

Dover District Council

Private Sector Housing Enforcement Policy

1. Aim

The primary enforcement role of the Private Sector Housing (PSH) service is to maintain and improve the housing conditions in Dover District (This excludes properties owned by the Council). It endeavours to achieve this through advice, information and financial assistance. Where this approach fails or is not appropriate and it is necessary to protect the health safety and welfare of persons then the service will take the appropriate enforcement action.

The aim of this policy is to:

- Set out the criteria and priorities we will use when enforcing legislation so it is transparent and clear to the public.
- Sets out our policy in respect of charges that may be imposed for enforcement.
- Ensure our enforcement is consistent, fair, proportionate and targeted.
- Ensure it is consistent with the aims and objectives contained in the Private Sector Housing Strategy 2010-15 and the Empty Property Strategy 2010-15.

2. Scope

This enforcement policy covers the following functional areas:

- Licensing of Houses in Multiple Occupation
- Enforcing minimum Housing standards to prevent injury and ill health,
- Bringing empty homes back into use,
- Licensing of caravan sites and mobile homes
- Harassment and Illegal eviction of tenants

3. Authorisations

In accordance with the Council's constitution, the Director for Finance, Housing and Community has a duty to appoint officers with suitable qualifications, experience and level of competency to enforce, or, to ensure that appropriate officers are trained to the required level to undertake an enforcement role.

Authority to exercise executive functions in relation to Private Sector Housing has been delegated to the Private Sector Housing Manager as detailed in the Councils Constitution. These powers have then been further delegated where considered appropriate and necessary.

4. General Principles

When carrying out enforcement action it is important that the Council works within the statutory framework set out and that it follows best practice and procedure.

In particular, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement policy as part of this commitment. When exercising its enforcement functions, the Council will act in such a way that is

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted only at cases where action is needed

Relevant advice/guidance and legislation underpinning this strategy includes

- Dover District Councils Overarching enforcement strategy
- DCLG document "Housing Health and safety Rating System; Enforcement Guidance".
- Regulator's Code
- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigator Powers Act 2000
- Data Protection Act 1998
- Freedom of Information Act 2000
- The Protection of Freedoms Act 2012
- The Housing Acts 2004 and 1985
- Local Government Miscellaneous Provision Act 1976
- The Building Act 1984
- The Environmental Protection Act 1994
- The Caravan Site and Control of Development Act 1960
- The Caravan Sites Act 1968
- Mobile Homes act 1983 and 2013
- Protection from Eviction Act 1977

Other legislation may be used occasionally.

5. Interventions and Enforcement

After considering all relevant information one or more of the following courses of action shall be taken:-

a) Informal action

b) Formal action

- Statutory notice
- Simple caution
- Prosecution
- Works in default

- Compulsory purchase of property
- Empty Dwelling Management Order
- Management order

Not all of these options are available in every case. This underlines the need to consider powers available under each piece of legislation individually.

In making any decision on enforcement, officers will consider the following criteria: -

- The seriousness of any offence
- The owner/landlords past history
- Consequences of non-compliance
- The known or likely public benefit of the chosen enforcement action
- The willingness of the owner/landlord to carry out works and the confidence in them
- The likely ability of any witnesses to give evidence and their willingness to co-operate
- The Crown Prosecution Service's Code of Practice for Crown Prosecutors
- The risk of any hazard to health (see details below)

The main Act used by PSH is the **Housing Act 2004** and is mainly used to remove hazards in a property that puts occupiers at risk of injury or ill health. This legal provision applies to all property and tenures including owner-occupiers. Hazards are subject to a statutory risk assessment that determines whether the hazards are classified as a Category 1 or 2. A category 2 hazard is less serious than a Category 1 hazard.

The Council are under a legal duty to take formal action in the case of a category 1 hazard. The Council do not have a duty to take action with category 2 hazards but they do have the power to take action. The decision in deciding which type of notice or order to serve will depend upon a number of factors. These factors are contained in DCLG document "Housing Health and safety Rating System; Enforcement Guidance" and is summarised in paragraph 5.3.

The Council may take enforcement action for category 2 hazards but will do so where it is felt appropriate. In making this decision we will take the following matters into account: -

- The wishes of the occupier
- Whether there are high scoring category 2 hazards
- Where there are there multiple hazards;
- Whether the occupants are in the high risk group in relation to any hazards present
- Whether it is reasonably practicable to remedy the hazard;
- Whether the defects have a significant effect on the occupants well being
- Whether the landlord had a record of poor maintenance
- Whether the landlord is accredited with a recognised accreditation scheme
- Whether the landlord has agreed to remedy the defects
- Whether the property or person is within one of the Council priorities;
- Whether the hazard is likely to become more serious if not dealt with. For example, damp can often lead to the property fabric deteriorating.

