

## 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).

- 1.9** Where the claim form includes a demotion claim, the claim must be started in the county court for the district in which the land is situated.

## **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 to 2.4B 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 and amounts of all payments due and payments made under the tenancy agreement for a period of two years immediately preceding the date of issue, or if the first date of default occurred less than two years before the date of issue from the first date of default 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.

**2.3A** If the claimant wishes to rely on a history of arrears which is longer than two years, he should state this in his particulars and exhibit a full (or longer) schedule to a witness statement.

**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.

**2.4A** If the claim for possession relates to the conduct of the tenant, the particulars of claim must state details of the conduct alleged.

**2.4B** If the possession claim relies on a statutory ground or grounds for possession, the particulars of claim must specify the ground or grounds relied on.

### **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 and amounts of all payments due and payments made under the mortgage agreement or mortgage deed for a period of two years immediately preceding the date of issue, or if the first date of default occurred less than two years before the date of issue from the first date of default 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.

- 2.5A** If the claimant wishes to rely on a history of arrears which is longer than two years, he should state this in his particulars and exhibit a full (or longer) schedule to a witness statement.

### **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.

### **Possession claim in relation to a demoted tenancy by a housing action trust or a local housing authority**

- 2.7** If the claim is a possession claim under section 143D of the Housing Act 1996 (possession claim in relation to a demoted tenancy where the landlord is a housing action trust or a local housing authority), the particulars of claim must have attached to them a copy of the notice to the tenant served under section 143E of the 1996 Act.

## **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.

## 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).

### **SECTION IV – ORDERS FIXING A DATE FOR POSSESSION**

- 10.1** This paragraph applies where the court has made an order postponing the date for possession under section 85(2)(b) of the Housing Act 1985 (secure tenancies) or under section 9(2)(b) of the Housing Act 1988 (assured tenancies).
- 10.2** If the defendant fails to comply with any of the terms of the order which relate to payment, the claimant, after following the procedure set out in paragraph 10.3, may apply for an order fixing the date upon which the defendant has to give up possession of the property. Unless the court further postpones the date for possession, the defendant will be required to give up possession on that date.
- 10.3** At least 14 days and not more than 3 months before applying for an order under paragraph 10.2, the claimant must give written notice to the defendant in accordance with paragraph 10.4.
- 10.4** The notice referred to in paragraph 10.3 must –
- (1)** state that the claimant intends to apply for an order fixing the date upon which the defendant is to give up possession of the property;
  - (2)** record the current arrears and state how the defendant has failed to comply with the order referred to in paragraph 10.1 (by reference to a statement of the rent account enclosed with the notice);
  - (3)** request that the defendant reply to the claimant within 7 days, agreeing or disputing the stated arrears; and
  - (4)** inform the defendant of his right to apply to the court –
    - (a)** for a further postponement of the date for possession; or
    - (b)** to stay or suspend enforcement.
- 10.5** In his reply to the notice, the defendant must –
- (1)** where he disputes the stated arrears, provide details of payments or credits made;
  - (2)** where he agrees the stated arrears, explain why payments have not been made.
- 10.6** An application for an order under paragraph 10.2 must be made by filing an application notice in accordance with Part 23. The application notice must state whether or not there is any outstanding claim by the defendant for housing benefit.
- 10.7** The claimant must file the following documents with the application notice –
- (1)** a copy of the notice referred to in paragraph 10.3;

- (2) a copy of the defendant's reply, if any, to the notice and any relevant subsequent correspondence between the claimant and the defendant;
  - (3) a statement of the rent account showing –
    - (a) the arrears that have accrued since the first failure to pay in accordance with the order referred to in paragraph 10.2; or
    - (b) the arrears that have accrued during the period of two years immediately preceding the date of the application notice, where the first such failure to pay occurs more than two years before that date.
- 10.8** Rules 23.7(service of a copy of an application notice) and 23.10 (right to set aside or vary an order made without service of the application notice) and paragraphs 2.3, 2.4 and 2.5 of the Practice Direction supplementing Part 23 (dealing with applications without a hearing) do not apply to an application under this Section.
- 10.9** On being filed, the application will be referred to the District Judge who –
  - (1) will normally determine the application without a hearing by fixing the date for possession as the next working day; but
  - (2) if he considers that a hearing is necessary –
    - (a) will fix a date for the application to be heard; and
    - (b) direct service of the application notice and supporting evidence on the defendant.
- 10.10** The court does not have jurisdiction to review a decision that it was reasonable to make an order for possession.

