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Rent Repayment Orders
A Guide for Local Housing Authorities

INVESTOR IN PEOPLE

PART 1: INTRODUCTION

1.1 What is a Rent Repayment Order?

Rent Repayment Orders (RROs) are a powerful enforcement tool for tackling unlicensed HMOs. The Residential Property Tribunal (RPT) has the power to make a RRO requiring the landlord of an unlicensed HMO to repay up to twelve months rent to the tenants or to the Local Housing Authority (LHA) where housing benefit has been paid.

The LHA applies to the RPT for a RRO to reclaim housing benefit and the tenants are responsible for applying for a RRO to reclaim rent paid from their own income. Tenants can only apply after either a RRO has been made to reclaim housing benefit or a successful prosecution has been obtained for operating an unlicensed HMO.

RROs should be considered for all unlicensed HMOs where housing benefit has been paid. In such cases the LHA will need to prove that the HMO should have been licensed throughout the period for which the money is being claimed. They will also need to prove how much housing benefit was paid during that period and that the landlord received those payments. It will be important to work closely with the housing benefits teams throughout the process of obtaining a RRO.

An application for an RRO needs to be made as soon as possible because the amount of rent that can be reclaimed will reduce as time progresses, in the majority of cases (see 2.1).

The LHA should always advise tenants to apply for a RRO straight after a landlord has been found guilty of operating an unlicensed HMO, or if a RRO has been made to reclaim housing benefits (unless all the rent is paid by housing benefits). The role of the LHA in tenant applications for RRO is not onerous. They will need to inform the tenants of their right to apply for a RRO and how to do so. See Annex 1 for a model letter and also LACORS Publication: RROs a Tenant's Guide.

Time is of the essence in most tenant applications as the amount of rent that can be reclaimed will reduce with time. Tenants would benefit from a LHA seeking an RRO for housing benefit in preference to, or at the same time as taking a prosecution for not licensing an HMO, as the RRO is likely to be determined more speedily.

If a landlord has voluntarily made a late application for an HMO licence, you may decide that an RRO is not appropriate as it is better to encourage

landlords to come forward and make licence applications, see LACORS Guide to Identifying and Dealing with Unlicensed HMOs. http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=3190030&id=18727

RROs can be made on HMOs which should have been licensed under Housing Act 2004, Parts 2 (mandatory HMO and additional licensing) and Part 3 (selective licensing). The power to make a RRO is in section 73 of the Act for HMOs and section 96 for rented properties in a selective licensing scheme. Where section numbers are stated in this guide for HMO licences, they also include by implication the equivalent section for selective licences. The box below shows all legislation relevant to RROs.

Legislation for RROs
Housing Act 2004 http://www.opsi.gov.uk/acts/acts2004/ukpga_20040034_en_1
Section 73 Other consequences of operating unlicensed HMOs: rent repayment orders.
Section 74 Further provisions about rent repayment orders

Please note: Sections 73 and 74 apply to licensing of HMOs under the mandatory scheme and under additional licensing schemes. Sections 96 and 97 apply the same legislation to other residential accommodation requiring a licence under a Selective Licensing Scheme.

Statutory Instrument 572/2007
The Rent Repayment Orders (Supplementary Provisions) (England) Regulations 2007
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=30825A6&id=16227

Statutory Instrument 831/2006
The Residential Property Tribunal Procedure (England) Regulations 2006
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=30825A6&id=15284 .

1.2 Why should LACORS provide guidance on RROs?

Some LHAs may consider that the time involved in applying for a RRO, or encouraging tenants to apply, is not cost effective. It is hoped that if LACORS provide guidance and examples of documents that can be used in the process, then LHAs will see RROs as a useful additional enforcement tool for tackling unlicensed HMOs. This would assist in compliance with the Audit Commission Key Lines of Enquiry 9: Private Sector Housing, which includes "Has the council utilised the full range of powers available to it to tackle the issues within its private sector?"
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=1F27E8A&id=16035

This guide is intended to provide advice to LHAs on the process of obtaining a RRO where housing benefit is to be reclaimed and to enable LHAs to advise tenants of their right to apply for a RRO if they have paid the rent themselves. The benefits of obtaining a RRO are outlined along with the procedures, the evidence needed and the roles of the parties involved. The advice includes

examples of RPT decisions on RROs to date; there were 15 applications for RRO up to October 2009, seven were LHA applications.

1.3 What are the advantages of applying for a RRO?

The main advantage of a RRO is to provide an additional penalty for a landlord who has not licensed his or her HMO. Subsequent publicity is also likely to act as a strong deterrent and persuade other landlords of unlicensed HMOs to apply for licences. In addition, landlords who have voluntarily applied for a licence will be pleased to see action being taken by LHAs against a landlord who is not complying with the law, thus creating more of a level playing field. Tenants will benefit by reclaiming up to a year's rent paid on unlicensed HMOs and LHAs can claim for the cost of various enforcement actions, as well as reclaiming the housing benefits paid in rent for the unlicensed HMO. However the reclaimed housing benefits money does have to be repaid to the government.

The significance of the penalty of a RRO is outlined in the decision of the RPT in the application for a RRO by tenants, who were students of Warwick University, heard on 18th September 2007:

> "The Tribunal is mindful that rent repayment orders constitute an important enforcement tool in the context of the HMO licensing regime; and that landlords should not be permitted effectively to disregard the HMO licensing regime simply by paying a fine (in this case a total of £2,000) that is insignificant in comparison with their rental income from the relevant properties (in this case £42,400 over a ten-month period)."

LHA applications for RROs should be fairly straight forward where:

- the landlord has been encouraged to apply for an HMO licence, but no application has been made, and
- the landlord is the owner, not a managing agent
- where the housing benefit team are able to provide good records of all benefit payments, and
- five or more of the occupiers have received housing benefit for the period of up top twelve months.

Where tenants successfully apply for a RRO, they are set to gain a substantial amount of repaid rent from a landlord who is not complying with the law. Such cases only require the LHA to advise the tenants of their right to apply for a RRO, how to do so and provide documents, most of which will already be on their file. Further information on tenant applications in contained in Part 4 below.

