

THE LONG ARM OF PRACTICE DIRECTION 51Z

Much has appeared in the media about the stay on evictions during the coronavirus pandemic. Carrying out evictions during the peak of lockdown would have been unworkable, as would the continuation of possession lists in the County Court, given that first hearings are often brief, with many listed in a day, necessitating a quick turnover and the presence of numerous people in waiting rooms. Further, it is common in many courts for pro bono advisors to be present on the day, to assist residential tenants. For those regularly instructed in possession claims, a moratorium for the duration of lockdown appeared inevitable, given that such hearings were plainly unworkable in person, and difficult to conduct remotely. Thus, much of PD51Z was unsurprising.

PD51Z stays “*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...*” for 90 days (from 27 March 2020). It does not stay claims for injunctive relief. It has been tweaked, with the introduction of paragraph 2A, which provided for limited exceptions to the stay. One of which was the exemption of claims against trespassers to which rule 55.6 applies. This catches those cases in which squatters had broken into and occupied properties. However, it is worth noting that the linking of the exemption to rule 55.6 means that only those claims where the squatters are ‘persons unknown’ can continue outside of the general stay. Thus, claims against known trespassers are stayed in accordance with the general provisions.

As explained in *Arkin v Marshall* [2020] EWCA Civ 620, the court does have power to lift a stay, such power being necessarily included within rule 3.1(2)(f); PD51Z did not exclude this power and thus it is conceivable that a court could disapply the stay imposed by PD51Z. However, the Court of Appeal noted that it was hard to envisage a situation in which it would be appropriate to do so, and I would not anticipate that praying in aid of rule 3.1 is likely to assist those seeking to rely on it to get around an imposed stay.

Most interestingly, whilst the Practice Direction evidently applies to those claims where a possession order is being sought, its reach is, actually, far wider. In *Hackney LBC v Okoro* [2020] EWCA Civ 681, the Court of Appeal confirmed that the Practice Direction applies to “*all proceedings...brought under CPR Pt 55...*”, and thus extends to appeals where proceedings had been initiated under Part 55. The Practice Direction applies to every stage of proceedings, and thus will stay appeals as well as applications to stay warrants, et cetera. I anticipate that applications such as these are likely to have fallen through the cracks, and have already

identified cases that have not yet been stayed, and which ought to be, in light of the clarification provided in *Okoro*.

Arguably, the broad-brush effect of PD51Z has gone too far, by staying matters in which possession has already been ordered. Though the fact of obtaining possession may still pose an issue (albeit less so as lockdown eases), that is not necessarily a reason to stay the process of appeals, or other applications, which can be conducted remotely in most instances, even if any ultimate order concerning possession is delayed. It is not, however, surprising that a blunt instrument, enacted swiftly in response to an urgent and changing situation, has imperfect application in specific instances.

Going forwards, it appears¹ that PD51Z is to be extended by a further two months, likely on the same terms. I would recommend taking this time to identify cases that, whilst not obviously within the remit of PD51Z, may indeed fall within its auspices. Being proactive and liaising with the court at an early stage may help to ensure that costs are not wasted in preparation for hearings that should be stayed, and may ensure that those cases are front of the queue when they are relisted.

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¹ <https://www.gov.uk/government/news/ban-on-evictions-extended-by-2-months-to-further-protect-renters>