



**DARLINGTON**  
Borough Council

# Private Sector Housing Enforcement Policy 2023



Community Safety  
Private Sector Housing

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## 1 Foreword

- 1.1 The Private Sector Housing team sets out to maintain and improve the housing conditions in privately owned property in Darlington. This policy sets out the service's transparent approach to enforcement so that people understand how they will be dealt with by Private Sector Housing and its officers.
- 1.2 The Private Sector Housing's functions are aimed at improving and maintaining housing standards in Private Sector Housing across Darlington. The Private Sector Housing Team's usual approach is to give informal advice, assistance and information. Where this approach fails or it is necessary to meet its enforcement objectives, the service will take the necessary enforcement action.
- 1.3 Enforcement is particularly relevant to the private rented sector in Darlington, where we aim to ensure compliance with regulatory requirements. These currently include the licensing of houses in multiple occupation (HMOs), enforcement of the housing health and safety rating system (HHSRS), and public health issues. More recently it includes a focus on improving the professionalism of residential lettings and managing agents.
- 1.4 This policy promotes efficient and effective approaches to regulatory inspection and enforcement to improve regulatory outcomes without imposing unnecessary burdens on businesses.
- 1.5 This policy is in accordance with Darlington Borough Council's Regulatory Services Enforcement Policy.
- 1.6 Any new legislation which comes into force relating to standards and management in privately owned housing which is undertaken by the Private Sector Housing Service will also fall within the general principles of this policy.

## 2 Aims of Policy

- 2.1 The aims of the policy are to:
  - set out the legal requirements, policies, principles and priorities that the Private Sector Housing Team will follow when enforcing legislation;
  - help provide safer and healthier Private Sector Housing;
  - increase public confidence in the quality and management of accommodation leading to a vibrant private rented sector in Darlington;
  - raise the profile and demonstrate the transparency of enforcement in the private rented sector.
  - improve the energy efficiency of private rented sector accommodation.

### 3 What is Enforcement Action?

- 3.1 Enforcement means an action carried out in exercise of or against the background of statutory enforcement powers. This is not limited to formal enforcement action such as prosecution, service of legal notices, application for a rent repayment order or the issue of civil penalty notice.
- 3.2 It includes inspections or investigations related to property or land and any relevant person where the purpose is checking compliance with legislation or to give advice to help comply with the law.

#### Enforcement Objectives

- 3.3 The Private Sector Housing Service primarily covers all privately owned residential accommodation. In normal circumstances enforcement action will be carried out with the objectives to ensure that:
- the Private Sector Housing Service meets the Council's statutory duties which it is responsible for or to carry out the powers it has adopted.
  - symptoms arising from empty homes are tackled to ensure the amenity of the area is not affected, the property is safe and secure and not causing a statutory nuisance;
  - tenants of a private landlord or a Registered Provider of Social Housing (RP) live in homes free of actionable hazards which affect their health and safety;
  - privately rented houses, including Houses in Multiple Occupation (HMOs), are managed in accordance with any relevant statutory regulations or other legal requirements.
  - all licensable rented properties are licensed and licence conditions are met;
  - where required privately rented accommodation meets minimum energy efficiency ratings and that Energy Performance certificates are provided.
  - letting professionals meet the legal requirements that apply to their business such as; to register with a Government Redress scheme; to advertise fees appropriately; and to comply with any other legislation that regulates services they provide.
- 3.4 This Enforcement Policy sets out general principles of good enforcement practice that should be followed by the Private Sector Housing Team. It follows the "Principles of good regulation" set out in the Legislative and Regulatory Reform Act 2006:
- regulatory activities should be carried out in a way which are transparent, accountable, proportionate and consistent;
  - regulatory activities should be targeted only at cases in which action is needed.

## Targeting Enforcement Action

3.5 To ensure that we meet our policy and enforcement objectives effectively we will have regard to the principle that our formal enforcement activity should be targeted only at cases in which action is needed. These are some examples of how we may target action – this is not an exhaustive list.

