



The Lifting of the Possession Claim Stay

7 September 2020

Cornerstone Barristers' Housing Team

The Speakers



Andy Lane - Chair

Olivia Davies



Dr Alex Williams



Dr Christina Lienen

Rowan Clapp



The Agenda



1. Introduction
2. Practice Direction 55C
3. Notices
4. Hearings
5. Homelessness
6. Questions

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● ● ● cornerstone
● ● ● barristers

Introduction

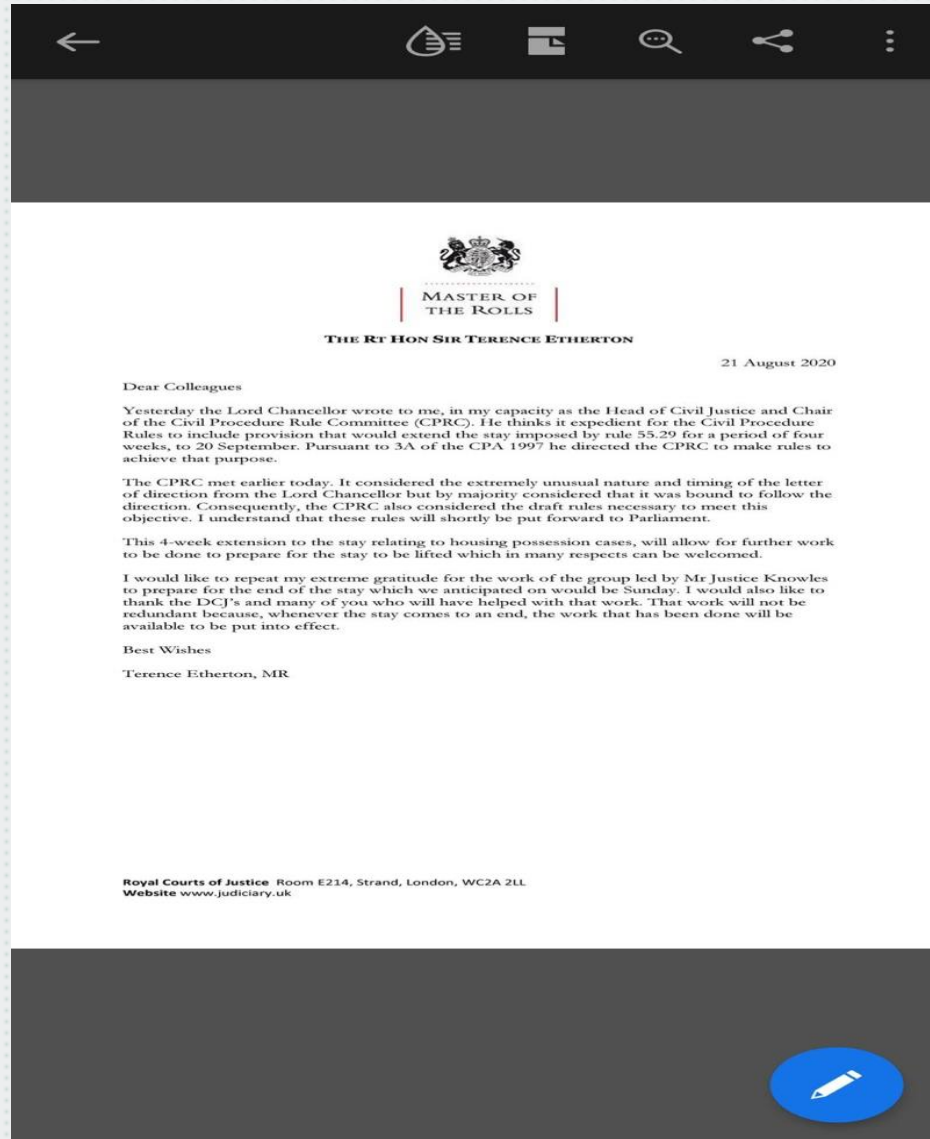
Andy Lane

The stay



- Response to lockdown
- First stay for 90 days from 27 March 2020 – PD51Z
- Second stay from 25 June to 23 August 2020 – CPR r. 55.29
- Ending of stay announced on 5 June 2020 by the Secretary of State for HCLG, Robert Jenrick MP
- Extended, on 21 August, to 20 September 2020

The reluctant rules committee



Effect of stay



- No direct impact on injunctions
- Possession claims can still be issued
- Case management directions can be agreed
- Pre-stay directions are “suspended”
- Doesn’t effect claims against “persons unknown”
- Impacts on homelessness/threatened with homelessness

And also note...



