



INNISFREE HOUSING ASSOCIATION

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Unauthorised Occupation Policy

UNAUTHORISED OCCUPATION POLICY

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UNAUTHORISED OCCUPATION POLICY

1. INTRODUCTION

- 1.1. Innisfree Housing Association (Innisfree) is committed to ensuring that its homes are occupied only by those who are legally entitled to live in them.
- 1.2. Unauthorised occupation undermines the fair allocation of social housing, reduces the availability of homes for those in need, and may expose Innisfree to financial, legal, and reputational risk.
- 1.3. This policy sets out how Innisfree will identify, investigate, and respond to unauthorised occupation across its housing stock, ensuring that all action taken is lawful, proportionate, and consistent.
- 1.4. This policy should be read alongside:
 - Tenancy Agreement or Licence Agreement
 - Tenancy Fraud Policy
 - Abandonment Policy
 - Allocations Policy
- 1.5. This policy applies to all Innisfree housing stock.

2. OUR APPROACH

- 2.1 Innisfree will take a lawful, proportionate, and evidence-based approach to managing unauthorised occupation.
- 2.2 We recognise that not all cases of unauthorised occupation involve deliberate wrongdoing, and each case will be assessed on its individual circumstances.
- 2.3 The aims of this policy are to:
 - Ensure homes are occupied by those with a legal right to live in them

- Act promptly to recover possession where occupation is unauthorised
- Prevent loss of housing stock and misuse of public resources
- Protect the rights of lawful tenants and residents
- Safeguard vulnerable individuals
- Ensure decisions are fair, transparent, and consistent

2.4 Innisfree will not take action that could result in unlawful eviction. Where necessary, legal advice will be sought before action is taken, consistent with our approach in abandonment cases.

3. REGULATORY AND LEGISLATIVE COMPLIANCE

3.1. Innisfree will comply with all relevant legislation and guidance, including:

- Protection from Eviction Act 1977
- Criminal Law Act 1977 (in relation to eviction of squatters)
- Housing Act 1985
- Housing Act 1988
- Human Rights Act 1998
- Equality Act 2010
- Prevention of Social Housing Fraud Act 2013
- Data Protection Act 2018
- Social Housing (Regulation) Act 2023

3.2. The Prevention of Social Housing Fraud Act 2013 makes unlawful subletting a criminal offence, reinforcing Innisfree's zero-tolerance stance to misuse of social housing.

4. WHAT IS UNAUTHORISED OCCUPATION?

- 4.1. Unauthorised occupation occurs where a person occupies an Innisfree property without a legal right to do so.
- 4.2. A person is considered an unauthorised occupier where they:
- Are not a named tenant or licence holder; and
 - Have no legal right of occupation through succession, assignment, or other lawful mechanism
- 4.3. Unauthorised occupation may arise in a range of circumstances and does not in itself imply criminal intent.
- 4.4. Innisfree recognises that unauthorised occupation may include (but is not limited to):

4.4.1 Subletting and unlawful occupation

- A tenant has sublet all or part of their home without permission
- A subtenant remains in occupation after the tenant has left

4.4.2 Post-tenancy occupation

- Occupation following a possession order where the occupier has failed to leave
- Occupation after a tenancy has ended

4.4.3 Failed succession or assignment

- An individual remains in the property after a succession application has been refused
- An occupier remains following an unsuccessful assignment request or request for mutual exchange

4.4.4 Abandonment-related occupation

- A third party moves into a property that has been abandoned

4.4.5 Squatting

- Occupation of a vacant or void property without permission

4.5 These categories align with risks identified within tenancy fraud and allocations processes, where eligibility and lawful occupation must be maintained.

5 PREVENTION AND DETECTION

5.1 Innisfree will take proactive steps to reduce the risk of unauthorised occupation, including:

- Verifying identity and household composition at sign-up and key tenancy events
- Conducting Home and Wellbeing Visits to confirm occupancy
- Monitoring tenancy changes such as succession, assignment, mutual exchanges, and transfers
- Investigating reports from residents, staff, and external agencies

5.2 Information gathered through audit, monitoring, and partnership working plays a key role in identifying occupation risks.

