

**The Master of the Rolls (as Head of Civil Justice) Working Group on Possession Proceedings**

**OVERALL ARRANGEMENTS FOR POSSESSION PROCEEDINGS**

**IN ENGLAND AND WALES**

**“THE OVERALL ARRANGEMENTS”**

**Introduction**

1. The stay of possession proceedings comes to an end on 20 September 2020. The legal system faces a combination of (a) accrued demand from the stay, (b) the possible increase in demand caused by economic consequences of the pandemic and (c) reduced physical court capacity because of social distancing. The challenge, and its scale, does not have a precedent.
2. This document summarises the arrangements (“Overall Arrangements”) identified and developed to address the challenge, within the time available.
3. A Working Group appointed by the Master of the Rolls as Head of Civil Justice and with cross sector membership has sought to bring together contributions from government and government agencies, judiciary and court service, profession and advice sector, user groups and experts. The Working Group has also engaged with a wide range of associations and representative bodies, and at national (England and Wales), regional and local level. Regional and local user group meetings, led by the regional and local Judiciary and Court Service, play a crucial part.
4. The strategy reflected in the Overall Arrangements is directed to (a) reducing volume in the system by enabling earlier advice and increasing settlement, (b) taking account, within limits that the law has imposed, of the effect of the pandemic on all parties, and (c) maintaining confidence in the fairness of outcomes. These objectives are also relevant beyond the legal system, including to the economy and to homelessness.
5. The Overall Arrangements involve and are supported by the following, in combination:
  - 1) Amendments by the Civil Procedure Rule Committee (CPRC) to rules and practice directions.
  - 2) The introduction by the Judiciary of new case management and listing arrangements, including a scheme of prioritisation.

- 3) The inclusion of specific procedures to enable the Court to receive enhanced information of any effect of the pandemic on the parties.
  - 4) Increased user communication through the Court Service (HMCTS), including guidance.
  - 5) The publication of guidance by the Ministry of Housing, Communities & Local Government (MHCLG), and the Financial Conduct Authority (FCA, with UK Finance), and the development and publication of voluntary best practice by a number of national associations.
  - 6) Adjustments in relation to legal aid duty scheme legal advice (a) to enable earlier provision, (b) to enable remote provision where needed, (c) to remove gaps in geographical coverage, and (d) to extend to some Accelerated Possession Claims.
  - 7) Specific designation, deployment, preparation and training of staff through the Court Service.
  - 8) Judicial preparation and training through the Judicial College.
  - 9) Arrangements for monitoring, including to identify when and where adjustments are needed and if contingency arrangements need to be brought in.
  - 10) Contingency arrangements, including the assembly of an additional cadre of judges.
6. In practice and throughout the operation of the Overall Arrangements everyone, collectively, has a critically important role in tackling the challenge. This includes by (a) helping the parties, (b) identifying additional solutions and (c) enabling court process and hearings to operate efficiently (both for possession proceedings and for other parts of the legal system).

### **Re-starting existing cases**

7. No claim for possession should be re-started without careful efforts to reach compromise.
8. Claims brought before 3 August 2020 will not be listed, relisted or referred to a Judge until a party files and serves a “Reactivation Notice” confirming that they wish the case to proceed. There is no rush - this may be done at any time from 21 September 2020 until at least 29 January 2021. A template Reactivation Notice will be available from the Court Service. If a Reactivation Notice has been provided to the Court by a party before 21 September 2020 the Courts can be expected to put it to one side and not deal with it before 21 September 2020; then, on or after 21 September 2020 (as resources allow) the Court will process the filing of it unless requested not to do so by the party who provided it.
9. In existing claims where case management directions were made before 21 September 2020, a party filing and serving a Reactivation Notice must propose new dates for directions and proposed hearing date, or state that no new directions are required and that an existing hearing date can be met.

### **Starting new cases**

10. No new claim for possession should be started without careful efforts to reach compromise. Regulations both in England and in Wales provide (extended) notice periods before most new claims may be commenced.
11. Where a Pre-Action Protocol applies it should be complied with, and compliance will be expected to be shown.