As a general rule a Category 2 hazard scoring more than 500 points will be considered a high scoring hazard.

5.1 INFORMAL ACTION

Wherever possible the Council will try to enforce in an informal manner. This would involve the officer drawing the matter to the attention of the owner, manager or responsible person in the form of a letter, e-mail or telephone. This letter will normally list any hazards or concerns or deficiencies found and arrange for a follow up visit to discuss the matter with the owner, manager and occupiers. If this informal approach does not result in works or action being completed or insufficient progress is made or information requested is not supplied then the Council may choose to treat the matter in a formal way.

Informal action is appropriate where;

- The act or omission is trivial in nature and it can be simply remedied.
- Confidence in the individual/businesses management is high.
- Any hazards pose a minimal risk to health.
- There is insufficient evidence for formal action at the time (although formal action may follow at a later date.
- The views or circumstances of the occupiers or owners provide compelling reasons why formal action should not be taken.

5.2 FORMAL ACTION

Formal action will be taken when:

- Informal action has not resulted in compliance or progress. See **Appendix 1** detailing the PSH service standards:
- There is an urgent and serious risk to an occupier or member of the public, this would include a category 1 hazard;
- An owner or landlord is known to have a history of non compliance with statutory requirements;
- A serious offence has been committed.
- The consequences of non-compliance are significant.
- The likely ability of any witnesses to give evidence and their willingness to co-operate
- It is felt necessary or it is a statutory requirement to inform the owner formally that there are recommended works that ideally should be carried out. This will normally be in the form of a Hazard Awareness Notice.
- Where an empty property is assessed as being a case for priority action as prescribed in our Empty Homes Strategy. See **Appendix 2**.

5.21 Statutory Notices

Most notices served by PSH are under the Housing Act 2004 to deal with serious hazards. The main ones used are:

- Improvement Notice (sections 11 and 12)
- Prohibition Order (sections 20 and 21)
- Emergency Remedial Action (sections 40 and 41)
- Emergency Prohibition Order (sections 43)
- Hazard Awareness Notice (sections 28 and 29)
- Suspended Improvement or Prohibition notice/order

The table below provides a guide to the likely action the Council will take under the Housing Act 2004. However each case will be considered individually.

Housing Act Notice		
Notice type	Category 1 Hazard	Category 2 Hazard
Improvement Notice	Most common notice that will be used for Category 1 hazards. Although it's mainly used for rented accommodation, it may also be used for properties with owner-occupiers where there is a concern for the health of the occupants. An example would be in the case of a fire hazard in a multiple occupied property (flats).	This notice will often be used to require works to deal with category 2 hazards as part of a notice to remedy category 1 hazards. May also be used where there are high scoring category 2 hazards that may affect the health of the occupants or are likely to be a cat 1 hazard in the future if the works are not carried out.
Suspended Improvement Notice	This may be used occasionally. For example where the occupier refuses to have works carried out or the work is not practical with the current occupiers.	This may be used occasionally. For example where the occupier refuses to have works carried out.
Hazard Awareness Notice	Not normally used for serious hazards except where the owner occupies the property. In this situation the owner is in full control whether to remedy the hazard and simply notifying the owner of the hazard is believed to be sufficient.	This notice is often used where there are recommended works to be carried out but they are not serious enough to warrant an Improvement Notice. May also be used for a high scoring hazard if an owner occupies the property.
Prohibition Order	Used very occasionally. Mainly used where improvements are not practical or where it's more practical to prohibit certain age groups. Main use is for dealing with overcrowding. It may also be used to prohibit the use of unsuitable parts of a property such as cellars and basements.	This order is not normally used for Category 2 hazards.
Suspended Prohibition Order	A Suspended Prohibition Order may commonly be used where an owner occupies the property or in cases of overcrowding.	This order is not normally used for Category 2 hazards.

Emergency Prohibition Order	Only used in very exceptional cases. An Emergency Prohibition order will be served where there is an imminent risk to health or injury and prohibiting the use of the property is believed to be the only solution.	This order is not normally used for Category 2 hazards.
Emergency Remedial Action	This will only be used in exceptional cases. There has to be an imminent risk to health or injury. The Council can carry out Works immediately and recover their costs from the owner.	This action is not normally used for Category 2 hazards.

