



Possession proceedings, where are we now?

Webinar 22nd June 2021

Tara O'Leary, Rowan Clapp, Olivia Davies & Dr Christina Lienen

Please note these slides are provided for training purposes only and do not constitute legal advice.

Today's webinar: outline



- Introduction: Tara O'Leary
- Breathing space / Debt respite scheme: Dr Christina Lienen
- The end of the eviction ban: Olivia Davies
- Practice and procedure: Rowan Clapp
- Concluding remarks & questions



The debt respite scheme: **Dr Christina Lienen**

The basics



- **Starting point:** The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (SI 2020/1311) – **in force since 4 May 2021**
 - Guidance for creditors: [Debt Respite Scheme \(Breathing Space\) guidance for creditors - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/debt-respite-scheme-breathing-space-guidance-for-creditors)
- **In a nutshell:**
 - a qualifying debtor who accesses FCA-regulated debt advice (or debt advice from exempted organisations (e.g., local authorities)) will get a 60-day window within which creditors may not enforce specified debts. This is referred to as a “standard breathing space”
 - if a qualifying debtor is receiving mental health crisis treatment as certified by an approved mental health professional (AMHP), the moratorium will last beyond the 60-day window, continuing for as long as the treatment continues (plus 30 days), subject to more generous terms.

What kinds of debts qualify, and what are the effects?



- Qualifying debt
- Eligibility
- Notification
- Record search
- Stop enforcement action
- Contact



- **Effects/consequences**
 - A breathing space does not extinguish debts, but it does prevent enforcement action against debtors for as long as they have effect, including the taking of possession action. A debtor can also not be asked to make further payments, or pay any interest, fees, penalties or charges arising during the moratorium period.

The debt respite scheme & housing



Possession proceedings

→ As landlords, you cannot make a notice of intent, give notice or evict a qualifying tenant for rent arrears whilst the breathing space is in place if your basis for seeking possession are rent arrears (for example, under Ground 8, Schedule 2 of the Housing Act 1988), **BUT:**

- Can still seek possession on other grounds (but note potential mental health overlap)
- A breathing space does not stop the section 21 eviction process for assured shorthold tenants.



A few important points from the Guidance



- **3.6 Existing legal proceedings**

If you had already filed a petition for bankruptcy or started any other action in a court or tribunal relating to a debt that is now in breathing space, you must tell the court or tribunal in writing. You must do this as soon as you receive notification of the breathing space.

- **3.7 Where a court judgment or order has not yet been issued**

Any court that receives notification about a breathing space debt where a bankruptcy petition has started, must stop the bankruptcy proceedings, until the breathing space ends or is cancelled. Other court proceedings about the debt (other than enforcement of court judgments or orders) can continue until the court or tribunal makes an order or judgment.

A few important points from the Guidance



• **3.8 Where a court judgment or order has been issued**

Unless the court or tribunal gives you permission to continue, the court or tribunal must make sure any action to enforce a court order or judgment about a breathing space debt stops during the breathing space. These might be actions like:

- holding a hearing during the breathing space
- making or serving an order or warrant, writ of control, writ of execution or judgment summons
- instructing an enforcement agent to serve an order, warrant, writ of control, writ, execution or judgment summons
- The court or tribunal can still send notices or correspondence to the debtor about an action or proceeding.
- Court orders and judgments for a breathing space debt, which were made before the breathing space began, cannot be enforced until the breathing space ends. This is unless the court or tribunal gives permission for these actions to continue.
- Existing legal proceedings can continue when the breathing space ends. If a time limit for enforcement or new legal claims related to the debt ran out during the breathing space, this is extended to 8 weeks after it ends.
- You can still start or continue any legal action relating to any debt that is not a breathing space debt, during a breathing space.



Case law (in the non-housing context): *Axnoller Events Ltd v Brake* [2021] EWHC 1500 (Ch)



The end of the eviction ban: **Olivia Davies**



The end of the eviction ban



- The temporary eviction ban imposed by the Public Health (Coronavirus) (Protection from Eviction) (England) (No.2) Regulations ended on 31 May 2021
- All possession orders can now be enforced for the first time since November 2020 where the landlord has a valid warrant of possession
- 14 days' notice of the date of eviction must be given
- Huge backlog means delays are likely – be aware of the priority list so you're not taken by surprise (e.g. ASB, extreme arrears, trespass, domestic violence, fraud)

The final hurdle?



