

Response document

CIVIL PROCEDURE RULE COMMITTEE CONSULTATION

Title: Enforcement of Possession Orders and Alignment of Procedures in the County Court and High Court

Response from ARLA Propertymark

MAY 2019

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If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

ARLA Propertymark is the UK's foremost professional and regulatory body for letting agents; representing over 9,000 members. ARLA Propertymark agents are professionals working at all levels of letting agency, from business owners to office employees.

Our members operate to professional standards far higher than the law demands, hold Client Money Protection and we campaign for greater regulation in this growing and increasingly important sector of the property market. By using an ARLA Propertymark agent, consumers have the peace of mind that they are protected, and their money is safe.

Questionnaire

We would welcome responses to the following questions set out in this consultation paper.

Question 1: (a) Should there be a process in the County Court of providing a notice of the time and date of eviction prior to the retaking of possession? And if so then (b) should it be put on a statutory basis?

1a

Yes

No

1b

Yes

No

Please explain your response

ARLA Propertymark believes that there should be a process in the County Court of providing a notice of the time and date of eviction prior to the retaking of possession on a statutory basis. This will provide consistency and clarity for all parties involved. Firstly, the landlord will have increased protection against vexatious counterclaims for unlawful eviction and other delaying tactics used by the tenant. Secondly, the tenant will be given ample notice of when they need to vacate the property. Furthermore, we would expect that if the tenant needs the aid of the local authority with housing moving forward, having the set date and time available should assist them in organising alternative housing for the tenant ahead of the eviction.

Landlord

It is beneficial for landlords to provide the tenant with a notice stating the time and date of eviction, as this provides clarity on the exact date of when the property will be vacated. This will limit vexatious counterclaims for unlawful eviction and will ensure that landlords have proof of them correctly serving the tenant with the Notice of Possession, which states when exactly the eviction will occur. Further, making this statutory reflects other instances where provision of documentation to the tenant is required by law, such as copies of an HMO licence (where required), the prescribed information and information on the protection of Tenancy Deposits, all of which, if not provided, render a Section 21 notice invalid.¹

Tenant

With the provision of a notice containing the time and date of eviction, tenants will be given ample notice of when they should be vacating the property. This will allow tenants to prepare for the eviction such as packing their belongings ahead of this date and making arrangements for alternative accommodation. Additionally, where the tenant requires help from the local authority in seeking accommodation, by providing the time and date of eviction the tenant will be able to notify the local authority when exactly they will be deemed “homeless” ahead of time. This will be beneficial to the local authority and the tenant, as it will limit the number of tenants turning up at the Council office on the day that they become homeless and will instead allow for preparations in rehoming the tenant ahead of the eviction.

¹ <https://www.rocketlawyer.co.uk/blog/tips-landlords-avoid-invalid-section-21-notices/>

Question 2: Should the notice be based on the current Form N54?

Yes

No

Other

Please explain your response

ARLA PropertyMark agrees that the notice should be based on the current Form N54², as it is clear, simple and easy to understand. Further, the form clearly outlines guidance for the tenant on the eviction process. For the reasons outlined above, we do not believe an alternative would be preferential.

Question 3: What information should be included in the notice?

c) The same as the N54?

d) Or a new form? If so, please provide details and explain your answer

Question 4: a) To whom should the notice be addressed and b) where should it be delivered? In particular should it always be addressed “to the occupiers” and delivered to the premises? 4a

Tenant

To the occupiers

Other

Please explain your response

The notice should be addressed to all tenants named on the tenancy agreement and “all other occupiers.” By including the provision of “all other occupiers”, the notice will encompass both named tenant in addition to any “permitted” or “non-permitted” occupiers, such as sub-tenants (legal or otherwise).

Landlords often face issues when evicting tenants who have moved illegal sub-tenants into the property. By including “all other occupiers”, this provides the landlord with protections to ensure that their property is vacated and allows all occupiers the opportunity to make any representations. We believe that by including “all other occupiers” in addition to named tenants, there will be less

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/622647/n54_0202.pdf

chance of occupying sub-tenants making last minute applications to set aside the Warrant for Possession.

