

# PRACTICE DIRECTION – POSSESSION CLAIMS

## THIS PRACTICE DIRECTION SUPPLEMENTS PART 55

### SECTION I – GENERAL RULES

#### 55.3 – STARTING THE CLAIM

- 1.1 Except where the county court does not have jurisdiction, possession claims should normally be brought in the county court. Only exceptional circumstances justify starting a claim in the High Court.
- 1.2 If a claimant starts a claim in the High Court and the court decides that it should have been started in the county court, the court will normally either strike the claim out or transfer it to the county court on its own initiative. This is likely to result in delay and the court will normally disallow the costs of starting the claim in the High Court and of any transfer.
- 1.3 Circumstances which may, in an appropriate case, justify starting a claim in the High Court are if –
  - (1) there are complicated disputes of fact;
  - (2) there are points of law of general importance; or
  - (3) the claim is against trespassers and there is a substantial risk of public disturbance or of serious harm to persons or property which properly require immediate determination.
- 1.4 The value of the property and the amount of any financial claim may be relevant circumstances, but these factors alone will not normally justify starting the claim in the High Court.
- 1.5 The claimant must use the appropriate claim form and particulars of claim form set out in Table 1 to Part 4 Practice Direction. The defence must be in form N11, N11B, N11M or N11R, as appropriate.
- 1.6 High Court claims for the possession of land subject to a mortgage will be assigned to the Chancery Division.
- 1.7 A claim which is not a possession claim may be brought under the procedure set out in Section I of Part 55 if it is started in the same claim form as a possession claim which, by virtue of rule 55.2(1) must be brought in accordance with that Section.

(Rule 7.3 provides that a claimant may use a single claim form to start all claims which can be conveniently disposed of in the same proceedings)
- 1.8 For example a claim under paragraphs 4, 5 or 6 of Part I of Schedule 1 to the Mobile Homes Act 1983 may be brought using the procedure set out in Section I of Part 55 if the claim is started in the same claim form as a claim

enforcing the rights referred to in section 3(1)(b) of the Caravan Sites Act 1968 (which, by virtue of rule 55.2(1) must be brought under Section I of Part 55).

## 55.4 – PARTICULARS OF CLAIM

- 2.1 In a possession claim the particulars of claim must:
- (1) identify the land to which the claim relates;
  - (2) state whether the claim relates to residential property;
  - (3) state the ground on which possession is claimed;
  - (4) give full details about any mortgage or tenancy agreement; and
  - (5) give details of every person who, to the best of the claimant's knowledge, is in possession of the property.

### *Residential property let on a tenancy*

- 2.2 Paragraphs 2.3 and 2.4 apply if the claim relates to residential property let on a tenancy.
- 2.3 If the claim includes a claim for non-payment of rent the particulars of claim must set out:
- (1) the amount due at the start of the proceedings;
  - (2) in schedule form, the dates when the arrears of rent arose, all amounts of rent due, the dates and amounts of all payments made and a running total of the arrears;
  - (3) the daily rate of any rent and interest;
  - (4) any previous steps taken to recover the arrears of rent with full details of any court proceedings; and
  - (5) any relevant information about the defendant's circumstances, in particular:
    - (a) whether the defendant is in receipt of social security benefits; and
    - (b) whether any payments are made on his behalf directly to the claimant under the Social Security Contributions and Benefits Act 1992.
- 2.4 If the claimant knows of any person (including a mortgagee) entitled to claim relief against forfeiture as underlessee under section 146(4) of the Law of Property Act 1925 (or in accordance with section 38 of the Supreme Court Act 1981, or section 138(9C) of the County Courts Act 1984):
- (1) the particulars of claim must state the name and address of that person; and
  - (2) the claimant must file a copy of the particulars of claim for service on him.

*Land subject to a mortgage*

- 2.5 If the claim is a possession claim by a mortgagee, the particulars of claim must also set out:
- (1) if the claim relates to residential property whether:
    - (a) a land charge of Class F has been registered under section 2(7) of the Matrimonial Homes Act 1967;
    - (b) a notice registered under section 2(8) or 8(3) of the Matrimonial Homes Act 1983 has been entered and on whose behalf; or
    - (c) a notice under section 31(10) of the Family Law Act 1996 has been registered and on whose behalf; and

if so, that the claimant will serve notice of the claim on the persons on whose behalf the land charge is registered or the notice or caution entered.
  - (2) the state of the mortgage account by including:
    - (a) the amount of:
      - (i) the advance;
      - (ii) any periodic repayment; and
      - (iii) any payment of interest required to be made;
    - (b) the amount which would have to be paid (after taking into account any adjustment for early settlement) in order to redeem the mortgage at a stated date not more than 14 days after the claim started specifying the amount of solicitor's costs and administration charges which would be payable;
    - (c) if the loan which is secured by the mortgage is a regulated consumer credit agreement, the total amount outstanding under the terms of the mortgage; and
    - (d) the rate of interest payable:
      - (i) at the commencement of the mortgage;
      - (ii) immediately before any arrears referred to in paragraph (3) accrued;
      - (iii) at the commencement of the proceedings.
  - (3) if the claim is brought because of failure to pay the periodic payments when due:
    - (a) in schedule form, the dates when the arrears arose, all amounts due, the dates and amounts of all payments made and a running total of the arrears;
    - (b) give details of:
      - (i) any other payments required to be made as a term of the mortgage (such as for insurance premiums, legal costs, default interest, penalties, administrative or other charges);

- (ii) any other sums claimed and stating the nature and amount of each such charge; and
  - (iii) whether any of these payments is in arrears and whether or not it is included in the amount of any periodic payment.
- (4) whether or not the loan which is secured by the mortgage is a regulated consumer credit agreement and, if so, specify the date on which any notice required by sections 76 or 87 of the Consumer Credit Act 1974 was given;
  - (5) if appropriate details that show the property is not one to which section 141 of the Consumer Credit Act 1974 applies;
  - (6) any relevant information about the defendant's circumstances, in particular:
    - (a) whether the defendant is in receipt of social security benefits; and
    - (b) whether any payments are made on his behalf directly to the claimant under the Social Security Contributions and Benefits Act 1992;
  - (7) give details of any tenancy entered into between the mortgagor and mortgagee (including any notices served); and
  - (8) state any previous steps which the claimant has taken to recover the money secured by the mortgage or the mortgaged property and, in the case of court proceedings, state:
    - (a) the dates when the claim started and concluded; and
    - (b) the dates and terms of any orders made.

