separate dwelling is a secure tenancy at any time when the conditions described in sections 80 and 81 as the landlord condition and the tenant condition are satisfied.

s81 The Tenant Condition

The tenant condition is that the tenant is an individual and occupies the dwelling-house as his only or principal home; or, where the tenancy is a joint tenancy, that each of the joint tenants is an individual and at least one of them occupies the dwelling-house as his only or principal home.



Non-Occupation/abandonment
Assured Tenancy

S1 Housing Act 1988

1(1) A tenancy under which a dwelling house is let as a separate dwelling is for the purposes of this Act an assured tenancy if and so long as –

....

(b) The tenant, or as the case may be, at least one of the joint tenants occupies the dwelling house as his only or principal home;....

Devonshires

Loss of Status / Security of Tenure

Secure & Assured

Secure Tenancy- s93(2) Housing Act 1985 - If the tenant under a secure tenancy parts with the possession of the dwelling-house or sublets the whole of it (or sublets first part of it and then the remainder), the tenancy ceases to be a secure tenancy and cannot subsequently become a secure tenancy.

Assured tenants could go in and out of security of tenure until Prevention of Social Housing Fraud Act 2013, s6 inserted new s15A into Housing Act 1988.

If security is lost, the tenancy can be terminated by Notice to Quit.

Devonshires

"Only or principal home"

- Tompkins v Rowley**- Whether or not someone is in residence is a question of fact – a person in hospital will not be treated as out of residence.
- Amoah v Barking and Dagenham LBC (2001)** – tenant sentenced to 12 years imprisonment- up to tenant to show intention to return. Court ruled that this had been shown by leaving some belongings, paying rent and leaving step daughter in occupation (as a Caretaker).

Devonshires

"Only or principal home"

- Bevington v Crawford (1974)**- A tenant may remain in residence in one property even though he has another home – the test is **what the property is used for**.
- Turnball –v- O'Brien (1948)**- Are the premises somewhere the person would give as his address, are possessions kept there, past and future habitation, no indication to move elsewhere.
- Jackson v Poku (1990)**- Furniture on its own not sufficient to show intention to return.

Devonshires

Only or Principal Home - Two Homes

- Contrary to intention of Parliament for a tenant under Housing Act 1988 to qualify for security of tenure in more than one home.
- When deciding which of the 2 homes is the only or principal home main factor is which one they **sleep** in (*Sumeghova v McMahon [2002]*).

Devonshires

Only or Principal Home - Two Homes

LB Islington –v- (1) Boyle (2) Collier (CA)

- Tenancy of 2 bed flat granted 1996 to Ms B.
- Ms B lived with partner Mr C and 3 children. Son had disabilities.
- 1999 attended autistic school in North London.
- 2004- relationship broke down. Mr C moved out and purchased house in Suffolk. Later that year, son became aggressive towards sister so Ms B and daughter moved to Suffolk. Mr C moved back to London to care for son.
- All personal belongings in Suffolk. Large furniture in flat.
- GP in Suffolk, daughter's school there.
- Mr C, with Ms B's permission, claimed benefits alleging she lived there.
- 2007- admitted to Council their error and asked permission Mr C to remain in London. Not agreed.
- NTQ served. Ms B moved back into flat and Mr C to Suffolk.
- Possession Claim issued, claim dismissed.
- Council appealed to COA.

Devonshires

Only or Principal Home - Two Homes

LB Islington –v- (1) Boyle (2) Collier (CA)

Appeal allowed. Judge summarised principles to be applied:

- Q of fact and degree, but sufficiently lengthy/continuous absence could compel inference that tenant had ceased to occupy as only or principal home.
- If the inference arose, onus on tenant to rebut.
- T had to establish intention to return and that there was a practical or real possibility of that occurring within a reasonable time.

Devonshires

Only or Principal Home - Two Homes
LB Islington –v- (1) Boyle (2) Collier (CA)

4

There also needs to be some "formal, outward and visible" sign of intention to return.

5

In "two homes" cases particular care must be taken to assess whether ceased to occupy having regard to:

(a)

Circumstances of absence.

(a)

Need for tenant to adduce evidence of subjective and continuing belief that property remained principal home, together with objective evidence to support this.