### **All cases**

12. For all cases there are guidelines to pre- and post-issue best practice. These include guidance to be published by MHCLG and by a number of associations.
13. Some claims have now been postponed by up to 6 months by reason of the stay, expiring 20 September 2020. In addition:
  - (a) Claims by mortgage lenders are subject to regulatory or voluntary schemes under which, as a matter of good practice and with appropriate exceptions for priority cases, claims are postponed to 30 October 2020. After 30 October 2020 claims will still need to proceed in an orderly sequence with proper conduct and best practice observed. The FCA has published further guidance on 14 September 2020.
  - (b) The National Residential Landlords Association will publish a “Pre-Action Plan: Managing arrears and avoiding possession claims” by 18 September 2020. This sets out 9 “golden rules” and emphasises that “in unprecedented times ... it is incumbent on tenants and landlords to engage with each other, trying all available avenues to reach an agreement before seeking repossession through the courts.” It will also set out 5 steps to take before notice is issued (including under s21 and s8, ground 8).
  - (c) Other national landlord and lender associations remain committed to encouraging their members only to bring forward cases where absolutely necessary.
  - (d) MHCLG will publish by 18 September 2020 four sets of Guidance for private landlords, social housing landlords, tenants of private landlords and tenants of social housing landlords. The Guidance encourages advice, discussion and compromise, with court proceedings as a last resort.
14. HMCTS will publish guidance, with a particular emphasis on the specific availability of advice and the importance of exploring settlement, as follows:
  - (a) within notices of Review Date and Substantive Hearing Date (see below);
  - (b) within “key points” leaflets for claimants and defendants respectively.HMCTS will arrange for materials to be available in the Welsh language as well as in the English language.

### **The Courts**

15. The parties will be offered a physical hearing for substantive hearings. This is subject to 3 exceptions:
  - (a) If contingency arrangements need to be introduced (see below).
  - (b) The existing provisions for Accelerated Possession Claims (see below) to be dealt with without a hearing in certain circumstances.
  - (c) Where the parties agree (subject to the Court) that a hearing should be by telephone or video.
16. Court centres will as far as possible allocate to possession proceedings the same number of courtroom/days per week as before March 2020. Where strictly necessary, the Court Service will arrange suitable additional premises.
17. Every courtroom and Judge handling a possession list will have a member of staff/usher attached to that courtroom and Judge throughout the day.
18. Only court centres able to conduct hearings with social distancing will be used. Each court centre will have, guided by the relevant health authority and adjusting as needed, a safety and active cleaning procedure running through the day. Parties must not attend a court building where that would conflict with pandemic health guidelines applying to the party.
19. The Court Service has designated 160 staff to serve as liaison staff members for these Overall Arrangements at each court centre. It is intended that there should be a dedicated possessions email address at each court centre to facilitate information and document flow.
20. Where a party is at the court centre, a legal representative may appear for that party either at Court or (where the facilities allow) by video link.
21. Where a party's legal representative is at the court centre, the party may appear either at Court or (where the facilities allow) by video link or by telephone.
22. The preferred starting point at least for the opening months is to use full-time District Judges and Deputy District Judges who sit extensively at the particular court centre. This is for a number of reasons including (a) because new arrangements are involved, (b) because of the potential for difficult 'pandemic-related' issues, and (c) because it will promote consistency and shared judicial knowledge. Designated Civil Judges (DCJs) have sought to prepare the ground regionally and locally for this approach.
23. In addition, a cadre of 200 additional Deputy District Judges (and Property Tribunal Judges) has been assembled to assist as required.
24. Special preparation/training through the Judicial College is being provided to assist all Judges involved.

### **Enhanced information**

25. The claimant is now required to set out what knowledge the claimant has as to the effect of the pandemic on the defendant and dependants. This includes in all existing cases where a Reactivation Notice is served, and in all new claims, including all Accelerated Possession Claims.
26. Under a new facility for Covid-19 Case Marking (see below) the Court file will be marked to highlight any case that is or is claimed to be a direct consequence of Covid-19.
27. The rules now also contain new requirements in appropriate cases for an updated rent account for the previous two years.
28. Court communications will emphasise to a defendant that if he/she has difficulty in completing the forms for a defence, a short statement explaining his/her circumstances and why an order should not be made will suffice.

### **Covid-19 Case Marking**

29. Covid-19 Case Marking serves these ends:
  - (a) The Marking may highlight settlement suitability.
  - (b) Marking by the defendant will be available to claimants who have agreed as a matter of policy to give special consideration to such cases.
  - (c) Marking by the claimant will draw attention to cases where it is the claimant that may be in particular difficulty as a result of the pandemic.
  - (d) The Marking will be available to the Court to assist with listing (whether to take earlier or later), with case management and with exercising any discretion available in decision making.
  - (e) The Marking will assist in monitoring.
30. Any defendant or private claimant will be entitled to request that the case is Covid-19 Case Marked. The request can be made at any stage and by any means, but the

defendant<sup>1</sup> or private claimant<sup>2</sup> will be required to provide specified information. The party making the request must inform all other parties. The request will result in the Marking unless there is an objection. If there is an objection the Court will decide, on the documents, whether the case should be Covid-19 Case Marked when the file is next before a Judge.

