



PROPERTY LAW  
NUTS & BOLTS  
SEMINAR SERIES

「Landmark  
Chambers」

**Welcome to Landmark Chambers’  
‘Property Law Nuts & Bolts, Part 1:  
An Introduction to Possession Claims’ seminar**

**The recording can be accessed [here](#).**

# Your speakers today are...



**James Hanham (Chair)**



**Miriam Seitler**

**Topic:**  
Section 21  
claims



**Brooke Lyne**

**Topic:**  
Claims against  
trespassers



**Joel Semakula**

**Topic:**  
Section 8  
claims

## Section 8 claims



**Joel Semakula**

## What we will cover

- Grounds of possession
- Section 8 notices
- The hearing
- Possession orders
- COVID
- Tips and tactics

## Housing Act 1988, s.5

(1) An assured tenancy cannot be brought to an end by the landlord except by

(a) obtaining

**(i) an order of the court for possession of the dwelling-house under section 7 or 21, and  
(ii) the execution of the order,**

(b) obtaining an order of the court under section 6A (demotion order),

(c) in the case of a fixed term tenancy which contains power for the landlord to determine the tenancy in certain circumstances, by the exercise of that power,

...

**and, accordingly, the service by the landlord of a notice to quit is of no effect in relation to a periodic assured tenancy**



## Housing Act 1988, s.5

(1A) Where an order of the court for possession of the dwelling-house is obtained, **the tenancy ends when the order is executed.**

(2) If an assured tenancy which is a fixed term tenancy comes to an end otherwise than by virtue of

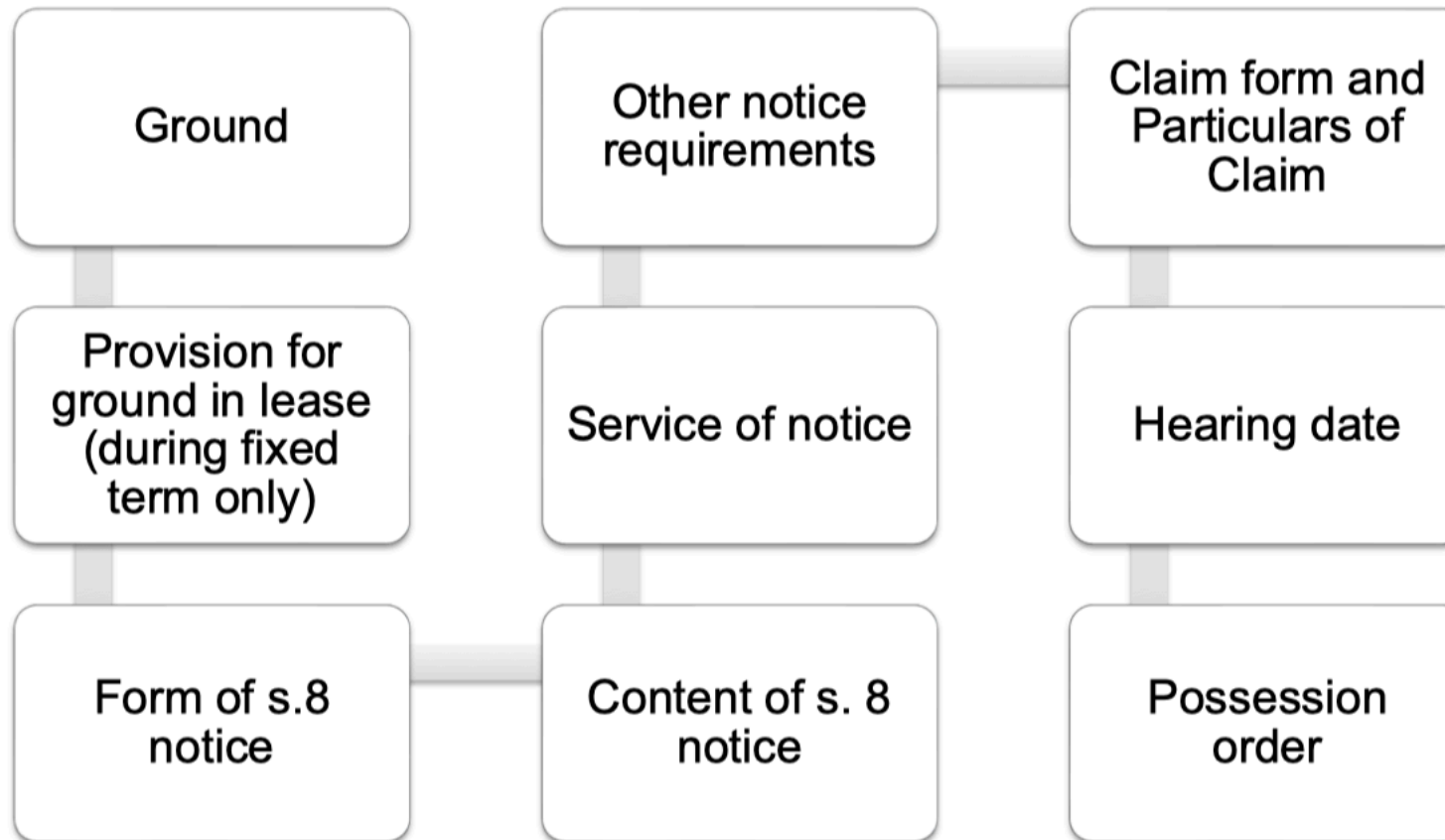
(a) an order of the court of the kind mentioned in subsection (1)(a) or (b) or any other order of the court