Devonshires

More Recent Case Study
Dove v LB Havering 2017

- Council granted twinstenancy of Property.
- Suspected not residing, served NTQ & WP NOSP.
- PO granted. Ts appealed to COA.
- COA dismissed appeal. Judge considered following facts:
 - T1 in relationship for 30 years, resided with partner in Kilburn for 4 days a week. Had keys to that P, cooked there, post there, nominated partner as emergency contact on passport and gave police address as her home.
 - T2 in relationship for 20 years, resided with partner in Walthamstow 5 days a week, active bank transactions in area. Whilst GP in Romford, visited hospital in Walthamstow. Earthware stayed in property, sold on eBay, using to store items, not as a home.
 - Video showed not using P as home, utility usage low.

Devonshires

Subletting

- What is a sublet?
 - "A lease of a property by a tenant to a subtenant"

Secure Tenancy-s93 Housing Act 1985

(1) It is a term of every secure tenancy that the tenant—
(a) may allow any persons to reside as lodgers in the dwelling-house, but
(b) will not, without the written consent of the landlord, sublet or part with possession of part of the dwelling-house.

(2) If the tenant under a secure tenancy parts with the possession of the dwelling-house or sublets the whole of it (or sublets first part of it and then the remainder), the tenancy ceases to be a secure tenancy and cannot subsequently become a secure tenancy.

Devonshires

Subletting cont.

Assured Tenancy- s15 Housing Act 1988

It shall be an implied term of every assured periodic tenancy that, **except with the consent of the landlord, the tenant shall not**

a)

Assign the tenancy (in whole or in part) or

a)

Sublet or part with possession of the **whole or any part** of the dwelling house let on the tenancy

Devonshires

Subletting cont.

- This will only apply where the tenancy agreement does not specifically make provision in relation to assignment or subletting.
- The tenancy agreement usually makes express provision along the same lines as the provisions of the Housing Act 1985 that is:
 1. The right to take in lodgers
 2. Sublet of part subject to consent
 3. Sublet of whole prohibited

Devonshires

Remedy for Breach

Subletting the whole of the premises would mean the tenant **losing their security** of tenure as the tenant is not occupying as only or principal home.

Even if the tenant were to be able to defend the claim that they had parted with possession (and therefore the tenancy is retained) it would amount to breach of term of tenancy.

Possession Action.

Devonshires

Notice to Quit

No security of tenure- terminable by Notice to Quit

Notice to Quit:

- Correct notice period – and expires on last day of period of tenancy.
- Ensure saving clause used.

NB: Fixed Term Tenancy- s146 Notice

Devonshires

Pre-Action Protocol for Possession Claims

<https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-possession-claims-by-social-landlords>

Pre-action Protocol - Mandatory Possession - Part3

We intend to seek possession of [] because []. We request that you notify us within [] days in writing of any personal circumstances or other matters you wish to have taken into account before we issue proceedings against you. Please put this in writing to us by emailing [] or writing to [].

LL to consider representations and respond.

Devonshires

Notice of Seeking Possession

Prescribed forms:

- Assured NOSP- Form 3: <https://www.gov.uk/guidance/assured-tenancy-forms#form-3>
- Secure NOSP- Part I: <https://www.gov.uk/guidance/secure-tenancy-forms>

Mark NOSP without prejudice to Notice to Quit.

Gov Guidance Notes for NOSP's (link above).

NOSP is valid for 1 year.

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Notice of Seeking Possession cont.

Ground 12, Schedule 2 of the Housing Act 1988 (Assured):
Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

Ground 1, Schedule 2 of the Housing Act 1985 (Secure):
Rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed.

Likely Terms:

- Failure use as main or only home;
- Failure inform LL be away from Property

Other Grounds:

- Rent Arrears- Grounds 8, 10 & 11
- Condition of Property- Ground 13/Ground 3
- ASB- Ground 14/Ground 2
- Mandatory ASB- Ground 7A/s84A HA 1985

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Service of NOSP

- Ensure covering letter and Gov guidance notes are served.
- Notices to be served on the tenant directly in accordance with tenancy terms.
- Do not address notices or send notices to unlawful occupiers- they are not the tenant.
- Consider date of deemed service.
- Complete Certificate of Service at the time the notices are served.

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Evidencing Your Case

- Speak with neighbouring residents & subtenants.
- Employees/Contractors?
- Checks- credit checks, companies house, boarder control.
- Visits- photographs.
- Internet- rightmove, Airbnb, sparerroom, facebook.
- Bank statements- money in and where transactions being made.
- Medical records.
- Partnership working- Council.
- Create table of monies in to show UIPO.

