

Section 8

Possession Proceedings

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Landmark Chambers
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Section 5, Housing Act 1988

(1) An assured tenancy cannot be brought to an end by the landlord except by

(a) obtaining

(i) an order of the court for possession of the dwelling-house under section 7 or 21, and (ii) the execution of the order,

(b) obtaining an order of the court under section 6A (demotion order),

(c) in the case of a fixed term tenancy which contains power for the landlord to determine the tenancy in certain circumstances, by the exercise of that power,

...

and, accordingly, the service by the landlord of a notice to quit is of no effect in relation to a periodic assured tenancy

Section 5, Housing Act 1988

(1A) Where an order of the court for possession of the dwelling-house is obtained, **the tenancy ends when the order is executed.**

(2) If an assured tenancy which is a fixed term tenancy comes to an end otherwise than by virtue of

(a) an order of the court of the kind mentioned in subsection (1)(a) or (b) or any other order of the court

(b) a surrender or other action on the part of the tenant, or

(c) the giving of a notice under section 33D of the Immigration Act 2014,

then, subject to section 7 and Chapter II below, the tenant shall be entitled to remain in possession of the dwelling-house let under that tenancy and, subject to subsection (4) below, his right to possession shall depend upon a periodic tenancy arising by virtue of this section.

Q1: Does an assured tenant still have the ability to end a periodic tenancy by service of a notice to quit?

