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Litigation in lockdown: the housing cases receiving pandemic priority

22 April 2020

What we will cover



- Notices
- The cases receiving priority
- Injunctions
- Social housing fraud
- Questions from the audience



Notices

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22 April 2020





Coronavirus Act 2020

CHAPTER 7

Notices – 26/3/20



Secure
/Assured
NSP

Introductory
Section 128

AST
Section 21

Flexible
Section
107D

Demoted
Section
143E

Rent Act
NTQs



- New Forms 3 (s.8) & 6A (s.21)
- Pre-26 March 2020 notices remain valid
- No changes to NTQ unless Rent Act
- Methods of service

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The cases receiving priority

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22 April 2020



HMCTS Approach



- Consolidating the work of courts and tribunals into fewer buildings.
- Different statuses:
 - Open and staffed;
 - Staffed but not open to the public
 - Closed
- All hearings to be remote “wherever possible” but physical hearings may be necessary

Remote Hearings



- Skype for Business
 - Don't need Skype for Business account – can join from free Skype account.
 - Each participant will receive instructions to join hearing as a “guest”.
 - Join early!
- HMCTS own “Cloud Video Platform”
 - Instructions sent by email.
 - Use Google Chrome!

How to get information



- Courts and Tribunals "tracker list":
<https://www.gov.uk/guidance/courts-and-tribunals-tracker-list-during-coronavirus-outbreak>
- Courts and Tribunals service centres open 8am-5pm Monday to Thursday and 8am-4pm on Friday.

Two levels of priority



- Priority 1:

“work that must be done”

- Priority 2:

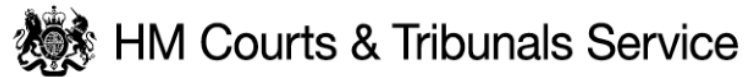
“work that could be done”

Priority bands change



- Daily updates posted:

<https://www.gov.uk/guidance/hmcts-daily-operational-summary-on-courts-and-tribunals-during-coronavirus-covid-19-outbreak>

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Visit gov.uk/hmcts for court and tribunal related **coronavirus updates**

Priority 1 Matters



- 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 Matters



- 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



Covid-19 and injunctions

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22 April 2020



What I will cover



- C19 and the test for seeking an injunction under the Anti-Social Behaviour, Crime and Policing Act 2014
- Service of applications and orders
- Exclusion clauses
- Presenting your evidence, electronic signatures, affidavits

HMCTS listing priorities (as at 20.4.20)



Civil courts – all “priority 1 work that must be done”

- Committals
- Injunctions and return dates for ex parte injunctions
- ASB/harassment injunctions not ancillary to possession*

Magistrates' Courts

- Applications relating to public health legislation
- Police led closure order applications
- Urgent applications for domestic violence protection orders

* but see University College London Hospitals NHS Foundation Trust v MB, [2020] EWHC 882 (QB), Chamberlain J granted an injunction which in effect required MB to give up possession of her hospital room

The test has not changed, but...



To obtain a s.1 injunction you need to show that:

- (1) The defendant has engaged or threatened to engage in **anti-social behaviour** AND
- (2) That it is just and convenient to grant the injunction for the purpose of preventing the Defendant from engaging in anti-social behaviour

Anti-social behaviour is defined in section 2:

- (1) harassment, alarm or distress to any person (HAD)
- (2) Conduct capable of causing a nuisance or annoyance in relation to a person's occupation of residential premises, or
- (3) conduct capable of causing housing-related nuisance or annoyance to any person

Harassment, alarm, distress

You may recognise the phrase ‘**harassment, alarm or distress**’ from the Crime and Disorder Act 1998 in relation to ASBOs.