4b

The premises

Other

Please explain your response

ARLA PropertyMark believes that it would be logical to deliver a notice concerning eviction of a property, to the property itself.

Question 5: What should the standard length of notice be?

d) seven days

e) 14 days

f) other (and what length)

Please provide your justification for a) or b) or c)

We would argue that a standard length of notice should be seven days. By the time a Warrant for Possession is issued, the landlord will have already been going through the possession process for months. We believe that by allowing seven days, this would still give tenants the time to find alternative accommodation or go to the local authority for support.

Setting the standard length of notice at seven days will go some way in limiting delays after a Possession Order is processed. Our members report delays in Possession Orders being processed by the Court. Even under the Accelerated Possession procedure which does not typically require a Court hearing and is decided on paper, where the matter is not defended it can take around two to three months to obtain a Possession Order.³ Further delays occur once a Possession Order has been agreed by the County Court, with landlords having to wait a further four to six weeks for CCBs to execute a Warrant,⁴ although other statistics indicate up to six months' passing before enforcement.⁵ Delay for landlords and agents also occurs where the Judge allows exceptional cases up to 42 days to leave the property following the issue of a Possession Order, as this results in more time taken to vacate the property; all the while rent arrears continue to build.⁶ For the reasons stated above, we do not see why it would be necessary to make a standard length of notice longer than seven days, as landlords will have already endured a lengthy possession process.

Question 6: Should the court have the power (i) to dispense with or (ii) to reduce or (iii) extend, the notice period?

³ https://www.franciswillsandjones.co.uk/site/our_services/property/landlord-services/eviction-services/possession-proceedings/further-information-possession-p/how-long-does-it-take-to-get-a-possession-order.html

⁴ <https://www.blakemorgan.co.uk/training-knowledge/features-and-articles/time-change-speed-enforcement-possession-orders/>

⁵ <http://fresh-move.co.uk/wp-content/uploads/2015/12/Guide-to-evicting-tenants-and-recovering-rent-arrears-The-Sheriffs-Office.pdf>

⁶ <https://www.arla.co.uk/media/1047712/arla-propertymark-response-to-mhclg-call-for-evidence-considering-the-case-for-housing-court.pdf>

- Yes
- No

Please explain your response and:

- If yes:
- a) at the time of the original judgment?
- b) or later?

Please provide your justification for a) or b)

As discussed in our response to Q5, by the time the Warrant has been issued, a full possession process will have already been undertaken. For this reason, we do not believe it is necessary for the Court to have the power to dispense with, reduce, or extend the notice period. By allowing this power, it will give tenants further opportunity to frustrate the process as well as another avenue to “play the system.”

We do not see reason as to why tenants should be given any further opportunity to play the system. Tenants who play the system before their notice period runs out cause further delay for landlords. Prior to a Court hearing, where Ground 8 of a Section 8 eviction notice has been used, it is known that some tenants will pay enough money owed to remove the mandatory ground for rent arrears before the hearing, which result in the Judge dismissing the case as the mandatory ground for eviction no longer stands. Whilst it can be a positive that landlords are paid money owed and the tenant can stay in the property, some tenants use this as a means to remain in the home without any intention of paying any further rent. This does not provide security for further rent payments. Further rent defaults could result in the landlord having to begin the process for another Possession Order in the County Court. In this instance, less experienced landlords are likely to be impacted where they lack the professional guidance needed and are acting as litigants in person.⁷ Conclusively, it would not be necessary for Courts to have the power to dispense with, reduce, or extend the notice period.

Question 7: Should there be an exception to the requirement for advance notice of the eviction to be given in the case of trespassers?

- Yes
- If not, why?

Should there be any limits on such an exception; if so then what and why?

