



Private Rented Sector (PRS) Enforcement Policy

Last reviewed July 2019

Private Rented Sector Housing Enforcement Policy

This policy is managed and adhered to by the housing service and will be reviewed on a regular basis.

Contents

1.0 Policy overview

- 1.1 Introduction
- 1.2 Aim(s) of the policy
- 1.3 Links to the Council's corporate aims
- 1.4 Equality and diversity
- 1.5 Policy statement

2.0 PRS Enforcement Policy detail

- 2.1 Powers to investigate
- 2.2 Determining the need for enforcement action
- 2.3 Enforcement action options
 - 2.3.1 No action
 - 2.3.2 Informal action
 - 2.3.3 Statutory action
 - 2.3.4 Works in default
 - 2.3.5 Conditional, varied or removal of licence
 - 2.3.6 Caution issued
 - 2.3.7 Management order
 - 2.3.8 Civil penalties
 - 2.3.9 Banning order
 - 2.3.10 Rent repayment order
 - 2.3.11 Prosecution
 - 2.3.12 Injunction
 - 2.3.13 Tenant Fees Ban
 - 2.3.14 Fitness Homes

3.0 Links to other corporate strategies and policies

4.0 Legislation

1.1 Introduction

Dacorum Borough Council (DBC) is committed to ensuring that all Dacorum residents living in the private rented sector live in homes that are safe and meet the required standards.

We recognise that most landlords want to be compliant and provide a good standard of home to their tenants. This policy sets out how we will take appropriate action using powers outlined in relevant legislation (i.e. Housing Act 2004 and more specifically the Health and Safety Rating System [HHSRS]) to tackle 'rogue landlords' that have a clear disregard for their responsibilities and the safety of their tenants.

This policy defines enforcement as any action taken by the Private Rented Sector Housing Team. This is not limited to formal enforcement action such as notices, civil penalties or banning order. It also includes offering advice or undertaking an initial investigation of a complaint.

This policy covers all types of property in the Private Rented Sector; it does not, however, include empty homes. It will make reference to owner occupiers.

1.2 Aim(s) of the policy:

The aims of this policy are to:

- Outline a range of enforcement options available to the Private Rented Sector Housing Team;
- Ensure a fair, reasonable and consistent approach to enforcement is used in accordance with all appropriate guidelines and legislation; and
- Provide tenants and landlords with an overview of the consequences of enforcement action.

1.3 Links to the Council's corporate aims:

This policy supports the Council's corporate priorities, which are set out in ['Delivering for Dacorum – Corporate Plan 2015-2020'](#)

1.4 Equality and diversity

The Council is committed to promoting equality of opportunity in housing services and has procedures in place to ensure that all Applicants and Tenants are treated fairly and without unlawful discrimination.

1.5 Policy Statement(s)

All landlords in Dacorum are required to take responsibility for managing their properties so their tenants live in good conditions and feel safe and secure in their home.

All complaints received will be fully investigated before action is taken.

We will take action against landlords that do not effectively maintain their properties or cause unnecessary upset for their tenants.

We will use a range of powers delegated to the Council to achieve a positive outcome for tenants living in poor conditions.

We will ensure all officers are competent and have a thorough understanding of current and upcoming legislation so any action taken by the Council against landlords is informed.

Where required we will also use powers to maintain the safety of owner occupiers.

2.0 Private rented sector enforcement policy detail

2.1) Powers to investigate

We will fully investigate all complaints and requests we receive, using relevant powers to gather information and gain access to properties where necessary. Investigations will be undertaken by officers who will determine whether enforcement action is required.

As part of our investigations, in line with section 235 of the Housing Act 2004, we may request documentation to be produced in order to:

- Identify whether any offence has been committed under Parts 1-4 of the Housing Act 2004; or
- Support our functions as a local authority under Parts 1-4 of the Housing Act 2004.

So that we can determine details of anyone with an interest in the property being investigated (e.g. occupier, mortgagee, lessee or someone who is directly or indirectly receiving rent payments), a Requisition for Information may be served under section 16 of the Local Government (Miscellaneous Provisions) Act 1976.

A response to such notice must be provided within 14 days. Failing this, or deliberately providing false information, could result in a fine.

In line with section 237 of the Housing Act 2004, we will also liaise with Housing Benefit and Council Tax departments where appropriate, to gather information that will support our investigations.

