

As at 10.8.20: Master of the Rolls' (as Head of Civil Justice) Working Group on Possession Proceedings

SUMMARY ARRANGEMENTS FOR POSSESSION PROCEEDINGS

Introduction

1. The stay on possession proceedings comes to an end on 23 August 2020. The legal system faces a combination of (a) accrued demand from the stay, (b) forthcoming major demand as a result of economic conditions, and (c) reduced physical capacity because of social distancing.
2. The strategy reflected in the arrangements summarised in this document is directed to (a) reducing volume in the system by enabling earlier advice and increasing settlement, (b) taking account, within limits that the law has imposed, of the effect of the pandemic on all parties, and (c) maintaining confidence in the fairness of outcomes.
3. Everyone, collectively, has a critically important role in tackling the challenge. This includes by (a) helping the parties, (b) identifying additional solutions and (c) enabling court process and hearings to operate efficiently.
4. The arrangements summarised seek to use to best effect, and in combination, rule changes, preparation, guidance, practical arrangements, cooperation, best practice, the developed provision of advice and assistance, technology, the judicial listing function, and the court's case management powers.

Re-starting existing cases

5. Claims brought before 3 August 2020 will not be listed, relisted or referred to a Judge until one of the parties files and serves a "reactivation notice" confirming that they wish the case to proceed. There is no rush - this may be done at any time before at least 29 January 2021.
6. In existing claims where case management directions were made before 23 August 2020, a party filing and serving a reactivation notice must propose new dates for directions and proposed hearing date or state that no new directions are required and that an existing hearing date can be met.

Starting new cases

7. No new claim for possession should be started without careful efforts to reach compromise. Claims that are not priority cases
8. Where a Pre-Action Protocol applies it must be complied with, and compliance will need to be shown. For claims not currently the subject of a Pre-Action Protocol there are or will be a short set of guidelines to pre- and post-issue best practice.
9. Some claims are subject to regulatory or voluntary schemes under which, as a matter of good practice and with appropriate exceptions for priority cases, pending claims are postponed to 30 October 2020 and new claims not issued until 30 October 2020. After 30 October 2020 claims will still need to proceed in an orderly sequence and proper conduct and best practice observed.

The Courts

10. The parties will be offered a physical hearing for substantive hearings. This is subject to 3 exceptions: (a) if contingency arrangements need to be introduced, (b) the existing provisions for Accelerated Possession Claims to be dealt with without a hearing, (c) where the parties agree (subject to the court) that a hearing should be by phone or video.
11. Every courtroom and Judge handling a possession list will have a member of staff/ usher attached to that courtroom and Judge throughout the day.
12. Only Court centres able to conduct hearings with social distancing will be used. Each Court centre will have, guided by Public Health England and adjusting as needed, a safety and active cleaning procedure running through the day. Parties must not attend a court building where that would conflict with pandemic health guidelines applying to the party.
13. Where a party is at the Court centre, a legal representative may appear for that party either at Court or (where the facilities allow) by video link. Where a party's legal representative is at the Court centre, the party may appear either at Court or (where the facilities allow) by video link or by phone.

Documentation and enhanced information for the Court, including Covid-19 Case Marking

14. The Claimant is now required to set out what knowledge the Claimant has as to the effect of the coronavirus pandemic on the Defendant and dependants. This includes in all existing cases where a reactivation notice is served, and in all new claims, including all Accelerated Possession Claims.
15. The rules now also contain new requirements in appropriate cases for an updated rent account for the previous two years.
16. A Defendant¹ or a private Claimant² who contends that the proceedings are a direct consequence of Covid-19 will additionally be entitled to mark the case as a Covid-19 Case. Covid 19 Case Marking serves these ends:
 - The Marking may highlight settlement suitability.
 - Marking by the Defendant will be available to Claimants who have agreed as a matter of policy to give special consideration to such cases.

¹ Covid-19 Case Marking by a Defendant will require the following information:

- brief details of the particular hardship faced by the Defendant;
- whether there were material arrears outstanding before March 2020;
- whether the Defendant has been placed on furlough, and whether the Defendant offered or paid a related proportion of rent or borrowing arrears;
- whether the Defendant has obtained universal credit since March 2020, and whether the Defendant offered or paid a related proportion of rent or borrowing arrears;
- whether the Defendant has been unable to earn by reason of Covid-19;
- whether the Defendant has been shielding;
- what proposals the Defendant has to pay the rent or borrowing arrears.

² Covid-19 Case Marking by a Claimant will require the following information from the Claimant:

- brief details of particular hardship faced by the Claimant;
- whether the Claimant has received assistance under a Covid-19 scheme, including (where a Landlord) with any borrowing by the Landlord in respect of the property.