6 INVESTIGATION AND DECISION-MAKING

6.1 Where unauthorised occupation is suspected, Innisfree will carry out proportionate enquiries to establish:

- Who is currently occupying the property
- Whether they have a legal right to occupy
- Whether any application or legal right is pending

6.2 We will:

- Attempt to contact the lawful tenant where applicable
- Interview occupiers and request evidence of residence

- Review tenancy records and relevant applications
- Consider any vulnerabilities or safeguarding concerns

6.3 Each case will be assessed on its individual circumstances, and no single piece of evidence will be relied upon in isolation, consistent with our abandonment policy.

7 LEGAL ACTION AND ENFORCEMENT

7.1 Where unauthorised occupation is confirmed, Innisfree will take appropriate action to recover possession.

7.2 This may include:

- Requesting occupiers to leave voluntarily
- Serving appropriate legal notices
- Applying to the court for possession
- Taking enforcement action following a possession order

7.3 In cases of unlawful subletting, Innisfree may:

- Seek possession
- Recover profits obtained through subletting
- Work with local authorities or prosecuting bodies

7.4 Innisfree will ensure that all enforcement action complies with legal requirements and protects against unlawful eviction.

8 USE AND OCCUPATION (MESNE PROFITS)

8.1 Where an individual remains in occupation of a property without a legal right to do so, Innisfree may charge a use and occupation fee (also known as mesne profits).

- 8.2 A use and occupation charge is not rent and does not create or imply a tenancy or licence. It represents a charge for the continued use of the property whilst it is occupied without legal entitlement.
- 8.3 Innisfree may apply use and occupation charges in circumstances including (but not limited to):
- Occupation following expiry or termination of a tenancy or licence
 - Occupation following a possession order where the occupier has not vacated
 - Failed succession or assignment where the occupier remains in the property
 - Unlawful subletting where a subtenant remains in occupation
- 8.4 The use and occupation charge will normally be set at a level equivalent to the former rent of the property, as determined by Innisfree.
- 8.5 Innisfree will clearly communicate to the occupier:
- That they have no legal right to remain in the property
 - That payments made are use and occupation charges only
 - That accepting payments does not create a tenancy
- 8.6 Innisfree reserves the right to:
- Recover use and occupation charges as a debt
 - Offset charges against any monies owed to or by the former tenant, where appropriate
 - Pursue recovery through the courts where necessary
- 8.7 The application of use and occupation charges will not prevent or delay action to recover possession of the property.

9 SAFEGUARDING AND VULNERABILITY

- 9.1 Innisfree recognises that some unauthorised occupiers may be vulnerable or at risk.

9.2 Where vulnerability is identified, we will:

- Consider safeguarding responsibilities
- Make referrals to appropriate agencies
- Allow reasonable time for advice and support to be accessed
- Consider reasonable adjustments in line with the Equality Act 2010

9.3 Safeguarding considerations will inform how cases are managed but will not prevent action where occupation is unlawful.

10 COMPLAINTS AND COMMENTS

10.1 Individuals who are affected by decisions made under this policy may make a complaint through Innisfree's Complaints Policy, at Stage 1.

11 DATA SHARING

11.1 All information will be stored in our Housing Management systems. All case notes, case files, and personal information will be kept confidential in line with the Data Protection Act 2018. We will adhere to the Data Protection Act and comply with General Data Protection Regulation for Sharing Personal Information to ensure that we maintain confidentiality of all parties.

11.2 We will share information with third parties where we have an information sharing protocol in place, if there are safeguarding concerns, or we have a duty to do so for the purpose of crime prevention under the provisions of the Crime and Disorder Act 1998, and the provisions of the Data Protection Act 2018 (and any other relevant legislation) justify it.

12 EQUALITY, DIVERSITY, AND INCLUSION

- 12.1 We are committed to embedding the Equality Act 2010 into our Policies and Procedures. As part of this commitment, staff should facilitate reasonable adjustments and adapt our standard policies and procedures wherever possible, to ensure every individual can access our services.

13 REVIEWING THIS POLICY

- 13.1 The policy will be reviewed every 3 years, or with any changes to regulation or legislation.



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