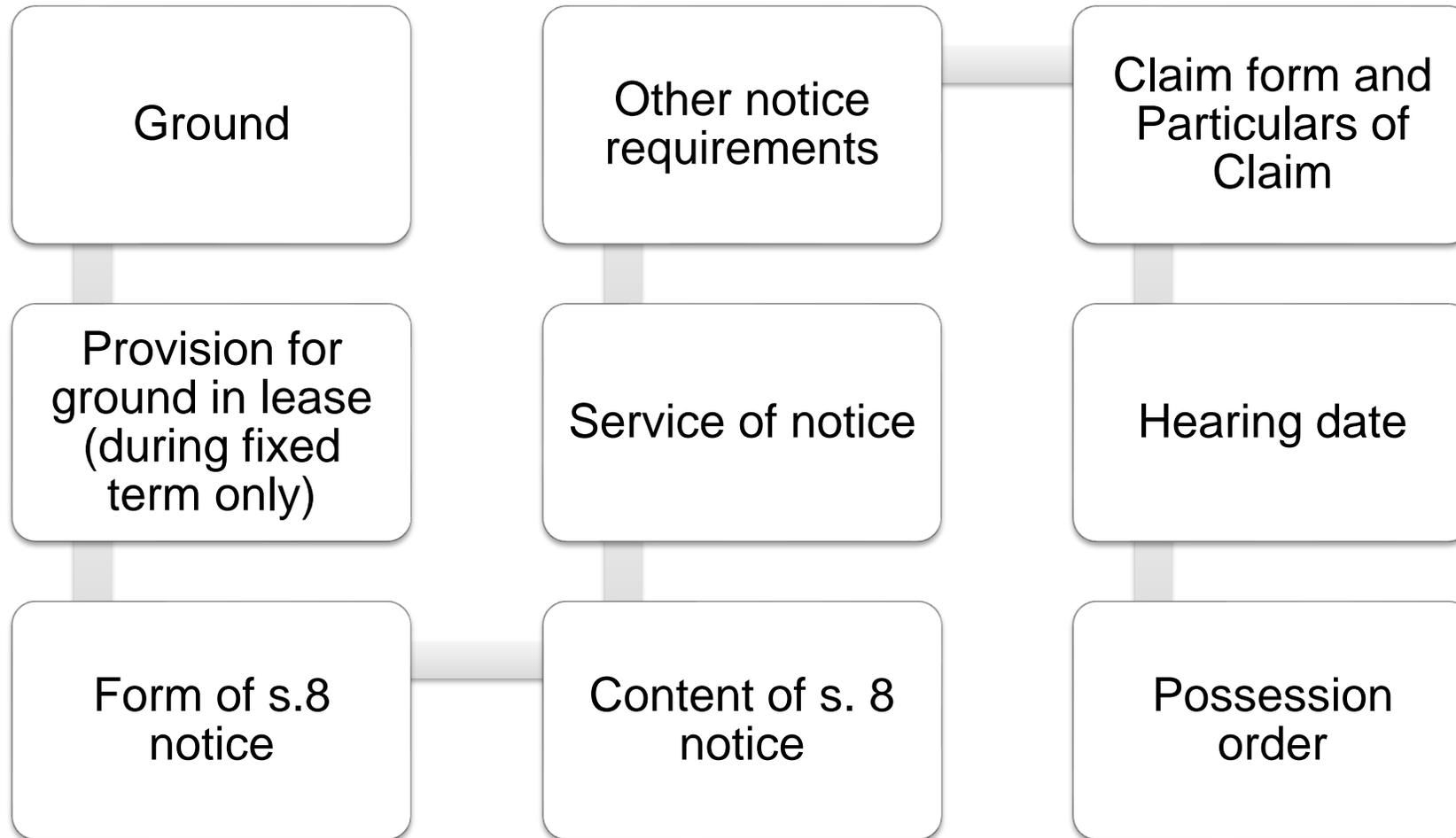
Yes

Q2: Can a landlord claimant apply for summary judgment in a