### *Possession claim against trespassers*

- 2.6 If the claim is a possession claim against trespassers, the particulars of claim must state the claimant's interest in the land or the basis of his right to claim possession and the circumstances in which it has been occupied without licence or consent.

## **55.5 – HEARING DATE**

- 3.1 The court may exercise its powers under rules 3.1(2)(a) and (b) to shorten the time periods set out in rules 55.5(2) and (3).
- 3.2 Particular consideration should be given to the exercise of this power if:
  - (1) the defendant, or a person for whom the defendant is responsible, has assaulted or threatened to assault:
    - (a) the claimant;
    - (b) a member of the claimant's staff; or
    - (c) another resident in the locality;
  - (2) there are reasonable grounds for fearing such an assault; or

- (3) the defendant, or a person for whom the defendant is responsible, has caused serious damage or threatened to cause serious damage to the property or to the home or property of another resident in the locality.
- 3.3 Where paragraph 3.2 applies but the case cannot be determined at the first hearing fixed under rule 55.5, the court will consider what steps are needed to finally determine the case as quickly as reasonably practicable.

## **55.6 – SERVICE IN CLAIMS AGAINST TRESPASSERS**

- 4.1 If the claim form is to be served by the court and in accordance with rule 55.6(b) the claimant must provide sufficient stakes and transparent envelopes.

## **55.8 – THE HEARING**

- 5.1 Attention is drawn to rule 55.8(3). Each party should wherever possible include all the evidence he wishes to present in his statement of case, verified by a statement of truth.
- 5.2 If relevant the claimant's evidence should include the amount of any rent or mortgage arrears and interest on those arrears. These amounts should, if possible, be up to date to the date of the hearing (if necessary by specifying a daily rate of arrears and interest). However, rule 55.8(4) does not prevent such evidence being brought up to date orally or in writing on the day of the hearing if necessary.
- 5.3 If relevant the defendant should give evidence of:
- (1) the amount of any outstanding social security or housing benefit payments relevant to rent or mortgage arrears; and
  - (2) the status of:
    - (a) any claims for social security or housing benefit about which a decision has not yet been made; and
    - (b) any applications to appeal or review a social security or housing benefit decision where that appeal or review has not yet concluded.
- 5.4 If:
- (1) the maker of a witness statement does not attend a hearing; and
  - (2) the other party disputes material evidence contained in his statement,
- the court will normally adjourn the hearing so that oral evidence can be given.

### *Evidence in mortgage possession claim*

- 5.5 Attention is drawn to section 113 of the Land Registration Act 1925 which provides that office copies of the register and of documents filed in the Land Registry, including original charges, are admissible in evidence to the same extent as the originals.

## **55.9 – ALLOCATION**

- 6.1 The financial value of the property will not necessarily be the most important factor in deciding the track for a possession claim and the court may direct a possession claim to be allocated to the fast track even though the value of the property is in excess of £15,000.

## **CONSUMER CREDIT ACT CLAIMS RELATING TO THE RECOVERY OF LAND**

- 7.1 Any application by the defendant for a time order under section 129 of the Consumer Credit Act 1974 may be made:
- (1) in his defence; or
  - (2) by application notice in the proceedings.

## **ENFORCEMENT OF CHARGING ORDER BY SALE**

- 7.2 A party seeking to enforce a charging order by sale should follow the procedure set out in rule 73.10 and the Part 55 procedure should not be used.

## **SECTION II – ACCELERATED POSSESSION CLAIMS OF PROPERTY LET ON AN ASSURED SHORTHOLD TENANCY**

### **55.18 – POSTPONEMENT OF POSSESSION**

- 8.1 If the judge is satisfied as to the matters set out in rule 55.16(2), he will make an order for possession in accordance with rule 55.17, whether or not the defendant seeks a postponement of possession on the ground of exceptional hardship under section 89 of the Housing Act 1980.
- 8.2 In a claim in which the judge is satisfied that the defendant has shown exceptional hardship, he will only postpone possession without directing a hearing under rule 55.18(1) if –
- (1) he considers that possession should be given up 6 weeks after the date of the order or, if the defendant has requested postponement to an earlier date, on that date; and
  - (2) the claimant indicated on his claim form that he would be content for the court to make such an order without a hearing.
- 8.3 In all other cases if the defendant seeks a postponement of possession under section 89 of the Housing Act 1980, the judge will direct a hearing under rule 55.18(1).
- 8.4 If, at that hearing, the judge is satisfied that exceptional hardship would be caused by requiring possession to be given up by the date in the order of possession, he may vary that order under rule 55.18(3) so that possession is

to be given up at a later date. That later date may be no later than 6 weeks after the making of the order for possession on the papers (see section 89 of the Housing Act 1980).

### **SECTION III – INTERIM POSSESSION ORDERS**

- 9.1 The claim form must be in form N5, the application notice seeking the interim possession order must be in form N130 and the defendant's witness statement must be in form N133.
- 9.2 The IPO will be in form N134 (annexed to this practice direction).