The exception should not be limited, as trespassers do not have the right to be in the property and therefore, should vacate as soon as possible. Furthermore, illegal sub-tenants are classified as trespassers where a mesne tenancy (the tenancy agreement entered into by the landlord and the initial tenant) ends. Trespassers are not covered by the Protection from Eviction Act 1977,⁸ meaning that the landlord does not need to obtain a Possession Order to evict them, and this should continue in ensuring the landlord’s right to their own property.

⁷ <https://www.arla.co.uk/media/1047712/arla-property-mark-response-to-mhclg-call-for-evidence-considering-the-case-for-housing-court.pdf>

⁸ <https://www.legislation.gov.uk/ukpga/1977/43>

Question 8 - Should there be any other exceptions to the requirement for advance notice of the eviction to be given (e.g. commercial premises or mortgages)?

- Yes
- No

If so, then what exceptions and why

ARLA Propertymark is only responding to this consultation in relation to the private rented sector, therefore issues surrounding commercial premises and mortgages are outside the scope of our response.

Question 9: Should procedures, (in terms of enforcement of possession orders in the High Court and in the County Court) be aligned by a similar requirement for HCEOs to provide a Notice to occupiers of the date and time of eviction delivered to the premises prior to the retaking of possession?

- Yes
- No

Please provide your justification for a) or b)

Please refer to our responses to Q1. and Q2.

Question 10: If it is accepted that provisions for enforcement of possession orders in the County Court and High Court be aligned, should there still be the need for judicial permission to enforce possession orders in the High Court?

- Yes
- No

Please explain your answer

We do not believe that there is a need for judicial permission to enforce Possession Orders in the High Court. At this stage in the possession process, there has already been a full judicial case decided by a Judge. The result of the need for judicial permission, is inconsistency with decisions made by County Court Judges to transfer the case to the High Court. By removing the required judicial permission, the possession process will be sped up. For these reasons, enforcement of Possession Orders by the High Court should work as a purely administrative exercise, as the landlord is only seeking to enforce a judgment of the Court.

Without the need for judicial permission to transfer a case, landlords and agents across England and Wales will be provided with a level playing field in what way they would like their Possession Order to be enforced. ARLA Propertymark members report frustration with inconsistencies for criteria needed for their Possession Order to be transferred from the County Court to the High Court. Landlords and agents must obtain leave from the County Court under Section 42(2) of the

County Courts Act 1984⁹ if they wish for their Possession Order to be enforced by an HCEO (this includes for cases involving rent arrears under the provision that the landlord is claiming more than £600 including court costs). However, Judges are advised by superiors against doing this, thus this relies on the County Court Judge to be given enough reason to grant permission – for example the time taken for a County Court Bailiff (CCB) to enforce the Possession Order and the landlord needing urgency to evict their tenants in order to sell their property. Issues arise where the County Court refuses to transfer the Possession Order to the High Court, either due to the claimant not reaching the criteria or through the Judge’s own discretion. Regarding discretion, one Judge in a County Court in London may have a different outlook to a Judge in South Wales, which contributes to a lack of a common standard across the Courts system. Removing judicial permission in this instance would, therefore, remove these inconsistencies.

Removing the need for judicial permission for the High Court to enforce County Court Possession Orders, would speed up the possession process for landlords attempting to regain possession of their property. When and if leave is granted, the landlord will need to apply to the High Court for permission to issue a ‘writ of possession’, which will then be executed by the HCEO and the landlord will regain their property. Given that the time endured for a County Court Bailiff to attempt eviction can take weeks, allowing an automatic right to an HCEO would result in landlords’ properties being returned to them much sooner. ARLA PropertyMark members report that landlords would prefer having easier access to HCEOs, despite the associated costs, as ultimately this cost will be much lower than the losses accrued through rent arrears, with the tenant being unlikely to pay their rent during the eviction process.¹⁰ Ultimately, this will provide landlords and agents access to an option that would speed up the possession process.

Question 11: Should the current exception regarding the absence of need for judicial permission for a Writ to issue against trespassers continue?

- Yes
- No

Please explain your answer

Please refer to our response to Q7.

Question 12: Should there be any limits on the trespassers exception?