5.22 Works in default

Under certain pieces of legislation the Council is empowered to carry out works in default and recover the costs. Works in default may be carried out where:

- A notice has not been complied with within the specified time
- There is no prospect of the person responsible carrying out the work, e.g. the person is absent or infirm
- Speedy abatement is required, e.g. where there is an imminent risk of injury or ill health
- the circumstances are such that works in default are a more appropriate or effective remedy than prosecution
- The problem persists after prosecution.

5.23 Prosecution

Prosecuting someone is a serious matter and will be considered carefully on a case-by-case basis. When considering prosecution officers must follow the guidance in the [Code of Practice for Crown Prosecutors](#)

Where criminal offences have been committed officers may consider prosecution is an appropriate way of dealing with the offence when:

- A simple caution is not appropriate or the person accused has refused to accept the offer of a simple caution; or
- There is a risk to public health and safety or of environmental damage as a consequence of the breach; or
- The breach was as a result of a deliberate act or following recklessness or neglect; or
- The approach of the offender warrants it, e.g. repeated breaches, persistent poor standards; or
- A legal notice or order has not been complied with or no reasonable progress made in relation to its requirements; or
- Obstruction of an officer in the course of their duty; or

- When a person continues to commit offences despite being informed by the Council of these; or
- The refusal or provision of false information.

Please note this is not an exhaustive list and each case will be considered on its individual merits.

The initial decision to prosecute will normally be taken by the Private Sector Housing Manager in consultation with the solicitor of the Council with the final decision being taken by the Strategic Housing Manager.

5.24 OVERCROWDING

Wherever possible the Council will resist taking action that would lead to homelessness but will seek to reduce overcrowding using suspended notices that relies on a voluntary reduction in the occupation of the dwelling. We will work with the Council's Homelessness team where enforcement action may lead to a family moving out of their accommodation.

In taking action, we will consider:

- The impact of the overcrowding upon the health and safety of vulnerable adults and children's living conditions.
- Whether the occupants are being exploited and we will take this into account when deciding what action to take.
- The wishes of the occupier.

Where there is a serious hazard of overcrowding, a suspended prohibition notice will normally be served. This will require the occupation of the property to be reduced by the occupiers leaving the property when they choose to. The Notice will then become fully operative once the property is no longer overcrowded and it would be an offence if the property became overcrowded by new occupiers.

5.25 Priorities for Enforcement

Normally we will not prioritise owner-occupiers for action as statistically these homes are safer and the owner has far greater control and power to remedy any hazards in the property. A private tenant would not have this control or power. However where the Council knows there is a serious hazard in an owner occupied property we may have to take formal action in accordance with our statutory duty. In most cases this will simply be a Hazard Awareness Notice but an Improvement or Prohibition Notice may be served if this is needed to protect existing or future occupants.

To ensure that we meet our policy and enforcement objectives effectively, we will from time to time need to target our enforcement activity to specific subjects. For example this may be:

- Concentrating our action on specific roads or;
- On particular individuals or organisations who persistently commit offences or their activities result in the need for us to work proactively to meet our objectives or;
- On specific types of properties for example Houses in Multiple Occupation or empty homes;
- The need to work with partners on specific enforcement activities.

5.26 Charging Policy

The Housing Act 2004 allows Councils to charge for taking enforcement action that results in service of a notice. The Council will recover our costs when statutory action is taken including the full costs of an officer's time, overheads and any relevant expenses such as specialist reports. Current charges are attached as **appendix 3** and these will be updated annually.

There will be discretion to waive the charge when it is not reasonable to expect a person to pay for charges for the enforcement action taken i.e. where it is very clear that the owner is not at fault or that the reason for serving the notice was outside the control of the owner.

Where the notice is fully complied with within the time allocated by the Council, then the costs charged relating to officer time and administration will be reduced by £150. Any other costs such as the obtaining of specialist reports will be fully recovered by the Council. Where a charge for enforcement action is levied, it will be registered as a local land charge.

6. Policy Monitoring

To ensure compliance with this policy, the enforcement activities of the Private Sector Housing Service will be monitored regularly by the Private Sector Housing Manager and are subjected to a regular audit process.

The Private Sector Housing Manager will review this policy annually.

7. Training and Development

Appropriate resources will be made available for training officers to enable them to successfully carry out their duties within this policy
All officers will have recognised building qualifications and completed training on the Housing, Health and Safety Rating System. Ideally senior enforcement officers will be professionally qualified and undertake Continual Professional Development.

