

## **Non-statutory guidance in the private and social rented sectors.**

In these strange and confusing times, every aspect of our legal system has been touched by delays, adjournments, revision and fundamental change. The management of housing, so reliant on face-to-face contact at all stages, has been subject to significant amendment.

A synopsis of the how the court intends to deal with housing-related cases can be found on the News section of our website - <https://www.parksquarebarristers.co.uk/news/?news-type=news>.

This article intends to deal with the wider management of housing functions, focussing on governmental non-statutory guidance.

The Ministry of Housing, Communities and Local Government issued such guidance on 28 March 2020 in response to the lockdown, divided into three sections – landlord and tenant, local authorities and technical guidance on eviction notices.

Given the non-binding nature of this guidance, the parties to whom it applies are not required to follow it. It does however provide for a broad set of principles which, if followed, would allow all to safely navigate the housing sector. Should any issues arise at later hearings as to the conduct of any party this guidance may also prove persuasive to the court.

### **Landlords and tenants**

The guidance for landlord and tenants can be found [here](#).

The guidance reiterates the extension of notice period under the Coronavirus Act 2020 to three months, meaning landlords will not be able to issue new possession proceedings until at least 30 September 2020. In addition the 90-day suspension of housing possession claims in the

courts is set out – I have summarised the listing timetables for courts across the North East on the PSQB [website](#).

The emphasis of the guidance is flexibility and a '*pragmatic, common sense approach*' – landlords are reminded that they are permitted to allow more than three months' notice should they so choose, whilst landlords are '*strongly advised*' not to commence new possession claims unless there exists a '*very good reason*' for doing so. This will of course be a judgment call on a case-by-case basis, but one can easily see rent arrears and similar not constituting a '*very good reason*'.

Nonetheless tenants are reminded that they are obliged to maintain their obligations pursuant to their tenancy agreement, including the payment of rent, with an emphasis on early conversations with landlords to minimise the risk of possession proceedings. Suggestions include reaching agreements as to deferred payment of rent, reduced rent for an interim period and payment plans. Tenants are referred to assistance provided by both local authorities and charities.

Whilst possession proceedings are significantly delayed as detailed above, applications to suspend warrants of eviction are being prioritised by the courts, whether to be heard remotely or safely observing social distancing protocols. It is extremely likely that the courts will take a sympathetic approach to such applications in the current climate.

Whilst the Coronavirus Act 2020 only applies to those under tenancies and secure licenses per the Housing Act 1985, this non-statutory guidance applies equally to those under licenses to occupy, and landlords of the same are urged to adopt a flexible approach.

There is further guidance on property access and repairing obligations; landlords are reminded that their obligations equally are unaffected. Where issues are not urgent, a '*pragmatic,*

*common sense approach*’ is advised. Given that inspections are likely to be difficult to carry out during this time, the severity of any disrepair will be taken into account as to whether a matter is urgent or otherwise. Examples given in the guidance of urgent disrepair include:

- a leaking roof
- a broken boiler
- a security-critical problem such as a broken window or door
- the failure of equipment necessary to assist the disabled

Where contractors or inspectors are required to visit the property, parties are referred to the extensive government guidance on [safely interacting with others](#).

Finally, landlords are reminded that they must take all reasonable steps to comply with gas safety inspections and electrical safety regulations which come into force for new tenancies as of 01 July 2020. Where compliance cannot be maintained due to the risks posed by Covid-19, landlords must keep detailed records of their reasonable attempts to comply.

### **Local authorities**

The guidance for local authorities can be found [here](#).

The guidance reminds local authorities that their obligations in respect of maintaining housing standards remain in force, and that they should be taking appropriate action in the most serious of cases (‘category 1 hazards’). They are urged to review and update their enforcement policies in response to the current circumstances and to base all decisions on the risk involved. Again, pragmatism is the word of the day.

Health and safety policies for those conducting inspections are of the utmost importance at this time; the guidance insists that local authorities’ “...*legal duties will remain the same during this time but if you consider that you may not be able to comply with them you should take your own legal advice.*”

Unsurprisingly, examples of where inspections might still be appropriate relate to those instances where serious hazards exist, where there is imminent danger to a tenant’s health or safety or where a tenant has been identified as vulnerable and it is unclear if they are aware of the presence of a particular hazard.

Overall, landlords are advised to take enforcement action only where necessary.

### **Technical guidance on eviction notices.**

The guidance can be found [here](#).

The three measures covered are those under section 8 and section 21 in addition to section 83 Housing Act 1985.

The principle message is set out in bold at the head of the guidance:

*“We strongly advise landlords not to commence or continue possession proceedings during this challenging time without a very good reason to do so. It is essential that we work together during these unprecedented times to keep each other safe.”*

Guidance is then offered in relation to the service of notices and a summary of when a section 21 notice may not be used.

## **Conclusion**

Housing is an area in which the following of prescriptive rules and regulations is of vital significance. This guidance recognises that such it may not be reasonable, in all cases, to continue working in the ways we have until a few short weeks ago. The repeated references to flexibility, pragmatism and common sense are designed to protect the safety of tenants overall, by ensuring that save in the most severe of cases people remain in a safe environment.

Once the turbulence recedes, which it surely will, there will be a massive organisational push for unresolved cases to be heard and normality to resume.

Until then, stay safe.