ONE PUMP COURT

What housing & community care lawyers can do during the Coronavirus Pandemic

An intermediate level seminar by the Housing & Community Care Team

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This paper is intended as an intermediate level and assumes a working and practical knowledge of housing law.

Enquiries: Our Practice Manager Mycal Thomas and our clerking team will be happy to discuss appropriate representation and advice for your lay clients in any case, including urgent matters, on 020 7842 7070.

SPEAKERS

Nicholas Nicol has been a barrister since 1986, specialising in Social Welfare Law, particularly Housing. He has appeared in all levels of court and tribunal in England, up to and including the House of Lords and the Supreme Court. He was formerly a law centre worker and Director of Policy and Research at the Public Law Project. He is a judge of the First Tier Tribunal Property Chamber and an accredited mediator. He has written or contributed to a number of books and articles on housing, human rights and fuel rights. His website is www.nicholasnicol.uk.

Michael Marsh-Hyde practices in housing, community care and general civil and public law. Before taking up practice as a barrister Michael worked for the housing and homelessness charity Shelter. He has a wealth of knowledge in housing and community care law and has developed a broad practice in this field. Michael is well versed in all housing, community care and property law work including landlord & tenant, homelessness & allocations, leasehold (private and commercial) and planning based work. He is regularly instructed in all types of first instance, judicial review and appellate work in this field.

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INTRODUCTION

Given the developing effects of the Pandemic, please ask questions and give examples of your experience. You can use the text chat function and we will do our best to address these when we can.

1. The impact of Coronavirus Covid-19 Pandemic is severe and wide-ranging, including for our field of practice (e.g. What is the Likely Impact of the COVID-19 Pandemic on the UK Private Rented Sector?). As well as the significant changes to the law, judicial and governmental guidance has also had an effect on the day-to-day practicalities of undertaking work in this field. This seminar seeks to consider these matters while proposing means of continuing to work and provide the necessary assistance to our clients.

2. There is a daily HMCTS operational summary. Legal aid guidance is also available: Coronavirus (COVID-19): Legal Aid Agency contingency response.

3. A good guide on housing law during the pandemic for lay people is Shelter's and there is also one on benefits from CABx. One Pump Court's own Stephen Knight has produced a myth buster to combat the myths surrounding the Coronavirus Act 2020, the regulations made under it and the Government's guidance on them.

4. We will consider each of the below areas in turn:
   a. Court Proceedings
   b. Possession Cases
   c. Housing Related Benefits Matters
   d. Housing Conditions
   e. Anti-Social Behaviour
   f. Homelessness
   g. Community Care
   h. Court Hearings

Court Proceedings

5. General court & Tribunal guidance can be found at:
   - Coronavirus (COVID-19) advice and guidance
   - First Tier Tribunal (Property Chamber) Guidance for Users During COVID-19 Pandemic

The relevant guidance is collected together in a new section AA of the 2020 White Book.

6. You can track what courts are open, staffed or completely closed here.

7. Civil court listing priorities are re-issued daily. 22nd April 2020 is available here. Of interest to housing lawyers:

   Priority 1 – work that must be done

   - Committals
   - Injunctions (and return days for ex parte injunctions).
   - The emphasis must be on those with a real time element (such as noise or interference with property).
   - Anti-Social Behaviour/Harassment injunctions (not ancillary to possession)
   - Applications to stay enforcement of existing possession orders
   - Production of persons in custody following Power of Arrest detentions
   - Homelessness Applications
   - Any applications in cases listed for trial in the next three months
   - Any applications where there is a substantial hearing listed in the next month.
   - All Multi Track hearings where parties agree that it is urgent (subject to triage).
   - Appeals in all these cases

   Priority 2 – work that could be done

   - CPR 21 approvals, ie appointment of litigation friend
   - Applications for summary judgement for a specified sum
   - Applications to set aside judgement in default
   - All small claim/fast track trials where parties agree it is urgent (subject to triage)
   - Preliminary assessment of costs
   - Appeals in all these cases

   Applications for interim payments and assessment of damages in PI cases are included in Priority 2. It may be that assessment of damages in housing conditions/disrepair cases may also be included by analogy.

8. The Administrative Court has issued its own guidance (available from ILPA here), including for "Immediates" and on how to issue proceedings and file documents. The Public Law Team at Simpson Millar circulated the following advice to the Housing and Immigration Group:

   > [The Guidance] requires for urgent cases where one is lodging with an N463 seeking interim relief or expedition, that the judicial review bundle is filed as a

single PDF which is no larger than 20MB. The guidance also states that in principle, the court's IT systems can accept files up to 24MB.

It turns out that this is not strictly correct. I understand from the Admin Court office that they are finding that some files of that sort of size get through, but many do not. They are not currently able to say what dictates whether files will get through or not and their IT department are currently working on it.

Having attempted to lodge our JR with a PDF totalling 19MB unsuccessfully, we then sought to lodge it by providing a secure link to the file via Mimecast as we thought this would be preferable to splitting the bundle, given the guidance specifically states that the bundle should comprise one single PDF for urgent cases.

I have since learned from the Admin Court office that they will not accept bundles by secure link. They must be a PDF attachment to an email.

I was invited to split my bundle into two parts, and this was then successful. I can confirm that a colleague managed to lodge a bundle of 15MB last week successfully also.

So it seems the court will accept split bundles, if you have attempted to, but were unable to lodge it as a single bundle.

The issues have been raised with the court via ALBA which will hopefully lead to clarification of the guidance.

I would also add that there is no one answering calls or picking up voicemails. There is nothing to tell you this if you phone the ACO and nothing preventing you leaving a message, but it won't get picked up. Email is apparently the only means of communication except for out of hours applications, which are still being dealt with in the usual way.

9. Practice Direction Property Chamber, First-tier Tribunal Lodging Applications and Documents by Email And Areas in the Property Chamber – just says you have to file by email.