31. A Judge may also, with a request from any party, at any stage direct that the case is to be Covid-19 Case Marked. The Court Service will advise the parties when this occurs.

### **Listing cases**

32. Generally speaking, the Court will not fix a date when it issues the claim form.
33. The former standard period between issue and hearing of eight weeks does not apply.
34. There will be no “block lists”.
35. Listing dates will not start to be provided by court centres until the end of the stay, i.e. from 21 September 2020.
36. At least 21 days’ notice is required of a hearing in a stayed claim listed or relisted in response to a Reactivation Notice.
37. Cases (stayed and new) will ordinarily proceed with a Review (please see below) and then (where necessary) a Substantive Hearing (please see below). (For Accelerated Possession Claims please see separately below.)
38. Unless there are existing case management directions that provide otherwise, for both stayed claims and new claims the first date to be listed is the Review (R) Date. (For Accelerated Possession Claims please see separately below.)

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<sup>1</sup> Covid-19 Case Marking by a Defendant will require the following information from the Defendant:

- brief details of the particular hardship faced by the Defendant;
- whether there were material arrears outstanding before March 2020;
- whether the Defendant has been placed on furlough, and whether the Defendant offered or paid a related proportion of rent or borrowing arrears;
- whether the Defendant has obtained universal credit since March 2020, and whether the Defendant offered or paid a related proportion of rent or borrowing arrears;
- whether the Defendant has been unable to earn by reason of Covid-19;
- whether the Defendant has been shielding;
- what proposals the Defendant has to pay the rent or borrowing arrears.

<sup>2</sup> Covid-19 Case Marking by a Claimant will require the following information from the Claimant:

- brief details of the particular hardship faced by the Claimant;
- whether the Claimant has received assistance under a Covid-19 scheme, including (where a Landlord) with any borrowing by the Landlord in respect of the property.

39. Generally, the Substantive (S) Hearing Date will be fixed on the Review (R) Date, although at some court centres the Substantive (S) Hearing Date may be advised in the same communication as the Review Date is advised. On either approach the Substantive (S) Hearing Date should be 28 days after the Review (R) Date.
40. Courts will list up to around 3 months ahead. The balance of reactivated or newly issued claims will be held in reserve to be listed for a Review on a rolling basis as each week passes.
41. Where possible, cases listed on a particular day or part of a day will be of the same type of claimant: e.g. Social Landlords, Private Landlords, Mortgage Lenders.
42. Notice of listing will include:
  - (a) Details for the defendant of duty scheme advice arrangements.
  - (b) The point that if the defendant takes up the offer of early advice on the Review Date (please see below) and the case can be resolved, no Substantive Hearing will be needed.
  - (c) Emphasis that the defendant's home is at risk and that help is available that is free.
  - (d) Case management and listing requirements for the claimant (please see below).

### **Prioritisation**

43. As a guideline the following cases will be listed with priority:
  - (a) Cases with allegations of anti-social behaviour, including Ground 7A of Schedule 2 to the Housing Act 1988 and Section 84A of the Housing Act 1985.
  - (b) Cases with extreme alleged rent arrears accrued, that is, arrears equal to at least (i) 12 months' rent or (ii) 9 months' rent where that amounts to more than 25% of a private landlord's total annual income from any source.
  - (c) Cases involving alleged squatters, illegal occupiers or persons unknown.
  - (d) Cases involving an allegation of domestic violence where possession of the property is alleged to be important for particular reasons which are set out in the claim form (and with domestic violence agencies alerted).
  - (e) Cases with allegations of fraud or deception.
  - (f) Cases with allegations of unlawful subletting.
  - (g) Cases with allegations of abandonment of the property, non-occupation or death of defendant.
  - (h) Cases concerning what was allocated by an authority as 'temporary accommodation' and is specifically needed by the authority for reallocation as 'temporary accommodation'.

Other circumstances may warrant priority, and further amplification of this guideline may be published.

44. Subject to the above, priority will be given to claims issued before the stay commenced in March 2020.
45. When the Court reaches a decision over the priority or urgency of a case, it will have regard to the impact not only on the claimant and defendant in that case but to the effect on other claimants and defendants in other cases.

#### **Legal advice and assistance for defendants**

46. Non means tested free of charge legally aided advice and assistance will be available to the defendant through revised duty scheme arrangements, at two points:
  - (a) (as a new arrangement) early advice one month (28 days) before the first substantive hearing (i.e. on what will be known as the R or Review Date), and also;
  - (b) (as now) advice at the first substantive hearing if there needs to be one (i.e. at what will be known as the S or Substantive Hearing Date).
47. By 18 September 2020 the Legal Aid Agency will have removed gaps in existing coverage of duty scheme legal advice for defendants by issuing contracts in the areas concerned.
48. All legal aid duty scheme contracts have been adjusted to allow the advice and assistance to be provided flexibly, including face to face (at Court building or suitable off-site location), video or phone (adviser calling back where necessary to address call costs problems and manage demand across the day).

