

# REFRESH, REVIVE AND REACTIVATE YOUR CLAIM!

## POSSESSION CLAIMS- WHAT TO DO WHEN THE STAY LIFTS.

Many landlords and tenants will already be aware of the effect of the Coronavirus Act 2020 in suspending all possession claims (save against trespassers), including enforcement action. There have been a few extensions with the most recent suspension extended to 20th September 2020.

Practice Direction 55C ("PD") addresses how claims will progress after the stay has been lifted.

### So, what will the court system look like after the moratorium lifts?

Either party, but most likely landlords, who have issued a claim before 3 August 2020 will now need to write to the tenant and to the Court to confirm that they still intend to proceed with the matter. They will need to do so by filing and serving a Reactivation Notice.

There is presently no template for a Reactivation Notice but the PD requires landlords to set out a number of important components such as the following:

- what the court should do with your matter
- the effect of the Coronavirus pandemic on the tenant and any dependants, if known. This will enable the court to have regard to vulnerability, disability, the social security position, and those who are "shielding".
- specify any rental arrears and enclose an updated rent account for the previous 2 years.

- Where case management directions were made before 23 August 2020, a copy of the last directions with new dates for compliance, a draft order for new directions with a new hearing date or confirmation that the existing hearing date can be met, and a statement saying whether the case is suitable for a remote hearing.

If parties fail to file and serve a reactivation notice by 4pm on 29 January 2021, the claim will be automatically stayed and a normal application will need to be made in order to lift the stay.

For possession claims (new or stayed) brought on or after 3 August 2020, the landlords must send the tenant and the Court, a notice setting out the knowledge that they have as to the effect of COVID-19 on the tenant and their dependants (if any).

### A few concluding points

- It is obviously important to prepare reactivation notices carefully, thoroughly and in as much detail as possible. Considering that the courts are expected to be overwhelmed by significant backlogs after the stay in possession claims is lifted, it will not be surprising if defective and/or incomplete reactivation notices are simply not processed. Any further delays to parties could be detrimental.
- In almost every case, the landlord will need to set out their knowledge as to the effect of the Coronavirus pandemic

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on the tenant and any dependents. This appears to put a positive duty on the landlord to acquire such knowledge, albeit it is not clear what the extent of this duty is. It seems that landlords will not be able to turn a blind eye as to the effects of the pandemic on the tenant and some investigation will need to be done. If this information is not known, it is likely that judges will simply adjourn proceedings, again causing substantial delays and costs to parties.

- The Courts will be prioritising the most egregious cases which we assume will be those involving anti-social behaviour, violence and trespass although this remains to be seen. If that isn't the case, social landlords will have no choice but to continue to rely on the powers given to them in the Anti-social Behaviour, Crime and Policing Act 2014 to protect victims, particularly in applying for injunctions.
- If you feel your case should be dealt with as a priority (such as serious ASB), now is a good time to start collecting evidence from residents, staff, the police and other agencies to assist with this.

This note is not intended to constitute to legal advice. Please get in touch with the author, Priya Sejpal, if you require more specific advice on the matter.

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