

Reactivation of Possession Claims

On 23 August 2020 the new Practice Direction 55C – “Coronavirus: Temporary Provision in relation to Possession Proceedings” – will come into force. It will remain with us until 28 March 2020 and will be subject to review during that period. Its provisions apply both to “stayed claims” (those brought on or before 22 August 2020) and “new claims” (brought on or after 23 August 2020) albeit in different ways.

Stayed Claims

For stayed claims where no final possession order has been made or which is brought on or after 3 August 2020, no such claim is to be listed, relisted, heard or referred to a judge unless the court orders or one of the parties files and serves a written notice (a “reactivation notice”) confirming that they wish the case to be listed, relisted, heard or referred. Any such reactivation notice, save other than in proceedings relating to an appeal, must set out what knowledge that party has as to the effect of the COVID-19 pandemic on the Defendant and their dependants and, where the same is filed and served by the Claimant in proceedings brought on the basis of rent arrears, the Claimant must also provide an updated rent account for the preceding 2 years.

Moreover, any trial date listed before the stay on proceedings commenced on 27 March 2020 is automatically vacated and the proceedings stayed unless a reactivation

notice, updated rent account and updated draft directions are filed and served not less than 42 days before the hearing.

Where case management directions had been made before 23 August 2020, any party filing and serving a reactivation notice must also file and serve a copy of the last directions order together with new dates for compliance with those directions and either i. a draft order setting out additional or alternative directions or ii. a written statement confirming that no new directions are required and that an existing hearing date can be met and ii. a written statement confirming whether the case is suitable for hearing by video or audio link. The other party must reply within 14 days of service of the reactivation notice.

If a reactivation notice is not filed in stayed proceedings before 4pm on 29 January 2021, the claim is automatically stayed. Any party wishing to lift that stay must apply in the usual manner; it is not an application for relief from sanctions.

Finally as to listing, any relisted hearing must be on at least 21 days' notice to the parties whilst the usual 8-week period before listing a first hearing under CPR r55.5 has been removed.

New Claims

Turning to new possession claims on or after 23 August 2020 and for stayed claims brought on or after 3 August 2020, the Claimant is required to bring to the hearing two copies of a notice i. in a claim to which the Pre-Action Protocol for Possession

Claims by Social Landlords is applicable, confirming that the Claimant has complied with the Protocol and setting out details of that compliance and ii. in all claims, setting out what knowledge that party has as to the effect of the COVID-19 pandemic on the Defendant and their dependants and iii. serve those notices on the Defendant not less than 14 days before that hearing.

Any such claims brought under the Accelerated Possession Procedure must file and serve a like-notice with the proceedings setting out what knowledge that party has as to the effect of the COVID-19 pandemic on the Defendant and their dependants.

The full text for the new Practice Direction 55C can be found via the following link: -

<https://www.judiciary.uk/wp-content/uploads/2020/07/CPR-123rd-PD-Update-PD55C-SIGNED.pdf>

Gary Lewis

22 July 2020

www.cobden.co.uk

Cobden House Chambers

19 Quay Street, Manchester, M3 3HN

Tel: 0161 833 6000