

Taking Legal Action Policy



1. Purpose and scope

- 1.1 Clarion Housing is committed to helping residents comply with the terms and conditions of their tenancy agreement or lease. However, at times, where residents fail to engage with us or to rectify a breach, we have to take legal action to enforce the tenancy agreement or lease terms and conditions, or to end a tenancy or lease.
- 1.2 Any breach of tenancy or lease will be managed and enforced in accordance with the relevant Clarion policy and procedure. This policy sets out when Clarion will take legal action to enforce the tenancy agreement or lease terms and conditions.
- 1.3 This policy applies to residents of all tenures living in a home owned or managed by Clarion, including leasehold and shared ownership properties. It can also apply to non-residents.
- 1.4 Below is a list of some of the more common reasons why we may take legal action, although any breach of tenancy could result in legal action being taken:
 - tenancy fraud
 - damage to or neglect of Clarion property
 - unacceptable behaviour towards Clarion staff or representatives either in person or over the phone, including abusive language used on an ongoing basis in correspondence or threats (either ongoing or one-off based on their severity)
 - failure to provide access for property maintenance
 - failed probationary period/starter tenancy
 - to repossess an abandoned property
 - removal of unauthorised occupiers following the death of a resident
 - if the resident has left the property leaving persons in occupation
 - where a resident refuses to move out of a property where we require to decant them or them to move out of the decant property
 - unapproved/unauthorised improvements or alterations to the property.

This list is not exhaustive.

N.B. This policy does not cover legal action for rent arrears, anti-social behaviour (ASB) or non-access for gas servicing - these are covered under separate policies.

- 1.5 Where necessary we will take legal action under the terms and conditions of the tenancy agreement, licence agreement or lease and/or other relevant legislation available to us.

2. Policy Statement

- 2.1 Clarion will work with its residents to ensure that the tenancy agreement and lease terms and conditions are adhered to.

- 2.2 During the duration of the tenancy or lease, we will fulfil our responsibilities as the landlord.
- 2.3 Where we are aware of a potential breach of a tenancy or lease by the resident, we will undertake initial enquiries to try to resolve the issue with the resident. We will give the resident an opportunity to put things right and where necessary offer advice or refer them for additional support (if they are unable to maintain the tenancy or lease without such additional support).
- 2.4 We will take appropriate action where breaches cause nuisance or create an unacceptable risk to the safety and wellbeing of others or cause damage or unacceptable risk to Clarion property, for example leaving items in communal areas.
- 2.5 Where we have had to take action, or enforce tenancy clauses, we may seek to recover our costs from the resident including any clearance, removal and/or legal costs.
- 2.6 Once it has been decided to take legal action, where it is reasonable to do so, we may suspend or reject applications from residents to transfer to another Clarion home and refuse other requests such as to mutually exchange, permission to alter a property, keep a pet or any other activity that requires our permission under the terms of the tenancy agreement or lease.

3. Legal options and outcomes

Depending on the nature of the breach, there may be various legal options that we pursue. We will aim to select the most appropriate action given the circumstances of any particular case.

The following are some of the remedies available to us:

3.1 Injunction Orders

Injunction Orders are civil orders made by a judge in the County Court. An injunction compels an individual to do something or to stop doing something.

An application for an injunction is usually the first step taken to enforce a breach of tenancy agreement or lease and has the advantage of working effectively in many cases meaning possession proceedings are not required.

Injunctions are decided by the court on the civil standard of proof, i.e. the balance of probabilities. The better the evidence presented to the court, the more likely an order will be granted but injunctions can be secured on a single witness statement, and – depending on the circumstances – on hearsay evidence alone and generally can be obtained more quickly than an eviction.

Where we wish to apply for an injunction it is extremely important that we are satisfied there has been a breach of tenancy or lease, and we have sufficient evidence to prove the breach before applying. An injunction is a discretionary remedy so the court must be satisfied that it is reasonable to order an injunction. An injunction cannot be brought against a person who does not have capacity to understand the nature of the injunction.