PART 2: THE PROCESS FOR OBTAINING A RRO

2.1 When can a RRO be applied for?

An LHA can apply for a RRO when an HMO should have been licensed, but was not, and where housing benefit has been paid as rent during the last twelve months. A tenant can apply for a RRO if the LHA has already obtained a RRO for repayment of housing benefits, or a conviction against a landlord for operating an unlicensed HMO. For more information about prosecuting landlords for operating unlicensed HMOs, see LACORS Guide to Identifying and Dealing with Unlicensed HMOs.
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=4BFB899&id=18727

Section 73 (and 96) of the Act says an HMO is unlicensed if:

- it is required to be licensed under this part but is not so licensed,
- there is no temporary exemption notice in force, and
- no effective application for a licence has been made (see section 63)

An application for an RRO needs to be made as soon as possible because the amount of rent that can be reclaimed will reduce with time where:

- the tenants have subsequently moved out of the property,
- the landlord has sold the HMO,
- or an effective licence application has since been received by the LHA (this can occur after the RRO has been applied for).

LB Newham applied for their housing benefit RRO and initiated a prosecution for operating an unlicensed HMO under section 71 at the same time. The hearing in the magistrates' court was five months after the RRO was made by the RPT. So LACORS would encourage LHAs to apply for a housing benefit RRO as early as possible to enable tenants to reclaim the maximum amount of rent in their RRO application (assuming not all the rent for the HMO has been paid as housing benefit).

2.2 Who should the RRO be made on?

The legislation refers to a RRO being made on the "appropriate person"; this term is defined in Section 73(10) as the person who would be eligible to receive the rent or housing benefit payments for the HMO, "on his own account".

This matter was considered in an RPT decision of 20 April 2009 concerning an application for an RRO from LB Croydon relating to 292 Old Lodge Lane, Purley. http://www.rpts.gov.uk/Indexes/LON_HA_HIMOL_00AH_2009.htm. They said that the meaning of appropriate person is "the person who receives, or ought to receive, the rent for the HMO as a principal and not as an agent."

Where there is a managing agent, the "appropriate person" will not generally be the same person as the person responsible for licensing the HMO (ie. the

manager or person in control of the HMO). CLG advised Lacors in an email on 11 June 2009 that:

> "Whilst a managing agent can be prosecuted for not applying for a licence, an RRO cannot be made against him. This is because the "appropriate person" against whom an RRO can be made must be entitled to receive the rent "on his own account", which means the landlord or a former landlord, but can't include an agent who simply collects it for the landlord."

An RRO cannot be made on a managing agent who is passing on most of the rent to the owner. One reason for this is that an RRO can be a charge on the property and the owner of the property is affected by this, not the agent. In fact, the decision in the Croydon case confirmed that the appropriate person would be the registered owner, in most cases. LB Croydon was successful when it applied for a second RRO for the property, this time it was against the long leaseholder (see Annex 5).

So if you are considering applying for an RRO, the first thing to do is to check the Land Registry to find out whether the legal owner of the property is the person who you believe receives the rent. If they do, then the same person is responsible for licensing the HMO and will be the appropriate person for an RRO; so this matter is straight forward.

Where one of these parties is a company, you could check the entry at Companies House to see if the same individuals do actually own and manage the property. However you should note that the RPT panel in the above Croydon case did not accept that a tenancy agreement signed by the secretary of the company managing the property was sufficient evidence to show the agent and owner were the same people. They considered the people and the company to be different legal entities. So it is safer to apply for an RRO against the leaseholder, if you can.

If the owner is not associated with the managing agent the situation is more complex. The best way of finding out about the responsibilities of the agent and the owner would be by obtaining their contract, if there is one. You could consider using S235 to obtain a copy, see LACORS FAQ "When is it useful to require documents under Section 235?" http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=15994. You could also ask the tenants about the owner's involvement and you could look at any tenancy agreement.

When considering the relationship between the owner and the managing agent you also need to consider whether the owner conspired in the offence of not licensing the HMO. CLG also discusses this in relation to the Croydon case in the above email:

> "It was the managing agent that was convicted in this case. Had that conviction been secured against the landlord the tribunal would of course have had to award all of the HB back. In my opinion the Council should have (and probably still can) make an RRO against the landlord because

an offence of operating an HMO has been committed. However, it would not necessarily get all of the HB back since the landlord himself was not convicted. Of course the RPT would have some discretion in the matter, ie the extent to which the landlord conspired in the offence."

So where there is a managing agent you will need to find out what the owner's relationship is with the agent and to what extent did the owner conspire in the offence of not licensing the HMO.

2.3 Applying to the RPT

The application form for a RRO can be downloaded from the RPT website http://www.rpts.gov.uk/pubs_and_forms/forms.htm (it is called Housing Act Appeals and Applications)**.** See Annex 4 for wording used in LB Newham's application for an RRO for the grounds of their application and reasons for urgency.

There is no fee for a RRO application. LHAs and tenants pursuing a RRO should be encouraged to request an urgent decision, to maximise the amount of rent that can be reclaimed.

Information on RPT procedures can be found in the RPT guide Licensing of HMOs at http://www.rpts.gov.uk/pubs_and_forms/pdf/HMO_Booklet.pdf. The legal basis for RPT procedures is in Statutory Instrument 831/2006.

2.4 The hearing

Due to the complexity of RRO cases, LHAs are advised to request an oral hearing rather than have the case heard by way of a paper determination based on submission of written documents only.

For housing benefit RROs, the LHA will need to prove that the property is a licensable HMO and that it was licensable throughout the period during which the housing benefit is being reclaimed. In the case of tenant applications, this process may be more straightforward as evidence will be available to prove to the RPT that the landlord has already been prosecuted for operating an unlicensed HMO and/or that a housing benefit RRO has already been obtained by the LHA.

At the end of the hearing, if the landlord failed to comply with a direction of the RPT, eg. by not providing the documents requested, you can ask for reimbursement of the LHAs costs up to a maximum of £500 (Schedule 13 of the Act, Paragraph 12). LB Croydon obtained £500 in costs in addition to the RRO, this was awarded because the landlord failed to provide a statement and documents in support of their case, as directed by the RPT following receipt of the application.