- Appeals against possession orders subject to stay
 - *LB Hackney v Okoro* [2020] 4 WLR 85
 - *Ioannou v Werner* [2020] 8 WLUK 252
- Proceedings for permission to issue warrant also subject to stay
 - Starting from PD51Z, para. 2
- Sheriffs/bailiffs not in practice carrying out evictions
- Also, 14-days notice required re writs/warrants from 20 September 2020
 - CPR r. 83.8A

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Post-stay requirements

Dr Alex Williams

CPR Practice Direction 55C



- Created 17 July; in force 23 August; updated 24 August.
- Modifies Part 55 during the “interim period”.
- 20 September 2020 (when stay now ends) to 28 March 2021.
- 3 categories of case:
 - Stayed claims (i.e. brought on or before 19 September 2020; includes appeals)
 - New claims (i.e. brought on or after 20 September 2020)
 - Claims brought on or after 3 August 2020
- Broadly:
 - Must reactivate stayed claims
 - Must provide specified information
 - New rules re fixing of hearing dates

Reactivation Notices (para. 2)



- Needed to list, re-list, hear or refer to a judge under rule 55.15 (accelerated possession claims)
- Does not apply to claims brought on or after 3 August 2020
- Does not apply to claims where final possession order made
- Must file notice by 4pm on 29 January 2021, or stay imposed
- Failure to file a notice is not a sanction for breach (para. 2.7)

Reactivation Notices

Content



- The notice must:
 - i. confirm that the party filing and serving it wishes the case to be listed, relisted, heard or referred under CPR 55.15;
 - ii. set out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants (N/A to appeals); and
 - iii. in rent arrears claims, be accompanied by a rent account for previous 2 years (N/A to appeals)

- If case management directions were made by 20 September 2020:
 - i. include a copy of the last directions order;
 - ii. include new dates for complying with directions;
 - iii. include draft order containing any additional or alternative directions required OR a written statement that new directions aren't necessary, and that the existing hearing date can be met; and
 - iv. written statement whether the case is suitable for hearing by video or audio link

- If another party disagrees, must respond within 14 days of service.

More Notices – Specified Information

Para. 6



- Para. 6 applies to any claim brought on or after 3 August 2020.
- Bring to hearing 2 copies of a notice:
 - i. in a claim to which the Pre-Action Protocol for Possession Claims by Social Landlords is applicable, confirming that the Claimant has complied with that Pre-Action Protocol and detailing how the Claimant has done so; and
 - ii. in all claims, setting out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants;
 - iii. serve the notices on the Defendant not less than 14 days prior to the hearing
- Accelerated possession claim brought on or after 3 August 2020:
 - Claimant must file with the claim form a notice setting out what knowledge that party has as to the effect of the Coronavirus pandemic on the Defendant and their dependants

Getting it Wrong

CPR 3.10



3.10 Where there has been an error of procedure such as a failure to comply with a rule or practice direction –

(a) the error does not invalidate any step taken in the proceedings unless the court so orders; and

(b) the court may make an order to remedy the error.

And Finally...

Hearing Dates



- Over to Olivia....