PD51ZA

10. The new Practice Direction 51ZA provides for the following:
    a. Parties are permitted to agree extensions of time limits under CPR 3.8 for up to 56 days, rather than the usual 28, but still subject to the proviso that any such extension should not put at risk any hearing date.

b. Any extension beyond that time still requires court permission but the application will be dealt with on the papers, at least initially.

c. The impact of the pandemic is an express consideration when considering extension of time, adjournments and relief from sanctions, e.g. in *R (McKeown) v LB Islington* [2020] EWHC 779 (Admin) the judge gave the Council 10 weeks instead of 6 to comply with the court's order, expressly due to the coronavirus. This does not necessarily mean the court will be more generous, e.g. in *Playboy Club London Ltd v Banca Nazionale del Lavoro SpA* [2020] EWHC 748 (Comm) permission to amend a pleading was refused, in part because of the time it would have taken to take instructions from Italian witnesses given the Coronavirus restrictions.

11. Judgments can no longer be handed down in open court. Instead, judgments are endorsed with a statement as to when they are deemed to have been handed down, being the date of circulation. Also, under CPR PD 39 para 9(1), the court may direct that the judgment not be recorded – instead, copies of the circulated judgment are to be treated as authentic.

Possession Proceedings

PD51Z

12. The most significant measure to effect possession proceedings is Practice Direction 51Z which came into force on 27th March 2020 and provides the following:

> *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 are stayed for a period of 90 days from the date this Direction comes into force. For the avoidance of doubt, claims for injunctive relief are not subject to the stay…*

Therefore, the period of stay is due to end on 25th June 2020.

13. Already PD51Z has been amended. With the addition of paragraph 2A excluding the following from the stay:

(a) a claim against trespassers to which rule 55.6 applies;

(b) an application for an interim possession order under Section III of Part 55, including the making of such an order, the hearing required by rule 55.25(4), and any application made under rule 55.28(1); or

(c) an application for case management directions which are agreed by all the parties.

14. The Glossary to the CPR provides the following:

Stay	*A stay imposes a halt on proceedings, apart from taking any steps allowed by the Rules or the terms of the stay. Proceedings can be continued if a stay is lifted.*

15. In *Grant v Dawn Meats UK* [2018] EWCA Civ 2212 Coulson LJ stated at §18:

> *A stay operates to 'halt' or 'freeze' the proceedings. In general terms, no steps in the action, by either side, are required or permitted during the period of the stay. When the stay is lifted, or the stay expires, the position as between the parties should be the same as it was at the moment that the stay was imposed. The parties (and the court) pick up where they left off at the time of the imposition of the stay.*

16. The Glossary to the CPR also provides the following:

Counterclaim	*A claim brought by a defendant in response to the claimant's claim, which is included in the same proceedings as the claimant's claim.*

17. The following are definitely stayed (other than proceedings listed in PD51Z 2A):
    a. Any claim for possession of residential property.
    b. Any application for a warrant.
    c. Any enforcement of a warrant.
    d. Any accompanying Counterclaim to a claim for possession. Because PD51Z stays the "Proceedings" and not merely the "Claim" or "Application".

18. The following are definitely not stayed:
    a. Any claim for injunctive relief by a tenant alleging unlawful eviction before or after the fact.
    b. Any claim for an Anti-Social Behaviour Injunction against a tenant.
    c. Any committal claim against a tenant for alleged breach of an Anti-Social Behaviour Injunction.

19. The stay operates as to freeze proceedings. Such a case must have a "legal life" in the form of being proceedings before the stay could take effect. Therefore, any deadlines for issuing will still apply during the period of the stay but once issued a claim will be stayed immediately thereafter, delaying any need to serve the claim form and any subsequent steps until the end of the stay period (*Grant v Dawn Meats UK* [2018] EWCA Civ 2212 *per* Coulson LJ).

20. In relation to directions on any live cases to which the stay applies the stay operates to extend all directions by 90 days. In theory parties could agree to continue to comply with directions up until any court intervention is then necessary or jointly apply for a revised timetable under PD51Z para 2A(c). Litigation is mostly progressed by the parties and so there are still various things which may be done:
    1. Pre-action correspondence
    2. Issue of proceedings, even if they may immediately be stayed
    3. Default and summary judgment
    4. Disclosure – in possession cases, there would be no obligation to proceed during the period of stay but it may still be an advantage to all parties to disclose voluntarily in order to progress matters.
    5. Preparing witness statements
    6. Bundle prep

    However, given that delays in possession proceeding are usually of more assistance to tenants, it is unlikely to be in their best interests to progress matters formally beyond disclosure. It would be advisable to take advantage of the stay to seek to settle cases or, alternatively, undertake preparatory work in relation to evidence preparation, albeit without filing or serving such documents. Any landlord that seeks to apply pressure on those representing tenants to progress possession matters during the period of the stay ought to be referred to the Guidance cited below where the Government strongly advises landlords during this period to refrain from commencing or continuing both possession action and enforcement action without a "very good reason". The coronavirus restrictions may motivate landlords to remove cases from the backlog building up or to avoid litigation costs at a time when resources are limited and decreasing. Mediation may be carried out remotely (e.g. through the Mediator Network). In the event that any party is treating the stay as operating to extend all directions by 90 days, it would be advisable to write to the Court to inform them that this is their understanding, giving the new dates by which any directions will be complied with along with any varied listing dates.

21. The stay does not stop parties taking steps up to the point where proceedings would be stayed. Some law firms are advising clients to apply for warrants so they can be first in the queue once evictions start up again. Correspondingly it is equally advisable to submit applications to suspend enforcement of a warrant to ensure that any enforcement action is reconsidered before a warrant is enforced when evictions start up again.

22. But what about:
    a. Counterclaims – as detailed above the proceedings are stayed. However, it may be necessary to apply for interim injunctive relief on such claims given the delays that are now likely to arise in such cases (see below in relation to Repairs and Equality Act cases).
    b. Applications to suspend warrants – suspension is unnecessary during the period of the stay and so applications could be withdrawn or stayed. However, you might still want to proceed with applications if you need to get new payment arrangements in place or if you want to set behavioural conditions that you are confident your client will comply with.
    c. Applications to set aside possession orders – the order itself cannot be enforced but there is no reason why a set-aside application may not be made or continued. Given the likely relevance of the promptness of the applicant in such cases it is advisable to make these applications sooner rather than later, albeit clearly the Pandemic and the corresponding stay ought to be pleaded in any explanation for delay at a later date.
    d. Applications for specific performance – these are similar to claims for injunctive relief and therefore likely to come within the express exclusion but there may be considerations such as obliging work operatives to work next to each other, depending on whether they can maintain distance, work inside someone's home or use PPE.
    e. Taking steps up to the stage where it is stayed. There are problems with just leaving stayed cases lying where they are – it seems local authorities are not processing homelessness applications of those now not due to be evicted, including refugees coming out of Home Office accommodation. What steps could be taken to progress cases to the point where local authorities take action rather than just waiting until the stay is lifted?
    f. Victims and perpetrators of domestic violence. Given the moratorium on possession claims, it may not be possible to displace the perpetrator and so the victim will have to be housed as a homeless person as the only option. See

https://www.theguardian.com/society/2020/mar/31/call-for-uk-domestic-violence-refuges-to-get-coronavirus-funding.