- Be ready for final delays caused by tenants' reporting possible COVID diagnoses:

➡ *"bailiffs have been asked not to carry out an eviction if they have been made aware that anyone living in the property has COVID-19 symptoms or is self isolating."*

➡ *"**bailiffs will not carry out an eviction** if they are made aware that you or anyone you live with has coronavirus symptoms, has tested positive for COVID-19 or are waiting for a test result, or has been instructed by the NHS to self-isolate. If this applies to you, you must inform the court at the address provided on the N54 form, explaining when the symptoms started and/or how long you have been in self-isolation for. **The appointment will be rescheduled for a later date with a minimum of 14 days' notice.**"*

Changes to Section 8 Notice periods

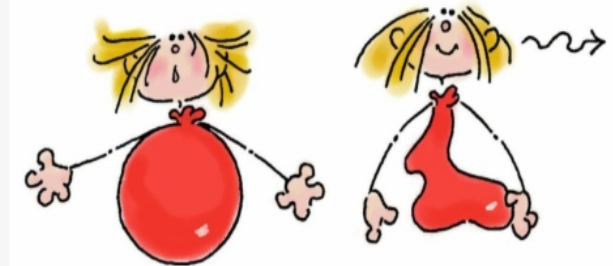


- From 1 June 2021 to 30 September 2021 the notice period changes from 6 months to **4 months** except as follows:
 - **Ground 7** (death of tenant): **2 months**
 - **Ground 7A** (Anti-social behaviour): **1 month** (NB normal time periods re date of conviction/breach/order apply)
 - **Grounds 8, 10 &/or 11**
where **4 months' rent** outstanding: **4 weeks**
 - **Grounds 7B, 14A, 14ZA, 17**: **2 weeks**
 - **Ground 14** (nuisance etc): **As soon as notice served**
- NB that **from 01 August 2021**, where rent arrears are less than 4 months' the notice period for grounds 8, 10 & 11 is **2 months**

Don't forget breathing space!



- It is not permissible to serve a section 8 notice on grounds 8, 10 or 11 during the breathing space period
- Where landlords are notified after the service of a section 8 notice on grounds 8, 10 or 11 (with or without other grounds) that a “breathing space” has started, proceedings cannot begin while the breathing space is in operation



Breathe in

Breathe out

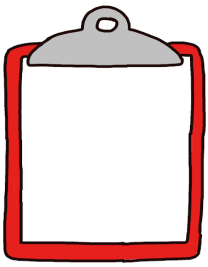
Changes to Section 21 Notice periods



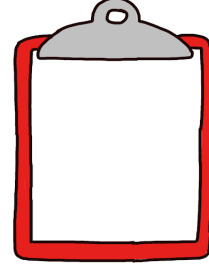
- From 1 June 2021 to 30 September 2021, there is a **4-month** notice period
- Possession proceedings must be issued **within 8 months** of service of the notice
- If a notice was served between 29 August 2020 and 31 May 2021, proceedings must instead be issued within **10 months**

What next?

- Notice periods are expected to revert to the pre-pandemic position on 01 October 2021 – stay alert!