2.5 Decisions on RRO applications

Details of RPT decisions for the 13 RRO applications up to October 2009 are in Annex 5.

2.6 Publicising the RRO

Where a RRO has been successfully obtained by a tenant or the LHA, the LHA should try to publicise it as widely as possible. This should have the effect of persuading other landlords to license their HMOs where they have not already done so. Following the making of the RRO in Warwick (see details of the case in the box in Part 4) other landlords were pleased to see that a landlord had been heavily penalised for not complying with the law. They saw this as helping to create a level playing field.

Publicity can be sought in the following ways with assistance from the LHA Communications Team:

- invite the local paper to send a reporter to the tribunal hearing
- write a media release and include landlord publications and landlord associations in the circulation list
- put the RRO on the agenda of any landlords' forum meetings
- include in any newsletters for landlords, including those issued by local landlord associations
- ask the local university and students union to publicise it to students and landlords.

See Annex 2 for the media release issued by Warwick DC following the RRO obtained by students of Warwick University.

2.7 An amnesty for landlords applying for licences

To increase the impact of the publicity of the RRO, your council could set up an amnesty for landlords of unlicensed HMOs. This would mean these landlords would not be penalised if they apply to license their HMO(s) within a period of say 30 days. Such an amnesty would have to be agreed by the relevant manager or councillor, even though it may just be formalising and publicising what you would do in any case. Landlords who respond to the amnesty can still be penalised by the council for submitting a late application by granting new licences for a shorter period at the same cost, as long as this is part of the council's policy.

2.8 Ability of landlords to license HMOs following a RRO

Where a landlord applies for a licence for an HMO where an RRO has been made, or for any other HMO that he or she owns, the LHA would need to consider the RRO when deciding whether they are a fit and proper person to hold a licence. If they decide that they are not fit and proper the HMO could only be licensed if the owner appoints another person, who is not associated with them, to manage the HMO and to be the licence holder. This could be a managing agent. If the owner is not willing to do this, the LHA will need to make an Interim Management Order on the HMO, if there is no prospect of it being licensed in the near future. For more details see LACORS FAQ "Are criminal records checks needed to assess whether a potential licensee is a fit and proper person?"
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=16819

PART 3: RROS TO RECLAIM HOUSING BENEFIT

The complexity of a RRO to reclaim housing benefit varies from the more straight forward cases in 1.3 above to complex cases requiring a lot of evidence which cannot be obtained easily. The successful application for a RRO by LB Newham is an example of a more complex case, which we can learn a lot from.

London Borough of Newham's successful application to RPT for a RRO,

In November 2007, Newham Council obtained a RRO for almost £10,000 of housing benefit paid to a landlord operating an unlicensed HMO. The landlord, who rented out eleven rooms above a pub to tenants who shared a kitchen and three bathrooms, had not applied to the council for a licence. Newham applied for a RRO relating to the amount of housing benefit that had been paid since August 2006 and the landlord was ordered to repay £9,751.25, including enforcement costs. The tribunal dismissed his claim that if the council considered he needed a licence, it should have simply stopped the housing benefit payments.

For the RPT Decision
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=18155

3.1 The housing benefits team

Good records of housing benefit payments are key to the success of an LHA application for a RRO. A meeting should be held between the housing benefits and private sector housing teams as soon as application for a RRO is considered for a particular unlicensed HMO. The meeting should discuss the comprehensive and reliable evidence needed from housing benefits records and that a representative of the housing benefits team will need to provide a witness statement and may need to attend the RPT hearing, see 3.5 below. At this stage it is worth checking whether the person receiving the rent is the owner of the property to find out whether they are the appropriate person (see 2.2).

Section 73(9)(b) specifically states that the housing benefits department is kept informed during RRO cases of "any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit".

Once the housing benefits records are available, officers from housing benefits, private sector housing and legal should jointly decide whether there is sufficient evidence to go ahead and apply for a RRO. They should also decide the period or periods for which housing benefit is to be reclaimed (see below).

3.2 The notice of intention

Once the evidence has been collected, the RRO procedure starts with the service of a Notice of Intended Proceedings by the LHA on the appropriate person. The following needs to be included in the notice (see section 73(7)):

1. a statement that the authority are proposing to make an application for a RRO under Housing Act 2007, section 73 (or 96)
2. the reasons why they propose to do so (this would include that the HMO has been operating without the required licence for a specified period) ,
3. the amount of rent that they will seek to recover and how that amount is calculated (see 3.5), and
4. that the landlord may make representation to the LHA within a period of not less than 28 days;

A copy of this notice must be sent to the housing benefit team.

See Annex 3 for a model Notice of Intended Procedings.

Before applying to the RPT the period for representation must have expired and the LHA must have considered any representations made to them. A letter should be sent in reply to any representations and they should be included in the bundle for the RPT along with the representation itself.

3.3 The evidence needed

Before making a RRO the RPT needs to be satisfied (see section 73(6)):

1. that the person receiving the rent has been guilty of operating an unlicensed HMO *"at any time within the period of 12 months ending with the date of the notice of intended proceedings*", and
2. "*that housing benefit has been paid in connection with the occupation of a part or parts of the HMO during any period during which it appears to the tribunal that such an offence was being committed*".

If (1) above is satisfied by a conviction for an offence, under section 72(1), then the tribunal **must** make the RRO, provided that the notice of intention has been properly served, see section 74(2). However section 73(3) states that if there are exceptional circumstances, the tribunal would not have to require repayment of any amount that would be "unreasonable for that person to pay". If there is no conviction the LHA will need to prove the property is a licensable HMO from first principles.

The Residential Property Tribunal Procedure (England) Regulations 2006, regulation 18 requires the following to be provided with the application to the RPT:

- either proof that the appropriate person has been convicted of an offence under section 72(1) of the Act or a statement containing evidence that an offence under section 72(1) of the Act was committed
- the Notice of Intended Proceedings
- any representations received

- details of all housing benefit payments made for the HMO during the stated period.