Where required, we will carry out inspections of the property in question. Under Section 239 of the Housing Act 2004, authorised officers have a power of entry to properties at any reasonable time to carry out an inspection. At least 24 hours' notice will be given to owners (if known) and occupiers (if any) ahead of a property inspection, unless in the case of an emergency, or where there is imminent risk to the health and wellbeing of persons using the premises.

We are not required to give notice of entry if we are seeking to determine whether an offence has been committed under sections 72 (offences in relation to licensing of HMOs), 95 (offences in relation to licensing of houses) or Section 234 (offences in relation to HMO management regulations).

If admission is refused, premises are unoccupied or prior warning of entry is likely to defeat the purpose of the entry, then we can apply for a warrant to be granted by a Justice of the Peace.

This warrant will include a power to enter by force, if necessary.

Following an inspection, a written response may be provided, usually in the form of a letter. It will include information on:

- Which legislation is contravened;
- What works are required and why;
- Agreed timescales (where possible); and
- The nature of the enforcement action the authority may take in the future.

All investigations we carry out into alleged breaches will follow best professional practice and meet all necessary requirements of relevant legislation (as listed in 4.0).

2.2) Determining the need for enforcement action

All enforcement action taken will be both proportionate and reasonable. When deciding the type of action required, we will consider:

- The seriousness of the deficiencies identified in the property;
- The past history of compliance;
- The confidence in management and the degree of willfulness involved;
- The consequences of non-compliance;
- The existence of statutory duties or discretionary powers; and
- The likely effectiveness of the various enforcement options.

When deciding the appropriate action, we will also consider the views of the tenants and landlord, as well as any relevant partners e.g. the Fire Service.

Depending on the outcome of these considerations, we may choose from a range of enforcement options, including:

- Take no action;
- Take informal action;
- Take statutory action, e.g. Service of statutory notices;
- Carry out works in default;
- Issue licences with conditions, remove licences or vary licence conditions;
- Issue a caution;
- Management orders;
- Civil penalties;
- Banning orders;
- Rent repayment orders; and/or
- Prosecute or seek an injunction.

Investigative cases (and any enforcement action as a result) are regularly reviewed by senior officers to ensure a consistent approach in deciding the appropriate enforcement action to be carried out.

2.0 Private rented sector enforcement policy detail

2.3 Enforcement action options

2.3.1) Take no action

Where an officer has investigated a complaint and no breach of legislation or concerns are identified, no action will be taken.

2.3.2) Informal action

Informal action that is either verbal advice, requests or warnings, or letters and inspection reports can be used when:

- Concerns identified are not considered a serious risk;
- There is not a significant risk to the safety or health of the occupant or others as a result of the property;
- Informal action will be more effective and/or quicker than formal action; or
- There is confidence in the manager/owner or there is evidence they have previously responded well to advice and guidance from the team.

In the case of informal action, where the level of risk is not high and the landlord or managing agent is willing to work with the team, we will allow a reasonable timeframe for recommended works to be carried out. If works are not carried out in this time, the level of enforcement will increase.

2.3.3) Statutory action

If a property has a category 1 hazard under the HHSRS, we are legally required to take enforcement action.

In these cases, enforcement action may take the form of:

- An improvement notice (including suspended notices);
- A prohibition order (including suspended orders);
- A hazard awareness notice;
- Emergency remedial action;
- An emergency prohibition order;
- A demolition order; or
- Declaration of a clearance area.

Any orders undertaken or notices served will be accompanied by a statement of reasons under section 8 of the Housing Act 2004. All notices issued will include timescales that are reasonable and comply with statutory legislation.

We will maintain contact with the landlord or managing agent throughout the duration of the notice to ensure they comply with any requirements.

Landlords and managing agents can request an extension by contacting the officer who served the notice and outlining the reasons why an extension is required. This will be considered by the management team, who will approve or reject extensions. The outcome of this decision will be given to the landlord or managing agent in writing within 7 days of the request.

If a notice is not complied with, we will escalate the level of enforcement.

2.3.4) Works in default

If a landlord refuses or fails to carry out repairs following a notice, we will carry out works in default.

In most circumstances, a person will be given notice of our intention to carry out works in default. Where we are required to do this, the landlord will be charged for the repairs, any administration costs and for the time of the officers involved.