23. A challenge to PD51Z has already been raised and is currently due to be heard at the Court of Appeal on 30th April 2020. The case is *Arkin v Marshall* and relates to two claims for possession on residential mortgages. The challenge is to:
    a. whether the 3-month stay of possession proceedings in PD 51Z is unlawful/ultra vires
    b. whether the stay applies to the requirement to comply with case management directions in all cases and
    c. whether the stay should be lifted in individual cases.

    https://nearlylegal.co.uk/2020/04/a-challenge-to-pd-51z/

    HLPA are considering an application to intervene and have issued an urgent call for evidence from housing lawyers. Further details can be found here.

Coronavirus Act 2020 & Notice Periods

24. Section 81 & Schedule 29 Coronavirus Act 2020 have amended the notice provisions relating to Rent Act, Secure, Flexible, Assured, Assured Shorthold, Introductory and Demoted tenancies during the "relevant period" (currently prescribed as from 25th March 2020 to 30th September 2020, though subject to amendment by statutory instrument by the relevant national authority):
    a. Rent Act Tenancy:
        i. Notices to Quit relating to a protected tenancy given by landlords during the relevant period shall not be valid unless it is given not less than 3 months before the date on which it is to take effect.
        ii. Proceedings may not be commenced during the relevant period as against a statutory tenant unless (a) the landlord has given the statutory tenant a notice of intention to commence possession proceedings; (b) the notice period is a period of at least three months; and (c) the proceedings are commenced on or after the intended date for commencing proceedings unless the court considers it just and equitable to dispense with the requirement to comply.
    b. Secure, Assured, Introductory & Demoted Tenancies: The court shall not entertain proceedings relating to any ground for possession unless any notice served on the tenant by the landlord during the relevant period specifies a date, not earlier than three months after the date of service of the notice, after which proceedings for

possession may be begun. Where the court previously had a power to dispense with the notice requirements this remains.

c. Flexible Tenancy: The court shall not entertain proceedings relating to recovery for possession on expiry of a flexible tenancy unless any notice served on the tenant by the landlord during the relevant period has given the tenant not less than three months' notice in writing that they require possession of the dwelling-house.
d. Assured Shorthold Tenancy: The court shall make an order of the dwelling-house let on an Assured Shorthold Tenancy only if it is satisfied, amongst the other standard requirements, that any notice pursuant to s.21 served during the relevant period has given to the tenant not less than three months' notice in writing that the landlord requires possession of the dwelling house.

25. It is worth noting the following:
    a. The relevant national authority (the Secretary of State in England) may amend the references to 3 months to any period up to 6 months by regulations made by statutory instrument. It is assumed that the effect of such variation on notices already served during the relevant period will be addressed in such varying legislation given that currently it is unclear whether such a variation would make such notices retroactively unenforceable or have absolutely not effect (either outcome seems undesirable at law).
    b. The extension period applies to notices given during the relevant period rather than proceedings commenced during the relevant period save in relation to Statutory Rent Act Tenants. Accordingly if a Notice were given before the relevant period it could still be relied on in proceedings provided it were otherwise valid. However in relation to a statutory tenant no proceedings can be commenced during the relevant period where the notice is not for a period of at least three months but a notice of shorter period can be relied on for proceedings commenced either side of the relevant period.
    c. The Court retains its discretion to dispense with the Notice requirements as before in relation to Secure & Assured tenancies and is granted such a discretion in relation to Rent Act statutory tenants.
    d. The extension of the notice period in relation to Introductory tenancies in practice reduces the effective period of such tenancies due to expire during the relevant period or shortly thereafter by up to two months because any introductory tenancy expires at the end of the trial period and it is only the issuing of proceedings with a valid notice that will pause that expiry pending the determination of proceedings (*s.125 & 130 Housing Act 1996*). The same cannot be said in relation to Demoted

tenancies as the service of the notice itself extends the period of the Demoted tenancy (*s.143B Housing Act 1996*).

e. This extension of the notice period equally extends the period during which any review must be completed if a landlord is seeking possession on a mandatory ground. However it doesn't extend the statutorily defined period to request a review so advisers should be vigilant to request the review ASAP while also requesting time to prepare submissions in the circumstances.

f. The duration of the validity of the notice is not affected in relation to Rent Act, Secure & Flexible tenancies. However in relation to Assured tenancies any section 8 notice is valid for at least one month less because the period from which possession proceedings must be commenced starts from the date of service of the notice rather than the date of expiry of the notice (*s.8(3)(c) Housing Act 1988*).

g. The duration of the validity of a section 21 notice in relation to an Assured Shorthold tenancy will likely be reduced from 4 months to 3 months unless the period of the tenancy is longer than three months and requires a longer notice period accordingly (*s.21(4D) & (4E) Housing Act 1988*). Because a section 21 notice may not be given during the first 4 months of any original assured shorthold tenancy the revised notice period acts so as to extend the earliest possible period from which a landlord can issue possession proceedings from 6 months to 7 months from the start of the original tenancy (*s.21(4B) Housing Act 1988*).

h. Where there are prescribed forms relating to any given notice the legislation has amended such forms to reflect the above changes. However there are commentators that are concerned that the use of the phrase "shall be read" rather than "substitute" many not have correctly varied the forms and further that there are edits to the forms that are not authorised by statute (https://nearlylegal.co.uk/2020/03/coronavirus-new-forms-3-and-6a-for-s8-and-s21/). Given however that forms substantially to the same effect can be valid in their corresponding proceedings it is unlikely that any Court will dismiss a claim reliant on the new forms published on the Government websites.

i. This does not provide an extension of three months to everyone. Licensees are not protected by this legislation nor are Rent Agriculture Act 1976, Assured Agricultural or Family Intervention tenants. According to the guidance, neither are service occupiers.