8. Equality impact Assessment

This policy aims to promote the Council's objectives of improving environmental quality, promoting prosperous communities, health and well-being. Care has been taken to ensure that application of these policies will not result in discrimination against any of the equalities groups. This document is covered by the Equalities Impact Assessment (EIA) for the overarching Corporate Enforcement Strategy.

9. Complaints against our Service

If you are dissatisfied with the service you receive please let us know. We are committed to providing quality services and your suggestions and criticisms about any aspect of our service will help us to improve. We will deal with all complaints in the strictest confidence. Wherever possible we will attempt to resolve your complaint informally.

Initially you should make representations through the case officer to try to resolve your concern. If you are unable to resolve this matter with the case officer you should contact the Private Sector Housing Manager.

If you are still dissatisfied, the Council has in place a Corporate Complaints procedure.

If you are still unhappy you can discuss your complaint with your local ward Councilor, MP or can complain to the Local Government Ombudsman.

How to Contact us

In the first instance please use the telephone number given on any correspondence we send and speak to the case officer dealing with the matter or contact;

Robin Kennedy, Private Sector Housing Manager,
Dover District Council,
White Cliffs Business Park,
Dover CT16 3PJ
Tel: 01304 872221 or E-mail robin.kennedy@dover.gov.uk

Our complaints officer can be contacted

Professional Standards Officer
Dover District Council
White Cliffs Business Park
Dover CT16 3PJ

Tel: 01304 872322 or email: complain@dover.gov.uk

Appendices

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Appendices 2
Appendices 3

Service Standards
Priority system for empty homes
Charging Policies

Appendix 1

SERVICE STANDARDS

Response to communication

This is to be determined by Council- wide standards.

Enforcement/request for service

1. All requests for service to be acknowledged within 7 working days by letter, telephone or e-mail.
2. Where a request for service is deemed very urgent with an imminent risk to health or injury, a visit to the premises should be made within 24 hours. If upon inspection it is confirmed there are hazards giving rise to a serious imminent risk to health the landlord or owner are to be informed as soon as practical and formal action taken within 4 days.
3. For all other requests for service, the complainant may be required to complete a questionnaire giving details of their problems and their landlord. If the questionnaire is not returned within 14 days a reminder letter will be sent. If following a further 14 days we have still not received a reply the case will normally be closed by the Private Sector Housing Manager. Wherever possible the complainant will be telephoned before the case is cancelled.
4. If a questionnaire is not required, or has been returned, the complainant will be contacted to make an inspection of the property within 10 working days.
5. Following an inspection of the property and in all cases not mentioned in section 2 above the council will write to the complainant within 10 working days informing them of the action the council are taking in the matter. The exception to this is where no action is required and the tenant will be given advice at the time of inspection.
6. Where an officer determines that works may be required, the council will write to the landlord and tenant within 10 working days of the inspection requesting a formal inspection¹ of the property with the landlord. This inspection will normally be arranged within 10 working days.
7. A letter will be sent within 10 working days of the formal inspection to the landlord that identifies the hazards, works required and timescales to complete them. A copy will be sent to the tenant any other interested parties.
8. Where works or action is required by the council the matter will normally be reviewed by a re-visit or in some cases by contacting the complainant within the following time periods.
 - For all properties having a category 1 hazard the reviews will take place every 6 weeks.
 - For all properties having no category 1 hazard the reviews will take place every 8 weeks.

¹ This formal inspection is required by the Housing Act 2004.

Where no adequate progress has been made, the owner shall receive written confirmation of the results within 10 days of the review. The tenant will be informed either in writing or verbally.

9. If there appears to be no satisfactory progress then legal action may be taken. This will usually be by the service of a statutory notice but this will depend upon all legal formalities such as ownership of the property being satisfied. The time scale allowed before progress is deemed unsatisfactory cannot be prescriptive but the following guidelines should be followed.
 - In the case of properties having category 1 hazards a formal notice would normally be served within 14 weeks of the formal inspection.
 - In the case of properties having high scoring category 2 hazards, a formal notice would normally be served within 22 weeks of the formal inspection.
10. Where a formal notice has been served, reviews will take place within 5 working days of any start date and completion date contained in the notice. The results of any review will normally be informed to the landlord in writing within 5 working days.
11. Where the notice has not been complied with then a prosecution and/or works in default will be considered. If action is deemed to be necessary this would normally be instigated within 6 weeks of the contravention. Any such action is subject to legal considerations, being proportional and in the public interest so timescales cannot be prescriptive.