#### **The Review (R) Date**

49. 14 days before the date listed as the Review (R) Date the claimant will be required:
  - (a) to provide to the Court an electronic bundle (with a paper bundle allowed as an alternative);
  - (b) to confirm to the Court that a paper bundle had been provided to the defendant (with an electronic copy in addition where the defendant is able to receive that);
  - (c) to confirm to the Court that the bundle includes all required material, specifically including enhanced information about the defendant now required;
  - (d) to confirm to the Court that the claimant will be available during the Review Date to discuss the case (by telephone would be sufficient) with the defendant or a duty scheme (or other) adviser.
50. The Review Date is an important new opportunity for the defendant to obtain free of charge duty scheme advice, and for the claimant and the defendant to reach agreement (with the assistance of the duty adviser). (If the bundle provided by the claimant to the court and the defendant has not reached a duty scheme adviser who is advising a defendant, the Court will make a copy available to the duty adviser (note

the Privacy Notice at <https://www.judiciary.uk/about-the-judiciary/judiciary-and-data-protection-privacy-notice/>).

51. On the Review Date a very short Review appointment will be listed by the Court. This will be conducted by a Judge on the documents and without attendance by the parties. The Review is for 5 minutes. No court fee will be payable in relation to a Review or any order made on the Review Date.
52. The Review will be at the end of the sitting day so that if on that day the claimant and the defendant resolve the case, or agree directions, then the Court will be available to make the orders required. This will still be without attendance of the parties; the agreed order should be provided (usually by the duty scheme adviser who has assisted the defendant to resolve the case or agree directions) to the member of staff/ usher attached to the Judge and courtroom throughout the day.
53. To ensure that compromise is not deterred, local authorities will be expected to take the approach, guided by MHCLG that signing a consent order or agreeing an order for possession where the property is unaffordable is not, in itself, a reason to find an applicant intentionally homeless.
54. If the case is not resolved by agreement, the Judge will consider the bundle provided by the claimant and the Court file. If the claimant's documents are in order the case will proceed to a Substantive Hearing 28 days later. If the claimant's documents are not in order the Court can be expected to dismiss the claim (with liberty to apply for reconsideration at an oral hearing) or may give directions.

### **The Substantive (S) Hearing Date**

55. Where a Substantive (S) Hearing is listed, all parties must attend.
56. The hearing is for 15 minutes, with additional time between hearings for Covid-19 safety procedures.
57. Unless the claimant and the defendant resolve the case, the Court will decide the claim or give further case management directions. Where the issues are complex or the evidence or argument requires, these directions may be towards a fuller substantive hearing with an individual time estimate and listing.
58. It can be expected that the question of adjournment will be considered, without the need for an application to adjourn, in any case where (a) there is no sign that advice has yet been made available to the defendant and (b) the consequences of the order may be serious in the context of the pandemic.

59. All concerned need to keep in mind that the court's discretion at the point of decision or order is currently limited by statute. In the result, as the law stands there are material cases where the judiciary may not have discretion, or may have only very limited discretion, to take into account the effect of the pandemic on a defendant.

### **Accelerated Possession Claims**

60. In accordance with existing rules, in some cases (Accelerated Possession Claims) an order for possession may be made without a hearing by a Judge to whom the papers have been referred for this course to be considered.

61. Within the Overall Arrangements, Accelerated Possession Claims are however subject to the following:

- (a) Accelerated Possession Claims issued before 3 August 2020 will require a Reactivation Notice as with all other stayed claims.
- (b) As a guideline, Accelerated Possession Claims will be dealt with having regard to the priorities listed in the section on Prioritisation above.
- (c) Each court centre will refer Accelerated Possession Claims to a Judge at manageable frequency.
- (d) Judges will use the time freed up where Substantive (S) Hearing slots are vacated, to deal with Accelerated Possession Claims referred to them for consideration.
- (e) Where the parties agree or there is no objection, the Judge to whom an Accelerated Possession Claim has been referred for consideration may direct that a Review (R) Date be listed to enable the Defendant to receive duty scheme advice and assistance.

62. If on consideration of an Accelerated Possession Claim referred to the Judge for consideration the Judge directs a Substantive Hearing (giving any appropriate case management directions, and with the parties to attend) that will be listed as a Substantive (S) Hearing unless otherwise directed.