Government Guidance

26. The Guidance is most likely to be of use in later possession proceedings to found a public law challenge to the actions of any public landlords during this period. However the specific contents and general underlying principles can be relied on to dissuade any progression of any outstanding possession actions during this time and further apply pressure to landlords to compromise proceedings on favourable terms.

27. It is worth noting the following from the Coronavirus (COVID-19) Guidance for Landlords and Tenants:
    a. Landlords and tenants are not relieved of any obligations and should carry on meeting them as far as possible.
    b. If there are any problems, talk to each other. This might seem obvious but it re-emphasises the usual point that litigation is a last resort. Landlords, both public and private are encouraged to reach out to tenants to understand their circumstances before taking possession action. If either party has missed an opportunity to talk, the court will be significantly less sympathetic unless there is some extenuating circumstance such as the other party's conduct meaning health and safety is endangered just by trying to communicate with them.
    c. Access to a property is only proposed for serious and urgent issues as set out in the guidance (essentially urgent health and safety issues). The landlord and tenant should follow the Government's latest guidance on what is necessary to stop the spread of the virus when considering any visits to the premises. No one should visit the property to conduct viewings or anything else which is non-urgent and health and safety related.
    d. Moving home ought to be delayed and only proceed if unavoidable.
    e. Regardless of the legislation, landlords are "asked" not to issue a notice. They are also "strongly advised" not to "commence" new notices seeking possession during this time without a "very good reason" to do so.
    f. Landlords are "strongly advised" not to commence or continue eviction proceedings during this challenging time without a "very good reason" to do so.
    g. The Government is allegedly working to extend the pre-action protocol for possession claims by social landlords to private landlords.
    h. Local Authorities can provide support for tenants to stay in their homes.
    i. There is no protection for licensees albeit the guidance urges landlords of such occupiers to follow the same guidance and to work with occupiers.
    j. There is no protection for service occupiers albeit the guidance recommends that employers are as flexible and understanding as possible.

k. The guidance is useless for property guardians save that it highlights the possibility that they may be tenants and not licensees.
l. The guidance (para 2.2) says lodgings, holiday lets, hostel accommodation and accommodation for asylum seekers are excluded from the protection of the 90-day stay for proceedings.
m. There is nothing for people living in HMOs other than the general guidance.

28. It is worth noting the following from the Coronavirus Act 2020 and renting Annex A:
    a. Landlords are "strongly advised" not to commence or continue possession proceedings during this time without "a very good reason" to do so.
    b. The bulk of the guidance summarises the changes to the law consistent with that summarised above in layman's terms.

29. The guidance on Government support available for landlords and renters reflecting the current coronavirus (COVID-19) outbreak summarises the guidance provided above and adds nothing further.

30. The Coronavirus (COVID-19): landlord right to rent checks provides that right to rent checks have been "adjusted", not abandoned and once the Covid-19 measures are lifted retrospective checks consistent with the standard guidance must be undertaken (the Court of Appeal has also just ruled that the right to rent scheme is discriminatory but not in breach of human rights: *SSHD v JCWI* [2020] EWCA Civ 542). Video calls and scanned documents, rather than originals, may now be used. The guidance also provides that,

> "*Because of COVID-19 some individuals will be unable to evidence their right to rent. During this period, you must take extra care to ensure that no-one is discriminated against because they are struggling to evidence their right to rent.*"

Housing Related Benefits Matters

31. Clearly the Covid-19 circumstances have resulted in changes to benefits which are outside of the remit of this webinar. The CIH have produced guidance. In summary:
    a. The Government announced in January that the freeze on Local Housing Allowance rates that has been in place since 2016 would be lifted, meaning that they would have risen by 1.7% in line with inflation this month.

b. As part of the coronavirus measures, LHA rates have also been put back up to the 30th percentile of market rents (where they were before the freeze). This will give the 1.4 million recipients about £10 per month more.
c. Funding has been provided to local councils to increase Council Tax Support (worth an extra £150 for recipients) but not Discretionary Housing Payments.
d. UC standard allowance and Working Tax Credit basic element have been increased by £20 per week above the inflationary increase.
e. New claim interviews are now by phone as all face-to-face meetings have been suspended for 3 months.
f. The Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020 allow claimants to be treated automatically as having limited capability for work, without the requirement for any medical evidence or to undergo a Work Capability Assessment.
g. Employment and Support Allowance is payable now from the first day of sickness for those directly affected by COVID-19 or self-isolating, meaning the first payment should be received in about 2 weeks (Universal Credit is still around 5 weeks).
h. The Government has said that sanctions won't be applied because the DWP would not be checking compliance with work search conditions for 3 months. The Social Security (Coronavirus) (Further Measures) Regulations 2020 also provide that work-search requirements will not be applied to UC and "new-style" JSA.
i. If benefits are due to expire, the DWP is supposed to extend the end-date.
j. The minimum income floor (the amount self-employed UC claimants are assumed to receive) has been suspended.

32. There is anecdotal evidence that benefit claimants are finding it difficult to contact the DWP/Job Centre.

Housing Conditions

General Principles

33. As detailed above landlords and tenants continue to be subject to their obligations throughout the Covid-19 period. However clearly the social distancing, isolation and shielding necessary during this period will have a relevance to the reasonableness of the parties conduct during this period:
    a. If a reasonable period to address poor housing conditions has yet to expire it is likely that a Court will determine that any such period is longer during the Covid-19

period. What that extended period will be will turn on the facts including the nature and seriousness of the issue and the precise nature of any necessary remedial works.

b. Landlord may be entitled to impose more stringent obligations on a tenant before undertaking necessary works for example cleaning an area before and after works are undertaken, vacating the rooms where works are being undertaken for the duration of the works etc. etc.
c. Tenants may be entitled to reasonably refuse access for works to be undertaken for example if they are in self-isolation, particularly at risk to Covid-19 and/or being shielded.
d. If however a landlord has failed to address poor housing conditions within a reasonable period before the Covid-19 circumstances arose loss still accrues, even if the landlord is prevented from bringing it to an end, and so damages are payable. The aim is to compensate for loss, not to be fair to the landlord.
e. The government guidance summarised below will be of particular relevance in relation to reasonableness in this regard.