The bundle of documents for the RPT hearing may also include:

- correspondence
- evidence of ownership of the property, management and who receives the rent
- any licence application form received
- witness statements of LHA Officers and housing benefits officers
- any tenancy agreement or rent book
- witness statements of tenants
- any photos
- the contract between the owner and managing agent.

As similar evidence is needed for a prosecution for an unlicensed HMO and for a RRO, the LHA should consider taking a prosecution in a Magistrate's Court at the same time as applying to the RPT for a RRO.

3.4 The period for reclaiming the housing benefit

A RRO can require that housing benefit is repaid for a period of up to twelve months to the date of the notice of intention. You should review the evidence to decide whether you have the grounds to reclaim the housing benefit for the whole twelve months, or for a shorter period. There could be more than one period within the twelve months, as there is not sufficient evidence for the intervening periods. The period will depend on whether the HMO was licensable throughout, whether an "effective" licence application was received by the LHA and the housing benefit cycle.

To prove that the property was an HMO which needed to be licensed, the following questions need to be considered for the whole twelve month period:

- Does the property comprise three storeys?
- Was it occupied by two or more households?
- Were there five or more occupiers?

The most difficult issue is likely to be proving that there were five or more occupiers during the period. This is easiest way of proving this is where there are records of housing benefit paid for five or more people throughout the period.

Where the housing benefit evidence is not sufficient the number of occupiers may be proven by the tenancy agreement and/or Section 9 statements from tenants; but these would need to be backed up by evidence of occupation collected by the LHA Officer. If the tenants say that there is a tenancy agreement, but they cannot provide a copy, then the landlord can be required to provide one under Housing Act 2004, section 235 See LACORS FAQ "When is it useful to require documents under Section 235?"
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=58FE8FC&id=15994

The LHA Officer should ensure they have evidence of the occupation of the HMO in their notes taken during inspections. Good practice involves trying to access all rooms in the property, talking to occupiers (whether they are on housing benefits or not) and taking detailed notes, in a notebook, of:

- full names of all the occupiers,
- mobile phone numbers and
- email addresses,

When a RRO is being considered, the LHA Officer should take, whenever possible:

(a) witness statements from all tenants to prove occupancy and the date they moved in, and

(b) a copy of any tenancy agreement or any rent books.

You will need to check and keep a record of the occupancy of the HMO each time you visit and each time you speak to the occupiers, so you know who is living there and whether anyone has moved in or out. The importance of collecting comprehensive evidence of occupation of the HMO throughout the period and keeping good notes cannot be emphasised enough.

In some cases the hearing may involve discussion about which storeys and how many occupiers should be counted to decide whether the HMO is licensable. Consider whether any of the following LACORS FAQs could help back your case:

- When do Multiple Occupied Self Contained Flats Need to be Licensed? http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=31EF5C4&id=17726
- Which buildings containing both self-contained and non-self-contained accommodation need to be licensed? http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=31EF5C4&id=17996
- How should storeys be counted in HMOs with back additions? http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=31EF5C4&id=15423
- How Do You Count A Resident Landlord and Family in an HMO? http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=31EF5C4&id=15426

Where an application for a licence has been received from the owner, the LHA needs to decide whether it was an “effective” application or not, see section 73(2) of the Act. If it was effective the date of receipt of the application would be the end of the period claimed for, unless it was later refused. An effective application would be one where the fee has been paid and the application generally complies with the requirements of SI 373/2006 The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006, regulation 7 http://www.opsi.gov.uk/si/si2006/20060373.htm. However an application with omissions, but which is in general satisfactory, should be considered effective.

In the Newham case they found that it makes the process simpler if you can tie up the specified period to fit in with the housing benefit payments cycle,

this may mean delaying the notice of intention by up to two weeks. This will make it easier to determine the amount of HB you are claiming a RRO for.

Once the period(s) is/are decided for reclaiming the housing benefit in the RRO, it/they should be stated in the notice of intention and the application to the RPT.

3.5 The amount of housing benefit to be reclaimed in RRO
Section 74(6) of the Act requires the RPT to consider the following when deciding the amount of housing benefit to be paid in the RRO:

- the amount payable in housing benefit during the relevant period
- the amount received by the appropriate person
- whether that person has at any time been found guilty of an offence under section 72(1) of the act
- the conduct and financial circumstances of the appropriate person.

The law goes on to say that the amount to be repaid in the RRO should be reasonable considering the circumstances

The amount claimed in an application for a RRO will not only include housing benefit payments for the stated period, the LHA can also claim costs incurred in taking various enforcement actions (see 3.5.3 below).

3.5.1 Housing Benefit: The housing benefit records should be checked to find out whether they show payments for the HMO throughout the previous twelve months and for how many people the payments were made. Obtaining these records will not be straight forward if the principal identifier in the housing benefits records is not the postal address. In the Newham case, the HMO was above a pub, and checks on the housing benefit records showed that the property had been given a variety of different names.

The data entered onto LHAs' housing benefit databases may not always be accurate and complete. Spot checks should be carried out with other housing benefits records to verify the accuracy of the records on the database. To ensure consistency the data should also be cross-checked against the LHA Officer's evidence; including notes taken during visits to the HMO and of telephone conversations with the occupiers etc.

A housing benefit officer or manager will need to provide a witness statement exhibiting a list of all payments made, including the dates, the amount and who it was paid to. The officer will need to be available at the RPT hearing to answer any queries that may arise.

On occasions it is discovered that overpayments of housing benefits have been made, for example where the claimant has started work and is no longer entitled to housing benefit. Overpayments may come to light at any stage during the process; this may lead to a reduction in the

amount of housing benefit that can be reclaimed in the RRO. (See SI 572/2007 for more details.)

In the Newham case further evidence emerged after the notice of intention and application that resulted in a reduction in the amount of money the LHA was asking to reclaim. The RPT accepted the change to a lesser amount, as it was in the landlords favour. If evidence later emerges that the amount of housing benefit paid was more than was claimed in the application for the RRO, it would usually be necessary to reserve the notice of intention and reapply to the RPT, or to accept the lesser amount stated in the original application.