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Listings & Hearings

Olivia Davies

The Headlines



1. Longer waits for hearings
2. Remote hearings to continue
3. Added administrative burden
4. More adjournments
5. Prioritisation

Hearing Dates – PD55C



- Court must give at least 21 days' notice of any hearing listed or relisted as a result of a reactivation notice (para 3.1).
- Para. 4 applies to all claims where no hearing has been listed.
- Therefore applies to stayed as well as new claims.
- Para. 4 modifies CPR 55.5:
 - i. court now fixes a hearing date when or after it issues the claim form
 - ii. disapplies the usual CPR 55.5(3)(b) period of 8 weeks between issue and hearing
- Allows the courts flexibility in managing backlog – anticipate delays!
- Courts will prioritise urgent cases eg ASB, domestic abuse and fraud

Expect more adjournments!



- The court may be reluctant to evict to avoid putting pressure on homelessness services
- There is a particular risk of adjournment if:
 - you have not complied with the new prescribed requirements under PD 55C
 - your case is not “urgent” (ie not ASB, domestic abuse or fraud)
- The impact of there being no duty solicitor

Knock-on effects of no duty solicitors



- Judges may be cautious about early determinations
- Expect that there will be more adjournments if:
 - The judge thinks it is necessary to allow tenants more time to seek advice.
 - Defendants have not complied with directions because there was no duty solicitor to explain what they were required to do.
 - There is even the slightest possibility of the tenant being able to raise a defence (eg disrepair, PSED) - no matter how flimsy the grounds!

Remote hearings (1)



- Are there any particular issues likely to arise if a hearing is held remotely that the court should be made aware of?
 - In considering whether to have a remote hearing judges will consider: “*the matters at stake during the hearing; any issues the use of video/audio technology may present for participants in the hearing, having regard to individuals’ needs; and any issues around public access to or participation in the hearing.*” ([HMCTS Guidance](#))
- If the parties disagree with the court’s proposal for a hearing to be held remotely, they may make submissions in writing as to what arrangements would be more appropriate ([HMCTS Guidance](#), para 17)

Remote hearings (2)



- Prepare yourself for operating in sub-optimal conditions
 - *“All parties are urged to be sympathetic to the technological and other difficulties experienced by others.”* ([Civil protocol regarding remote hearings](#), 26 March 2020)
 - Difficulties with witness handling

How can you best prepare?



- Ensure you have complied with all the procedural requirements
- Think about why your case needs to be dealt with. But being realistic is key.
- Social landlords should:
 - review their policies concerning at what point they issue notices.
 - consider introducing a new policy e.g. only to issue a notice where the tenant has not engaged with attempts to resolve the matter.
- All landlords should consider serving a short (3-4 paragraphs) witness statement with the claim.

How can a witness statement help?



- For all landlords – to prove compliance with the relevant protocols.
- For social landlords:
 - To acknowledge the extraordinary circumstances of the pandemic and show how that has informed your decisions about which cases to bring and why. Put the case into the context, for example, of the small % of social housing tenants in arrears despite the pandemic.
 - Set out all the other actions you have taken to attempt to resolve the matter e.g. written communication, visits to the tenant, contact with DWP.
 - Make the court aware where e.g. the tenant has mental health issues and to set out how action taken so far has had regard to that factor.

More Guidance to come...



- More detailed guidance on using the courts and the new arrangements will be made available in advance of possession proceedings starting again

Coronavirus (COVID-19) Guidance for Landlords and Tenants (August 2020)

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Possession Notices

Dr Christina Lienen



New notice periods – to be covered

The basics

The general rule and its exceptions

Three final points

Helpful resources on notices

The basics: applicability and timeframe



Applies to private and social rented sectors in England, and to all new notices in relation to assured, assured shorthold, secure, flexible, introductory and demoted tenancies and those under the Rent Act 1977, but not to any notices issued before the legislation came into force.

**The Coronavirus Act
2020 (Residential
Tenancies: Protection
from Eviction)
(Amendment)
(England) Regulations
2020**

**29 August 2020
– 31 March
2021**

The basics: what you can do



All possession claims for housing and land (except against trespassers) brought under CPR Part 55 are covered.

You can:

Issue a notice
(now)



Apply to the
court (from 21
September)



BUT:

Landlords are encouraged not to commence or continue eviction proceedings without a “very good reason to do so”.

