

## APPENDIX 4

Wirral Council

### **Policy on deciding whether to apply for a Rent Repayment Order**

#### 1. Introduction

1.1 Upon a successful prosecution, simple caution or Civil Penalty award, whichever is appropriate, the case officer will decide whether or not it may be appropriate to apply for a Rent Repayment Order. If appropriate an *Officer Group* will be convened and consider whether or not to apply for a Rent Repayment Order. This *Officer Group* will consist of the original case officer and both a Housing Standards Officer and a Senior Officer, not originally in either *Officer Groups (1) or (2)* referred to in the policy for deciding whether to Prosecute, offer a Simple Caution or apply for a Civil Penalty. The original case officer will attend the Officer Group to provide background information only and will not be involved in the final decision whether or not to proceed with the Rent Repayment Order. A record of the meeting will be kept including the names of officers in attendance, date meeting is held, details of the case being discussed and the meeting outcome

#### 2.0 Legislation

2.1 It should be noted that an application for a RRO can only be made in relation to certain offences as follows:

#### 2.2 Housing Act 2004 Parts 2 or 3:

Landlord of a property has failed to obtain a licence for a property that was required to be licenced, specifically in relation to Sections 72(1) and 95(1)

2.3 Housing and Planning Act 2016 extended the range of offences where a RRO can be applicable:

(a) Failure to comply with an Improvement Notice under Section 30 of the Housing Act 2004

(b) Failure to comply with a prohibition Order under Section 32 of the Housing Act 2004

(c) Breach of a banning order made under Section 21 of the Housing and Planning Act 2016

- (d) Using violence to secure entry to a [property under section 6 of the Criminal Law Act 1977 and
  - (e) Illegal eviction or harassment of the occupiers of a property under section 1 of the Protection from Eviction Act 1977
- 2.4 If the Council has secured a successful prosecution, or a simple caution has been accepted and signed in relation to one of the above offences and where;
- (a) the landlord has been in receipt of rent through either Housing Benefit or Universal Credit, the *Officer Group* may submit an application for a RRO to recover the maximum of 12 month's rent OR
  - (b) the tenant has paid their own rent, the *Officer Group* may consider supporting a tenant to apply for a RRO where the tenant is willing to pursue an application.
- 2.5 If the Council has secured a Civil Penalty in relation to any of the following offences;
- (a) Failure to comply with an Improvement Notice under Section 30 of the Housing Act 2004
  - (b) Offences in relation to licensing of Houses in Multiple Occupation (Housing Act 2004 Section 72(1))
  - (c) Offences in relation to licensing of houses underpart 3 of the Housing Act 2004 (Section 95 (1))

### 3.0 Decision Making

#### 3.1 the *Officer Group* may

- (a) submit an application for a RRO to recover the maximum of 12 month's rent OR
- (b) the tenant has paid their own rent, the *Officer Group* may consider supporting a tenant to apply for a RRO where the tenant is willing to pursue an application. This will include the issue of advice to the tenant.

#### 3.2 In deciding whether or not to apply for a RRO the Officer Group will take into account:

##### (a) For civil penalty cases only:

The culpability and harm category applied by the officer group that determined the level of Civil Penalty. It may not be deemed to be appropriate to pursue a

RRO in cases in the low culpability harm categories 1, 2 and 3, unless the officer group considers that there are mitigating factors applicable

(b) For prosecution cases, it will have been previously determined that there will be either

- (i) a greater chance of harm(s) to health and/or
- (ii) a history of previous enforcement, poor co-operation, prosecution or unspent convictions and/or
- (iii) larger professional landlord

3.3 Unless there are mitigating circumstances an application for a RRO should be made in all cases involving prosecution.

3.4 This decision will include the reasons taken into account in arriving at the decision and will be recorded against the property record (relevant worksheet on M3 Public Protection, or, alternative system being used at the time of the decision) for reference.

3.5 If a decision is made to apply for a Rent Repayment Order, the case officer will issue a Notice of Intended Proceedings on the person who has committed the offence (referred to as *the landlord*). This Notice of Intended Proceedings will invite *the landlord* to make representations within a period specified in the notice (*the notice period*). Any representations made by *the landlord* within *the notice period* will be considered by the *Officer Group 2*. *The landlord* will subsequently be made aware in writing of the decision reached following consideration of any representations made.

3.6 If no representation is made within *the notice period* or, where a representation is made by *the landlord* and a decision is reached by the *Officer Group*, to proceed with an application for a Rent Repayment Order, the case officer will make a formal application for a Rent Repayment Order.