3.6 Property type or occupation -

- empty properties - door to door surveys, Council Tax information or by our empty property priority system;
- Landlords whose tenants receive Local Housing Allowance/Universal credit.
- Properties of a low rental value - the standards in these properties are more likely to be of a lower quality in terms of risks to health and safety to the occupiers;
- Unlicensed properties;
- Poorly managed privately rented properties or those with anti-social behaviour linked to them.
- Construction type - where there is a problem with a particular method of construction, for example precast reinforced concrete (PRC) properties;
- Properties with a low energy efficiency rating on their Energy Performance Certificate (EPC).

3.7 Areas

- Where there are particular problems in a specific locality. This can be on a street by street basis or an area of Darlington;
- Where an area of Darlington is identified as having adverse health or socioeconomic indicators;
- To provide a co-ordinated approach alongside other initiatives; for example, the Northgate initiative.

3.8 Individuals

Where a landlord, lettings professional, agent, individual or organisation('s):

- Persistently fails to manage privately rented accommodation in accordance with legal requirements;
- Repeatedly fails to comply with informal or formal requests to meet minimum legal requirements or commits offences under Private Sector Housing related legislation;
- Persistently fails to submit a valid licence application or meet licensing standards;
- Places tenants in overcrowded accommodation;
- Failure to register with a government approved Redress scheme;

3.9 In addition under the Housing and Planning Act 2016 where the individual is:

- on the government database of rogue landlords and agents;
- has a rent repayment order against them; or
- is subject to a banning order or a management order.

3.10 To ensure that there are checks and balances in our enforcement approach any targeted action will need to be agreed with a Private Sector Housing Manager before it is undertaken.

## 4 Licensing of Private Rented Sector properties

### Mandatory HMO licensing

4.1 A Mandatory licence is currently required for HMOs with five or more occupiers living in two or more households sharing facilities.

### Operating an unlicensed property

4.2 Systematic surveys using available relevant information held by the Council will be carried out to identify unlicensed properties.

4.3 We will consider any representations regarding exceptional circumstances that may have resulted in the application not being made. In other circumstances the Council will carry out an investigation and if appropriate consider taking formal action.

4.4 If a landlord has approached the Council for a licence an informal approach will be adopted so long as a valid application with the appropriate fee is subsequently duly made within 28 days.

Landlords who fail to reapply for a licence in properties that require a renewal of their licence or fail to provide the required information or the appropriate fee within 28 days may also be investigated for failing to licence a licensable property.

4.5 Fines for failure to license a property are unlimited. Where landlords have been convicted of the offence of operating an unlicensed property the Council may use Rent Repayment Orders to claim back any Housing Benefit or equivalent paid whilst the property was unlicensed. We may also provide tenants with information and advice on how and when they can apply to The First Tier Tribunal Service to claim back the rent they paid whilst the property was unlicensed.

4.6 Under the Housing and Planning Act 2016 (The 2016 Act) the council can also serve a civil penalty notice of up to a maximum of £30,000 for failure to licence a property.

## **Duration of Licences**

- 4.7 Licences will normally be granted for the full five-year period. We may reduce the length of the licence from five years to an appropriate lesser period:
- to remove any advantage over those licence holders who applied at the appropriate time; or
  - where the property has not previously been satisfactorily managed; or
  - where we are concerned the proposed management arrangements may not be satisfactory.
  - There are Development Control (Planning), Building Control (Building Regulations) or Fire Safety requirements that have not been met.

## **Fit and Proper Person Policy**

- 4.8 In granting a licence the Council must be satisfied that the proposed licence holder, manager and any person involved in the management of the property are fit and proper persons. A person's fit and proper status may be reviewed at any time if circumstances change. A finding that the person does not satisfy this standard may result in refusal of an application or revocation of existing licence(s).