possession claim in respect of residential premises?

No

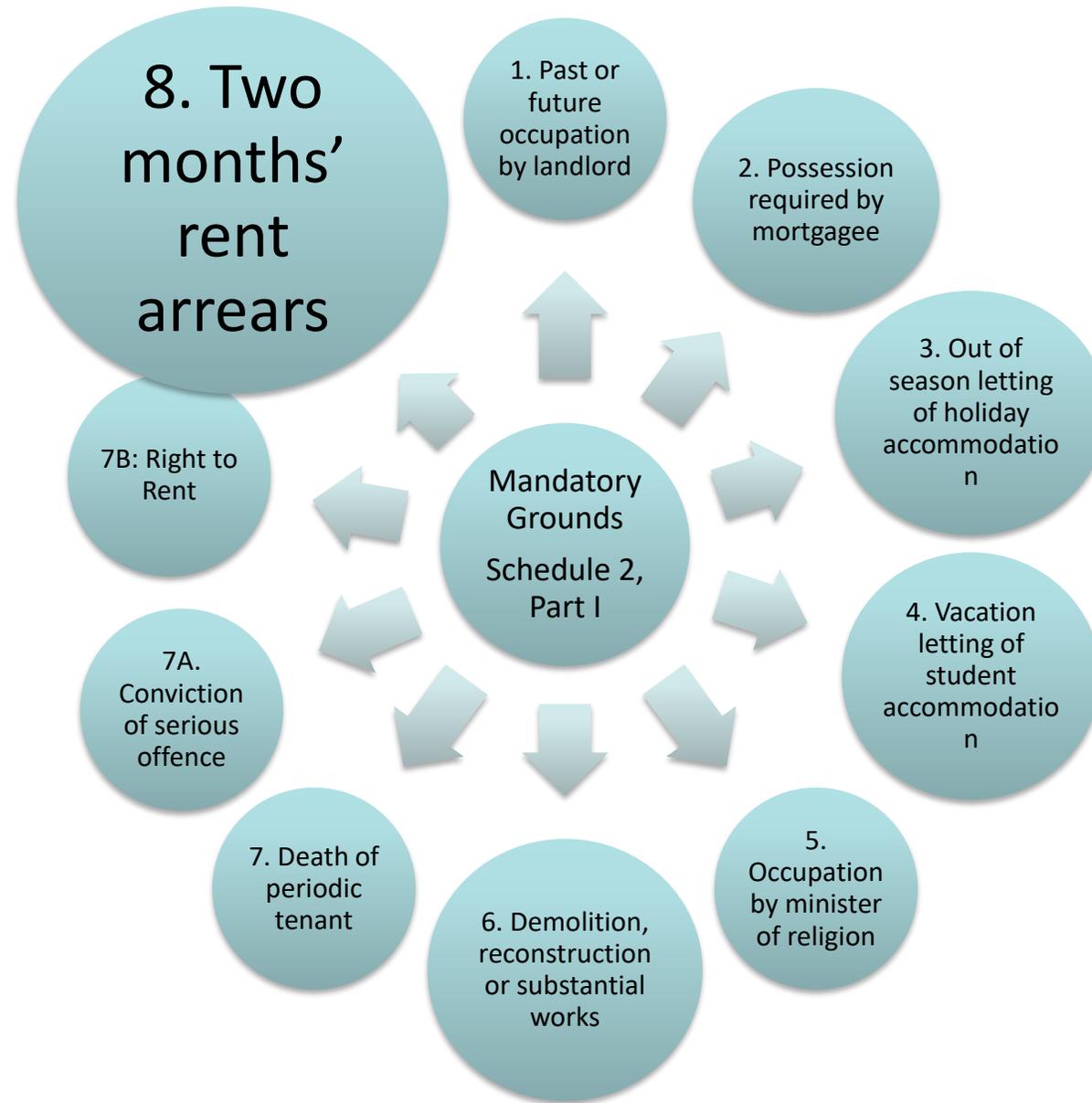
CPR r.24.3(2)(a)