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Unlawful Profit Orders

Prevention of Social Housing Fraud Act 2013

- An order requiring the tenant against whom it is made to pay the landlord an amount representing the profit made subletting their home.
- Option 1- Issue Claim- N5 Claim Form and Particulars of Claim- include request within Further PoC
- Option 2- Stand alone money claim
 - County Court Money Claims Centre
 - N1 Claim Form (Part 7)
 - Particulars of Claim
 - Supporting evidence

Devonshires

Case Study

Possession & UPO of over £145,000

- Need to look not just at evidence presented, but at absence of any evidence.
- Need to look at evidence together, not individually.
- *Wisniewski v Central Manchester Health Authority 1998*- court's ability to draw adverse inferences from the absence or silence of a witness

Devonshires

3 TOP TIPS

- Make use of partnership working.
- Don't sit back once claim is issued- gather additional evidence & make a Part 18 Request.
- Publicise your wins.

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Questions?

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REFRESHMENTS

Back in 30 Minutes!





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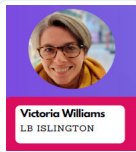
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Victoria Williams
LB ISLINGTON

Housing Investigations Team Leader
Islington Council



Hit them where it hurts – recovering finance as well as the property

Vicky has worked in Tenancy Fraud for more than 15 years, as an Investigator and now as Housing Investigations Team Leader for the well-established tenancy fraud team at Islington Council. During this time she has managed complex investigations into all types of tenancy fraud including subletting, not principal home, and fraudulent housing and succession applications, as well as providing valuable guidance on policies and procedures within the organisation. She has recovered funds via compensation orders, Unlawful Profit Orders and under the Proceeds of Crime Act. In 2014 Vicky successfully brought one of the first prosecutions under the Prevention of Social Housing Fraud legislation.

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Agenda

- Rent and mesne profit
- Unlawful profit orders
- Temporary accommodation costs
- Recovery

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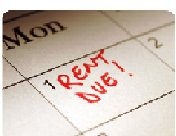
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Recovering arrears

- Service of Notices – best practice to serve both NoSP & NTQ
- After expiry of NTQ, Use & Occupation charge/ mesne profit – **NOT rent!!**
- Proceedings should be issued on all grounds, including arrears

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Unlawful Profit Orders

- Introduced by Prevention of Social Housing Act 2013
- Can be attached to either civil or criminal proceedings
- Where civil – can be attached to possession proceedings or stand alone
- Discretionary – need to provide the court with compelling evidence

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Unlawful Profit Orders cont'd...

- UPOs can only be sought where a secure or assured tenant:-
 - In breach of an **express or implied term of the tenancy**, has **sub-let or parted with possession** of—
 - (i) the whole of the dwelling-house, or
 - (ii) part of the dwelling-house without the landlord's written consent, AND
 - Has **ceased to occupy** the dwelling-house as the tenant's **only or principal home**, AND
 - Has received money as a result of this conduct.

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Calculating UPOs

Step 1

- Determine the total amount **received** by the tenant as a result of the sublet (A)

Step 2

- Determine the total amount **paid** by the tenant as rent to the landlord over the period (B)

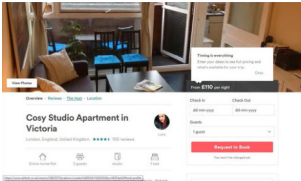
Step 3

- Deduct A from B to calculate the maximum UPO amount

UPO success stories

LB Westminster

- Tenant sublet his flat via Airbnb
- Created false ID
- Possession granted
- UPO of £100,974.94





UPO success stories



Hyde Group

- Subtenants contacted repairs
- Tenant owned a property overseas
- Tenant returned keys
- UPO of £81,000



Temporary accommodation costs

- Average annual temporary accommodation cost per family **£12,100** (at 2020); could be as high as £25K
- Can use the above if local figures are not available
- Where insufficient evidence of profit from subletting – or in addition!



Temporary accommodation costs

National average temporary accommodation cost per family	£12,100
Multiplied by 3 (average length of investigation)	£36,300
Average investigation cost	£1,300
Average legal cost	£1,000
Average void cost	£3,140
Total average investigation cost	£42,000

Calculating losses from housing tenancy fraud – Tenancy Fraud Forum



Enforcement

**Charging order**

**Third party debt order**

**Attachment of earnings**

**Warrant of control**



Any questions?





