

**Tuesday 15<sup>th</sup> September 2020**

**Welcome to Landmark Chambers'**

**'Possession Proceedings: what to expect when  
the stay is lifted' webinar**

**The recording may be accessed [here](#).**

# Your speakers today are...



**Evie Barden (Chair)**



**Tom Morris**



**Nick Grant**

## How did we get here?

Practice Direction 51Z

27<sup>th</sup> March

Stayed proceedings for 90 days

Extended to 20<sup>th</sup> September 2020 by rule 55.29.

NOTE: section 82(1) Coronavirus Act 2020: no right of re-entry or forfeiture under a business tenancy enforceable by action or otherwise before 30<sup>th</sup> September 2020.

## Effect of the stay

- Glossary to the CPR definition:  
*“A stay imposes a halt on proceedings, apart from taking any steps allowed by the Rules or the terms of the stay. Proceedings can be continued if the stay is lifted”.*
- White Book commentary at 3.1.8:  
*“The making of a stay imposes a halt, not only upon proceedings, but also upon the expiration of any time limit in those proceedings which had not expired when the stay was imposed.”*

## What is stayed?

- ALL claims brought under Part 55 – commercial and residential.
- Claims for relief against forfeiture by at tenant.
- Counterclaims for possession orders.
- Appeals against possession orders.
- Proceedings for the determination of damages in a split trial where liability has already been determined and a possession order made.
- Claims where the parties are agreed that a possession order should be made to give effect to a ruling but where the claim did not include a claim for a possession order (*TFS Stores Ltd v Designer Retail Outlet Centres (Mansfield) General Partner Ltd* [2020] EWCA Civ 833; [2020] 4 WLR 99)

## After the stay?

- Time starts to run again
  - “*When the stay is lifted, or the stay expires, the position as between the parties should be the same as it was at the moment that the stay was imposed. The parties (and the court) pick up where they left off at the time of the imposition of the stay.*”
    - *Grant v Dawn Meats UK* [2018] EWCA Civ 2212, per Coulson LJ
- Agreed directions embodied in a court order during the stay do not take effect until after the stay is lifted: *Arkin v Marshall* [2020] 1 WLR 3284

## Re-calculating time

- The ‘conventional analysis’ means that to work out post-stay time limits, you calculate how much time the parties had to take a step before the stay, deduct from that the number of days which had expired before the stay was imposed and add the remaining number of days from the date on which the stay is lifted or expires – see *Grant v Dawn Meats*

## Practice Direction 55C

- Modifies Part 55 during the “interim period”: 20<sup>th</sup> September 2020 to 28<sup>th</sup> March 2021.
- 2 types of “stayed claim”:
  - (1) claim brought before 3<sup>rd</sup> August 2020
  - (2) claim brought after 3<sup>rd</sup> August 2020 or in which a final order for possession has been made.
- First type caught by paragraph 2.1 (paragraph 2.1 claims)



## Effect of ending of stay on Paragraph 2.1 Claims

- Paragraph 2.1 claims not to be listed, relisted, heard or referred to a judge until a reactivation notice is filed and served (unless court directs otherwise)
- Where case management directions made before 20<sup>th</sup> September 2020, reactivation notice MUST be accompanied by:
  - (1) a copy of the last directions order together with NEW dates for compliance taking account of the stay before 20<sup>th</sup> September 2020
  - (2) a draft order setting out additional or alternative directions (including proposing a new hearing date) OR
  - (3) a statement that no new directions are required and that existing hearing date can be met

## Implications

- Time starts to run from date the stay is lifted and not the date the reactivation notice is filed and served.
- Dates to be calculated from date of end of stay and not of reactivation notice.
- BUT: unless court orders otherwise, any trial date set prior to 27<sup>th</sup> March 2020 shall be vacated and the case stayed unless a party complies with the requirements of the practice direction not less than 42 days prior to the hearing date (para 2.5).
- If no reactivation notice filed and served in a Paragraph 2.1 Claim before 29<sup>th</sup> January 2021, the claim is automatically stayed.
- In neither case is the stay a sanction – an application to lift the stay can be made.
- Reactivation notice requirements re-engaged where stay lifted during the interim period (up to 28<sup>th</sup> March 2021).