3.5.2 Amount of housing benefit received by the appropriate person: If the rent is paid to someone other than the appropriate person, section 74(3) states that any management fee would need to be deducted when calculating the amount of the RRO. It is in the interest of the respondent to provide evidence of the fee taken by the agent, in a representation following the notice of intention. If this does not occur, the application should be for the full rent paid and the RPT would need to assess how much the appropriate person received, on their own account.

If the LHA has paid housing benefit direct to the tenant, it will also be necessary to prove that the money was subsequently received by the landlord. However no such proof is required where payments are made directly to the landlord, as was the case in Newham; here the landlord did not contest that he had received the money.

New claims for housing benefit made from 7 April 2008 will be based on the Local Housing Allowance and will normally be made directly to the tenant. Where the housing benefit is paid directly to the tenant evidence of payment of rent to the landlord will be needed; this could be in the form of a rent book or rent receipts. If these are not available the tenants would need to sign section 9 statements listing the rent payments paid to the landlord. It is recommended that the tenant's bank statement or cheque stubs be available at the hearing in case the payments were disputed by the landlord. This would depend on the tenants being cooperative. Such co-operation can be encouraged where tenants top-up housing benefits payments with their own funds, or there are tenants who do not claim housing benefits. Here tenants will be able to apply for their own RRO once the housing benefit RRO has been made.

In the Warwick case (see Part 4) it was easily proven that the rent was paid, as the agent wrote an email saying the rent was up to date, but this is often not possible.

3.5.3 Enforcement costs: The LHA can reclaim various enforcement costs in a RRO: these are outlined in SI 572/2007, regulation 3, they include costs for:

- applying for the RRO
- estimated future charges for registering and enforcing a land charge on the property following the RRO
- dealing with any licence application
- prosecution under S72, unless costs have been awarded by the court
- costs associated with an IMO and FMO on the property.

All officers involved should keep records of the hours spent from when a RRO is first considered to when the application is made. The hours spent on the case should be multiplied by the appropriate hourly rates and added up to decide the total cost of applying for the RRO.

In considering claiming costs for dealing with the licence application, the fee should be taken into account, so only costs for exceptional work relating to this application should be included e.g. giving advice on who the licence holder should be, as a landlord subject to a RRO will not be a fit and proper person.

The amount to be claimed in the RRO will consist of the housing benefit actually paid to the landlord for the specified period plus various enforcement costs.

3.6 Claiming the RRO money

The RPT will not usually set a deadline for payment of the money in the RRO; though on occasions they may agree that the RRO is paid in instalments. The RPT has no powers to enforce the order, in fact they will only send a copy of the decision to the landlord. (Lacors considers that an actual Order should be issued by the RPT, we are taking this up with the London RPT). As the payment should be made to the LHA, the LHA should raise an invoice asking the owner to pay the RRO and any associated court costs. This should be done following the expiry of the appeal period for the RRO or once any appeal has been dealt with.

Under section 74(9) of the Act the LHA may register the RRO as a local land charge until the debt is recovered. However this would not be appropriate if the property has been sold or repossessed. Following the expiry of the appeal period for the RRO or a decision on any such appeal, a copy of the order should be sent your legal department, to be entered on to the local land charges register. Consideration should also be given to registering the charge with the Land Registry, there is a cost for doing this and it would be necessary if the land charge were to be enforced.

If the RRO is not paid, the council (and tenants) can recover the money as a civil debt provided that permission is granted by the County Court (see The Residential Property Tribunal Procedure (England) Regulations 2006). This

may involve an application for a County Court Order, for which there is a fee. You would need to consult your legal department if you decide to take this course of action.

Under section 74(12) of the Act, if a licence is granted for the HMO it can include a condition requiring the licence holder to pay any outstanding amount of the RRO either by instalments or otherwise. In practice this power is of little use as the licence holder would not be the landlord subject to the RRO if they were deemed not to be a fit and proper person. If a person other than the licence holder is responsible for complying with a condition, then that person must agree to the condition before the licence is issued (section 67(5)).

3.7 Repayment of housing benefit to central government

The Rent Repayment Orders (Supplementary Provisions) (England) Regulations 2007 regulation 4 states that the local authority should firstly reclaim the enforcement costs and then pay the rest of the RRO money into the “Consolidated Fund”. This is a government bank account with the Bank of England, so the housing benefit money which is reclaimed will not benefit the LHA, but it will still be a significant penalty for the landlord.

PART 4: TENANT APPLICATIONS FOR RROS

Tenants and former tenants can apply for a RRO to claim repayment of their rent for a period of up to twelve months following:

1. the making of a RRO for the repayment of housing benefit, or

2. a successful prosecution of a landlord for operating an unlicensed HMO under Housing Act 2004, section 72(1).

The role of the LHA is to advise the tenants of their right to apply and how to do so, see Annex 1 for a model letter to tenants. Where the prosecution was against a managing agent, the LHA should investigate the role of the owner with the tenants. If the owner was never aware of the need to license the HMO and played no role in the offence, the tenants should not be advised to apply for an RRO.

The LHA would not be expected to take the case on behalf of the tenants, but the lead officer would normally need to provide a witness statement, which is likely to be similar to the one provided for the prosecution or housing benefits RRO. The statement should include:

- description of property
- details of the “appropriate person” see 2.2 above
- brief case history including landlord’s history of compliance
- letters inviting the landlord to apply for a licence
- details of the successful prosecution or housing benefits RRO
- any licence application, date received and whether an effective application
- any details of landlord’s income raised in the above court or tribunal hearing and list of properties known to be rented by the landlord.

The LHA should maintain contact with the tenants and provide any support they can, to assist the tenants in obtaining a RRO. If the tenants are successful, the LHA should liaise with the tenants and seek agreement to publicise their RRO, see 2.5 above. This investment of time could lead to a number of other landlords coming forward to apply for HMO licences and would save time spent in searching out their HMOs.