It is an offence for any person to obstruct the Council or any of the contractors or agents that have been employed to carry out the works.

2.3.5) Variation and revocation of a licence

We will vary a licence where it is considered that there has been a change of circumstances since the licence was granted. A licence will be revoked following a change in ownership, death of the licence holder or by agreement with the licence holder if the property is no longer licensable.

We will revoke a licence if the licence holder or manager is no longer deemed to be a fit and proper person.

2.3.6) Simple Caution

Officers may use simple cautions where someone has committed a less serious crime. Simple cautions warn people that their behaviour has been unacceptable and make them aware of the legal consequences should they commit further offences. Simple cautions can only be issued where:

- There is evidence an offender is guilty;
- The offender is eighteen years of age or over;
- The offender admits they committed the crime; and
- The offender agrees to be given a caution.

If the offender does not agree to receive a caution, then they are likely to be prosecuted instead.

Simple cautions will not be used where there is history of offending within the last two years, or where the same type of offence has been committed before.

The case officer will present cases to the Private Rented Sector Enforcement Panel for authority to issue a simple caution. The Cautioning Officer will be the Group Manager, Strategic Housing, who will act in conjunction with the Solicitor to the Council, who is the head of Legal Services. They will follow the cautioning procedure from the Ministry of Justice guidance.

2.0 Private rented sector enforcement policy detail

Where appropriate, the issue of a simple caution will be notified to a home authority, originating authority, lead authority or primary authority.

If an offender refuses to accept a formal caution, the delegated officer will refer the matter to the Head of Legal Services who may pursue a prosecution, taking into account the relevant guidance and the council's constitution.

2.3.7) Management orders

Under Part 4 of the Housing Act 2004, we will take over the management of privately rented property through a management order in certain circumstances (where a privately rented property is unlicensed/no suitable licence holder can be found).

Section 26 and Schedule 3 of the Housing and Planning Act 2016 allow us to also make a management order in circumstances where a banning order has been made and where a privately rented property is being let in breach of a banning order (see section 2.3.9).

2.3.8) Civil Penalties

Civil penalties are a financial penalty we can impose under the Housing Act 2004 and the Housing and Planning Act 2016 (Section 23, 126 and Schedule 9) as an alternative to prosecution. In Dacorum, civil penalties will be used for the following:

- Failure to comply with an Improvement Notice (Section 30 of the Housing Act 2004);

- Offences in relation to licensing of Houses in Multiple Occupation (Section 72 of the Housing Act 2004);
- Offences in relation to licensing of houses under Part 3 of the Act (Section 95 of the Housing Act 2004);
- Offences of contravention of an overcrowding notice (Section 139 of the Housing Act 2004); and/or
- Failure to comply with management regulations in respect of Houses in Multiple Occupation (Section 234 of the Housing Act 2004).

The Private Sector Housing Team will work with the dedicated Environmental Health Officer to review cases and determine the level of civil penalty. The amount decided can range up to a maximum of £30,000.

Factors that will contribute to the level of civil penalty imposed include:

- The severity of the case and the harm caused to the tenant or others as a result of the property;
- Any previous enforcement action taken against the landlord or managing agent, including evidence of previously failing to comply;
- The level of punishment required to deter the landlord or managing agent from failing to take responsibility for their tenants and properties in the future; and
- Any financial gain acquired by the landlord or managing agent as a result of their failings.

We will also use powers to assess a landlord's assets and any income they receive (not just rental income) when determining an appropriate penalty.

Landlords cannot be prosecuted for the same offence if we have already issued a Civil Penalty. Additionally, we cannot issue a Civil Penalty if we are already in the process of prosecuting a landlord.

We will issue a civil penalty for each individual breach of the management regulations for Houses in Multiple Occupation.

2.3.9) Banning orders

A banning order is an order by the first-tier Tribunal that bans a landlord from:

- Letting houses in England; and
- Engaging in letting agency or property management work in England.

We will use banning orders in cases where we believe an individual poses high risk as a practising landlord (based on evidence that has occurred after April 2018).

A banning order will be issued for a minimum of 12 months, but there is currently no maximum amount of time for which a banning order can be in place. When applying for a banning order, we will consider the level of harm or risk created by the landlord's actions and use this to make a recommendation to the first-tier tribunal for the length of time a banning order should be in place.