# Reactivation notices

- Only for 'stayed claims', but not those in which a final order has been made
- No prescribed form
- Statement of truth?
- Deadline: 4pm on 29 January 2021

In the xxxx County Court

Claim No. xxxxxxxx

Claimant(s): Mr xxxxx

-And-

Defendant(s): Mr xxxxx

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**NOTICE TO RE-ACTIVATE POSSESSION CLAIM**

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I/We the above-named claimant(s) herein give notice the possession claim:

Claim No. <xxxxxx>

Claimant(s): <xxxxxx>

Defendant(s): <xxxxxxxx>

**Be re-activated with immediate effect.**

1. I/We request the court to issue directions so the claim for possession can be expedited.
2. I/We confirm a copy of this notice has been served on the defendant and the certificate of service is attached.
3. I/We attach a letter requesting the defendant(s) to provide information regarding the impact of COVID-19 on the defendant(s), if any. Upon the defendant(s) returning this I/We will file the same with the court.

**STATEMENT OF TRUTH**

- I/We the claimant(s) believe that the facts stated in this Witness Statement are true to the best of my knowledge.

Signed : \_\_\_\_\_ Sunday, 13 September  
2020 Name: <full name> (The Claimant(s))

## Illustrative timeline for a claim

<u>When</u>	<u>What</u>
From 21 September 2020	New proceedings issued and served (or Reactivation Notice served by Claimant (or Defendant) in stayed claims issued before 3 August 2020).
At any point	Covid-19 Marking on the initiative of the Claimant, Defendant or at the direction of a Judge.
By (claim served plus 14 days)	Defence filed.
After issue	<b>R</b> (Review) Date fixed (priority cases first).
By ( <b>R</b> minus 21 days)	Notice of <b>R</b> (Review) Date to Claimant and Defendant.
By ( <b>R</b> minus 14 days)	Claimant lodges bundle with Court and provides a copy to Defendant.
<b>R</b>	Review ( <b>R</b> ) listed – no attendance before Judge; free early advice available to Defendants under duty scheme; negotiation; agreed order made where achieved and appropriate; mediation under pilot agreed where appropriate; Substantive ( <b>S</b> ) Hearing fixed unless claim resolved or other directions.
<b>R</b> plus 28 days	Substantive ( <b>S</b> ) Hearing – attendance required before Judge; further free advice and assistance available to Defendants under duty scheme.
After <b>S</b>	As directed by the Court (if case continues).
By ( <b>E</b> minus 14 days)	Notice of <b>E</b> (Eviction) Date to Defendant
<b>E</b>	Eviction Date

## Enforcement & eviction

- Harmonisation of 14 days notice in both County and High Court – new CPR r. 83.8A from 20 September 2020
- Prescribed form
- MHCLG guidance for
  - Local lockdowns
  - Christmas period

## Notice periods

- Legislation
  - “Primary” acts (e.g. Housing Act 1985)
  - Coronavirus Act 2020, s. 81 and Sched. 29
  - Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020/914
  - The Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) and Suspension (Coronavirus) Regulations 2020/924

## Notice periods

- S. 8 notice periods:
  - Grounds 1-6, 9, 12, 13, 15, 16: six months
  - Grounds 8, 10, 11
    - If <6 months rent outstanding at time of notice: six months
    - Otherwise: four weeks
  - Grounds 7, 7B: 3 months
  - Grounds 14A, 14ZA, 17: two weeks notice
  - Grounds 7A, 14?
  
- S. 21 notice period: six months (period of validity extended to 10 months)

## Questions?

**We will now answer as many questions as possible.**

**Please feel free to continue sending any questions you may have via the 'chat' tab which can be found along the top or bottom of your screen.**



# Thank you for listening

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