

Dealing with lettings during the pandemic

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Overview

- What is happening to possession hearings?
- Existing possession orders
- Accelerated claims
- Other court proceedings, and using injunctions instead of possession claims
- Notices during the pandemic

Context

- “Lockdown” - The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350)
- Inevitable restrictions when “lockdown” eases
- Coronavirus Act 2020
- Civil Procedure Rules Practice Direction 51Z
- Common sense

CPR PD51Z

- “All proceedings for possession brought under CPR Part 55 and all proceedings seeking to enforce an order for possession by a warrant or writ of possession are stayed for a period of 90 days from the date this Direction comes into force”
- <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51z-stay-of-possession-proceedings,-coronavirus>

What is happening to possession proceedings?

- Nearly all are automatically stayed by CPR PD51Z until 25 June 2020
- (Some possession proceedings are not under CPR 55, but it includes “(a) a possession claim brought by a – (i) landlord (or former landlord); (ii) mortgagee; or (iii) licensor (or former licensor); (b) a possession claim against trespassers; or (c) a claim by a tenant seeking relief from forfeiture.”)

What is happening to possession proceedings?

- <https://www.judiciary.uk/announcements/coronavirus-covid-19-message-from-the-lord-chief-justice-to-judges-in-the-civil-and-family-courts/> (from 19/03/20)
- “Judges dealing with any possession claim during the crisis must have in mind the public health guidance and should not make an order that risks impacting on public health.”
- “Block listing of possession claims is inappropriate at this time because it would be difficult to maintain appropriate social distancing.”

Existing possession orders

- Orders have not been set aside but proceedings to enforce them by warrant or writ are automatically stayed
- Remember – home moves are strongly discouraged while emergency measures in place
- “Applications to suspend warrants of possession should be prioritized.” (from LCJ’s 19/03/20 message)

Accelerated claims

- These claims (based on an AST and s.21 notice) are dealt with under Pt 2 of CPR 55
- They are therefore automatically stayed under CPR PD51Z
- Practice should be for these to be referred to a judge once the stay is lifted

Other court proceedings

- These are not automatically stayed
- Practice appears to vary
- The automatic stay does not prevent injunctions: “For the avoidance of doubt, claims for injunctive relief are not subject to the stay in paragraph 2.”

Other court proceedings

- Some courts open, some staffed and some suspended:
<https://www.gov.uk/guidance/courts-and-tribunals-tracker-list-during-coronavirus-outbreak>
- Civil court listing priorities (updated daily):
<https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak>

Other court proceedings

Priority 1 – work that must be done

- Committals
- Freezing Orders
- Injunctions (and return days for ex parte injunctions).
- The emphasis must be on those with a real time element (such as post-termination employment restrictions), noise or interference with property.
- Anti-Social Behaviour/Harassment injunctions (not ancillary to possession)
- Applications to stay enforcement of existing possession orders
- Production of persons in custody following Power of Arrest detentions
- Applications to displace under s 29 of MHA
- Homelessness Applications
- Enforcement work that does not involve bailiffs, such as third-party debt orders (particularly hardship payments).
- Any applications in cases listed for trial in the next three months
- Any applications where there is a substantial hearing listed in the next month.
- All Multi Track hearings where parties agree that it is urgent (subject to triage).
- Appeals in all these cases

Priority 2 – work that could be done

- Infant and Protected Party approvals (children could attend by Skype)
- CPR 21 approvals
- Applications for interim payments in MT/PI/Clin Neg
- Stage 3 assessment of damages
- Enforcement of trading contracts
- Applications or hearings pursuant to the Insolvency Act 1986 which concern the survival of a business or the solvency of a business or an individual
- Applications for summary judgement for a specified sum
- Applications to set aside judgement in default
- Applications for security for costs
- All small claim/fast track trials where parties agree it is urgent (subject to triage)
- Preliminary assessment of costs
- Appeals in all these cases

Civil work in the Court of Appeal is subject to separate guidance and civil work carried out within the Queen's Bench Division and Business & Property Courts of England and Wales is covered by the High Court Contingency Plan. The work of the Business and Property Courts outside of London (District Registries) is being dealt with on a case-by-case basis and is also excluded from these lists.

Accordingly these lists relate only to County Court work.

Other court proceedings

- Telephone and video hearings: <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak>
- Guidance on going to court in the pandemic: <https://www.gov.uk/guidance/keeping-court-and-tribunal-buildings-safe-secure-and-clean>
- Applications to adjourn: <https://www.gov.uk/guidance/applications-to-adjourn-civil-and-family-hearings-because-of-coronavirus-covid-19>

Notices during the pandemic

- Coronavirus Act 2020, sch.29
- <https://www.gov.uk/guidance/assured-tenancy-forms#form-3>
- <https://www.gov.uk/guidance/assured-tenancy-forms#form-6a>

Useful links

- The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350):
http://www.legislation.gov.uk/ukxi/2020/350/pdfs/ukxi_20200350_en.pdf
- Coronavirus Act 2020, sch.29:
<http://www.legislation.gov.uk/ukpga/2020/7/schedule/29>
- CPR PD51Z: <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part51/practice-direction-51z-stay-of-possession-proceedings,-coronavirus>

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- <https://www.gov.uk/guidance/assured-tenancy-forms#form-3>
- <https://www.gov.uk/guidance/assured-tenancy-forms#form-6a>
- MHCLG landlord and tenant guidance:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876500/Consolidated_Landlord_and_Tenant_Guidance_COVID_and_the_PRS_v4.2.pdf



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