### **Eviction where an order for possession is made**

63. Notice of eviction, of at least 14 days, is now required both in the County Court and in the High Court. In both cases, a new form now provides in both Courts for clear information to the defendant of the date of the proposed eviction and the right to apply to the court for suspension or postponement, and of available routes to advice.

64. Whilst any application will be considered on its merits, generally speaking, in current circumstances and in light of current challenges, parties will be encouraged to recognise that applications to transfer proceedings from the County Court to the High Court may not be able to be treated as of high priority.

65. Safety of defendants, occupants and High Court Enforcement Officers (HCEOs)/bailiffs in the specific case will be carefully considered by HCEOs/bailiffs. The Ministry of

Justice has issued guidance to ensure that no enforcement of possession orders will proceed (a) where local lockdown measures are in place to protect public health (in areas where the public health risks could be greater), and (b) other than in the most serious cases, over the Christmas period.

### **Monitoring and adjustments**

66. Participation in regional and local court user groups is encouraged throughout the duration of the Overall Arrangements.
67. HMCTS, led nationally, will collect data and monitor agreed points across the Overall Arrangements to ensure reporting to local, regional and national Judiciary, and to allow evaluation.
68. With the benefit of data collection and monitoring, adjustments to the Overall Arrangements will be made in light of experience. Nationally, judicial members of the MR's Working Group will continue to meet weekly with HMCTS national senior management. The full cross-sector MR's Working Group will convene from time to time as circumstances require.
69. If the pandemic occasions future adjustments in HMG advice to the public, or to legal requirements, e.g. regional or temporary return of "lockdown", then required adjustments to the Overall Arrangements will be made, with advice from the MR's Working Group.

### **Full contingency arrangements**

70. Full contingency arrangements include:
  - (a) the use of additional buildings at scale (some initial advance scoping has been undertaken by HMCTS);
  - (b) the use of remote hearings at scale; and
  - (c) deploying the additional cadre of Judges at scale (rather than simply to assist).
71. Full contingency arrangements will be used only where an assessment is made at national Judicial level that they are required. This recognises that access to advice will in practice diminish if they are used. The MR's Working Group will provide advice.

## **SCHEDULE**

## **Milestones**

Please note that the dates given are subject to exceptions for certain types of case and in certain circumstances

14-18 September	Guidance published by MHCLG, the FCA, and by associations.  Overall Arrangements published in final form by the Master of the Rolls' cross-sector Working Group.  Template Reactivation Notices published by the Court Service.
18 September	Remaining Template Documents, guidance and leaflets published by the Court Service.
20 September	The final day of the stay of possession proceedings.
21 September	Courts will start to deal with possession proceedings, including initially: <ul style="list-style-type: none"><li>i. Issuing reactivated claims lodged but not issued because of the stay, and new claims (NB the claimant must ensure that required notice periods have expired before a claim is issued; required notice periods can now be up to 6 months).</li><li>ii. Serving claims.</li><li>iii. Hearing stayed cases that had case management directions (in accordance with those directions or any amendment to those directions).</li><li>iv. Hearing applications to suspend or stay a warrant, and appeals.</li><li>v. Listing for Review both reactivated claims and new claims.</li></ul>
6 October	Earliest date for evictions (claimants who have already obtained a warrant following an existing possession order, and allowing 14 days' notice, and assuming no outstanding application to suspend or stay the warrant).
19 October	First Review (R) Dates (allowing 21 days' notice) (generally speaking, these will be priority cases first).  Duty scheme free early advice available to all defendants on the Review Date for their case.
16 November	First Substantive (S) Hearing Dates following first Review Dates.

## **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; 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).

#### **Typical listing for a Court Possession Proceedings Day**

1000	Urgent hearings to suspend/stay/set aside/vary/postpone
1045	Hearing <b>S</b> 1
1105	Hearing <b>S</b> 2
1125	Hearing <b>S</b> 3
1145	Hearing <b>S</b> 4
1205	Hearing <b>S</b> 5
1225	Hearing <b>S</b> 6
1245	Hearing <b>S</b> 7
1300-1400	Lunch adjournment
1400	Hearing <b>S</b> 8
1420	Hearing <b>S</b> 9
1450	Hearing <b>S</b> 10
1510	Reviews <b>R</b> 1-10 [All on the documents; no attendance before the Judge]
1600	Hearings end

Urgent hearings to suspend/stay may also be taken where any S hearings have been vacated or are ineffective, although these will also be used for considering Accelerated Possession Claims (see below). Appeals, applications to suspend/stay/vary/postpone will also be dealt with on other days where required.