- Marking by the Claimant will draw attention to cases where it is the Claimant that is in particular difficulty as a result of the pandemic.
 - The Marking will be available to the Court to assist with listing including prioritisation (whether to take earlier or later), with case management and with any discretion available in decision making.
 - The Marking will assist in monitoring.
17. If the Defendant has difficulty in completing the forms for a defence, a short statement explaining his/her circumstances and why an order should not be made will suffice.

Listing cases, including prioritisation

18. Generally speaking the Court will not fix a date when it issues the claim form. The former standard period between issue and hearing of eight weeks does not apply. There will be no “block lists”.
19. Listing dates will not start to be provided by court centres until the end of the stay on 23 August. At least 21 days’ notice of a hearing in a stayed claim listed or relisted in response to a reactivation notice is required.
20. The first date to be fixed is the R (Review) Date. Generally, the S (Substantive) Hearing will be fixed on the Review Date. Courts will list up to around 3 months ahead. The balance will be held in reserve to be listed for an R Date (ie Review) on a rolling basis as each week passes.
21. In addition, each Court centre will refer Accelerated Possession Claims to a judge at manageable frequency.
22. Where possible cases listed on a particular day or part of a day will be of the same type of Claimant: eg Social Landlords, Private Landlords, Mortgage Lenders.
23. As a guideline the cases identified in the Schedule to this Summary will be listed with priority. Subject to that, priority will be given to claims issued before the stay commenced.
24. Notice of listing will include:
- (a) the Review (R) date or the Substantive (S) hearing date (see below);
 - (b) details of what the court will do on the R date and the S date (as the case may be) (R on the documents; S with attendance);
 - (c) details for the Defendant of duty scheme advice arrangements on both R and S dates, or (accurate and up to date) alternatives;
 - (d) the point that if the Defendant takes the early advice offered on the R date and the case can be resolved, no S hearing will be needed;
 - (e) emphasise that the Defendant’s home is at risk and that help is available that is free;
 - (f) case management and listing requirements for the Claimant (see in particular 5.4 above);
 - (g) details of the facility for Covid-19 Case Marking by the Claimant or the Defendant (see 5.3 above).

Legal advice and assistance for Defendants

25. Non means tested legally aided advice and assistance will be available to the Defendant through revised duty scheme arrangements, at two points: early advice one month (28 days) before the first substantive hearing (ie on what will be known as the R or Review Date), and also (as now) advice at the first substantive hearing if there needs to be one (ie at what will be known as the S or Substantive Hearing).

26. All legal aid duty scheme contracts will allow the advice and assistance to be provided flexibly, including face to face (at Court building or suitable off-site location), video or phone (adviser calling back where necessary to address call costs problems and manage demand across the day).

Review (R) Date

27. 14 days before the date listed as the Review (R) Date (see below) the Claimant will be required:
- (a) to provide to the Court centre an electronic bundle (with a paper bundle allowed as an alternative);
 - (b) to confirm to the Court that a paper bundle had been provided to the Defendant (with an electronic copy in addition where the Defendant is able to receive that);
 - (c) to confirm to the Court that the bundle includes all required material, specifically including information about the Defendant now required;
 - (d) to confirm to the Court that the Claimant will be available during the R Date to discuss the case (by telephone would be sufficient) with the Defendant or a duty scheme (or other) adviser.
28. On the Review (R) Date a very short Review (R) will be listed by the Court. This will be conducted by a Judge on the documents and without attendance by the parties. The Review is for 5 minutes. The Judge will consider the material provided by the Claimant. No court fee will be payable in relation to a Review.
29. The Review will be at the end of the sitting day so that if on that day the Claimant and the Defendant resolve the case, or agree directions, then the Court will be available to make the orders required. This will still be without attendance of the parties; the agreed order should be provided (usually by the duty scheme provider who has assisted the Defendant to resolve the case or agree directions) to the member of staff/ usher attached to the judge throughout the day.
30. Local authorities will be expected to take the following approach: if someone leaves their home because they had signed a consent order to agree possession because the property was unaffordable, then they should not be considered intentionally homeless.
31. If the Claimant's documents are in order and the case is not resolved it will proceed to an S hearing 28 days later. If the Claimant's documents are not in order the Court can be expected to dismiss the claim (with liberty to apply for reconsideration at an oral hearing) or may give directions.

Substantive (S) Hearing

32. Where a Substantive (S) Hearing is listed all parties must attend.
33. The hearing is for 15 minutes, with additional time between hearings for Covid-19 safety procedures.
34. Unless the Claimant and the Defendant resolve the case, the Court will decide the claim or give further case management directions.
35. It can be expected that the question of adjournment will be considered, without the need for an application to adjourn, in any case where (a) there is no sign that advice has yet been made

available and (b) the consequences of the order may be serious in the context of the pandemic.

