

Tuesday 25th August 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...



Miriam Seitler (Chair)



Brooke Lyne



Kimberley Ziya

A Short History Lesson

- 27 March 2020 - Stay introduced by pilot PD 51Z
 - All proceedings for possession brought under CPR Part 55 and all proceedings seeking to enforce an order for possession by a warrant or writ of possession stayed for a period of 90 days i.e. until 24 June 2020.
 - Coronavirus Act 2020, Schedule 29 came into force – 3 months' notice for all s.8 and s.21 notices served between 26 March and 30 September 2020. Act also imposed restrictions on forfeiting a commercial lease for rent arrears.

A Short History Lesson

- 20 April 2020 – PD 51Z amended to exclude
 - Claims against trespassers to which rule 55.6 applies (persons unknown)
 - Applications for interim possession orders
 - Applications for case management directions which are agreed by all the parties.

The Inescapable Stay

- *Arkin v Marshall* (2020) EWCA Civ 620
- *Hackney LBC v Okoro* [2020] EWCA Civ 681
- *Copeland v Bank of Scotland Plc* [2020] EWHC 1441
- *TFS Stores Ltd v The Designer Retail Outlet Centres (Mansfield) General Partner Ltd & Ors* (2020) EWCA Civ 833

A Short History Lesson

- 5 June 2020 – SOS Housing announced extension to the stay on Twitter
- 11 June 2020 – Stay extended by new PD
 - Stay to continue until 23 August 2020.
 - New CPR Part 55.29 (basically the same as PD 51Z)

A Short History Lesson

- 17 July 2020 – New Practice Direction laid before Parliament
 - New CPR PD55C to come into force on 24 August 2020
 - Reactivation notices
 - What should a reactivation notice look like and what must it contain?
 - Removal of 8-week period for listing of first hearings

A Short History Lesson

- 20 August 2020 – Lord Chancellor wrote to MR
 - asking for the stay to be extended again
- 21 August 2020 – Stay extended until 20 September 2020
 - Rules committee approved the amendment by majority

Judicial Irritation?



MASTER OF
THE ROLLS

THE RT HON SIR TERENCE ETHERTON

21 August 2020

Dear Colleagues

Yesterday the Lord Chancellor wrote to me, in my capacity as the Head of Civil Justice and Chair of the Civil Procedure Rule Committee (CPRC). He thinks it expedient for the Civil Procedure Rules to include provision that would extend the stay imposed by rule 55.29 for a period of four weeks, to 20 September. Pursuant to 3A of the CPA 1997 he directed the CPRC to make rules to achieve that purpose.

The CPRC met earlier today. It considered the extremely unusual nature and timing of the letter of direction from the Lord Chancellor but by majority considered that it was bound to follow the direction. Consequently, the CPRC also considered the draft rules necessary to meet this objective. I understand that these rules will shortly be put forward to Parliament.

This 4-week extension to the stay relating to housing possession cases, will allow for further work to be done to prepare for the stay to be lifted which in many respects can be welcomed.

I would like to repeat my extreme gratitude for the work of the group led by Mr Justice Knowles to prepare for the end of the stay which we anticipated on would be Sunday. I would also like to thank the DCJ's and many of you who will have helped with that work. That work will not be redundant because, whenever the stay comes to an end, the work that has been done will be available to be put into effect.

Best Wishes

Terence Etherton, MR

Where are we now?

- PD 55C now applies (albeit it doesn't make sense because of the dates)
- Reactivation notices – to file or not to file?
- How will possession proceedings be heard going forwards (in person/telephone/video?)
- How do the Courts propose to deal with the backlog?

Where are we now?

- Substantive changes - SOS says notice periods will be extended to 6 months
 - Will require primary legislation
 - Would bring England into line with position in Wales
 - Retrospective effect (unlikely?)
 - Section 21 notices have 6 month shelf life

Harmonising Enforcement

- Formerly limited requirement for notice of High Court enforcement
 - CPR 83.13(2): to obtain permission for a writ all occupiers had to be given notice of proceedings that was “sufficient” to allow them to apply for any relief to which they might be entitled
 - *Secretary of State for Defence v Nicholas* [2015] EWHC 4064 (Ch)
 - *Partridge v Gupta* [2017] EWHC 2110 (QB), [2017] All ER (D) 118

Harmonising Enforcement

- But now....
- CPR 83.8A(2)
 - A notice of eviction must be delivered to the premises and addressed to all persons against whom the possession order was made, and “any other occupiers”, not less than 14 days before the writ or warrant is executed.
- Prescribed form for the notice of eviction is to be found in PD 83

Conclusion

- A bit of a muddle
- More legislative and procedural change is likely
- But, this webinar will be on again on 15 September 2020

Q&A

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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