Forms, forms, forms

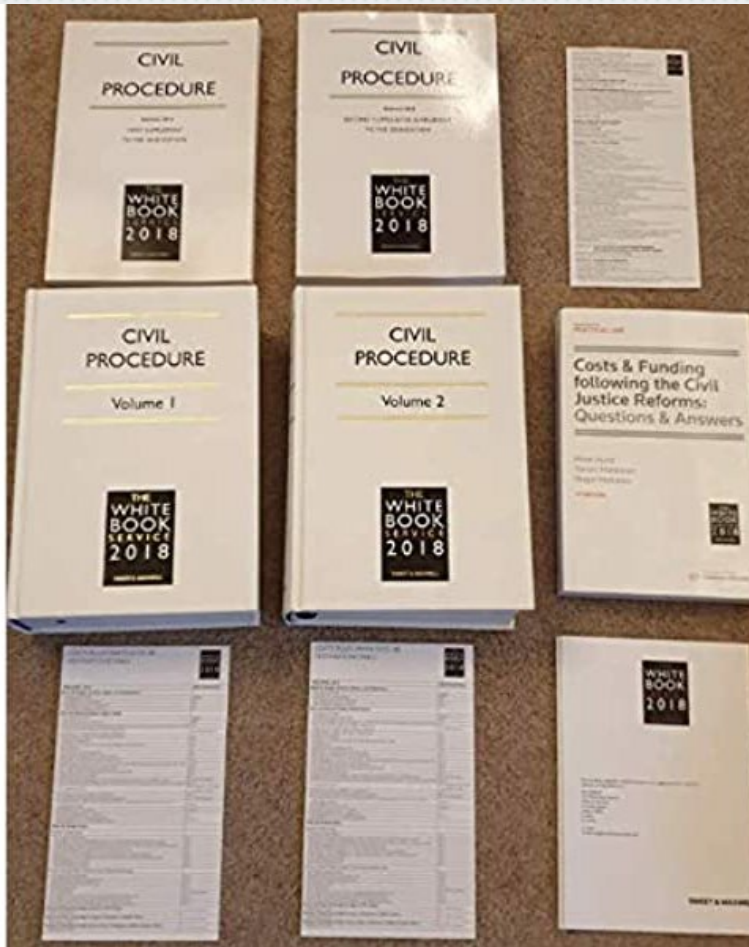


- From 1 June 2021 until 30 September 2021, landlords must serve a section 21 notice using the newly updated [Form 6A](#) and a section 8 notice using the updated [Form 3](#).
- Make sure you use the up-to-date forms to ensure that you have:
 - 1) the correct notice period (for both section 8 and 21 notices)
 - 2) References to the requirements of the “breathing space” regulations (for section 8 notices)
- If in doubt about the validity of your section 21 notice, let Nearly Legal’s magic [flowchart](#) be your guide!



Practice and procedure: **Rowan Clapp**

Practice Direction 55C (PD55C) – Stays and reactivation.



- Modifies CPR Part 55 until 30 July 2021.
- Can be no listing/relisting/hearing or referral in 'stayed claims' until one of the parties files and serves **reactivation notice**.
- '**stayed claim**' is a claim brought on or before **19 September 2020**.
- The requirement for a reactivation notice doesn't apply to stayed claims brought on or after **3 August 2020**, or in which a final possession order has been made.
(55CPD2.2, 55PN3)

PD55C – Reactivation Notices.



- Model reactivation notice is available [here](#).
- Must: confirm that the party filing wishes the case to be listed, relisted, heard or referred AND (unless an appeal), set out what knowledge that party has as to the effect of the Coronavirus Pandemic on the Defendant and their dependents (**55CPD2.3(a)-(b)**).
- If the claim is based on arrears of rent, Claimant MUST provide with the notice an updated rent account for the previous two years (again, unless the proceedings are an appeal (**55CPD2.4**)).
- No reactivation filed and served by 4pm 30 April 2021 regarding stayed claim? Automatically stayed (**55CPD2.6**).
- Trial dates set prior to 27 March 2020? Vacated unless party complies with reactivation procedure not less than 42 days prior to hearing date (**55CPD2.5**).

PD55C – Relisting



- Court will provide at least **21 days' notice** to any of the parties of a hearing relisted in response to reactivation notice (**55CPD3.1**).
- Where no hearing has been listed, court will fix a date for the hearing when or after it issues the CF (**standard period of 8 weeks between issue and hearing** (**CPR r.55.5(3)(b)**) **does not apply** (**55CPD4.1, 55PN9.33**)).



PD55C - Directions



- If **previous case management directions** in a stayed claim, party filing and serving reactivation notice **must** file and serve with that notice:
 - Copy of last directions order
 - New dates for compliance with directions taking account of the stay before 20 Sept 2020; AND
 - Either:
 - A **draft order setting out additional/alternative directions** (inc. new hearing date), OR
 - Statement that no new directions required; AND
 - Statement in writing whether the case is suitable for hearing by **video/audio link** (**55CPD5.1, 55PN.3**)
- If parties do not agree with the proposed directions or means by which hearing is to continue, must file and serve response within 14 days of service of the reactivation notice (**55CPD5.2**)
- If no parties complies with ^ by 4pm on 30 April 2021 then, claim automatically stayed (**55CPD5.3**)

PD55C – Additional requirements



- In **any** claim brought on or after 3 August 2020, Claimant **MUST** bring to the hearing:
 - **Two copies** of a notice detailing who the claimant has complied with the relevant **Pre-Action Protocol** (if applies); and
 - Setting out what knowledge the Claimant has as to the effect of the Coronavirus pandemic on Defendant and their dependents
- Must also serve same on Defendant not less than 14 days prior to the hearing (**55CPD6.1, 55PN7**).
- In **any** claim to which Section II of Part 55 Applies, Claimant must file with the CF a **notice setting out what knowledge that party has as to the effect of the Coronavirus Pandemic on that Defendant and their dependents (55CPD6.2)**.