- Yes
- No

Please explain your answer

Please refer to our response to Q7.

⁹ <https://www.legislation.gov.uk/ukpga/1984/28/contents>

¹⁰ <https://www.arla.co.uk/media/1047712/arla-propertymark-response-to-mhclg-call-for-evidence-considering-the-case-for-housing-court.pdf>

Question 13: Should the current exception regarding the absence of need for judicial permission for a Writ to issue in mortgage cases continue?

- Yes

- No

Please explain your answer

It is not applicable for us to respond to this question.

Question 14: Should the requirement of occupiers having “sufficient notice of proceedings” be defined; and if so, then how and in particular as to notice of:

(i) the proceedings seeking possession?

(ii) the original order for possession?

(iii) any order transferring enforcement to the High Court?

(iv) the last order or writ or warrant for possession or order staying or suspending such?

(v) an intent to enforce or

(vi) something else?

(vii) Any of the above – please specify which

All of the above

Other

Yes, ARLA PropertyMark believes that “sufficient notice of proceedings” should be defined to avoid problems highlighted in our response to Q1. The original Possession Order should be used together with the writ and Form N54 to ensure a level of understanding with the tenant without placing a substantial burden on the landlord. Should there be too many requirements, we would expect the amount of errors to increase. This is due to landlords generally acting as a litigant in person to limit their Court costs, placing more requirements on them would only exacerbate the possession process further.

Question 15: Should there be a need to justify transfer of enforcement of possession orders between the County Court and the High Court (i) if the procedures for possession are aligned and (ii) if they are not?

Yes

No

Please explain your answer; and give any particular considerations that should be taken into account as to whether or not transfer should take place

No, ARLA Propertymark does not think that there should be a need to justify transfer enforcement of Possession Orders between the County Court and High Court. The expediency reasons outlined on Page 9 of the consultation document¹¹ are the reasons behind why landlords want to use High Court Enforcement Officers, and therefore they should be provided with this choice. To further understand our reasoning, please refer to our response to Q10.

Question 16: What (if any) information should the court be provided with on application to transfer?

The Court should be provided with evidence of a Possession Order. As discussed in our response to Q10, the landlord is only trying to enforce an order of the Court. This should not be an opportunity to rehear their case, wasting the time of all parties involved.

Question 17: Where a landlord wishes to transfer a case for the purposes of enforcement, should there be a specific provision that these applications are made on notice to the defendant using Form N244 or some other means?

Yes

No

If Yes:

- Form N244
- Other – please specify

We believe that this should be administrative only in order for a landlord to be able to enforce an order of the Court.

Question 18: Should such an application be capable of being determined on paper without a hearing?

Yes

No

Please explain your answer

Please refer to our answer to Q17.

Question 19: Should there be any provision made regarding the higher costs of the HCEO over the County Court bailiff procedure?

Yes

¹¹ https://consult.justice.gov.uk/digital-communications/enforcement-of-possession-orders/supporting_documents/cprcommitteepossessionenforcementconsultation.pdf

No

If so, what provision should be made?

Yes, ARLA Propertymark agrees that there should be a provision for the cost of using an HCEO to exceed the cost of a County Court Bailiff (CCB). It should be the landlord's choice to either wait for a CCB or use an HCEO. Should they choose to use an HCEO, it should be at their cost, not the tenants. Costs that the tenant is responsible for should be limited to their liability for the County Court Bailiff charges only.

Question 20: Should there be any provision made regarding notice having to be given to occupiers in advance of eviction if a transfer order is made and a Writ obtained?

Yes

No

Please explain your answer

ARLA Propertymark believes that there should be a level of consistency between the County Court and High Court when enforcing Possession Orders.

Question 21: Should any applications for stays or suspensions of the possession order (made by the tenant) be made to the (home) County Court rather than the High Court?

Yes

No

Please explain your answer

Yes, ARLA Propertymark believes that applications for stays or suspensions of the Possession Order should be made to the County Court. The County Court will typically have better knowledge of the law surrounding the case, as the case itself as it was heard there. Furthermore, this will avoid any administrative delays in transferring documentation between Courts.