2.3.10) Rent repayment orders

Under the Housing Act 2004, rent repayment orders can be used when the landlord of a property has failed to obtain a licence for a property that was required to be licensed. Specifically, offences in relation to licensing of Houses in Multiple Occupation (Section 72(1)) and offences in relation to licensing of houses under Part 3 of the Act (Section 95(1)).

Section 41 of the Housing and Planning Act 2016 extended the use of rent repayment orders meaning we can now also apply for a rent repayment order for the following:

- Failure to comply with an improvement notice under Section 30 of the Housing Act 2004;
- Failure to comply with a prohibition order under Section 32 of the Housing Act 2004;
- Breach of a banning order made under Section 21 of the Housing and Planning Act 2016;
- Using violence to secure entry to a property under Section 6 of the Criminal Law Act 1977; and

2.0 Private rented sector enforcement policy detail

- Illegal eviction or harassment of the occupiers of a property under Section 1 of the Protection from Eviction Act 1977.

It is important to note that tenants also have the right to apply for a rent repayment order.

Any rent paid following a rent repayment order will be returned to either the tenant (if rent was paid directly by them) or the Council, (if rent was covered by Housing Benefit/Universal Credit). Where there is a split of benefit payment and personal income this will be split accordingly.

When pursuing a rent repayment order, we will do this on behalf of both the Council and the tenants rather than tenants being required to use this power and make a separate application.

When a landlord commits the following:

- Failure to comply with an Improvement Notice (Section 30);
- Offences in relation to licensing of Houses in Multiple Occupation (Section 72(1)); and/or
- Offences in relation to licensing of houses under Part 3 of the Act (Section 95 (1))

We can also issue a civil penalty notice (see section 2.3.8).

When applying for a rent repayment order we will:

- Inform the landlord that the local housing authority is proposing to apply for a rent repayment order and explain why;
- State the amount that the local housing authority is seeking to recover; and
- Invite the landlord to make representations within a period specified in the notice which must be at least 28 days.

2.3.11) Prosecution

Where a local housing authority decides to prosecute when a landlord has committed breaches in more than one local housing authority area, it should consider the scope for working together with other local housing authorities.

A prosecution will only take place where it is in the public interest and where there is sufficient evidence to support that course of action. In a case where there is sufficient evidence to warrant a prosecution but the public interest would not benefit from such a course of action, then a Simple Caution may be used as an alternative (see Section 2.3.6).

Any decision to prosecute will initially be considered by the Private Rented Sector Enforcement Panel. The panel will consider any mitigating reasons to not pursue prosecution, such as:

- Any reasonable explanation provided by the individual or company;
- Evidence that the individual or company intends to prevent a recurrence of the problem;
- An individual's age and state of health; and
- The offender's attitude to the offence.

If prosecution is deemed appropriate, then the case will be fully prepared and referred to the Legal Team for consideration. All prosecutions will be brought without

unavoidable delay and generally there is a requirement to lay information with the Courts within six months of the identified date that the offence was committed.

2.3.12) Injunction

We may ask to issue an injunction against a landlord to prevent certain actions, activities or threats being carried out.

2.3.13) The Tenant Fees Act 2019

This Act defines what lawful charges a landlord or letting agent may place upon a tenant at the commencement of or during the tenancy. The Act provides new enforcement powers for Trading Standards to take action where it is considered that a landlord or agent is charging unlawfully. Local authorities are required to work in partnership with Trading Standards to support any such investigation or enforcement action.

2.3.14) The Homes (Fitness for Human Habitation) Act 2018

This Act amends the Landlord and Tenant Act 1985 to create a new duty on landlords to ensure homes are fit for human habitation at the start of tenancy and throughout. The term fitness will be amended from nine factors e.g. repairs, water supply, freedom from damp to also include any category 1 hazard under the HHSRS. This Act is to provide greater support to tenants and the Private Sector Housing Team will provide assistance to tenants wishing to seek further advice about possible action.

2.4) Community Safety and Landlord Responsibility

Landlords in Dacorum may be asked to attend a multi-agency meeting with service such as the Police or social care if we consider there to be a risk to their tenants. The Private Sector Housing Team will request meetings in writing on behalf of the Community Safety Partnership.