Review Procedure.



- As above, 21 days' notice. Cases will normally proceed with a **Review first, and then to a Substantive Hearing (55PN9.36-7)**.
- Unless case management directions, first date to be listed will be the Review date at which the Substantive Hearing date will be fixed (sometimes courts list both dates on same doc – either way, Substantive Hearing date should be 28 days after the Review date **(55PN.9.38-39)**).
- **Notice of the listing for review will include details for the Defendant of duty scheme advice arrangements (55PN9.42(a))**.
- 14 days before the Review date, Claimant required:
 - To provide Court with an electronic bundle (paper ok as alternative)
 - To confirm to the Court that a paper bundle had been provided to the Defendant (plus electronic copy where Defendant is able to receive that)
 - To confirm to the Court that the bundle includes all required material (incl. enhanced material about the Defendant, e.g impact of Coronavirus).
 - To confirm to the Court that the Claimant will be available during the Review Date to discuss the case (by telephone is sufficient) with the Defendant or with duty scheme (/other) adviser **(55PN12.49)**.
- On review date – very short appointment listed by court. Conducted by judge on papers. Listed for 5 mins at the end of the sitting day – if parties resolve case or agree directions, Court available to make orders required **(55PN12.52)**. If not resolved, either proceed to list for Substantive hearing or if documents not in order, may dismiss or give directions.

Note on listing



- No block listing for possession list, but will be listing cases of the same type on the same day where possible.
- Means specific time for hearing.
- Guidelines re: prioritization remain in place – cases with allegations with ASB/extreme rent arrears will be given priority (along with cases issued before the stay in March 2020).
- Unless exceptions apply, the aim is that parties will be offered a physical hearing for substantive hearings (**55PN6**).

Typical listing for Court Possession Proceedings day:

1000 Urgent hearings to suspend/stay/set aside/vary/postpone

1045 Hearing S1

1105 Hearing S2

1125 Hearing S3

1145 Hearing S4

1205 Hearing S5

1225 Hearing S6

1245 Hearing S7

1300-1400 Lunch adjournment

1400 Hearing S8

1420 Hearing S9

1450 Hearing S10

1510 Reviews R1-10 [All on the documents; no attendance before the Judge]

1600 Hearings end

Top tips



- Review 55CPD and its requirements – **ensure completed all relevant paperwork.**
- Numbered, indexed, word searchable, bookmarked bundle.
- Check with counsel if have concerns
- Current guidance encourages **settlement consideration** – is this appropriate? Take advice if needed.
- Cert. service very helpful, especially in the event Defendant does not attend hearing.
- **Consider further (short) witness statement** to update/clarify/assist.
- Review **policies** re: when notices are issued. Is a new policy appropriate?
- **MUST** consider impact of coronavirus on Defendant.
- Ensure court has **correct details** for any remote hearing (has the Defendant objected? If so, why?).
- Consider asking judge to record additional information for clarity in recital (for purposes of enforcement).
- Get to court early – opportunity to **narrow issues with duty solicitor/settle.**

Homelessness Teams



- Eviction ban has ended - > possible spike in applications for assistance (pot. 400,000 renters have received eviction notices or told to expect them).
- Duty under s.195 HA 1996 to work with those threatened with people threatened with homelessness **within 56 days** to prevent them from becoming homeless, but, guidance urges authorities to consider acting as early as possible:

‘12.2 Housing authorities may become aware of residents who are threatened with becoming homeless but not within 56 days, and possibly not within any specified time period; and are encouraged to offer assistance where possible rather than delay providing support which may be effective in preventing homelessness.’

- Homelessness Code of Guidance for Local Authorities

Homelessness Teams (2)



- Consider early advice from counsel re: merits of potential application for assistance (or re: certain common classes of applications, where many of a similar character are being made).
- Likely use of out of borough placements due to affordability constraints:
 - Note: lawful to hold back a stock of in borough accommodation if desired (Alibkiet v Brent LBC [2018] EWCA Civ 2742)
 - And Note: may well be allocation policies challenged – have publicly available policies explaining factors authority will consider (and also recall requirement to house as close as possible to previous accommodation (Nzolameso v Westminster City Council [2015] UKSC 22))





Contact details:

Cornerstone Barristers, 2-3 Grays Inn Square, London WC1R 5JH

Tel: 020 7242 4986

Fax: 020 3292 1966

dgatt@cornerstonebarristers.com

samc@cornerstonebarristers.com