

Rent repayment orders Workshop for local authorities

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Introductions

42 Bedford Row Housing Group

Seminars and workshops

Questions and answers



What are rent repayment orders?

- Orders made by First-tier Tribunal (Property Chamber) requiring a landlord to pay the local authority an amount paid as universal credit (including housing benefit) in *respect of rent* when a specified housing offence has been committed by a landlord. When made they are enforceable as a debt.



Are the rules the same as before?

- No.
- The 2016 Act has introduced a new regime
- The approach to quantum is very different

Why should local authorities consider asking for rent repayment orders?

- If a local authority becomes aware a person has been convicted of a specified housing offence within its area it is under a duty to consider applying for a rent repayment order – section 48 of the Housing and Planning Act 2016 (likely to be a rare)
- To recover the costs and expenses incurred in private rented sector enforcement functions under the Housing Act 2004 or the 2016 Act.
- To comply with its policy about prosecution and applying for RRO's;

Can my authority ask for an RRO in addition to prosecuting the landlord?

- Yes for housing offences committed by landlord in the area:

What does my authority's policy require?

- Many local authorities require that an RRO is considered in addition to
- a financial penalty under s249A of the Housing Act 2004; and
- A criminal prosecution

Which do you think will be easier for your authority? The Magistrates Court or the First-tier tribunal ("the FTT")?

Can my authority apply for an RRO and a civil penalty for the same offence?

- Yesbut only for these offences -
 - Failure to comply with an Improvement Notice (section 30)
 - Licensing offences for HMO's (section 72(1) HA 2004);
 - Licensing offences for part 3 houses under section 95 of HA 2004

What about time limits?

- An RRO can be applied for against a landlord who has committed one of the specified offences “in the period of 12 months ending on the day on which the application is made”: s 41(2)(b) of 2016 Act; and
- (arguably) within 12 months beginning with the date on which the landlord committed the specified offence – this is the effect of the requirement to give notice of intended prosecution before applying for an RRO under s 42 of 2016 Act;

Factors to consider before applying for an RRO

- LHA's policy often combined with Financial Penalty policy;
- Guidance for Local Housing Authorities on RRO's published by MHLG;
- the Crown Prosecution Service Code – whether sufficient evidence to secure a conviction viz (i) the evidential stage and (ii) the public interest stage.
- Landlord's representations responding to Notice of Intended Prosecution under s 42 of the 2016 Act;

Offences which enable an RRO to be made

- Control/Management of HMO without licence – section 72 HA 2004;
- Control/management of an unlicensed “house” – section 95 HA 2004
- Failure to comply with improvement notice or prohibition order - sections 30(1) or 32(1) of HA 2004
- Eviction or harassment of occupiers contrary to sections 1(2), 1(3) or 1(3A) of the Protection from Eviction Act 1977
- Breach of banning order- section 21 HA 2004

Burden, standard of proof and tactics

- The LHA must prove commission of offence beyond reasonable doubt at FTT where there has not been a conviction
- “Strict” liability offences easier to prove than those offences which require proof of intent or knowledge (e.g. Control/Management of HMO without a licence – section 72 HA 2004). These do not require proof of knowledge: *R. (Mohamed) v WFBC* [2020] EWHC 1083.
- Be prepared for the “reasonable excuse” defences
- Evidence about quantum (e.g. conduct, finances) is balance of probabilities (“more likely than not”)

What evidence does the LHA need?

- Ideally at least 2 officers with knowledge of elements of offence who can “attend” virtually the hearing for cross examination with witness statements complying with section 9 of the Criminal Justice Act 1967
- Evidence of interview or admissions; Photographs and legible copies of all designations (if applicable).
- Evidence of amounts paid by universal credit; Evidence of previous conduct of landlord if relevant e.g conviction for any housing offence
- Consider whether evidence about non-parties falls within exceptions to Data Protection Act 1998/GDPR

Who is the landlord?

- Until recently it was clear that an RRO could be made against any landlord (including a superior landlord): see *Goldsbrough v CA Property Management Limited* [2019] UKUT 311 (LC) .
- This was challenged in *Rakusen v Jepson* [2020] UKUT 0298 which reached the same conclusion as *Goldsbrough*. *Rakusen* is now the subject of appeal.

Is there a discretion to refuse to make an order?

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- The FTT has residual discretion to refuse to make an RRO – decided under the old statutory regime: see *Harris v LB Newham* [2017] UKUT 0264 (LC)
 - It is now accepted the discretion will normally be exercised in favour of making an order

How much?



Amount of an RRO – where there is conviction or a civil financial penalty has been made against the landlord in respect of the offence

- The mandatory amount is the universal credit (rent) for the ~~maximum 12 months~~ ending with the date of the offence or in a 12 month period during which the landlord was committing the offence
- Unless by reason of “exceptional circumstances” there is an amount which the FTT considers it would be unreasonable to require the landlord to pay: s 46(5) of the 2016 Act.
- Referral of tenants from the local authority would not be exceptional circumstances - extremely high running costs might be: *Ball v Sefton MBC* [2021] UKUT 42

Amount of an RRO – where no conviction

- There is 12 month maximum period of universal credit received by the landlord directly or indirectly for rent.
- The FtT takes into account all the facts in particular conduct and financial circumstances of landlord and whether the landlord has a conviction for a specified housing offence: see s 45(4) of the 2016 Act.
- Maintenance costs will not ordinarily be deducted from sums repayable: see *Vadamalayan v Stewart* [2020] UKUT 183.

Amount of an RRO – where no conviction (cont.)

- Arrears prior to the relevant period will be deducted: see *Awad v Hooley* (2021) UKUT 55.
- Where there is are multiple offences you only get one RRO: see *Ficcara & Ors v James* (2021) UKUT 0038 (LC).

Determining the amount of Universal Credit paid towards rent:

- Work with the relevant tenants to obtain this information.
- Use the set formula.



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Costs of RRO application

- LHA can apply for application and hearing fee to be reimbursed.
- No costs usually awarded by FTT unless conduct unreasonable under rule 13 of the FTT Procedure Rules.

Questions ?

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