## **Breach of licence requirements**

- 4.9 Licences issued for rented properties include requirements on the number of persons or households that are permitted to occupy a property as well as licence conditions. Licence conditions may require works with regard to the physical condition of the property or in relation to the management of the property.
- 4.10 Knowingly permitting the over occupation of a licenced property or failing to meet licence condition(s) without reasonable excuse are a criminal offence(s).
- 4.11 The 2016 Act introduced civil penalty notices of up to £30,000 which the Council can serve on individuals as an alternative to prosecution.

## **Revocation of licences**

- 4.12 Revoking a property licence under the Housing Act 2004 may be taken under the following circumstances:
- breach(es) of licence condition(s);
  - where the licence holder and/or manager are no longer considered to be Fit and Proper person(s) by agreement.
  - where there is a banning order on the licence holder.

## 5 Regulation of residential lettings and management professionals

- 5.1 In addition to having legal responsibilities in relation to the management of properties which are privately rented, business's letting and managing residential property are required to comply with a number of other legal requirements, some of which are regulated by the Council's Private Sector Housing Team.

## 6 Empty Properties

- 6.1 We recognise that some areas of the Borough suffer from higher levels of empty properties and housing need. The Private Sector Housing Team systematically identifies long term empty properties and will work with the owner to bring back into use.

The empty property policy statement sets out the detail of our priorities in this area:

- As the overall aim is to provide more accommodation of the type required in Darlington we will take action on empty properties within a procedure that could ultimately lead to bringing a property back into use.
- Action will be tailored to match housing need, nuisance issues and length of time the property has been empty;
- Where necessary, we will take enforcement action to deal with the symptoms that arise when a property is left empty.

## 7 Overcrowding

- 7.1 We will investigate complaints from private rented sector tenants about overcrowded living conditions, from other parties where they are concerned about children or vulnerable adults living in overcrowded conditions or where overcrowded conditions are legitimately impacting on a neighbours' health, safety or welfare.
- 7.2 We will liaise with the Council's Housing Options Team where we are taking enforcement action that is likely to lead to a family moving out of their accommodation.
- 7.3 When deciding on the most appropriate course of action each case will be judged on its own merits.
- 7.4 We may serve overcrowding notices in relation to HMOs if having regard to the rooms available, it considers that an excessive number of persons is being, or is likely to be, accommodated in the property.
- 7.5 Under the 2016 Act the council can serve a civil penalty notice of up to £30,000 on a person failing to comply with an overcrowding notice.



## 8 Providing Assistance, Information and Education

8.1 We start from the position of working with our service users to help them comply with their regulatory requirements. This is an efficient way of meeting our objectives. We will provide clear, accessible advice and guidance and provide contact details where further information is required. Information is provided in a range of formats such as leaflets and information on the Darlington Borough Council Website.

## 9 Enforcement Action

9.1 Where assistance, information and education has failed to ensure compliance with a statutory requirement or failed to ensure compliance with requirements made through use of our discretionary powers enforcement action may be taken. Enforcement actions include no action, informal action and formal action.

### 9.2 No action

In certain circumstances it may be appropriate to take no action. For example:

- When we decide that the health and safety risk is sufficiently low enough;
- Where there are extenuating circumstances regarding the person against whom we would take action on;
- Where taking legal action would be disproportionate or inappropriate taking into account the circumstances of the case.
- Where the tenant does not want us to take action and we consider it is appropriate not to take action in the circumstances.
- We may however make recommendations which are above the legal minimum requirements, advise if there are legal avenues open to persons to resolve the issues themselves or refer to another appropriate regulator or advice service.

### 9.3 Informal Action

In most cases, officers will endeavour to seek the desired improvements or protection of the public's health and safety in relation to Private Sector Housing by working initially on an informal basis with those involved.

Informal action may take a variety of forms, for example:

- verbal requests;
- letters or e-mails;
- schedules of work.

The advice will make clear what is expected to be done to meet a legal requirement and what is a recommendation which does not legally require action. It will be made clear that formal action could follow if there is a failure to meet informal requests to carry out works to meet legal requirements.

However, where the circumstances of the case justify it, officers will be expected to take a formal approach in the first instance. Formal action will also be taken where compliance with a statutory requirement has not been achieved by informal action.