A breach of a civil injunction is classed as contempt of court and can be punishable by imprisonment if committal proceedings are subsequently brought.

3.2 Undertakings

In some cases, we may accept an undertaking as an alternative to an injunction order.

This is a formal promise given to the court. Like an injunction, a breach of an undertaking is a contempt of court and can result in committal to prison. It should be noted that:

- as the **evidence in support of the injunction** application is not tested before the court there are no findings of fact which could be used in further proceedings
- the **evidence used to prove a breach of undertaking** can be used in future proceedings.

3.3 Possession orders

Tenancy agreements

In cases where we have exhausted all avenues and/or an injunction is not appropriate, for tenanted properties we will seek possession of the property.

There are two types of possession orders that can be granted by the court: an outright order (OPO) or a suspended possession order (SPO). If the court grants an outright order the resident must leave the property by the date given in the order. If the court grants a suspended order, the resident will remain in occupation but must comply with the terms set out in the order. The type of order granted will depend on the nature of the breach.

If a resident fails to comply with a suspended order, we can apply to court for permission to execute the warrant, setting out the reasons why the suspended possession order has not been complied with.

Shared ownership leases

Seeking possession of a shared ownership lease (provided the leaseholder has not staircased to 100%) is similar to seeking possession of an assured tenancy and we can seek a possession order from the court as above. It is important to check the terms of the lease and whether the property is subject to a mortgage – if so, the mortgagee may need to be notified before any action is taken.

Leasehold properties

If there has been a breach of a lease, the lease terms will need to be carefully checked to decide how possession should be sought. The usual way to seek possession of a lease is to forfeit the lease. In order to get to the position where we can serve a forfeiture notice we must first seek a declaration from the First-tier Tribunal (Property Chamber) that there has been a breach of the lease. We understand the importance if we are seeking to forfeit a lease or remaining compliant at all times with our obligations as set out in the lease agreement and that any breach by Clarion may result in a breach against the leaseholder being waived. Legal advice will always be sought when we are considering forfeiture.

3.4 Adjournment

An adjournment means the case cannot be decided yet and the court hearing is postponed. An adjournment may be indefinite or for a fixed period of time.

3.5 Dismissal or strike out

The judge may decide to dismiss the case. The reasons for this can include:

- Clarion Housing not following its own policy or procedure

- evidence the issue has been resolved
- evidence showing there is no case to hear.

4. Key relevant legislation

- 4.1 [The Housing Act 1988 as amended by the Housing Act 1996](#) – sets out the grounds for possession of an assured tenancy under Schedule 2.
- 4.2 [The Housing Act 1985](#) – sets out grounds for possession of a secure tenancy under Schedule 2.
- 4.3 The grounds for possession are appended to the Taking Legal Action procedure.

5. Right of appeal in possession claims

- 5.1 For any cases where possession is sought using a mandatory ground, the Pre-action Protocol for Possession Claims by Social Landlords provides that we should write to the resident to advise why we intend to seek possession and give the resident opportunity to notify us in writing of any personal circumstances or other matters which they wish to have taken into account. They can do this by sending their reasons in writing within 10 working days of being informed of the decision.
- 5.2 Any appeals received after this time will not normally be considered other than in very exceptional or extenuating circumstances.
- 5.3 A manager who has not been involved with the case will review the case and consider any representations received and reply to the resident within 15 working days from when the appeal is received. They will review the circumstances and ensure Clarion's policies and procedures have been complied with. They will also ensure that there is sufficient evidence to support the claim and that the proposed course of action is reasonable in all the circumstances. If we decide to proceed with legal action, we should give brief written reasons to the resident for doing so.
- 5.4 If the appeal is upheld, the tenant will be advised of the outcome, and what is required to comply with the terms and conditions of their tenancy.

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