In R v Jones [2006] EWCA Crim 2942 the Court of Appeal gave guidance as to the meaning of HAD:

*‘... we do wish to draw a distinction between activity likely to cause harassment, alarm or distress, and activity which merely causes frustration, disappointment, anger, or annoyance. That is plainly not what the Crime and Disorder Act 1998 is aimed at. It is aimed at actions likely to cause what might be globally described as “**fear for one’s own safety**”; merely being frustrated at the delay on a train does not come within that meaning, even though in one sense it might be said to cause distress.’*

See 3.03-3.07 of Kuljit’s book

Nuisance/annoyance

“**nuisance**” to be assessed according to “plain and ordinary notions” Walter v Selfe (1851)

“**Annoyance**” was considered in Tod-Heatly v Benham:

*“Annoyance” is a wider term than nuisance, and if you find a thing which **reasonably troubles the mind and pleasure**, not of a fanciful person or of a skilled person who knows the truth, but **of the ordinary sensible English inhabitant of a house**—if you find there is anything which disturbs his reasonable peace of mind, that seems to me to be an annoyance, although it may not appear to amount to physical detriment to comfort. You must take sensible people, you must not take fanciful people on the one side or skilled people on the other ... it seems to me there is danger of annoyance, though there may not be a nuisance.’*

C19 related behaviour



- Public health concerns
- Gatherings inside dwellings/communal areas
- Repeated obstruction of entrances/other areas so that social distancing cannot be practiced
- Abuse of park wardens/others seeking to enforce restrictions

Common behaviour that continues to occur

- loud music/TV, noisy parties, arguments, verbal and physical abuse
- DIY at anti-social times

Remind tenants of the terms and conditions of their tenancies and how they need to be even more mindful than usual about the impact of their behaviour on others who may be trying to work from home, shift workers who may be sleeping during the day, the vulnerable who could be shielding.

Inform tenants the methods they can use to report ASB and how complaints will be investigated and action taken in appropriate cases.

Service of applications and orders



Of the Claim

- CPR 6.15(1), need a “good reason” to authorise service by an alternative method
- A court can order that steps already taken to bring the claim to the attention of a Defendant by alternative means is good service: CPR 6.15(2), ask for this

Of the injunction order

- A person cannot be committed for breach unless the order has been served on him/her: CPR 81.5
- UNLESS a court dispenses with service under CPR 81.8
- CPR 81.8 allows a court to dispense with service if “just” to do so OR to make an order for service by alternative means – ask for this

Letterbox, post, Whatsapp, Facebook Messenger, stuck to their door (etc).

Can apply on notice or without notice (if the facts justify this)

Exclusion clauses



- Can still ask for an exclusion clause where the test it met: use or threatened use of violence or where there is a significant risk of harm
- Could ask for an exclusion clause in a without-notice application for an injunction in appropriate cases
- BUT remember:
 - The guidance in Moat Housing v Hartless – it will be rare for a court to allow a without-notice exclusion order (see 3.22 of Kuljit's book)
 - Govt guidance is to “stay at home”, is the behaviour bad enough to warrant an exclusion clause? It would help if you can show that the Defendant has somewhere else to stay.

Presenting your evidence



Diary sheets

- Normally I would ask for the handwritten documents to be exhibited but witnesses may not have the means to get these to you. Consider asking them to send images of their notes via Whatsapp/email. Or ask for notes to be kept in Word format so that these can be readily emailed to you. Consider an online system of reporting and publicise this.

Signatures

- CPR 5.3: the requirement contained in any rules or practice direction for a document to be signed can be met if the signature is printed by computer or other mechanical means

Affidavits

- Committal applications still require affidavits, CPR 81.10(3)(b). Seek permission to use witness statements instead.

Checklist - things to ask the court for



- Check what the court wants from you and by when. Format of bundles, format of hearing telephone or video?
- Dispense with personal service and permit service by alternative means (for both the application and order).
- Ask the Judge to include a clause that the order takes effect without being sealed by the court (if apt)
- Seek permission to issue any future committal application with witness statements in support (not affidavits)



Further reading



Hard copy and e-book versions available from Amazon and Bloomsbury Professional online.