#### 9.4 Formal Action

Circumstances where it may be appropriate to take formal legal action include where for example:

- There is an actionable hazard which puts at risk a person's health and safety due to identified Category One Hazards:
  - risk of a fall leading to serious injury
  - no heating and or lack of insulation in cold weather;
  - the Energy Performance Certificate is not to the required standard;
  - no hot water to wash and prepare food safely;
  - exposure to damaged asbestos insulation board which means occupiers are likely to inhale or ingest asbestos fibres;
  - exposed live electrical wiring which people are likely to make contact with.
  
- there are a multiple hazards creating a more serious situation or there is an overall lack of repair or maintenance of a property resulting in it being run down.
- there is a hazard which presents risk serious of injury to someone occupying or visiting the property.
- a person refuses to or is likely not to carry out the works informally;
- there is history of failure to meet requests to carry out legally required works;
- there is history of a failure to manage a property in line with legal requirements;
- there is a record of criminal convictions for failure to comply with housing related offences (including offences that are likely to affect housing management);
- it is necessary to safeguard and protect health and safety in the future;
- it is necessary to bring an empty property back into use when informal requests to do so have failed.
- A letting or managing agent has failed to meet legal requirements for instance but not exclusively in relation to requirements to be members of an appropriate redress scheme.

Under the 2016 Act;

- an individual is subject to a Banning Order
- on the database of rogue landlord and agents

The above is not intended to be an exhaustive list. Each case will be considered on its individual merits.

In an emergency, or where non-compliance has been previously encountered, an officer may decide it is more appropriate to take formal action first without giving an opportunity to resolve the issue informally, we would expect that the officer explains to the person concerned why formal action is being taken.

There are a number of options for formal action. The decision as to which is the most appropriate will depend on the circumstances of the case, the relevant legislation, the risk to health and safety and tests relevant to each option.

The options include:

- service of formal notice or order;
- emergency action;
- a penalty charge notice;
- simple caution;
- civil penalty notice;
- prosecution;
- work in default;
- revocation or refusal of a licence;
- management order;
- banning order;
- rent repayment order;
- obtain a warrant to enter;
- requiring the production of information, documents or other materials.

#### 9.5 Service of formal notices or orders

Notices and orders will be served in accordance with the requirements of the relevant legislation. The person on whom the notice or order is served will be informed of the reason that this action is being taken, the timescale for completion of any works, the works that are legally required, representations that may be made, relevant appeal periods, details of any charges (see below) and the consequences of noncompliance. Contact details will be provided so that the detail and requirements of the notice can be explained.

#### 9.6 Emergency Action

In emergency situations where it is not possible to contact the relevant person and gain their co-operation, enforcement action may be taken immediately without notice, for example:

- where there is an imminent risk of serious harm to the health or safety of occupiers or others (Emergency Remedial Action under the Housing Act 2004);
- where there is an immediate need to secure a building against unauthorised entry or to prevent it becoming a danger to public health (subject to the provisions of The Local Government (Miscellaneous Provisions) Act 1982.

### 9.7 Civil Penalty Charges

Certain legislation enables the Council to serve a Financial Penalty Notice. Failure to pay a civil penalty may result in the Council bringing prosecution proceedings or in the recovery of the charge as a debt through courts action.

Private Sector Housing is responsible for enforcing the following requirements which can be subject to a civil penalty:

- Failure to comply with a notice requiring the provision of a smoke or carbon monoxide detector (£5000 maximum).
- From 1st April 2018, failure to comply with new energy efficiency requirements for rented properties (£5000 maximum).
- From 1<sup>st</sup> July 2020, failure to comply with the new electrical safety requirements to rented properties (£30,000 maximum).
- Failure to be a member of a Government approved residential lettings or management redress scheme when required to do so. Government guidance states that the expectation is that for this contravention, a £5,000 penalty should be considered the norm and that a lower penalty should only be charged if the Council is satisfied that there are extenuating circumstances. It will be up to the Council to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a penalty.