Tenants can reclaim rent for a maximum period of twelve months ending on the date of the application for an RRO. However in most cases the period will end earlier, the end date will be the date when:

- an effective licence application has been received by the LHA, this can occur at any time
- the tenants moved out, or
- the landlord sold the HMO.

Here delays will mean less rent can be reclaimed, so tenants should be encouraged to apply for a RRO at the earliest possible opportunity. The delay caused a substantial reduction in the amount of the RRO in the application made by two tenants in Camden in respect of 79 Bayham Street, London NW1 http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=20954. One tenant did not receive any repayment of rent and the other received two months repayment, as they had both moved out of the property.

For more information see LACORS publication "RROs A Tenant's Guide" http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=19502 .

Students' success; the first RRO

Sixteen students at the University of Warwick claimed back a total £18,540 of rent which they paid to their landlord for the two houses they lived in from September 2006 to June 2007. This is the first RRO to have been secured since the Act came into force.

The council wrote to the landlord on numerous occasions to advise him that two of his HMOs would require a licence under the mandatory licensing regime, but applications were not forthcoming. Visits were made to both HMOs in autumn of 2006 to confirm that they were indeed occupied by five or more people, forming two or more single households, and evidence was gathered.

The landlord was found guilty of operating both HMOs without licences by Stratford-upon-Avon Magistrates. The council immediately notified the occupiers of both HMOs of the successful prosecution and advised them that they were able to make a claim to the Residential Property Tribunal for a Rent Repayment Order. Fortunately, the Council has a good relationship with Warwick University Students Union, and their Welfare Officer. The Welfare Officer was briefed by the Council on the position, and he decided, in consultation with the tenants, that it would be worthwhile to make an application for a RRO.

The Tribunal inspected the properties, and heard representations from the Welfare Officer, representing the students, and counsel, representing the landlord. Of much significance to the Tribunal was the failure of the landlord to apply for HMO licences and his subsequent conviction. The Tribunal determined that the offence had been committed and that the proportionate amount of rent covering this period was £37,080 for both HMOs. After deliberation, the Tribunal decided that a refund, equivalent to 50 per cent of the rental income, would be reasonable; equivalent to £18,540.

For RPT decision see
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=18149

PART 5: CONCLUSION

RROs are an important enforcement tool for tackling unlicensed HMOs. They are not only a penalty for the landlord of the HMO concerned, but subsequent publicity should also persuade landlords of unlicensed HMOs to applying for a licence.

LHAs should apply for RROs to reclaim housing benefits where good housing benefits records can be obtained and sufficient evidence is available to prove that the property was being occupied as an unlicensed HMO.

Tenants should be advised of their right to apply for a RRO and how to do so, whenever a successful prosecution for an unlicensed HMO or a housing benefit RRO has been obtained. Housing benefit RROs are likely to be quicker than prosecutions and speed is of the essence because the amount of rent tenants can claim in an RRO will reduce with time in most cases.

Where there is a managing agent, the appropriate person for a RRO will be the owner, not the agent. Here the relationship between to two parties needs to be investigated before deciding whether to apply for a RRO.

Please note: This advice has been produced by LACORS in consultation with experienced local authority housing practitioners. As such, it is not statutory guidance and may be subject to challenge by the Courts or the Residential Property Tribunal. Anyone wishing to comment on the advice given should email housing@lacors.gov.uk, stating which question their query refers to. LACORS may update this advice from time to time.

Annex 1

MODEL LETTER ADVISING TENANT THEY CAN APPLY FOR A RRO

Dear tenant

You could get up to 12 months rent repaid to you

Your landlord has not applied for a licence to rent out your accommodation. He/She has now been found guilty in [court] [a tribunal] so the law allows you to apply to reclaim rent you have paid, for up to one year, as long as it was not paid by housing benefit. You can still apply if you have moved away.

In the first successful case sixteen students reclaimed a total of £18,540, which was 50% of the rent they paid. [Their students union accommodation officer led the case on behalf of their behalf].

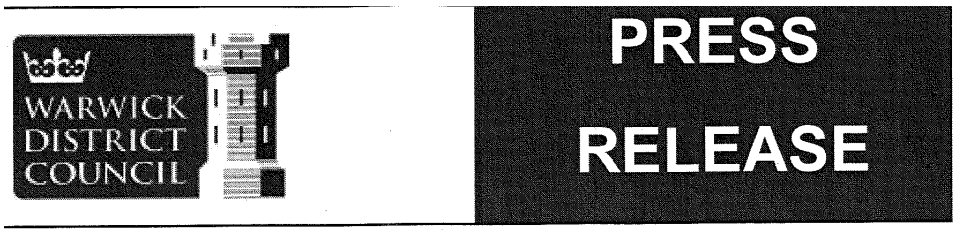
As a tenant, you or another tenant in the house or flat will need to apply to the Residential Property Tribunal asking them to make a Rent Repayment Order (RRO). [We can help you do this] [and] [you should be able to get help to do this from your university accommodation office or students union or from a Citizen Advice Bureau or other advice agency.] I will be able to give you a witness statement to support your case.

In most cases you will need to put in your application as soon as you can**,** because the maximum amount you can claim will decrease as time goes on. Of course there is no guarantee that you will get your rent repaid, but there is a chance of reclaiming a good proportion of it, if you follow the guidance in the attached information sheet “Rent Repayment Orders, A Tenants Guide”. This guide explains how much rent you could reclaim, what you have to do and who can help you.

Please contact me as soon as possible to discuss the possibility of reclaiming your rent [and how I can help you to do this].

Yours Sincerely

Annex 2



6th November 2007

Landlord ordered to repay tenants £18,540

Landlords and tenants of licensable HMO's should take note after what is believed to be the first case in the country of a Rent Repayment Order (RRO) being made by the Residential Property Tribunal.

Two groups of Leamington students have successfully claimed back a total £18,540 of rent which they paid to their landlord, Mr B S Bahi, whilst they occupied flats in Warwick Street, Leamington Spa from September 2006 to June 2007.

In order to apply for an RRO, the landlord must first have been convicted by the Council for failing to licence his property as a house in multiple occupation. Mr Bahi was prosecuted at Leamington Spa Magistrates Court in June 2007 when he was fined a total of £3057.80, including costs, after the Council took legal action.

