

Possession update – July 2022





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A RETURN TO NORMALITY...

- 1 November 2021: the Overall Arrangements for Possession Proceedings have come to an end. Courts no longer have to list review dates prior to substantive hearings, and no longer need to prioritise certain possession claims.
- 30 November 2021: The “interim period” under Practice Direction 55C came to an end. PD 55C will continue to apply to any possession claim issued before 1 December 2021 (PD 55C, para 1.8).
- Stayed claims issued after 1 Dec 21 still need to be “reactivated” unless they were issued on or after 3 August 2020 or a possession order has already been made (PD 55C, para 2.1-2.3)
- Until 30 June 2022, for all claims issued on or after 3 August 2020, the Claimant must demonstrate compliance with the relevant Pre-Action Protocol and provide information as to effect on pandemic on the Defendant/s (PD 55C, para 1.9; paras 6.1 and 6.2).

Whilst notice periods have returned to what they were pre-pandemic, continue to pay attention to the relevant notice periods for older claims:

Ground	29 Aug 20- 31 May 21	1 Jun 21 – 30 Sept 21
Section 21	6 months	4 months
Rent arrears	4 weeks where 6 months + in arrears; 6 months otherwise	4 weeks where 6 months + in arrears; 4 months otherwise From 1 Aug 21: 2 months where arrears are less than 4 months'
Mortgage repossession	6 months	4 months

BREATHING SPACES

- Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium (England and Wales) Regs 2020
- Debt:
 - Rent/Mortgage arrears can be included
 - Tenant/Mortgagor remains liable for the debt, but Regs limit what landlord/lender can do to enforce for a period of 60 days (reg 26(2)).
 - Landlord/lender cannot demand payment of the debt included in the moratorium, and cannot charge interest during the breathing space (reg 7(6)-(7)).
 - Landlords cannot:
 - Serve notice on rent arrears grounds during breathing space.
 - Issue claims on arrears grounds during breathing space, though the time limit for issuing a claim will be extended for 8 weeks if it falls during the breathing space (reg 7(6)-(7)).
 - Enforce possession orders.
 - Landlords must notify court of any breathing space if there are ongoing proceedings (*reg 10(1) and PD 70B*).
 - Court must adjourn ongoing proceedings to FAD after breathing space ends.

BREATHING SPACES, CONT.

- Mental Health:
 - Available to those receiving treatment from specialist mental health service in respect of serious mental disorder (reg 28).
 - Lasts for length of treatment plus 30 days (reg 32(2)).
 - Can enter as many as needed.
 - Can be on application from debtor themselves or from third party (reg 29(1)).
 - If there are ongoing proceedings during a breathing space, court must adjourn generally with a review for directions six months after start of breathing space.
- Any steps taken by a creditor contrary to Regs will be void (reg 7(12)), though it is possible for the court to give permission where it is reasonable and not detrimental to the tenant (reg 7(5)).
- Debtors cannot be evicted during a breathing space of any kind, and can apply for their restitution if they are evicted in error (Lees v Kaye [2022] EWHC 1151 (QB)).

RENTERS REFORM WHITE PAPER - BACKGROUND

- April 2019: MHCLG consulted on proposals to end “no fault” evictions, extend grounds under section 8, and restrict landlords’ ability to grant ASTs.
- November 2019: Conservative manifesto included commitment to introduce “Renters’ Reform Bill” that would abolish section 21 claims.
- 16 June 2022: MHCLG release white paper entitled “A fairer private rented sector”. Describes the reforms as a “New Deal” for renters centred on “quality, affordability and fairness” – we shall see!

HEADLINE REFORMS

- End of Section 21
- Abolition of Assured Shorthold Tenancies
- Ombudsman
- Extended grounds under section 8
- Application of the Decent Homes Standard to private rental sector

THE END OF SECTION 21

- All assured shorthold/periodic tenants will be “moved on to single system of periodic tenancies”.
- Tenants will need to give two months’ notice.
- Landlords will only be able to evict tenants in “reasonable circumstances, which will be defined in law.”
- Purpose-built student accommodation will not be included.