34. Given that a substantial portion of housing condition cases are pleaded as counterclaims to possession actions such proceedings will be stayed by operation of PD51Z. However, if particular works need to be done as a matter of urgency consideration ought to be given by advisers to applying to lift the stay and seek interim injunctive relief in this regard.

Court Proceedings

35. Standalone claims in the county court should be proceeding and may have a degree of priority (see above on priority listings). However it is likely that there will be delays given the effect of Covid-19 on the functioning of the courts at the moment.

36. Environmental Protection Act Prosecutions may be regarded as "Civil applications relating to public health legislation" and accordingly will be heard and treated as priority 1 matters in the Magistrates Courts (Magistrates' court cases update 22nd April 2020; Judicial note on listing in Magistrates Courts – Covid-19). However all listing decisions remain a matter for a judge and it may be that they confine priority to public health matters with a Covid-19 element. Experience from one solicitor, where all their EPA prosecution first hearings have been vacated by the courts, suggests that this is the approach being adopted by the Courts.

Guidance

37. It is worth noting the following from the Coronavirus (COVID-19) Guidance for Landlords and Tenants:
    a. Landlord's repair obligations have not changed. Tenants have the right to a decent, warm and safe place to live.
    b. Planned reviews and maintenance may be understandably more difficult during this time. However, that is no reason to allow dangerous conditions to persist.
    c. Technological solutions such as smartphones can be used to reduce the need for in-person inspections of property issues.
    d. Tenants and landlords are urged to take a common-sense and pragmatic approach to non-urgent issues which are affected by Covid-19 restrictions.
    e. Where reasonable, safe for the tenant and in line with government guidance it is recommended that tenants allow local authorities, landlords and contractors access to their property in order to inspect or remedy urgent health and safety issues.
    f. Urgent health and safety issues are those which will affect your ability to live safely and maintain your mental and physical health in your home. This could include (but is not limited to):
        i. If there is a problem with the fabric of your building, for example the roof is leaking.
        ii. If your boiler is broken, leaving you without heating or hot water.
        iii. If there is a plumbing issue, meaning you don't have washing or toilet facilities.
        iv. If your white goods such as fridge or washing machine have broken, meaning you are unable to wash clothes or store food safely.
        v. If there is a security-critical problem, such as a broken window or external door.
        vi. If equipment a disabled person relies on requires installation or repair.
    g. Landlords should make every effort to abide by existing gas safety regulations and electrical safety regulations which come into force on 1 July. There are provisions in both regulations to account for situations in which a landlord cannot do this, and they must demonstrate they have taken all reasonable steps to comply with the law.
    h. The guidance seems to suggest that works could still be undertaken even where a tenant is symptomatic and/or in an at risk group provided that sensible precautions are taken to protect the tenant and the individuals attending the premises.

i. There is no obligation on a landlord to move or protect a tenant from other tenants in a HMO who may be symptomatic. Guidance should be followed by the occupants on hygiene and cleanliness.

38. The new Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 were made on 18th March and will apply to all new tenancies on 1st July 2020 and for existing tenancies on 1st April 2021.

39. The guidance in Closing certain businesses and venues includes a section on *Work carried out in people's homes*. The tradesperson should be well and have no symptoms and maintain the 2-metre social distancing. Also:

> *No work should be carried out in any household which is isolating or where an individual is being shielded, unless it is to remedy a direct risk to the safety of the household, such as emergency plumbing or repairs, and where the tradesperson is willing to do so. In such cases, Public Health England can provide advice to tradespeople and households.*

Local authority enforcement of the HHSRS and licensing

40. COVID-19 (Coronavirus) and the enforcement of standards in rented properties:
    - As part of the national effort to respond to the COVID-19 outbreak it is vital that local authorities, landlords and tenants work together to keep rented properties safe.
    - It may be harder for local authorities to carry out their usual work. Inspecting properties and taking enforcement action may be affected by issues around resources or tenants maintaining strict separation. Landlords may also find it harder to comply with their legal obligations for the same reasons.
    - Authorities are expected to update their policies on how and when they will inspect properties during the coronavirus pandemic.
    - Enforcement should only take place when "necessary".
    - Stock-owning local authorities are of course expected to maintain their homes to the same standard as they enforce against and should have due regard of the guidance in their functions as landlords.

41. Further the Coronavirus (COVID-19) Guidance for Landlords and Tenants provides that the government is encouraging local authorities to take a common-sense,

pragmatic approach to enforcement during these unprecedented times in relation to selective or additional licensing requirements. This includes considering pausing the introduction of non-mandatory licensing schemes where this will allow limited resources to be focused where they are most needed. The underlying suggestion is that enforcement action is unlikely at this time.

42. This is not statutory guidance issued under section 9 of the Housing Act 2004 so local authorities are not required to have regard to it. The guidance is intended to provide a recommended approach for local authorities, taking into account the COVID-19 outbreak and current public health guidance guidance.

Practicalities

43. It may not be possible to obtain expert evidence if they require property visits or face-to-face meetings however we have heard of some surveyors expressly contacting solicitors to indicate their availability at this time.

44. Also for those solicitors unwilling to proceed with instructing experts or issuing proceedings without first having sight of the premises, entirely understandable when operating under a CFA, they are not restricted from travelling to the premises because they would be travelling there for the purposes of work and it is not reasonable to provide those services from the place where they are living (Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 reg.6). However it would be advisable to at least attempt to have a video conference with the client in advance to establish whether attendance is necessary. Further if attendance is necessary it would be appropriate to comply with the guidance cited above at paragraph 39.

Anti Social Behaviour

45. In the majority of ASB cases, the aim for the tenant's representative is to put in place whatever is required to ensure and show that there will be no ASB in future. This includes:
    - Advising your client frankly on the consequences of ongoing ASB.
    - Checking, principally through disclosure, whether the landlord has complied with their published policies and their duties under the Equality Act to address the ASB and any vulnerabilities which caused or contributed to it.

- Obtaining a comprehensive and up-to-date medical diagnosis and treatment plan.
- Obtaining support from children's services, social services or voluntary sector organisations.
- Exploring re-housing options for one or more household members.
- Seeking to persuade the landlord that a plan derived from the above enquiries is preferable to seeking possession.