The general rule and its exceptions



THEN

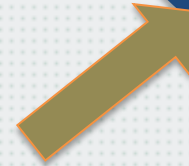
Notices served between 26
March 2020 and 28 August
2020

3 MONTHS

NOW

Notices served
between 29 August
2020 and 31 March
2021

**6 MONTHS,
UNLESS...**



**GOLDEN
RULE**

The general rule and its exceptions



- **Exception 1: anti-social behaviour, domestic abuse, rioting and false statement**
 - Assured tenancy - possession is sought under grounds 14ZA, 14A and 17, Schedule 2 to the Housing Act 1988: **2 WEEKS NOTICE**
 - Regulated/protected tenancy - possession is sought for anti-social behaviour (Case 2, Schedule 15 to the Rent Act 1977): **4 WEEKS NOTICE**
 - Secure tenancy - possession is sought under grounds 2ZA, 2A and 5, Schedule 2 to the Housing Act 1985 so long as no other ground is identified (except Ground 1): **4 WEEKS NOTICE**
 - Introductory/demoted tenancy under the Housing Act 1985 or the Housing Act 1988 - possession is sought for reasons related to anti-social behaviour or domestic violence: **4 WEEKS NOTICE**

The general rule and its exceptions



- Exception 2: At least **six months of rent is unpaid**
 - **4 WEEKS NOTICE**



This does not cover case 10A (no right to rent) under the Rent Act 1977: **3 MONTHS NOTICE**

The general rule and its exceptions



- Exception 3: A tenant has **passed away or is in breach of immigration rules** and does not have a right to rent a property in the UK (ss. 7 and 7B of the Housing Act 1988 respectively):
 - **3 MONTHS NOTICE**

Other than that...



- Changes have been suspended for some grounds, incl. Grounds 7A and 14 of the Housing Act 1988
- What does that mean? For those grounds we revert to the pre-Coronavirus Act 2020 position, i.e.
 - a Ground 14 notice may state that proceedings may be begun immediately
 - a Ground 7A notice must allow 28 days (if periodic) or 1 month (if fixed term)
- The same is the case for Ground 2, s. 83 Housing Act 1985; s. 83ZA Housing Act 1985; Ground 2, Schedule 2 Housing Act 1988.
- **AND:** 28-days notices to quit were never affected by the changes in the first place.

Three final points



If you want to serve a new notice in order to take advantage of the new, shorter notice periods required for certain serious cases, you should, where you are issuing a new notice of the same type, withdraw the first notice before serving a new notice.

The Government has extended the period over which valid s. 21 notices remain valid:

- **10** months from the date it is given to the tenant where s. 21(4D) applies;
- **4** months from the date specified in the notice as the date after which possession is required where s. 21(4E) applies.

Where appropriate, if disputes over rent or other matters persist, landlords and tenants are encouraged to consider mediation.

Helpful resources on notices



House of Commons Briefing Paper Number 08867 (31 August 2020)
“Coronavirus: A ban on evictions and help for rough sleepers” at

<https://researchbriefings.files.parliament.uk/documents/CBP-8867/CBP-8867.pdf>

Ministry of Housing, Communities & Local Government Non-Statutory Guidance (August 2020): “Coronavirus (COVID-19) Guidance for Landlords and Tenants” at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/913299/Landlord_and_Tenant_Guidance_August_update.pdf

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Relevance to Homelessness services

Rowan Clapp

Overview

All references to sections are to the Housing Act 1996.



1. 'Priority need' & Covid-19 (s.188 and s.193).
2. Early assistance, the prevention duty (s.195) & support for tenants.
3. 'Suitability' and in/out of borough placements.
4. The end of rough sleeping?

Priority need & Covid-19 (1)



- Assessment of whether an applicant has ‘priority need’ for accommodation is central to the interim duty to accommodate (s.188) and to the ‘full housing duty’ (s.193).
- Guidance on priority need found at s.189(1).
- Meaning of ‘vulnerable’ now likely to be informed by regulation 1(5) of **The Health Protection (Coronavirus, Restrictions) Regulations 2020**
- Individuals will be ‘vulnerable’ if aged 70 or over, have an underlying health condition (Sch 1) or are pregnant.