The Council may issue more specific guidance in relation to these contraventions which will be made available on our website. Each case will be considered on its own merits and the relevant statutory appeal rights are provided with any notice served. See also civil penalties in the section below.

### 9.8 Simple Caution

Simple Cautions may be appropriate where someone has admitted to an offence, or where it is their first offence of this type or they have assisted officers in remedying the situation that led to the offence. For example applying for a licence as soon as they are able or quickly complying with the requirements of a notice. Simple Cautions warn people that their behaviour has been unlawful and makes them aware of the legal consequences should they commit further offences.

### 9.9 Prosecution

Recommending a case for prosecution is a serious step. Officers will carry out an investigation into any suspected offences to collect evidence, to establish if a statutory defence is available and reasons why the case may or may not be in the public interest to pursue further.

#### 9.10 Civil Penalty Notices in the Housing and Planning Act 2016

The 2016 Act gives the council the power to issue a civil penalty can be considered as an alternative to prosecution for any of the following offences under the 2004 Act:

- Failure to comply with an Improvement Notice (section 30);
- Offences in relation to licensing of HMOs (section 72);
- Offences in relation to licensing of houses under Part 3 of the Act (section 95);
- Contravention of an overcrowding notice (section 139);
- Failure to comply with management regulations in respect of HMOs (section 234).

The decision when to prosecute, agree a simple caution or when to issue a civil penalty will made on a case-by-case basis in line with this policy and the other guidance referred to.

Civil Penalties can be used where a breach is serious and the council may determine that a significant financial penalty (or penalties if there have been several breaches), rather than prosecution, is the most appropriate and effective sanction in a particular case.

The government have issued statutory guidance to councils on the use of Civil Penalty notices under the 2016 Act. The council has also published its own policy (link to policy when published) on how it will decide on the level of financial penalty which is in accordance with the government guidance.

#### 9.11 Fines Recovery of Costs and Proceeds of Crime

The upper limit for fines in the magistrates' court has been removed, this means if found guilty of an offence the court there is no maximum fine.

In some cases, the Council can apply to court to recover rent from a landlord if a property has been let illegally.

Officers will provide Legal Services with all the relevant information to enable the recovery of costs to be sought at Court. Any costs application made is likely to include the time officers have spent investigating a case and the legal costs involved.

## 10 Retaliatory Eviction

- 10.1 The Deregulation Act 2015, provides tenants protection from eviction in retaliation for making a complaint in relation to health and safety issues in their home. The protection only applies in certain circumstances please see link for further guidance.

10.2 The circumstances require that a relevant formal legal notice has been served under the Housing Act 2004. Private Sector Housing will only serve the relevant formal legal notices in line with this policy.

## 11 Publicising prosecutions

11.1 Verdicts and sentences in criminal cases are given in open court and are a matter of public record. The Council will publicise sentences following prosecution on a case by case basis.

## 12 Work in Default

12.1 Where the Council has legally required to be completed, powers are available to carry out works in their default. The powers are provided in the legislation being used in relation to specific case.

12.2 In most circumstances a person will be given notice of the Council's intention to carry out works in their default. Once we have started works it is an offence for that person to obstruct us or any of the contractors that have been employed to carry out the works.

12.3 The complete cost of the works and all costs will be recovered in accordance with the relevant statutory provisions.

12.4 It should be noted that carrying out works in default does not prevent prosecution or civil penalty which may also be appropriate.

## 13 Rent Repayment Orders

13.1 Rent Repayment Orders (RRO) can be made by a First Tier Tribunal where they are satisfied beyond reasonable doubt that a landlord has committed certain offences (whether the landlord has been convicted of that offence or not). The landlord can be required to repay up to 12-months' rent, either to a tenant for rent paid or a council for housing benefit or universal credit paid in relation to the rent of a property. The relevant offences are:

- Violence for securing entry
- Illegal eviction or harassment of occupiers
- Failure to comply with an improvement notice or prohibition order
- Failure to licence a property which requires a licence
- For breach of a banning order

13.2 Councils must consider applying for an RRO if they become aware of someone being convicted of one of the offences which can lead to an RRO. The council can also help tenants apply for an RRO. Applications for an RRO can be made in addition to other formal action taken in relation to the same conduct.