In nearly all cases, these steps require time. The delay to any landlord action, caused by the coronavirus, provides both a window of opportunity for the tenant and an incentive for the landlord to co-operate.

46. However CPR PD 51Z expressly excludes injunction cases and so some landlords are likely to resort to this as an alternative to possession, at least in the short term. Advisers should be prepared to see an increase in anti-social behaviour injunction and committal work in the coming months. The risk of a later claim for possession on an absolute ground of possession (as introduced by sections 94 & 97 ASB Crime and Policing Act 2014) ought to be treated as a primary consideration by anyone advising on such matters:
    a. It is advisable for clients to propose to provide undertakings to the court at the earliest possible opportunity, even if only on an interim basis until any substantive application for an injunction is resolved. This has two benefits (1) Court's view such conduct positively and it can result in less stringent measures being imposed and (2) if there were any breach of such an undertaking it would not trigger the absolute grounds.
    b. It is advisable to strongly contest committal applications even in circumstances where any sentence may be minor precisely because of the risk to the respondent's home. It is not easy for applicants to succeed on an application for committal even in what appears to be the most clear-cut circumstances because (1) there are a lot of technical requirements that need to be satisfied (see CPR81) and (2) the applicant carries the burden and must satisfy the court to the criminal standard of proof.

47. There may be substantial difficulties obtaining expert evidence to defend such proceedings if they require property visits or face-to-face meetings. This may be particularly relevant in relation to psychiatric reports or sound experts in noise nuisance cases:

a. Psychiatrists, as medical health professionals, are likely to have additional demands placed on them during the Pandemic and this will likely result in delays in securing reports (see for example Statement from the Royal College of Psychiatrists on the Roles and Work of Psychiatrists during the Covid-10 Pandemic). It should not be assumed however that reports cannot be obtained during this time. By way of example Expert in Mind are continuing to provide expert reports albeit any assessments are being undertaken remotely by video-link. Given the extremely vulnerable nature of our clients this may need to some creative efforts to secure client attendance at video meetings but such efforts should be made even if unsuccessful to ensure that any Court considering delay in obtaining such evidence makes allowance for the difficulties faced.

b. It should be noted that the current situation does not automatically mean that sound experts cannot attend premises or that the occupants can refuse access, of particular relevance will be the guidance cited above at paragraph 39. Given the Courts generally require committal proceedings to be dealt with promptly it should not be assumed that a Court will automatically grant additional time to secure such expert evidence unless it can be shown that the delay arises as a consequence of compliance with guidance or the other party being unwilling to act in accordance with the guidance. Any clients unwilling to grant access to an expert to their premises because they prefer to be particularly cautious but are not necessarily supported by the guidance should be advised that this may mean they are required to proceed without the expert evidence.

Equality Act

48. As housing lawyers, we frequently use the Equality Act now to provide defences in possession cases, but such defences are stayed in the same way as any possession proceedings. However, the Equality Act will in many cases provide a counterclaim as well as a defence seeking specific performance or action on the part of the Claimant. However, if such steps need to be done as a matter of urgency consideration ought to be given by advisers to applying to lift the stay and seek interim injunctive relief in this regard. This may be particularly relevant with clients locked down in unsuitable accommodation where the provision of suitable alternative accommodation is being sought by way of counterclaim.

Homelessness

49. Coronavirus (COVID-19): guidance for local government provides a list of the guidance for Homelessness and rough sleeping services, including a letter to Local Authorities 26th March 2020 in which the Government said they had appointed Dame Louise Casey to co-ordinate the response to homelessness, known as “Everyone In”. The basic principles are to:
    - focus on people who are, or are at risk of, sleeping rough, and those who are in accommodation where it is difficult to self-isolate, such as shelters and assessment centres
    - make sure that these people have access to the facilities that enable them to adhere to public health guidance on hygiene or isolation, ideally single room facilities
    - utilise alternative powers and funding to assist those with no recourse to public funds who require shelter and other forms of support due to the COVID-19 pandemic
    - mitigate their own risk of infection, and transmission to others, by ensuring they are able to self-isolate as appropriate in line with public health guidance.

    This should be done by taking the following programme of actions:
    1. Convening a local coordination cell to plan and manage the response to COVID and rough sleeping involving the local authority (housing, social care and public health) and local NHS partners together. This would then report in to wider local COVID structures.
    2. Seeking to stop homeless people from congregating in facilities such as day centres and street encampments where there is a higher risk of transmission.
    3. Urgently procuring accommodation for people on the streets – MHCLG will supposedly support councils to do so if they are struggling to procure sufficient units.
    4. Triaging people where possible into 3 cohorts driven by medical advice:
        - those with symptoms of COVID19
        - those with pre-existing conditions but without symptoms; and
        - those without any of the above.
    5. Getting the social care basics such as food, and clinician care to people who need it in the self-contained accommodation.
    6. If possible, separating people who have significant drug and alcohol needs from those who do not.

50. Crisis welcomed this initiative but stated that, foremost amongst the issues to be resolved are:

- Legal barriers: Councils are denying help to people on the basis of 'local connection' criteria, alongside on-going confusion and denial because people are deemed to have no recourse to public funds**.**
- Funding is still a concern for local authorities.
- Discretionary Housing Payments (DHP) are useful but funding has yet to be increased (unlike for Council Tax Support).
- People without recourse to public funds still cannot access housing benefit and the right to rent scheme is still limiting private sector landlords in offering accommodation.
- Once in hotel or other self-contained accommodation, the medical needs of those who are symptomatic need to be addressed. In a number of hotels people have been 'cohorted' and it is known who is symptomatic, yet no Covid-care plan is available, and nor is personal protective equipment (PPE) for those supporting individuals**.**
- The wait for UC payments is still a problem.
- The approach to benefit sanctions has been made more flexible but they still present a risk of causing homelessness.

51. COVID-19 advice for accommodation providers advises all businesses providing holiday accommodation should close for commercial use but hostel and other accommodation providers should remain open for key workers, vulnerable groups, emergency accommodation, the homeless or primary residences (similar advice has been sent in a letter to Caravan Park Owners). This was followed up by a letter to Hotel Chief Executives 24th March 2020:

> *where hotels, hostels, and B&Bs are providing rooms to support homeless people, through arrangements with local authorities and other public bodies, they should remain open. … If you have closed services for homeless people today as a result of the measures announced this week, I would be very grateful if you could reverse these decisions as soon as possible*.