Question 22: In cases where there is a request for a warrant or writ of possession, should the applicant have to certify that all occupants have had sufficient notice of proceedings to be able to apply for relief (i) if advance notice does have to be given of the date and time of eviction and (ii) if such advance notice does not have to be given?

Yes

No

Should there be exceptions (e.g. trespassers)?

Yes

No

Please explain your answer

ARLA Propertymark believes that the landlord should have to declare that they have served a Possession Order on the premises. Exception should be made in consideration of trespassers, as they do not have any right to be in the property and therefore the landlord is under no obligation to provide them with notice, they should leave on their own accord as soon as possible.

Should the Court be able to waive such a requirement?

Yes

No

Please explain your answer

Yes, the Court should have the ability to waive such a requirement in urgent cases and this will also allow Courts to take common sense approaches on a case-by-case basis.

Question 23: If there is to be a need for such certification; then should it be defined?

Yes

No

If yes, then should be defined as all or any (and if so which) of notice of:

(i) the proceedings seeking possession.

(ii) the original order for possession?

(iii) any order transferring enforcement to the High Court?

(iv) the last order or writ or warrant for possession or order staying or suspending such?

(v) an intent to enforce or (vi) something else?

Please refer to our response to Q22.

Question 24: What form should such certification take so as to give confidence that all occupiers who may be affected by a possession order are informed;

a) a statement of truth/declaration or

b) some other means?

Please refer to our response to Q22.

Question 25: How will the proposed changes affect work in the enforcement sector?

ARLA Propertymark would expect more landlords to instruct HCEOs to enforce their Possession Orders. This will impact both County Court Bailiffs (CCBs), whose level of strain will decrease, and High Court Enforcement Officers, whose workload will increase. Overall, this will benefit landlords and agents using their services in possession cases and the enforcement sector as a whole.

County Court Bailiffs

Allowing landlords access to HCEOs without judicial permission will take away strain from CCBs, which will contribute to a decrease in waiting times for those wishing to instruct a CCB. Waiting times for CCBs differ drastically throughout England and Wales depending on geographic location and need, taking around two to three weeks in Nottingham, but around three months in Birmingham.¹² A lack of CCBs in many areas attributes to delays in enforcing a Possession Order, for example it has been reported that there are only four CCBs employed by Central London County Court.¹³ Consequently, a lack of availability for Bailiffs results in a delay for the issue of warrants – which cannot be issued until a date has been set for the Bailiffs to visit the property. The proposed changes will limit these delays and alleviate the workload of CCBs.

High Court Enforcement Officers

We believe that by removing the need for judicial permission for landlords to access HCEOs, the number of instructions for enforcing a Writ of Possession for HCEOs will increase. Many landlords feel that due to the need for judicial permission as the process currently stand, they are not able to have the possession enforced by an HCEO as this is ultimately down the Judge's discretion.¹⁴ Although we anticipate that waiting times for CCBs may decrease, we would still expect enforcement conducted by an HCEO to still be the quicker option, as they work privately and are paid on results¹⁵ as opposed to being employed directly by the Courts, as CCBs are. For this reason we would still reiterate that HCEOs will be given more instructions, this reflects the positive feedback received from ARLA Propertymark members that report that they are pleased with the service when using HCEOs, despite the associated cost, as the loss of rent far outweighs the fees for using HCEOs to regain their property in a timely manner.

Thank you for responding

¹²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755025/Factors_influencing_housing_case_progress_and_outcomes_in_county_courts_research_report.pdf

¹³ [ibid](#)

¹⁴ <https://www.arla.co.uk/media/1047712/arla-propertymark-response-to-mhclq-call-for-evidence-considering-the-case-for-housing-court.pdf>

¹⁵ <https://www.courtenforcementservices.co.uk/differences-high-court-enforcement-officer-county-court-bailiff-enforcement-agent/>