



# **GAINING ACCESS TO RESIDENTS HOME POLICY**

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## **1.0 Introduction**

1.1 This Policy outlines Arun District Council's (ADC) approach to obtaining access to residents' homes (including gardens and other outside areas) in order to fulfill statutory and legal obligations as a social housing landlord. This Policy does not relate to obtaining access to properties as part of the repossession process, nor where ADC consider a property has been abandoned.

1.2 The Policy covers:

- a) When ADC needs to access a home
- b) Resident Responsibilities
- c) What the ADC process is when the resident does not allow access

## **2.0 When ADC need to access residents' homes**

2.1 ADC may need access to homes for lots of reasons, including:

- a) To inspect the condition of the property
- b) To carry out servicing or a repair
- c) To investigate a possible breach of tenancy.

2.2 This policy will be used to gain access in the following circumstances:

- a) Gas Safety Checks
- b) Fire Safety surveys and works
- c) Electrical Testing and works
- d) Asbestos surveys and works
- e) Surveys or works to control the risk of legionella
- f) Servicing and maintenance of personal lifts, including stairlifts
- g) Repairs to properties, especially where failure to carry out repair would place residents at risk and/or cause damage to property
- h) Any surveys required to identify condition of the property
- i) Any other reason we deem as reasonable to need access to the property for

2.3 If ADC needs to access a home, it will make all reasonable attempts to contact the resident first, including contacting their family and other people they know or who

may or may not live with them. However, there may be urgent situations where ADC is unable to let the resident know in advance such as a water leak which is damaging an adjoining property. All attempts to gain access will be consistent with landlord and tenant obligations set out in ADC's tenancy agreement.

### **3.0 Residents Responsibilities**

- 3.1 Individual tenancy agreements will detail rights and responsibilities in relation to residents providing access to their home.
- 3.2 Residents must allow ADC employees, or contractors employed by ADC, into their home when requested or if the resident requests a repair or inspection. ADC staff or contractors will always show identification when visiting a resident's home.
- 3.3 Its important residents make ADC aware:
  - a) If their contact details change, i.e. telephone numbers, e-mail addresses or any changes in contact details for next of kin
  - b) If they have support or communication needs
  - c) The details of someone else who can give the council access if the resident is not able to when ADC needs to enter a home

### **4.0 What ADC we will do if access is not provided**

- 4.1 Most residents allow access to their homes when required. Any resident who does not allow access, may be in breach of their tenancy, and ADC may take legal action to gain access
- 4.2 If a resident repeatedly refuses access after reasonable requests, ADC:
  - a) Can ask the court for an injunction to allow access into the resident's home and ask the court to require the resident to pay the council's legal fees.
  - b) ADC may also ask the court to grant an injunction to last the life of the tenancy to allow ongoing access for a specific reason e.g. gas safety.
  - c) In very serious cases, where the council has been granted an injunction and the resident still does not allow access, the council can ask the court to fine or imprison the resident.
- 4.4 If the resident continues to refuse reasonable access, ADC will apply to the court for possession of the home. ADC will take this decision if:
  - a) The resident has not responded to attempts to contact them, or
  - b) The resident does not allow access after the Court has granted an injunction, or

c) The resident routinely fails to give access.

## **5.0 When ADC will enter the home without resident's permission**

5.1 ADC will only enter a resident's home without their permission in exceptional circumstances, where:

- a) ADC has identified a serious health and safety risk to the occupants and others
- b) There is likely to be serious, permanent or significant damage to the building if immediate action is not taken
- c) There is an immediate concern for the wellbeing of someone in the property
- d) The tenant has breached an injunction, and the terms allow the council to gain entry
- e) And where condition 5.4 below has been met

5.2 An example of exceptional circumstances is a serious or substantial water leak and the resident is not contactable and there isn't anybody else who can allow access.

5.3 If there's any possibility an occupant could be seriously ill or has died, ADC will contact the emergency services and ask them to enter the property.

5.4 ADC will only enter without permission as a last resort. The decision must be authorised by Group Head of Residential Services or Director of Services and Legal Services.

5.5 If an emergency arises out of hours, the Duty Emergency Coordinator will decide whether the council or its contractors should enter the property

## **6.0 The Equality Act 2010 and the Human Rights Act 1988**

### **6.1 Equality Act**

- a) The Equality Act 2010 identifies those characteristics in respect of which it is unlawful to discriminate (protected characteristics). These are; age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation. The Act protects a person from discrimination if they are associated with someone who has a protected characteristic e.g. a family member.

### **6.2 Disability**

- a) The Council will have regard to those who have a disability. This is called the Public Sector Equality Duty. In relation to disability, the duty may mean treating disabled people more favourably than other tenants, having due regard to the need to remove

or minimise disadvantage suffered by protected groups, taking steps to meet their needs, where different, and encouraging participation in public life where participation is disproportionately low, i.e. tenant representative groups. The Courts have held that the disability equality duty applies to decisions about individuals, including decisions about evictions.

### **6.3 Human Rights**

- a) The Convention Rights have a role to play in the context of social housing. The rights protected under the Human Rights Act 1998 are incorporated into the law of England and Wales. The Council is required to treat people in accordance with the Convention Rights unless required by Act of Westminster to do something that is incompatible with the Convention Rights. Interference with a person's human rights must be proportionate to those rights, this means balancing the rights of the individual with the duties and responsibilities of the Council as a landlord. The Council is responsible for showing that the actions it takes are necessary and therefore proportionate. Thus, the principles are directly relevant to the day to day decision making of officers.
- b) The Equality and Human Rights Commission states that there are rights contained in Articles 6, 8 and 14 that are most likely to be relevant to social housing.
- c) Article 6 - Right to a fair trial
- d) Article 8 - Right to respect for private life, family life and the home.
- e) Article 14 - Prohibition of discrimination
- f) These rights do not necessarily prevent the Council from managing its housing stock and acting to end or manage tenancies, but the Council must act in accordance with the law and in a way that is in pursuit of a legitimate aim and both necessary and proportionate. This is a balancing exercise between the human rights of a tenant or occupier and the rights of others. The convention does not prohibit the Council from taking sensible and proportionate measures to encourage or enforce payment or other compliance.

### **7.0 Review**

- a) This Policy will undergo review when there is a requirement to address legislative, regulatory, best practice or operational issues.