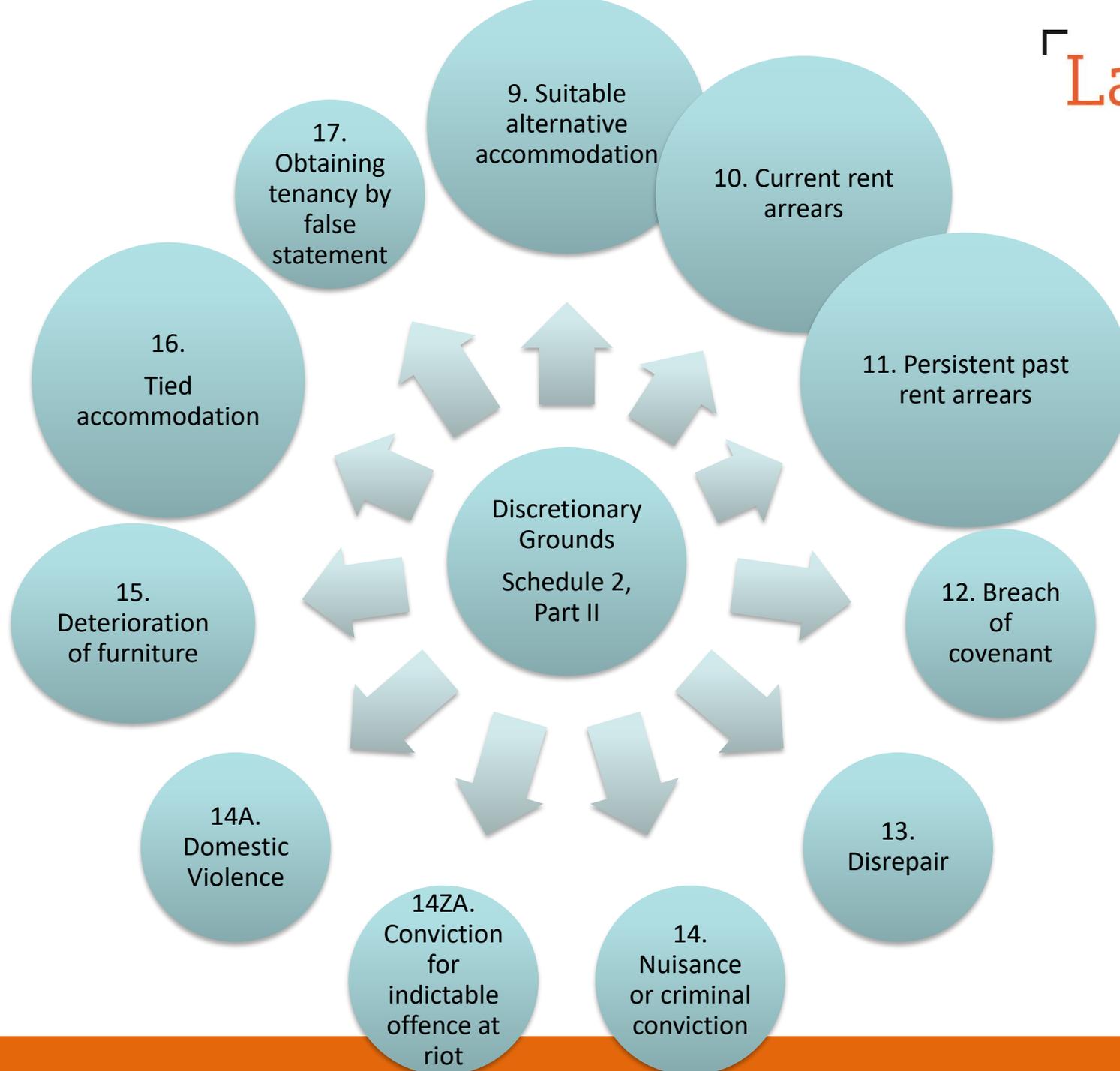
Checklist



Schedule 2







Ground 8

Both at the **date of the service of the notice** under section 8 of this Act relating to the proceedings for possession and at **the date of the hearing**

- (a) if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid;
- (b) if rent is payable monthly, at least two months' rent is unpaid;
- (c) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears;
and
- (d) if rent is payable yearly, at least three months' rent is more than three months in arrears;

and for the purpose of this ground 'rent' means rent lawfully due from the tenant.

Ground 8

TIPS:

- **Bring a witness (landlord or managing agent) to hearing to orally update evidence on the outstanding rent arrears.**
- **Rely on Ground 8 together with Grounds 10 and 11 in case tenant pays enough before hearing to get around Ground 8.**
- **Check for a set-off clause in the tenancy agreement.**
- **Watch out for s.48, Landlord and Tenant Act 1987.**
- **Anticipate possible counterclaims: disrepair, deposit, fitness for human habitation**

What is the practical consequence of relying on a mandatory rather than discretionary ground?

Section 9

(1) Subject to subsection (6) below, the court may adjourn for such period or periods as it thinks fit proceedings for possession of a dwelling-house let on an assured tenancy.

(2) On the making of an order for possession of a dwelling-house let on an assured tenancy or at any time before the execution of such an order, the court, subject to subsection (6) below, may

(a) stay or suspend execution of the order, or

(b) postpone the date of possession,

for such period or periods as the court thinks just.

...

(6) This section does not apply if the court is satisfied that the landlord is entitled to possession of the dwelling-house

(a) on any of the grounds in Part I of Schedule 2 to this Act; or

(b) by virtue of subsection (1) or subsection (4) of section 21 below.

Seeking possession within the fixed term of the tenancy – extra requirements Section 7(6)

- 1. Possession can only be sought on Grounds 2, 7A, 7B, 8 or 10 -15.**
- 2. The terms of the tenancy must make provision for it to be brought to an end on that ground.**

NB. This does not mean the landlord is exercising right of forfeiture – no section 146 notice required and provisions for automatic relief do not apply:
Artesian Residential Investments v Beck [1999] 3 All ER 113



Section 8 Notice

- Prescribed form: Schedule 1 to the Assured Tenancies and Agricultural Occupancies (Forms)(England) Regulations 2015 as amended by Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment No.2) Regulations 2016 - last changed in December 2016 – found online and referred to as Form 3
- Must contain:
 1. Ground + sufficient details of the circumstances
 2. Proceedings will not begin earlier than certain date
 3. Proceedings will not begin later than 12 months from date of service of notice

Section 8 Notice

- Flexibility: court can dispense with notice where just and equitable to do so and alter/add grounds (section 8(1)(b) and 8(2)).
- BUT not in respect of ground 7A or 8.