Appendix 2

Empty Homes Priority System for Action

A priority list of known empty residential properties will be calculated, that reflects the length of time the property has been empty and the impact the property is having on the local environment & community.

The Council will tackle vacant residential property in priority order. The properties with the highest score will be dealt with first.

Vacant properties will be surveyed regularly to enable their points to be adjusted to take into account changes in circumstances.

Properties subject to new complaints will be surveyed within 14 working days. The points will be calculated in accordance with the table below to establish their priority. The points are accumulative. For example a property empty for eight years will be awarded 30 points for being empty for that length of time.

<u>Property Description</u>	<u>Points</u>
Vacant for over 2 Years.	15
Vacant for over 5 Years. An additional	15
Vacant for over 10 Years. An additional	15
Vacant for over 15 Years. An additional	15
Causing serious damage to adjoining property	15
Falling into serious disrepair	15
Property in a high profile area. (Regeneration areas, town centres, major roads and conservation areas)	10
Becoming an eyesore to the area	10
Attracting rubbish & fly tipping	10
Receiving complaints regarding the property	10
Attracting vandalism and anti-social behaviour	10
No real attempt to sell or re-let after 2 years	5
No sign of refurbishment after 2 years	5

Low Scoring Properties – up to 40 pts

This score could reflect an empty property that the owner is in the process of renovation, alterations or sale. Or there is a probate or other legal issues. These properties are not causing a nuisance and are secure and in a good state of repair. Properties that fall into this category will only require minimal monitoring to ensure they do not deteriorate or remain empty long term.

Medium Scoring Properties – 41 to 65 pts

This score reflects empty properties that are falling in to a state of neglect. Attempts to sell or re-let the property have been unsuccessful or not pursued. The owner has not maintained the appearance of the property. They are now beginning to become an eyesore, cause a nuisance, attracting rubbish, or anti-social behaviour and action is needed to prevent them from falling into serious disrepair. The Empty Property Officer, who will attempt to negotiate with the owner to try and prevent further deterioration in their condition and bring them back into use and occupation, will closely monitor these properties. Planning and Public Protection enforcement powers will also be used at this stage, if necessary.

High Scoring Properties – over 65 pts

These properties will normally have been empty for many years, are causing a nuisance to the local community and are eyesores and probably in a prominent position. They are at risk of attracting vandalism, arson, fly tipping and are in a state of disrepair and/or derelict.

Priority and Urgent Properties.

These will be properties that in urgent need of attention by the Council. These will be properties that are, insecure, unsafe and dangerous and will be secured and made safe as soon as possible. Once secure the property will be rescored and dealt with in priority order.

Appendix 3

Charges for enforcement

Introduction

Under section 49 of the Housing Act 2004 charges can be made for work undertaken in respect of the Housing Act 2004 for the service of statutory notices and the licensing of Houses in Multiple Occupation. These charges can include the costs for officer time; specialist reports such as electrical or structural reports and legal costs.

The Council will only seek to recover costs that have been reasonably incurred in administering the service and cannot be used to make profit or used as a penalty. Where owners act responsible and co-operate then charges may be reduced to reflect this. Charges may also be reduced or waived in exceptional circumstances but this is at the discretion of the Private Sector Housing Manager and any request must be put in writing.

Charges for service of Statutory Notices under the Housing Act 2004

Notice Type	Officer time costs*	Specialist reports costs	Possible Reduction
Hazard Awareness	No cost	Charge normally made for all costs	None
Improvement, Prohibition,	£300 charge for simple notice; £450 for standard notice; £600 for more complicated notice	Charge made for all costs	£150 reduction in charge if notice complied with within timescales contained in Notice
Suspended Notices	Same charges apply as for Improvement and Prohibition Notices above. Plus annual charge of £50 for annual review.	Charge made for all costs	£150 reduction in charge if works completed within 12 months of notice.
Emergency Remedial Action	£400 charge	Charge made for all costs	None
Demolition order	£600	Charge made for all costs	None

* A simple notice would typically be a notice on a one bed flat or a single hazard; a standard notice would typically be a two or three bed house or a number of hazards; a complicated notice would typically be a House in Multiple Occupation, a property with more than three bedrooms or a property with more than six hazards.

Charges for Licensing of Houses in Multiple Occupation under the Housing Act 2004

	Current Fee	Proposed fee
Initial application fee to licence an HMO.	£650 for up to 10 habitable rooms plus £36 for each habitable room above 10	No change
Fee for Licence renewal	£420 for up to 10 habitable rooms plus £25 for each habitable room above 10	No change
Fee for Amendments to Licence	£100	£300