

**The Master of the Rolls has distributed the overall arrangements for
possession proceedings in England and Wales**

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Following the lifting of the stay on possession proceedings on 20 September 2020, the Courts will be faced with an unprecedented number of possession claims. The Master of the Rolls Working Group on possession claims has provided arrangements (referred to as "The Overall Arrangements") to manage those claims. This note summarises those arrangements.

Cases

Existing Cases

- 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". A template reactivation notice has been provided by the Court service.
- Where case management directions were made before 21 September 2020 a party must file and serve a Reactivation Notice proposing 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.

New Cases

- No new claim for possession should be started without careful efforts to reach compromise.
- Where a Pre-Action Protocol applies it must be complied with, and compliance will need to be shown.

Enhanced information

- 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 including in all cases where a reactivation notice is served.

Covid-19 Case Marking

- The Court file will be marked to highlight any case that is or is claimed to be a direct consequence of Covid19 which will assist the Court with case management on request.
- This option is available to both claimants and defendants, however before a claim is case marked it will be required to provide specific information.
- If a party objects to the case marking a judge will make a determination on the papers.

Listing

The Court will no longer fix a date for possession when it issues the claim form and there will no longer be block lists. Where a claim is listed or relisted in response to a Reactivation Notice at least 21 days' notice of the hearing is required. Whilst not entirely clear, however, it may be that where a case was already listed and has not been vacated, the listing may remain effective.

Both stayed and new cases will ordinarily proceed with a Review. Unless there are existing case management directions that provide otherwise, for both stayed claims and new claims the first date to be listed will be the Review Date.

Following the Review Date hearing, where necessary there will be a Substantive Hearing which should be 28 days after the Review Date. The parties will be offered a physical hearing for Substantive Hearing subject to some exceptions.

Prioritisation

Priority will be given to cases:

- a) with allegations of anti-social behaviour
- b) with extreme alleged rent arrears accrued 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) involving alleged squatters, illegal occupiers or persons unknown.
- d) 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) with allegations of fraud or deception.
- f) with allegations of unlawful subletting.
- g) with allegations of abandonment of the property, non-occupation or death of defendant.
- h) concerning what was allocated by an authority as 'temporary accommodation' and is specifically needed by the authority for reallocation as 'temporary accommodation'

Subject to the above, priority will be given to claims issued before the stay commenced in March 2020.

The process

There is a two-stage process to obtain a possession order, first there will be a review date then a substantive hearing.

The Review Date

The Review Date is an 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). To facilitate this, 14 days prior to the Review Date the claimant will be required:

- (a) to provide to the Court an electronic bundle;
- (b) to confirm to the Court that a paper bundle had been provided to the defendant;
- (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 that the claimant will be available during the Review Date to discuss the case with the defendant or a duty scheme (or other) adviser.

On the Review Date a very short Review appointment will be listed by the Court without attendance by the parties at the end of the day.

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.

In addition to the Review Hearing the Court proposes to introduce a facilitated negotiation and/or mediation pilot scheme. That scheme will present a further opportunity for the parties to reach a settlement. It is anticipated the mediation will take place either on or after the Review Hearing but before the Substantive Hearing.

Substantive hearing

Where a Substantive Hearing is listed, all parties must attend for a 15-minute hearing where the Court will decide the claim or give further case management directions, whichever is appropriate. Where the issues are complex or the evidence or argument requires, the directions may go towards a full substantive hearing with a time estimate and hearing.

Accelerated Possession Claims

An order for possession may be made without a hearing by a Judge to whom the papers have been referred.

However, 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 Date be listed.

Eviction where an order for possession is made

At least 14 days' notice of an eviction is now required.

The Ministry of Housing has announced that guidance will be issued to bailiffs 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.

Summary of Key Milestones

When	What
14-18 September	<p>Guidance published by the Ministry of Housing, the FCA, and by associations.</p> <p>Overall Arrangements published in final form by the Master of the Rolls' cross sector Working Group.</p> <p>Template Reactivation Notice published by the Court Service.</p>

18 September	Remaining Template Documents, guidance and leaflets published by the Court Service.
21 September	Courts will start to deal with possession proceedings, including initially: <ul style="list-style-type: none"> • Issuing reactivated claims lodged but not issued because of the stay, and new claims • Serving claims. • Hearing stayed cases that had case management directions (in accordance with those directions or any amendment to those directions). • Hearing applications to suspend or stay a warrant, and appeals. • Listing for Review both reactivated claims and new claims.
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). Duty scheme free early advice available to all defendants on the Review Date for their case.
20 October	Mediation/ independent facilitated negotiation available in appropriate cases identified on a Review Date.
16 November	First Substantive (S) Hearing Dates following first Review Dates.

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