36. The court's discretion at the point of decision or order is currently limited by statute. These limits did not contemplate the circumstances that a pandemic would give rise to, for Claimants and for Defendants. In the result, there are material cases where the judiciary does not have discretion, or has only very limited discretion, to take into account the effect of Covid-19 on a Defendant.

Accelerated Possession Claims

37. Accelerated Possession Claims issued before 3 August will require a reactivation notice as with all other stayed claims. As a guideline all Accelerated Possession Claims will be dealt with having regard to the priorities listed in the Schedule to this Summary.
38. Judges will use the time freed up where S Hearing slots are vacated to deal with Accelerated Possession Claims referred to them for consideration.
39. Where the parties agree or there is no objection, the Judge to whom an Accelerated Possession Claim has been referred for consideration may direct that an R Date be listed to enable the Defendant to receive duty scheme advice and assistance. This may be particularly appropriate in a case that is Covid-19 marked by the Tenant.
40. If on consideration of an Accelerated Possession Claim referred to the Judge for consideration the Judge directs a substantive hearing (giving any appropriate case management directions, and with the parties to attend) that will be listed as an S Hearing unless otherwise directed.

Where an order for possession is made

41. Notice of eviction is now required both in the County Court and in the High Court. In both cases, a new form now provides in both Courts for clear information to the Defendant of the date of the proposed eviction and the right to apply to the court for suspension or postponement, and of available routes to advice.
42. Whilst any application will be considered on its merits, generally speaking, in current circumstances and in light of current challenges, parties will be encouraged to recognise that applications to transfer proceedings from the County Court to the High Court may not be able to be treated as of high priority.
43. At enforcement, safety procedures and policies must also be provided to Defendants. Safety of both Defendants and enforcement officers/bailiffs in the specific case must be carefully considered and set out. Transparency is vital here.

Monitoring

44. HMCTS, led nationally, will monitor agreed points, so as to ensure reporting to local, regional and national judiciary, and in turn consideration of adjustments in light of experience.
45. Participation in regional and local court user groups is encouraged.

Contingency arrangements

46. Contingency arrangements are being put in place.

47. If the pandemic generates future adjustments in HMG advice, eg regional or temporary return of “lockdown”, required adjustments to the overall arrangements will be made where possible. It will be for the Lord Chancellor if the occasion arises to decide whether to inform the Rules Committee that it is expedient to introduce stays of possession claims or enforcement for particular regions, periods of time, or classes of case.

Schedule

Illustrative timeline for a claim

<u>When</u>	<u>What</u>
From 23 August	New proceedings issued and served (or reactivation notice served by Claimant (or Defendant) in stayed claims issued before 3 August
After issue	R Date fixed
By R minus 21 days	Notice of R Date to Claimant and Defendant
By R minus 14 days	Claimant lodges bundle with Court and provides a copy to Defendant
R	Review (R) listed – no attendance; early advice available; negotiation; S Hearing fixed unless claim resolved or other directions
R plus 28 days	Substantive Hearing (S) – attendance required; advice available
After S	As directed by the Court (if case continues).

Typical listing for a day

1000	Urgent hearings to suspend/stay/set aside/vary/postpone
1045	Hearing S 1
1105	Hearing S 2
1125	Hearing S 3
1145	Hearing S 4
1205	Hearing S 5
1225	Hearing S 6
1245	Hearing S 7
1300-1400	Lunch adjournment
1400	Hearing S 8
1420	Hearing S 9
1450	Hearing S 10
1510	Reviews R 1-10 [All on the documents; no attendance by the parties]
1600	Hearings end

Urgent hearings to suspend/stay may also be taken where any **S** hearings have been vacated or are ineffective, although these will also be used for considering Accelerated Possession Claims (see below). Appeals, applications to suspend/stay/vary/postpone will also be dealt with on other days where required.

Priority cases

- (a) cases with allegations of anti-social behaviour, including Ground 7A of Schedule 2 to the Housing Act 1988 and Section 84A of the Housing Act 1985;
- (b) cases with extreme alleged arrears accrued, that is, arrears equal to at least (i) 12 months' rent or (ii) 9 months' rent where that amounts to more than 25% of a private landlord's total annual income;
- (c) cases involving alleged squatters, illegal occupiers or persons unknown;
- (d) cases involving an allegation of domestic violence where the claimant is a Social Landlord and possession of the property is alleged to be important for particular reasons which are set out in the claim form (and with domestic violence agencies alerted);
- (e) cases with allegations of fraud or deception;
- (f) cases with allegations of unlawful subletting; and
- (g) cases with allegations of abandonment of the property, non-occupation or death of defendant;
- (h) cases concerning what was allocated by an authority as 'temporary accommodation' and is specifically needed by the authority for reallocation as 'temporary accommodation'.