Service of notice – timings

Ground	Earliest date from <u>service</u> of section 8 notice when proceedings can be issued
1,2,5-7,9 and 16 (whether with or without other grounds, other than 7A or 14)	Two months from service of notice, or, if longer, earliest date on which, apart from section 5(1), the tenancy could be brought to an end by a notice served on the date that the section 8 notice is served.
7A (whether with or without other grounds)	Periodic: Earliest date on which, apart from section 5(1), the tenancy could be brought to an end by a notice served on the date that the section 8 notice is served. Fixed: one month after service of notice.
14 (whether with or without other grounds, other than 7A)	Date on which notice is served
All other grounds (3, 4, 8, 10, 11, 12, 13, 14ZA, 14A, 15)	Two weeks after service of notice

Other notice requirements

Landlord and Tenant Act 1987, section 48

- (1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.
- (2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.**

Q3: Can a landlord comply with s.48 by giving the relevant address in the tenancy agreement?

Yes

Q4: Can a landlord comply with s.48 by giving an address in the section 8 notice?

No

Claim Form and Particulars of Claim

- Part 55
- N5 Claim form
- N119 Particulars of Claim – attach key documents – tenancy agreement and notice
- Claim Form and Particulars must be filed and served together (CPR 55.4)

Claim Form and Particulars of Claim

- Identify the land;
- State whether claim relates to residential property;
- **State the ground, including statutory ground** (if applicable);
- Full details of tenancy agreement;
- Details of every person who occupies the property to best of landlord's knowledge;
- Details of any alleged conduct.

PD 55A 2.1



Particulars of Claim – Rent Arrears

- If ground relates to rent arrears:
 - (1) Amount due at start of proceedings;
 - (2) In schedule form, dates and amounts of all payments due for past two years before issue or from date of default;
 - (3) Daily rate of rent and interest;
 - (4) Any previous steps to recover the arrears with full details of any court proceedings;
 - (5) Details about tenant's circumstances, e.g. social security benefits.



Hearing Date

- Hearing date will not be less than 28 days from issue of claim form;
- Standard period between issue and hearing will not be more than 8 weeks;
- Defendant must be served with Claim Form and Particulars not less than 21 days before hearing date;
- Time periods can be shortened by the court;
- W/S must be served at least two days before hearing CPR 55.8(4).

Order

Order should state on its face whether it was made on a mandatory or discretionary ground: *Diab v Countrywide Rentals 1 plc* (2001), unreported.

Money judgment : rent + interest + rent at daily rate

Costs

- Statement of costs – N260
- Fixed costs may apply – CPR r.45.1(2)(d):

(d) the claim is for the recovery of land, including a possession claim under Part 55, where one of the grounds for possession is **arrears of rent**, for which the court gave a fixed date for the hearing when it issued the claim and **judgment is given for the possession of land** (whether or not the order for possession is suspended on terms) and the defendant –

- (i) has **neither delivered a defence, or counterclaim, nor otherwise denied liability**; or
- (ii) has delivered a defence which is limited to specifying his proposals for the payment of arrears of rent;

- Fixed costs = fixed commencement costs (usually £69.50) + court fee + £57.25

Grace period: mandatory grounds

Section 89, Housing Act 1980

(1) Where a court makes an order for the possession of any land in a case not falling within the exceptions mentioned in subsection (2) below, the giving up of possession shall not be postponed (whether by the order or any variation, suspension or stay of execution) to a date later **than fourteen days** after the making of the order, unless it appears to the court that **exceptional hardship** would be caused by requiring possession to be given up by that date; **and shall not in any event be postponed to a date later than six weeks after the making of the order.**

Application to set aside CPR 39.3

(3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside.

(4) An application under paragraph (2) or paragraph (3) must be supported by **evidence**.

(5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant –

(a) acted promptly when he found out that the court had exercised its power to strike out or to enter judgment or make an order against him;

(b) had a good reason for not attending the trial; and

(c) has a reasonable prospect of success at the trial.

Thank you for listening

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