When deciding whether or not to apply for an RRO the Council's policy is to:

- Treat each case on its own merits
- Ensure that applying for an RRO would meet the enforcement objectives in this policy
- Consider the impact of the breach on the occupier or others affected by the offence committed.
- Consider the likelihood of the application being successful.
- The level of resources it will take to make a successful application
- Whether it is more appropriate for the tenant to apply for the order themselves.

13.3 The council is also obliged to have regard to the statutory guidance issued to local authorities on applying for an RRO entitled Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities.

#### 14 Charging for Enforcement Action

14.1 The Housing Act 2004 allows councils to make a reasonable charge to recover administrative and other expenses for taking certain enforcement action. Other legislation also allows the recovery of costs covering officers' time and expenses accrued when determining works necessary in the case of works in default.

14.2 The Private Sector Housing Team is likely to seek to recover all costs and fees when formal action is taken, when we think it is reasonable to expect the owner or person required to carry out works.

14.3 The full costs of all officers' time, including overheads and any relevant expenses, will be charged. In some cases we may force the sale of a property to recover our cost. We will only do so if we have the power to and it is reasonable and proportionate to do so in the circumstances of that case.

#### 15 Enforcement - general

15.1 We will use all available powers to meet the enforcement objectives within this policy. These include powers of entry, the ability to require the production of documents under the Housing Act 2004, the power to require information about a person's identity, or interest in land and the power to require certificates regarding gas and electrical safety in Houses in Multiple Occupation.

15.2 We will have regard to any relevant Government guidance as part of our enforcement activity.

15.2 When carrying out enforcement we will have regard to other legal requirements that might apply to our actions; for example, the Data Protection Act 2018, Regulation of Investigatory Powers Act 2000 and the codes of practice under the Police and Criminal Evidence Act 1984.

## 16 Consultation and Partners

- 16.1 We work with a wide range of partners and stakeholders such as private sector landlords and agents, residents, businesses, other Council teams, agencies such as Fire and Rescue Services and the Police and other local authorities.
- 16.2 The Fire Safety protocol sets out how both the Council and Darlington and Durham Fire and Rescue Service will take enforcement action in relation to fire safety in properties where there is an overlap between each organisation's duties and powers.
- 16.3 We value the partners we work with and will engage with them in relation to enforcement activity and procedures where the subject area is relevant and appropriate to them.

## 17 Appeals and Complaints Procedure

- 17.1 This policy and the guidance and other policies referred to in it will be relevant documents to consider when reviewing complaints in relation to our enforcement activity. It is important to stress that they are not the definitive list of guidance available and there may be more relevant or up to date guidance that should be considered in relation to any complaint.
- 17.2 We will inform all persons who are the subject of formal enforcement activity of their right of appeal; this will vary dependent on the particular legislation being used.
- 17.3 The Council's complaints process is available for complaints relating to the application of this policy where there is not an appeal procedure otherwise available. If you want to appeal against a formal notice or order you should use the statutory appeal rights open to you.

## 18 Approval of this policy

- 18.1 Cabinet approved this policy on (to be inserted) under the powers delegated in the Council's constitution.

## 19 Enquiries

For all enquiries about this policy please contact the Private Sector Housing Manager on

Email: [PrivateSectorHousing@Darlington.gov.uk](mailto:PrivateSectorHousing@Darlington.gov.uk)

Address: Private Sector Housing Team, SERVICES GROUP, Darlington Borough Council, Town Hall, Feethams, Darlington, DL1 5QT.

Direct line: (01325) 406 445

For more information on how the Private Sector Housing works please visit:

Website: <https://www.darlington.gov.uk/your-council/community-safety-team/>