2.0 Private rented sector enforcement policy detail

2.5) Rogue Landlord Database

From 1 April 2018, the Housing and Planning Act 2016 requires us to input the details of any landlord or managing agent that we issue a banning order against onto a national database. This database can be accessed by all Local Housing Authorities.

Under Section 30 of the Housing and Planning Act 2016, we can also input the details of landlords or managing agents who receive two civil penalties within a 12-month period. Whilst this is discretionary, we are committed to tackling rogue landlords and believe that where two civil penalties have been issued within 12 months, it is appropriate to use this power.

2.6) Owner Occupiers

There may be occasions where we are required to intervene and use powers on owner occupiers. This will be administered largely through hazard awareness notices.

However, the use of improvement notices, prohibition notices and their emergency equivalents will be considered in cases involving:

- Vulnerable elderly people who are judged incapable of making informed decisions about their own welfare;
- Vulnerable individuals who require the intervention of the Council to ensure their welfare is best protected;
- Hazards that might reasonably affect persons other than the occupants; and
- Serious risk of life-threatening harm such as electrocution or fire.

2.7) Registered Providers

We expect Registered Providers (RP) to ensure their homes are the required standard. If these are not completed, tenants will be advised to use the in-house complaints process or contact the Housing Ombudsman Service.

If the RP does not take appropriate action or we have concerns for the safety of the tenant, we can intervene and take action.

2.8) Staff competency

This policy is administered by the dedicated Private Sector Housing Team. All officers in the team are authorised to enforce delegated powers on behalf of the council.

The competency of officers to regulate the private rented sector through investigation and enforcement is maintained by completion of mandatory training and any relevant qualifications.

2.9 Exceptions to policy

Whilst we are committed to working with tenants and landlords, the following situations may impact our involvement and ability to use enforcement powers:

- The tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works;
- The tenant(s) have, in the opinion of the Council, clearly caused the damage to the property they are complaining about, and there are no other items of disrepair;
- The complaint is found to be trivial or has no reasonable justification on visiting the property;
- The tenant(s) have requested a service and then failed to keep an appointment and not responded to a follow up letter or appointment card;
- The tenant(s) have been aggressive, threatening, verbally or physically abusive towards officers; and/or

- The tenant unreasonably refuses to provide the Council with relevant documentation.

2.10) Appeals

Where a statutory notice/order is served, or a licensing decision is made, the method of appealing the decision will be included within the documentation provided. This will include the full postal address and contact information for the relevant appeal body and the relevant time period to submit an appeal.

To reduce the potential for unnecessary appeals, clear reasons will be given, wherever possible, to a person against whom enforcement action is being taken.

2.11) Publicising Outcomes

Verdicts and sentences in criminal cases are given out in open court and are a matter of public record. Evidence suggests that the public wants to know about the outcomes of local court cases. This information is also a legitimate way of engaging communities and making criminal justice services more transparent and accountable.

We may publicise the outcomes of criminal cases and basic personal information about the convicted offender, in accordance with guidance issued by the Criminal Justice System (Publicising Sentencing Outcome, CJS, 2011).

We will publicise action taken with the aim to:

- Reassure the public;
- Increase trust and confidence in the criminal justice system;
- Improve the effectiveness of the criminal justice system; and
- Discourage offending and/or re-offending.

3.0

Links to other corporate documents

This policy links to and should be read in conjunction with the following policies and strategies:

- Houses in Multiple Occupation Policy
- [Homelessness Strategy](#)
- [Fire Safety guidance for HMO's](#)
- [Fit & proper statement](#)
- [Regulators statement](#)
- ['Delivering for Dacorum – Corporate Plan 2015-2020'](#)

4.0

Legislation

The legislation listed below will be taken into consideration when implementing this policy:

- [Housing Act 2004](#)
- [The Human Rights Act 1998](#)
- [The Equality Act 2010](#)
- [The Regulation of Investigatory Powers Act 2000](#)
- [The Police and Criminal Evidence Act 1984 – Codes of Practice](#)
- [Enforcement Guidance issued under section 9 of the Housing Act 2004](#)
- [The Criminal Procedures and Investigations Act 1996](#)
- [The Legislative and Regulatory Reform Act 2006](#)
- [The Code for Crown Prosecutors](#)
- [The Enforcement Concordat](#)
- [Homes \(Fitness for Human Habitation\) Act 2018](#)
- [Tenant Fees Act 2019](#)