Priority need & Covid-19 (2)



- Conditions listed at Schedule 1 of the regulations (same list as those who are 'clinically vulnerable')
 - chronic (long-term) respiratory diseases, such as asthma, chronic obstructive pulmonary disease, emphysema or bronchitis
 - chronic heart disease, such as heart failure
 - chronic kidney disease
 - chronic liver disease, such as hepatitis
 - chronic neurological conditions, such as Parkinson's disease, motor neurone disease, multiple sclerosis, a learning disability or cerebral palsy
 - diabetes
 - problems with the spleen, such as sickle cell disease or removal of the spleen
 - a weakened immune system as the result of conditions such as HIV and AIDS, or medicines such as steroid tablets or chemotherapy.
 - being seriously overweight, with a body mass index of 40 or above

Priority need & Covid-19 (3)



- Amendments to paragraphs 8.44 and 8.45 of the Homelessness Code of Guidance:
 - ‘Clinically extremely vulnerable’ = likely to be assessed as having priority need.
 - ‘Clinically vulnerable’ people’s priority need must be considered in light of Covid-19.
 - Absent a clinical finding of vulnerability (extreme or otherwise), LA may consider seeking an independent clinical opinion to confirm.

Early assistance and the prevention duty (s.195) & support for tenants



- S.195 duty to work with people threatened with homelessness within **56 days** to help to prevent them from becoming homeless.
- Impact of extended notice periods (3 months (operative 25 March-28 August 2020) or six months (29 August – (at least) 31 March 2021)).
- Consider acting as early as possible (paragraph 12.2 of the Guidance on Duties in cases of threatened homelessness & the non-statutory Guidance for Landlords and Tenants on the Coronavirus Act 2020).

Support for tenants (1)



- Non-statutory Guidance for Landlords and Tenants on the Coronavirus (p.8):
 - “Local authorities can provide support for tenants to stay in their homes. If tenants are experiencing financial hardship, they may be able to access new funding; we have made **£500m** available to fund households experiencing financial hardship and are determined to take action to support people in need”

Support for tenants (2)



- How does this funding work?
 - LAs can reduce the 2020 and 2021 Council Tax bills of working age people in receipt of Local Council Tax Support.
 - Can also provide discretionary support to vulnerable people through alternative support arrangements (like Local Welfare Schemes).
- Assist tenants to ensure they are accessing full benefit entitlement (including DHP).

'Suitability' and in/out of borough placements (1)



- Likelihood that out of borough placements will be necessary (remember can hold back a stock of 'in borough' accommodation if desired *Alibkhiet v Brent LBC* [2018] EWCA Civ 2742) due to affordability constraints.
- Importance of a publicly available allocation policy explaining the factors an authority will consider and remember the requirement to attempt to house as close as possible to previous accommodation (*Nzolameso v Westminster City Council* [2015] UKSC 22).

'Suitability' and in/out of borough placements (2)



- What is 'suitable' for clinically extremely vulnerable applicants given Covid-19?
- See *R (on the application of Escott) v Chichester DC* [2020] EWHC 1687 (Admin).



The end of rough sleeping?



- March 2020 - £3.2m funding to LAs (“Everyone In” Scheme).
- Since then:
 - Gov pledge £3.2bn to LAs but not ringfenced for homelessness.
 - Fund of £433m to provide 6,000 housing units for vulnerable rough sleepers (3,300 within 12 months).
 - 2 May 2020 - announcement of specialist task force.
- 8 May 2020 Luke Hall MP provides further guidance on “move-on” accommodation including:
 - LAs to encourage people to return to live with friends and family
 - LAs to seek as many sustainable move on options as possible, including the expansion of housing stock by acquisition, repair and refurbishment alongside potential long-term leasing to meet need.
- We await the recommendations of the task force.

Questions



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