The students felt that they had endured a 'poor experience' whilst at the flats, citing various problems which were only rectified after considerable delays, or had not been rectified at all. The students were represented by Ken Harris, Advice & Welfare Officer for the Students Union at Warwick University.

The Tribunal considered the conduct and financial circumstances of the landlord, and largely accepted the students claim that the landlord had failed to remedy problems within a reasonable timescale or at all. However, of much more significance to the Tribunal was the failure of the landlord to apply for HMO licences. After deliberation, the Tribunal decided that refund, equivalent to 50% of the rental income, would be reasonable. This was equivalent to £18,540.

Councillor Michael Doody, Housing Portfolio Holder said: "This decision should act as a warning. The Council's Private Sector Housing team is actively pursuing other HMO landlords who are still to submit a licence application. Any which proceed to prosecution will give tenants the opportunity to make a similar claim to the tribunal."

Warwick Universities' Advice and Welfare Officer, Ken Harris, said: "Students contribute significantly to their local economies, and often help to create more vibrant communities through volunteering initiatives and fundraising for local charities. Nationwide legislation on HMO licensing, as well as the Tenancy Deposit Scheme, has meant that students are now getting the legal protection that they deserve."

Landlords need to be aware that whilst the fine imposed for failing to licence an HMO can be as much as £20,000, where there is mitigation, it can be considerably less. However, the Rent Repayment Order, can, in effect, result in a much more serious penalty, and can be applied to allow repayment of rent throughout the period that an HMO remains unlicensed.

Further information:

- Paul Hughes, Warwick District Council 01926 456729
- Ken Harris, Students Union 02476 572822
- Midlands Rent Assessment Panel 0845 1002615

Background information

Housing Act 2004 Part 2 is concerned with Mandatory HMO Licensing. It has been a requirement under this legislation since 6th April 2006 for certain HMO's to be licensed, or to have been the subject of an application for a licence. Licensable HMO's are those containing 5 or more persons (who do not live as a single household), and containing at least 3 storeys. To date, Warwick District Council have received over 300 applications.

A house in multiple occupation is a house occupied by persons who do not form a single household. It will include shared houses and flats, hostels and certain buildings converted to self contained flats. Those converted to self-contained flats are generally exempted from Mandatory Licensing.

The maximum fine for failing to obtain a licence is £20,000.

Section 73 & 74 Housing Act 2004 specifies the requirements for the making of a Rent Repayment Order. Local authorities can recover Housing Benefit by applying for an RRO. For tenants to make an application for such an Order, the local authority must fist have secured a conviction for failing to obtain a licence.

The maximum liability for an RRO is up to 12 months worth of rent, and this is recoverable as a civil debt.

A Section 21 Housing Act 1988 notice (notice to quit) cannot be given by a landlord to a tenant to avoid having to licence an HMO.

Annex 3

[Name of Council]

NOTICE OF INTENDED PROCEEDINGS
Section 73 Housing Act 2004

To: [Name of appropriate person]

Address:

TAKE NOTICE that the [Council name] intends to apply to the Residential Property Tribunal for a Rent Repayment Order in respect of the HMO premises at [insert address](“the premises”)

The reasons for the intended application for the Rent Repayment Order are:

a) The premises is an House in Multiple Occupation which requires a licence under Housing Act 2004, section 61and has been operated without such a license since 6th April 2006, and

b**).** housing benefit was paid to occupiers of the premises

The Council seeks to recover the sum of £xxxx housing benefit paid to you as the appropriate person. A summary of housing benefit payments showing how this amount has been calculated is annexed hereto. (The Council will also seek to claim enforcement costs in the Rent Repayment Order.)

You may make a written representation to [Council name] within 28 days from the date of this notice. The representation should be sent to [name of officer and address]. The Council will consider and respond to any representations made before any application is made to the Residential Property Tribunal.

Dated this day of 2008

Signed:_____

Name:

On behalf of the [Council name]

Telephone:

Email address:

Annex 4

Application to the RPT

In its application to the RPT for an RRO, LB Newham used the following wording to argue that their application needed to be dealt with urgently and outlining their grounds for appeal.

URGENCY OF APPLICATION
We request an urgent determination.

The property was also occupied by individuals not in receipt of Housing Benefit. These individuals are only able to apply for a Rent Repayment Order once either this application is determined in the council's favour, or once the landlord has been successfully prosecuted for operating an unlicensed HMO.

These individuals no longer occupy the property, and delays in their ability to make an application for a Rent Repayment Order will result in the amount of rent that they can potentially reclaim through the Rent Repayment Order being reduced due to the time constraints attached to the application process.

Notwithstanding the above, this application also involves a considerable sum of money that has been paid via the public purse, and the landlord of the property (for whom we have been unable to ascertain an alternative address from his business address) may become untraceable if this case is not heard urgently.

GROUNDS OF APPLICATION
Type of Application: 6 - Application by the LHA for a Rent Repayment Order under Section 73(5) of the Housing Act 2004.

On 01 May 2007 the property Cundy's Tavern, 2-4 Connaught Road, Silvertown, London E16 2DB was visited by officers from the London Borough of Newham. The property was not licensed as a house in multiple occupation, and the council had not received a valid application to licence the property as a house in multiple occupation. The property was found to comprise of accommodation located over 3 storeys, with the ground floor being used as a public house, with a lobby providing access to a staircase leading to the upper two floors which were used as residential accommodation. There were a total of 11 rooms occupied by single individuals who were all unrelated, and who shared a communal kitchen and 3 communal bath/shower rooms. The property was therefore an unlicensed house in multiple occupation of 3 storeys occupied by more than 5 individuals comprising more than 2 households, and was required to be licensed under Part 2 of the Housing Act 2004.

Housing Benefit records show that the landlord received Housing Benefit payments for 5 individuals living at the property for the period from 18 August 2006 until 01 May 2007 except for a short period, where 4 separate Housing Benefit claims were paid to the landlord.

