

MAY 2021



TWO STAGE HEARING PROCESS FOR POSSESSION CLAIMS – HOW DOES IT WORK IN PRACTICE?

Possession claims were stayed on 27th March 2020 as an urgent response to the outbreak of Covid-19, and this continued until 20th September 2020 when possession claims (slowly) started creeping through the court system again.

As part of the measures introduced to deal with the effects of a 6 month backlog of possession claims, a new two-stage possession hearing process was introduced.

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1) Stage One: Review Hearing

The Review Hearing is the first stage and will involve a Judge reviewing the case on the papers. The parties are not required to attend court, but are required to be available by telephone so that they can be contacted if anything arises. If the Judge is content that everything is in order, the matter will be listed for a Substantive hearing.

2) Stage Two: Substantive Hearing

The substantive hearing is the second stage, and only cases that succeed in getting past the review hearing will be able to progress to a substantive hearing. The substantive hearing will be much like possession hearings pre-Covid-19, and will involve one or both parties attending court for a short hearing.

So what's the big deal?

In our experience, the two stage process can slow cases down (although it may be that this is no slower than if we retained the one-stage process given the size of the backlog). This is particularly the case where there are small anomalies that need addressing that prevent a matter proceeding straight from a review hearing to a substantive hearing.

In addition, the new process takes a lot longer to prepare for and deal with. A comprehensive electronic bundle needs to be filed at least 14 days prior to the review hearing, with a hard copy served on the Defendant, and this can all take significantly more time which may push costs higher too.

It remains to be seen whether the two stage process is a temporary measure, or whether perhaps this will be retained in the post-Covid-19 era given that it may filter non-compliant cases out earlier on and therefore reduce wasted court time.

EVICTION BAN DUE TO END 31ST MAY 2021

In mid-March 2021, the government announced a further extension to the ban on bailiff evictions, which is due to come to an end at the end of May 2021.

By way of a reminder, residential possession claims are now proceeding through the courts, and if the Court eventually makes a possession order, the order usually states that the tenant has 14 days within which to give back possession (i.e. hand back the keys and vacate). If the tenant still fails to leave within that period, the landlord may make an application to the court for a bailiff appointment.

In theory, there is an exception to the ban on evictions where the Court is satisfied that the case involves substantial rent arrears. "Substantial rent arrears" is essentially 6 months' rent arrears or more. Whilst this may seem helpful for landlords who are dealing with tenants in a vast amount of rent arrears, it appears that lots of lawyers are experiencing issues with this and are struggling to persuade courts/bailiffs to proceed, despite the exception being enshrined in legislation. Practically speaking, therefore, it may be tricky to obtain a bailiff appointment prior to the end of May 2021 even if you have substantial arrears.

In any event, given how slow possession claims are currently moving through the court process, few landlords will actually obtain a possession order whilst the ban is still in force, and so it may be that this doesn't pose any practical issues for the majority of landlords.

We will have to see how things play out over the course of the next month, but of course there will again be a significant backlog of evictions when bailiff appointments are allowed to proceed again.

TOP POSSESSION PITFALLS OF THE FIRST QUARTER OF 2021

The first quarter of 2021 has been busy for our Property Litigation team with lots of landlords and agents coming to the end of their tether and starting the process to evict defaulting tenants.

We have put together a list of the top three pitfalls that we have encountered on cases we have worked on in the last few months.

Date of service.

Lots of clients and agents forget that it is vital to calculate the date for expiry of a s21 or s8 notice based on receipt of the notice (not posting!) – which can sometimes be 2 or 3 working days. We would always recommend adding a few days as a safety net (maybe even a week!) to make sure that there is no question that the requisite notice period has been given. It is also best to serve by post and by hand (with proof of posting such as a photograph!) so that hopefully there can be no doubt that you have properly served the notice.

Gas safety certificates.

The main issue with gas safety certificates that we have found in recent months, is that landlords and agents are forgetting to serve updating gas safety certificates on the tenant or failing to keep a record of when they did this. Even if your gas engineer leaves a copy at the property address, we would suggest that you serve a further copy on them by post and/or email as 'belt and braces' to ensure that they cannot later claim they were not served with it.

Incomplete record-keeping.

The new s21 claim form which was updated last year is extremely prescriptive and requires a vast amount of information and documentation. This has meant that complete record-keeping is more important than ever! We have found that some landlords, particularly those who don't use a managing agent, just do not have full records to be able to evidence that they have complied with all the requirements in order to serve a valid s21 notice.



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If you would like to discuss or need any help or support on any of the issues above then please contact the Machins' Property Litigation Team on 01582 514 000.

We offer fixed fees for s21 and s8 possession claims up to and including the first possession hearing. Please email Holly Baker for a copy of our fixed fee schedule or to find out more.

Machins Solicitors LLP have offices in Berkhamsted and Luton. We are one of the leading law firms in Hertfordshire and Bedfordshire and recognise the need to establish a proper relationship with our clients which allows us to understand individual requirements and to give effective practical advice in a pragmatic, cost effective way. We provide specialist advice and assistance both for businesses and individuals.

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