

It takes two to make a thing go right...! The two-part possession hearing





Introduction

On 27 March 2020, all possession claims and evictions (save for a few exemptions) were stayed as a result of the Coronavirus pandemic. Fast forward to 20 September 2020, and the stay has been lifted, but there are new arrangements released by the Master of the Rolls "The Overall Arrangements" which deal with how the Court intends to return to hearing possession claims and the challenges it faces. Most important to note is the introduction of a "Review Hearing".

The Review Hearing

Cases (stayed and new) will ordinarily proceed with a Review Hearing, which in claims that were stayed will take place after a valid reactivation notice has been filed and served in accordance PD55C on which see our InBrief [Reactivation Notice: Pursuant to Practice Direction 55C](#).

For new claims, issued on or after 21 September 2020, the court will not fix a hearing date when it issues the claim, and as above will proceed with a Review Hearing.

The Court will give notice to the parties of at least 21 days of the Review Hearing.

The Review Hearing will be heard by a Judge on the papers who will determine whether the claim is ready or suitable to be listed or relisted for a substantive hearing. There is no extra fee payable for the Review Hearing.

What happens at the Review Hearing and who should attend?

The hearing will last no longer than 5 minutes and will take place at the end of the Judge's daily list so presumably between 3 and 4pm.

Despite the Judge dealing with the hearing on paper, i.e. he or she will not see the parties, the parties are still required to attend the hearing either in person or by telephone/video conference. This is to provide the defendant with an opportunity to obtain advice from the duty adviser and to allow the parties to discuss the matter and see if a compromise can be reached or agree any directions. If the parties reach a compromise or agree directions, the Judge will be on hand to approve the same. If agreement is not reached either on the claim or directions the Judge will consider the bundle (on which see below) and provided everything is in order, the Judge will list the matter for a Substantive Hearing 28 days later.

The Electronic Bundle

An electronic bundle must be submitted by the Claimant to the Court 14 days before the Review Hearing. The Claimant will also have to serve a hard/paper copy of the bundle on the Defendant in addition to providing an electronic copy if the Defendant is able to receive it that way. The Claimant will therefore have to produce an electronic and paper bundle.

What must the Electronic Bundle contain?

1. "All required material" (see below for further details);
2. Confirmation that a paper bundle has been provided to the Defendant (with an electronic copy in addition where the defendant is able to receive that);
3. Confirmation that the bundle includes all required material, specifically including enhanced information about the Defendant;
4. Confirmation that the Claimant will be available during the day of the Review Hearing to discuss the case (by telephone would be sufficient) with the defendant or a duty scheme (or other) adviser.

What is "all required material"?

There is no definition or guidance from the Overall Arrangements as to what constitutes "all required material". However, it is safe to assume that the Judge will want to take into account as much information as possible, and therefore the bundle should include the following;

- The Claim Form and Particulars of Claim;
- The Tenancy Agreement;
- The Notice seeking possession;
- An up to date rent statement for at least the previous two years;
- Witness Statements and Certificates of Service;
- Previous court orders and notices from the Court;
- Any relevant interparty correspondence;
- A draft order for directions if applicable;
- The enhanced information about the Defendant and how the Coronavirus pandemic has affected them and any dependants; and
- The confirmations mentioned above.

It's important to note that if the bundle is not in order, the Judge may dismiss the claim for possession. If the Judge dismisses the claim on this basis, the Claimant is entitled to apply for reconsideration at an oral hearing.

Filing and serving the Electronic bundle

The notice of the Review Hearing should provide the Claimant with relevant electronic filing details.

The bundle **must** be submitted **14 days before the Review Hearing** so it's important for the Claimant to gather any information they might need well in advance to ensure that the bundle contains the required material including the enhanced information about the Defendant's circumstances as a result of the Coronavirus and can be filed on time.

21 September 2020 onwards	New proceedings may be issued and served or Reactivation notices may be filed and served in stayed claims issued pre 03 August 2020
Any time	File may be Covid marked
Service of claims plus 14 days	Defence filed
Some point post issue	Review Date fixed
At least 21 days from Review Date	Notice of Review Date to Claimant and Defendant
14 days from Review Date	Claimant to lodge bundle with Court and provide copy to Defendant
Review Date	Review takes place. No attendance before Judge. Free early advice available to Defendants and an opportunity for negotiation and agree an order, failing which a date will be set for a Substantive Hearing

The Substantive Hearing

The Substantive Hearing is not to be confused with a final possession hearing or trial. The Substantive Hearing will be listed for 15 minutes and is similar to what used to be the first 'undefended' possession hearing. Again, the parties are required to attend and are encouraged to try and settle the claim.

A party can seek to adjourn a Substantive Hearing without the need for a formal application if:

1. advice has not yet been made available to the Defendant; or
2. the consequences of a possession order may be serious in the context of the Coronavirus pandemic.

Much like the Review Hearing, if the parties are unable to come to an agreement, the Court will decide.

Should the Defendant raise a Defence or issues arise that cannot be dealt with at the Substantive Hearing, directions may be ordered.

The Overall Arrangements provide the following timeline as an example of how a claim for possession will now proceed as a result of these changes:

If you require any further information on the effect of the Coronavirus on possession proceedings, please contact Paul Hayes:

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