Consequently, the council contends that during the period 18 August 2006 to 01 May 2007, Cundy's Tavern, 2-4 Connaught Road, Silvertown, London E16 2DB was a property that was required to be licensed under Part 2 of the Housing Act 2004, but was nether licensed, nor had the landlord provided a valid application to licence the property with council.

The council therefore is applying for a Rent Repayment Order to re-claim all Housing Benefit payments made to the landlord in the 12 months ending with the date of the Notice of Intended Proceedings served under Section 73 of the Housing Act 2004 on the landlord, Mr Wayne Ring. The Notice of Intended Proceedings was dated 17 August 2007, and therefore this application relates to the period 18 August 2006 to 01 May 2007, as the council action taken on 02 May 2007 prevented the property from being occupied.

Annex 5

RPT Determinations on RRO cases

RPT decisions on RRO applications up to October 2009 are listed below. You will see that once the tribunal has decided to grant an RRO and has determined the relevant period, the proportion of the rent to be reclaimed in the RRO varies greatly.

20 April and 27 August 2009
Two LHA applications in respect of 292 Old Lodge Lane, Purley, Surrey
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=22070
http://www.rpts.gov.uk/Indexes/LON_HA_HIMOL_00AH_2009.htm
In April LB Croydon applied for a RRO against the managing agent of the property. It failed to obtain a RRO because the RPT determined that the managing agent was not the appropriate person. LB Croydon then made a new application against the long leaseholder; he was deemed to be the appropriate person. An RRO was made for £2,515.92 plus £500 costs. This was the full rent for the relevant period. No agent's fee was deducted as the respondent did not make any representation to the RPT on this issue. Costs were awarded, as the respondent did not comply with the tribunal's directions to provide evidence.

20 August 2009
LHA application in respect of 83 Windmill Street, Gravesend, Kent
http://www.rpts.gov.uk/Indexes/CHI_HA_HIMOL_29UG_2009.htm
An RRO was granted to Gravesham BC for £13,476.76. This was the full amount paid in Housing Benefit to the tenants who were living in the HMO throughout the twelve month period. The hearing followed the conviction of the landlord in Dartford Magistrates' Court for running an HMO without a licence. The Tribunal did not consider the landlord's claim that he had not received rent to which he thought he was entitled. The housing benefit was paid directly to three of the four households occupying the HMO.

21 July 2009
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=22302
Tenant application in respect of 32 Teversal Avenue, Lenton, Nottingham.
An RRO for £2,841.75 was made, this amounted to 50% of the rent paid to the five tenants during the relevant period of four and a half months. The amount was reduced because the tenants did not keep the property in a "completely acceptable" manner, the property was of a reasonable standard and the landlord had already incurred a substantial fine of £5,000 in the Magistrates' Court.

22 June 2009
Tenant application in respect of 68 Oak Tree Lane, Birmingham.
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?authCode=2F3D800&id=22304
An RRO for £4,495 was made. The application was for £7,050 for rent paid between July 2007 and June 2008, but the application for the RRO was made in February 2009. So the amount of rent to be repaid was reduced to the full

amount of rent paid between February 2008 and June 2008 when the tenants moved out.

31 March 2009
Wirrall Borough Council against Mr A S Hassan of 18 Marlborough Grove, Wirral,
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=21687
An RRO was granted for £8,820.71. This was the full amount paid in Housing Benefit to six tenants who were living in the HMO throughout the relevant period of five and a half months.

3 March 2009
Tenant applications in respect of 21 London Road, Reading, Berkshire
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=21689
The period for the repayment of rent was reduced from five months to three months, because the Magistrates' Court record of conviction stated that the contravention covered a specific period. The Tribunal did not accept that the HMO continued to be operated without a licence after that period, so the RRO was awarded for the reclaim of £2,940, which was the full rent paid during the three month period. Subsequently the RRO has not been paid and the tenants are having great difficulty getting their rent back.

26 February 2009
Tenant application in respect of 70 Trinity Road, Bridlington, YO15 2HF
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=21504
An RRO of 50% of the full rent was awarded amounting to £2,460. In deciding the amount of the RRO, the RPT considered that the landlord had not complied with an improvement notice and that they had already incurred a hefty fine in court.

8 December 2008,
LHA application in respect of 79 Bayham Street, London NW1 0AA
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=20954
LB Camden was awarded an RRO of £8,934.84 plus £500 costs against S & Y Properties. The amount was the full amount of Housing Benefit paid during the 12 month relevant period as the respondents did not present any evidence which, in the opinion of the tribunal, would justify the award of a lesser sum.

26 March 2009
Tenant application in respect of 79 Bayham Street, London NW1 0AA
http://www.rpts.gov.uk/Indexes/LON_HA_HIMOL_00AG_2009.htm
An RRO was granted to repay £866.66, which was the full rent paid for two months by one tenant. Two ex-tenants had made a joint application for the RRO, but it was submitted four months after the conviction in the Magistrates' Court. This meant that one of the tenants had moved out before the start of the 12 months relevant period and the other moved out two months after the start of the relevant period.

16 October 2008

Tenant application in respect of 13 Beech Street, Kensington, Liverpool, L7 0EU
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=20664
An RRO was awarded for the reclaim of £3,900, the full amount applied for. The RPT found that the landlord's conduct was poor.

21 October 2008
Tenant application in respect of 34 Hounslow Gardens, Hounslow, Middlesex,
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=20666
An RRO for £500 was made, the application was for £2,714. the amount was reduced because of the landlords financial circumstances and there were six other tenants who could also make applications RROs.

20 October 2008
Application from Liverpool City Council in respect of 28 Wellfield Road, Liverpool
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=20662
The RRO was refused because the property was empty throughout the relevant period. The application had been made for a period ending more than a year prior to the RRO application.

7 November 2007
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=18155
Successful application by LB Newham for an RRO in respect of 2 – 4 Connaught Road, London E16 2DB. (See main guide above for details.)

October 2007
http://www.lacors.gov.uk/lacors/ContentDetails.aspx?id=18149
Successful application from 16 tenants of 37 and 11a Warwick Street, Lemington Spa. (See main guide above for details.)