This letter was drafted in response to largescale closures of accommodation used to house homeless individual including Travelodge hotels. For details as to events around 24th March please see https://nearlylegal.co.uk/2020/03/throwing-out-the-homeless-hotels-and-coronavirus/. It is unclear whether this situation has improved much since the letter. By April 19 the government claimed to have helped councils to assist more

than 5,400 rough sleepers who were on the streets or in communal accommodation. In London, more than 1,000 rough sleepers had been given emergency accommodation by April 15 according to Inside Housing, with hotel chains such as Travelodge, Best Western, Accor and InterContinental taking part in the scheme (Housing Rights April 2020).We would be grateful for any participants insights in this regard.

52. The page entitled "COVID-19: guidance for hostel or day centre providers of services for people experiencing rough sleeping" just states, "Public Health England will be issuing updated guidance for those working with people who are experiencing rough sleeping and living in hostel environments as soon as possible."

53. Given the above it is hoped that a large volume of homeless individuals have been accommodated during the Pandemic. However they still remain statutorily homeless so that any duties under Part VII Housing Act 1996, including duties to inquire and make decisions, ought to be triggered albeit any accommodation provision duty is likely to be satisfied, in the short term at least, by the accommodation provided in response to Covid-19 (*R (Aweys) v Birmingham CC* [2009] UKHL 2009; [2009] 1 WLR 1506).

54. It is likely that social distancing and public health requirements will have created additional statutorily homeless individuals:
    a. The most obvious category would be those working in keyworker roles but who also have vulnerable, at risk or symptomatic individuals at their home address. In advising individuals it may be that there is funding and provision available through their employer to be accommodated elsewhere, not least because this could avoid the individual becoming unavailable for work due to household isolation. As far as we are aware there is not wholesale provision across the NHS. It is advisable to review any employer's guidance, directives and policies when advising such clients as there are circumstances where of accommodation provision should be funded by employers such as the NHS. For example those who have symptomatic households ought to be provided with NHS-reimbursed hotel accommodation (Letter from NHS Chief Executive 17th March 2020).
    b. For those keyworkers who are not able to secure accommodation from their employer but who also have vulnerable, at risk or symptomatic individuals at their home address it is certainly arguable that both them and the other household member are statutorily homeless as it is not reasonable for them to continue to occupy their accommodation.

c. If the keyworker is seeking to be accommodated elsewhere it is unlikely that they will be priority need. However public authorities will still be subject to the relief duty (*s.189B Housing Act 1996*) and the power to accommodate non-priority need individuals (*s.205(3) Housing Act 1996*). Given that, "*Housing authorities will wish to consider local priorities, needs and resources when considering how the power might best be utilised in their district.*" (*§15.3*5 *Homelessness Code of Guidance for Local Authorities*) it is well worth putting a detailed letter to the Local Authority that they ought to exercise this power in favour of a keyworker and if refused there could well be a solid foundation for a public law challenge.

55. There is a realistic prospect that Local Authorities rely on PD51Z to avoid considering applications from individuals who are entitled to a court order before being evicted from their homes. Such Local Authorities should note the following:
    a. It is arguable that any tenant is threatened with homelessness if any notice is due to expire within 56 days as it is not reasonable to expect a tenant to be subjected to possession proceeding (particularly if there is a degree of inevitability to the outcome of those proceedings).
    b. If a valid notice under section 21 of the Housing Act 1988 has been issued in respect of the only accommodation available for their occupation, and the notice will expire within 56 days then an applicant is statutorily threatened with homelessness (*s.175(5) Housing Act 1996*).

56. One of the circumstances in which a council may give notice that the relief duty under section 189B(2) of the Housing Act 1996 has come to an end is the expiry of a period of 56 days after they decided the applicant was homeless and eligible for assistance. Given the difficulties securing alternative accommodation during the Pandemic we are expecting a lot of discharge without much homelessness being resolved (indeed we have already heard of Local Authorities engaging in this practice). However, the service of the notice is discretionary so it is open to the council simply not to serve it and such a decision needs to be reached consistent with principles of public law. Considerations will include the needs of the applicant, the risk of the applicant sleeping rough, the prospects of securing accommodation within a reasonable period and any wider implications of bringing the duty to end (*§14.19 Homelessness Code of Guidance for Local Authorities*). Given the exceptional circumstances posed to those seeking accommodation during the Pandemic it is likely any such decision to discharge duties in this manner will be subject to challenge.

57. The requirement during the emergency period for no person to leave or be outside of the place where they are living without reasonable excuse does not apply to any person who is homeless (Reg. 6(4) Health Protection (Coronavirus, Restrictions) (England) Regulations 2020/350). The regulation fails to define homelessness so it will be interesting to see how the police and Magistrates proceed to apply this provision.

58. For the foreseeable future it is likely that section 204 appeals will be heard remotely. Proposed directions sent with any grounds of appeal will need amending to reflect this. Please see attached that draft proposed directions that address issues relating to remote hearings therein (Albeit I'm sure that a certain circuit judge at Central London County Court will have already decided what these amended directions should look like).

Community Care

59. Section 15 & Schedule 12 Coronavirus Act 2020 – Local authority care and support. The Act replaces duties on Local Authorities in Pt 1 of the Care Act 2014 to assess needs for care and support and to meet those needs with a power to meet needs for care and support, underpinned by a duty to meet those needs where not to do so would be a breach of an individual's human rights. New guidance, Care Act easements: guidance for local authorities, summarises the changes:
    1. Local Authorities will not have to carry out detailed assessments of people's care and support needs in compliance with pre-amendment Care Act requirements. However, they will still be expected to respond as soon as possible (within a timeframe that would not jeopardise an individual's human rights) to requests for care and support, consider the needs and wishes of people needing care and their family and carers, and make an assessment of what care needs to be provided. Annex B of the guidance provides more information
    2. Local Authorities will not have to carry out financial assessments in compliance with pre-amendment Care Act requirements. They will, however, have powers to charge people retrospectively for the care and support they receive during this period, subject to giving reasonable information in advance about this, and a later financial assessment. This will ensure fairness between people already receiving care and support before this period, and people entering the care and support system during this period. Annex B of the guidance provides more information