Social housing fraud

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22 April 2020





CIVIL PROCEDURE

VOLUMES 1 & 2



**Practice
Direction 51Z**

Possession work



- See earlier priority status
- Proceedings can be issued but guidance says:

We strongly advise landlords not to commence or continue possession proceedings during this challenging time without a very good reason to do so. It is essential that we work together during these unprecedented times to keep each other safe.

- Stayed for 90 days from 27/3/20: PD51Z
- Injunctions re trespassers?

Fraud work – investigations



- Pre-action (protocol) letters
- Third parties (banks and fuel suppliers)
- The Prevention of Social Housing Fraud (Power to Require Information) (England) Regulations 2014/899
- E-mail and telephone/video conferencing



Fraud and the Courts

Coronavirus

formation for all co
tribunal users

(Fraud) Court work



- See later explanation of priority court work
- Magistrates' Court only covering urgent work
- Crown Courts are dealing with a range of work, much of which is being done remotely. This includes sentencing hearings and all urgent applications including applications for bail and applications to extend custody time limits. Pre-trial preparation hearings and further case management hearings are also taking place
- Injunctions still available - shared owners
- Declarations (of breach) in FTT still available

CHECK DAILY!

Sentencing still happening...

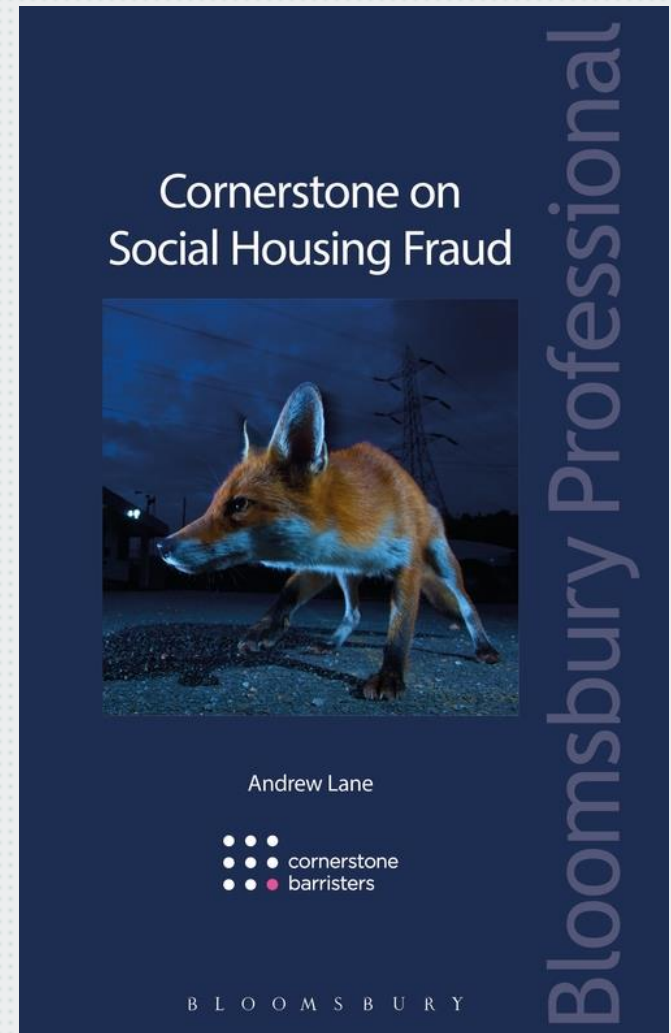


“Sherwin, who pleaded guilty to three offences of fraud, should have appeared at Wolverhampton Crown Court via a live Skype link on April 2. But due to technical problems - and the need for social distancing due to the coronavirus crisis - it was dealt with over the phone. He was sent to prison for 20 months, suspended for two years, and ordered to carry out 30 days of unpaid work. He must also pay £4,000 in court costs.”

Further reading



Hard copy and e-book versions
available from Amazon and Bloomsbury
Professional online.



Any questions?





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