THE NEW GROUNDS

- Ground for landlords wishing to sell property and/or wanting to let family members move into the property – but not in the first six months of the tenancy.
- Ground for “repeated serious arrears” to get around tenants who pay just enough to get below ground 8 on several occasions: *“Eviction will be mandatory where a tenant has been in at least two months’ rent arrears three times within the previous three years, regardless of the arrears balance at hearing.”*
- Increased notice period for rent arrears grounds to four weeks.
- Recognition that people fall into Ground 8 territory because of timing of their benefit payments: *“We will prevent tenants in this scenario from being evicted, provided it is the reason they have exceeded the mandatory rent arrears threshold.”*
- Reduced notice period for mandatory ASB grounds.
- New “specialist” grounds for temporary/supported accommodation.
- Notice period where ground is something beyond the tenant’s control will be two months.

DISPUTE RESOLUTION

- Rent increases: increased notice period to two months; end the use of rent review clauses/automatic rent increase; FTT no longer able to increase the rent beyond landlord's initial demand in the increase notice.
- Expansion of Rent Repayment Orders to include non-decent homes.
- Introduction of Ombudsman for all of private rented sector:
 - Mandatory membership
 - Councils can enforce if landlords fail to join
 - Ombudsman *"will have powers to put things right for tenants, including compelling landlords to issue an apology, provide information, take remedial action, and/or pay compensation of up to £25,000."*
- The death of the housing court!



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CLARION HOUSING ASSOCIATION V CARTER [2021] EWHC 2890 (QB)

- Where property is vested in the Public Trustee under the rules of intestacy, the potential beneficiary does not acquire an equitable interest in that property
- Accordingly, the potential beneficiary is not a tenant in equity

GLOBAL 100 V LALEVA [2021] EWCA CIV 1835

- At the first hearing of a possession claim, the court may make directions if the claim is “genuinely disputed on grounds which appear to be substantial”: CPR 55.8(2)
- The test for whether it is genuinely disputed on grounds which appeared to be substantial is the same as for summary judgment.
- The court may give summary judgment if it considers that the defendant has no real prospect of successfully defending the claim or the issue and that there is no other compelling reason for a trial: CPR 24.2

LIDDIMENT V HULL [2021] EWHC 3418 (CH)

There is no general principle that, where a claim is made for possession of a mortgaged property and there is a dispute as to how much was owed under the mortgage, the court should use its discretion under the Administration of Justice Act 1970, s.36 to stay the execution of any possession order or adjourn proceedings pending determination of the sum owed.

METROPOLITAN HOUSING TRUST LTD V TM [2021] EWCA CIV 1890

- Where a housing trust bringing possession proceedings against a schizophrenic tenant living in mental health supported accommodation had breached its public sector equality duty by not taking account of an up-to-date psychiatric report, that breach had not been remedied by its decision-maker testifying at trial that if he were making the decision at the time of trial, he would not have pursued the possession proceedings.
- A witness's assessment in the witness box was far removed from the open-minded conscientious inquiry that the public sector equality duty required.

CROYDON LBC V KALONGA [2021] EWCA CIV 1890

- An unexpired fixed term is not subject to termination by the landlord under Housing Act 1985, s.82(1)(b) unless the landlord has an existing right to terminate early under the tenancy which has become exercisable and unless any requisite steps have been taken

LONDON & QUADRANT HOUSING TRUST V STOKES [2022] EWHC 1120 (QB)

- A judge had been entitled to find that two employees of a housing trust, acting fraudulently, had had ostensible authority to sign an individual up to a tenancy agreement where the agreement had been on a genuine document produced by the trust, and the individual had been an honest witness who had had no reason to believe that her tenancy was anything other than a regular transaction.

NORTHWOOD (SOLIHULL) LTD V FEARN [2022] EWCA CIV 40

- A deposit protection certificate – for the purposes of The Housing (Tenancy Deposits) (Prescribed Information) Order 2007 – given by a landlord which was a limited company was valid if it was signed by the landlord's property manager

***LEES V KAYE* [2022] EWHC 1151 (QB)**

- Where a moratorium for the purposes of reg.7(12) of The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England & Wales) Regulations 2020 is in place, enforcement of a possession order is unlawful

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