3. Local Authorities will not have to prepare or review care and support plans in line with the pre-amendment Care Act provisions. They will however still be expected to carry out proportionate, person-centred care planning which provides sufficient information to all concerned, particularly those providing care and support, often at short notice. Where they choose to revise plans, they must also continue to involve users and carers in any such revision. Annex B of the guidance provides more information
4. The duties on Local Authorities to meet eligible care and support needs, or the support needs of a carer, are replaced with a power to meet needs. Local Authorities will still be expected to take all reasonable steps to continue to meet needs as now. In the event that they are unable to do so, the powers will enable them to prioritise the most pressing needs, for example enhanced support for people who are ill or self-isolating, and to temporarily delay or reduce other care provision. Annex C provides further guidance about the principles and approaches which should underpin this

60. The current caselaw on the threshold that must be met before human rights breaches arise through want of care and support set it particularly high. This part of the amendments provides very limited assistance to those seeking care and support. It is advisable to place more emphasis on the above detailed Guidance and the expectation of continued care and support contained therein when seeking assistance.

61. Responding to COVID-19: the ethical framework for adult social care is new but has been adapted from the ethical framework previously developed in 2007. It lists ethical principles:
    - Respect
    - Reasonableness (rational, fair, practical and grounded in evidence)
    - Minimising Harm
    - Inclusiveness
    - Accountability
    - Flexibility
    - Proportionality
    - Community

Court Hearings

51Y – Video or Audio Hearings during Coronavirus Pandemic

62. The general principle behind the various measures affecting court hearings is that they will be conducted remotely – Civil Justice Protocol Regarding Remote Hearings. The likelihood is that this will continue after the coronavirus restrictions have passed to some extent.

63. At the moment, the courts are only set up to use Skype for Business or HMCTS's Cloud Video Platform (Kinly Cloud) for video hearings, except the latter has no facility for recording. Judicial guidance advises that they are looking to expand these options to include Microsoft Teams in the next few weeks albeit that as Microsoft Teams is essentially taking over from Skype for Business and is backwards compatible it is assumed that this means the Court service will be operating through MS Teams software rather than Skype for Business. Those already operating through MS Teams should be able to engage with any Skype for Business contact with the Court service. The recommended audio app is BT MeetMe.

64. According to the latest Judicial Office guidance, it seems that recent versions of the Apple operating system present a problem when Skype for Business is used. For some reason the microphone is not and cannot be enabled. This seems to be a problem which is known to Microsoft and for which some fixes have been proposed, but there is no clear fix yet.

65. Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (as amended by the Amendment Regulations) reg.6(1) and (2)(h): During the emergency period, no person may leave or be outside the place where they are living without reasonable excuse but a reasonable excuse includes to fulfil a legal obligation, including attending court or satisfying bail conditions, or to participate in legal proceedings. Also, reg.6(4) says reg.6(1) does not apply to any person who is homeless.

ANNEX A – Draft Proposed Directions for remote s.204 Hearings

IN THE COUNTY COURT IN []

BETWEEN

The Appellant

and

The Respondent

PROPOSED CASE MANAGEMENT DIRECTIONS

UPON consideration of the appellant's notice, grounds of appeal and proposed case management directions.

IT IS ORDERED THAT:

Case Management Directions

1. The respondent shall disclose any documents relevant to the decision under appeal including but not limited to the appellant's housing file by 4pm on [14 days from order] (*Paragraph 28.1.(5)(c) Practice Direction 52D*).

2. The appellant shall have permission amend to its grounds of appeal, if so advised, by 4pm on [28 days from order] (*Paragraph 28.1.(5)(d) Practice Direction 52D*).

3. The appellant shall file and serve a skeleton argument by 4pm on [42 days from order].

4. The respondent shall file and serve a skeleton argument in response to the appellant's skeleton argument by 4pm on [56 days from order].

5. In the event that either party considers it necessary to serve evidence in relation to the Appeal, such evidence shall be served:
    a. By the Appellant on the Respondent, by 4pm on [42 days from order].
    b. By the Respondent on the Appellant , by 4pm on [56 days from order].

Remote hearing directions

6. Unless otherwise directed, the case shall be listed for remote hearing at the Central London County Court on the first available date after [70 days from order] for an appeal hearing pursuant to section 204 Housing Act 1996 (as amended) with a time estimate of [] day.

7. The method of conducting the remote hearing shall be Skype for Business / Teams.

8. To ensure the proper administration of justice the link to join the Skype for Business / Teams hearing shall be published on the Court Listing for this matter.

9. Within 5 working days of the date of this order:
    a. If either party disagrees with proposal for conducting the appeal in paragraph 6 to 8, they shall make submissions in writing by email, copies to all other parties, as to the basis of its objection and what other proposals would be more appoproraite. The other party shall have 3 working days to respond before a binding decision is made by the judge presiding over the appeal
    b. Each party shall provide to the court direct contact number(s) and email address(es) for the Court to contact (a) the solicitor or caseworker with ongoing conduct of the case and (b) counsel for the parties (if yet instructed).

10. No more than 14 days and no later than 7 days before the hearing, the Appellant shall file with the County Court at Central London an indexed and paginated electronic bundle of documents and an electronic bundle of authorities limited to relevant documents only to which it is intended to refer. The email address for filing of all documents or submissions relating to this appeal is [] .

11. The content of the Appeal bundle shall be agreed as far as possible and copied to the Respondent when filed with the Court.

12. Authorities shall be from the best available report and the report shall appear as a PDF or other full copy of the report. Transcripts shall only be included of wholly unreported cases.

13. The advocates for the parties shall each serve upon each other and file with the court, no less than 1 clear working day before the hearing, a perfected version of their skeleton argument (containing if appoproraite a chronology) with page references to the Appeal Bundle. Filing with the Court will be by sending a Word version to [].

General Provisions

14. This order has been made without any determination as to whether the appeal was filed in time or otherwise properly instated.

15. This order has having been made without a hearing under the Court's general case management powers, either party may apply to vary, suspend or set aside provided that such an application is made by email to [] within 7 working days of the party being served with the Order and copied to the opposing party.

16. Should the parties settle the Appeal they are to promptly file a request for its disposal in terms complying with CPR PD52A Section 6.

17. Costs in the case.