



Private Sector Housing (PSH) Enforcement Policy

August 2022

Private Sector Housing Enforcement Policy

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

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1.1 Introduction

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

We recognise most landlords want to be compliant and provide tenants the required standards in their homes. 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 including harassment & illegal eviction.

This policy defines enforcement as any action taken by the Private 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 properties in the private sector; 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 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 Council's corporate aims:

This policy supports the council's corporate priorities that are set out in '[Delivering for Dacorum – Corporate Plan 2020-2025](#)'.

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, 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 use powers to maintain the safety of owner-occupiers.

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2.1 Powers to investigate

We will fully investigate all complaints, requests and reports 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 and/or Local Government (Miscellaneous Provisions) Act 1976 Part 1, s16, we may request documentation from landlords and owners 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 which is 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.

It is a legal requirement to respond to this notice within 14 days. A failure to respond within the timescales stipulated, or deliberately providing false information may 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 which 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.

A person who obstructs a relevant person in performing their duties is liable on conviction to a fine.

We are not required to give notice of entry if we are seeking to determine whether an offence has been committed under s72 (offences in relation to licensing of HMOs), s95 (offences in relation to licensing of houses) or s234 (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 maybe provided, usually in the form of a letter. It will include information on:

- what legislation is contravened
- what works are required and why
- agreed timescales, wherever possible
- the nature of the enforcement action the authority may take in the future.
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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 consider the views of the tenants, landlords and owners, 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 but not limited to:

- 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
- propart secute; or seek an injunction.
- compulsory purchase orders
- enforced sale

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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.

2.3 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 is verbal advice, requests, warnings or letters and inspection reports that 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 this also includes empty dwellings.

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;
- a protection of buildings 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, managing agent or owner throughout the duration of the notice to ensure they comply with any requirements.

Landlords, managing agents and owners 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.

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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 makes 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
- 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 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 and they will follow the cautioning procedure from the Ministry of Justice guidance. 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.

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2.3.7 Management orders

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

This can also apply to empty dwellings that meet the time for Empty dwelling management orders.

Section 26 and Schedule 3 of the Housing and Planning Act 2016 allows us to also make a management order in circumstances where a banning order has been made and where a privately owned 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. Civil penalties are used for the following Offences:

- 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);
- 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.

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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 practicing 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 a banning order can be in place for. 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
- 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));
- 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;
- Invite the Landlord to make representations within a period specified in the notice which must be at least 28 days.

2.3.11 Prosecution

Scope for working together with other local housing authorities should be considered when a local housing authority decides to prosecute a Landlord who has committed breaches in more than one local housing authority area.

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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 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
- 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; generally, there is a requirement to lay information with the Courts within six months of the identified date that the offence was committed.

Exemption to the above process is the Protection from Eviction Act 1977. This is an either way offence and therefore can be heard in both the Magistrates Court and Crown Court.

2.3.12 Injunction

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

2.3.13 The Tenant Fees Act 2019

The Act details fees that Landlords or their Agents can charge to their tenants. Those not detailed in the Act are prohibited fees. When these fees are charged the matter can be referred to Trading Standards who are the enforcing body. Action can be taken against Landlords or their Agents who are found to be in breach of legislation under the Housing and Planning Act 2016 for a first offence resulting in a Civil Penalty of up to £5,000. If further breaches are committed within 5 years of this penalty or a conviction for a previous breach is found, this matter will be considered a criminal offence. The local authorities will then have the discretion to either prosecute or impose a further financial penalty of up to £30,000.

Where two or more financial penalties have been imposed, on the same person, that person may be placed on the database of rogue landlords and property agents. The penalty, should a prosecution take place, can include a banning order and include an unlimited fine. This would be considered criminal offence.

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 the 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 hazards under the HHSRS. This Act is to provide greater support to tenants and the Private Sector Housing Team and to provide assistance to tenants, wishing to seek further advice about possible action.

2.3.15 Empty Homes

Any action taken against an owner will be proportionate, taking into account each case and the individual circumstances around empty properties.

When reports are received of an empty property from a neighbour or member of the public, the Private Sector Housing Team will attempt to contact the owner to obtain circumstances relating to the empty property. The team will provide advice on property repair and any other applicable solutions or grants available to the owner to assist in bringing the property back into use.

Should the owner not cooperate, we can seek to use our local authority powers to bring the property back into use.

In cases where the owner cannot be traced the team will complete checks with other departments and agencies to locate owner or responsible person. Our enforcement options include but not limited to:

- Empty Dwelling Management Order
- Compulsory purchase
- Enforced sale

2.3.16 The Electrical Safety Standards Regulations 2020

The *Electrical Safety Standards* in the Private Rented Sector (England) *Regulations 2020* is a legislation that places a requirement on landlords or their agents to ensure that they have in place an Electrical Installation Condition Report (EICR) undertaken by a competent person confirming compliance with the current British Standard. This demonstrates that the wiring and installations in the property are safe.

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The Landlord must provide an EICR to the Local Authority if requested within 7 days. Landlords are also required to:

Ensure that an EICR is undertaken every 5 years; Ensure that any faults identified on the EICR are rectified within 28 days

- Provide an EICR to all new tenancies before occupancy;
- Provide an EICR to all new tenancies within 28 days of testing
- Provide an EICR to within 28 days if requested by a tenant
- Keep a copy of the certificate until the next inspection is due

Failure to comply with the above or a request from the Local authority will result in the following enforcement options being considered:

Serving Civil Penalty Notices of up to £30,000 where breaches of legislation are found

Arrange if necessary works to the property and such charges will be invoiced to the landlord

2.4 Community Safety and Landlord Responsibility

Landlords in Dacorum may be asked to attend a multi-agency meeting with services 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.

2.5 Rogue Landlord Database

From 01 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. While 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 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
- 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 up to the required standards. The tenant should report all disrepair to their RP in the first instance to enable the RP the opportunity to rectify the issue. Should the RP fail to rectify in a timely manner, the tenant can approach the Private Sector Housing Team for assistance.

If a tenant is dissatisfied about the services of a registered provider should initially raise a complaint with the provider. All providers have responsibility for dealing with, and being accountable for, complaints about their services. All providers must have in place a clear complaints procedure and a statement about how they handle complaints, including complaints about performance against the standards.

Tenants not satisfied with the way their RP has dealt with their complaint should raise a complaint with the [Housing ombudsman](#)

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 Sector through investigation and enforcement is maintained by completion of mandatory training and any relevant qualifications.

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2.9 Exceptions to policy

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

- Where the local authority is satisfied that the landlord is taking all reasonable and appropriate action to address repairs in a timely manner
- where the tenant(s) unreasonably refuse access to the landlord, managing agent or landlord's builder, to arrange or carry out works
- where 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
- where 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
- where the complaint is found to be trivial or has no reasonable justification on visiting the property
- where the tenant(s) have been aggressive, threatening, verbally or physically abusive towards officers
- where the tenant(s) unreasonably refuses to provide the council with relevant documentation

2.10 Appeals

Where a statutory notice or order is served, or a licensing decision is made, the appeal process 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:

- [HMO policy](#)
- [Prevention of Homelessness and Rough Sleeping Strategy](#)
- [Fire Safety guidance for HMO's](#)
- [Fit & proper statement](#)
- [Regulators statement](#)
- ['Delivering for Dacorum – Corporate Plan 2020-2025'](#)

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](#)
- [The Electrical Safety Standards in the Private Rented Sector \(England\) Regulations 2020](#)
- [Housing and Planning Act 2016](#)
- [The Energy Efficiency \(Private Rented Property\) \(England and Wales\) Regulations 2015](#)