(b) a surrender or other action on the part of the tenant, or

(c) the giving of a notice under section 33D of the Immigration Act 2014,

**then, subject to section 7 and Chapter II below, the tenant shall be entitled to remain in possession of the dwelling-house let under that tenancy and, subject to subsection (4) below, his right to possession shall depend upon a periodic tenancy arising by virtue of this section.**

## Route to a possession order





# Housing Act 1988, Schedule 2





## Mandatory Grounds – Schedule 2, Part I

1. Landlord wants to move back into the property

2. Property is being repossessed by a mortgage lender

3. Out of season holiday let

4. Property has been let by a student or educational institution

5. Property is required by a minister of religion

6. Landlord intends to redevelop/demolish the property

7. Tenant has died (tenancy has passed on by will or intestacy)

7a. Serious anti-social behaviour

7b. No right to rent in the UK

8. Serious rent arrears at the time of serving the notice and possession proceedings

## Discretionary Grounds – Schedule 2, Part 2

9. Alternative accommodation available
10. Rent arrears at the time of serving notice and possession proceedings
11. Persistent late payment of rent
12. Breach of tenancy agreement (other than rent arrears)
13. Deterioration in the condition of the property
14. Nuisance/annoyance/illegal/immoral use of property
14a. Domestic abuse (social housing only)
14ZA. Rioting
15. Deterioration of the furniture belonging to the landlord
16. Employee of the landlord
17. False statement

## Ground 8

Both at the **date of the service of the notice** under section 8 of this Act relating to the proceedings for possession and **at the date of the hearing**

- (a) if rent is payable weekly or fortnightly, at least eight weeks' rent is unpaid;
  - (b) if rent is payable monthly, at least two months' rent is unpaid;
  - (c) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears;  
and
  - (d) if rent is payable yearly, at least three months' rent is more than three months in arrears;
- and for the purpose of this ground 'rent' means rent lawfully due from the tenant.

## Ground 8: Tips

- Plead Ground 8 along with Grounds 10 and 11 in case tenant pays enough before hearing to get around Ground 8.
- Consider whether the tenancy agreement has a set-off clause.
- Section 48, Landlord and Tenant Act 1987.
- Think ahead to possible counterclaims: disrepair, deposit, fitness for human habitation
- Bring a witness (landlord or managing agent) to hearing to orally update evidence on the outstanding rent arrears.



# Practical consequence of relying on mandatory rather than discretionary ground

## Section 9: Extended discretion of court in possession claims

**(1) Subject to subsection (6) below, the court may adjourn for such period or periods as it thinks fit proceedings for possession of a dwelling-house let on an assured tenancy.**

(2) On the making of an order for possession of a dwelling-house let on an assured tenancy or at any time before the execution of such an order, the court, subject to subsection (6) below, may

**(a) stay or suspend execution of the order, or**

**(b) postpone the date of possession,**

**for such period or periods as the court thinks just.**

...

**(6) This section does not apply if the court is satisfied that the landlord is entitled to possession of the dwelling-house**

**(a) on any of the grounds in Part I of Schedule 2 to this Act; or**

**(b) by virtue of subsection (1) or subsection (4) of section 21 below.**

# What about seeking possession within the fixed term of the tenancy – Section (7)(6) and that little bit extra

- Grounds Limited: 2, 7A, 7B, 8 or 10 – 15.
- Terms of the tenancy must make provisions for the tenancy to be brought to an end on that Ground.
- Landlord is not exercising right of forfeiture. This means no section 146 notice required and provisions for automatic relief do not apply: **Artesian Residential Investments v Beck** [1999] 3 All ER 113

**No  
Notices  
Or  
Signs  
Allowed**



## Section 8 Notice

- Prescribed form: Schedule 1 to the Assured Tenancies and Agricultural Occupancies (Forms)(England) Regulations 2015 as amended by Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment No.2) Regulations 2016 - last changed in December 2016 – found online and referred to as Form 3
- Must contain:
  1. Ground + sufficient details of the circumstances
  2. Proceedings will not begin earlier than certain date
  3. Proceedings will not begin later than 12 months from date of service of notice

## Section 8 Notice (Cont'd)

- Flexibility: court can dispense with notice where just and equitable to do so and alter/add grounds (s.8(1)(b) and 8(2)).
- BUT not in respect of grounds 7A, 7B or 8.

# Timings – Service of notice - Mandatory Grounds

Ground	Modified notice period: 26 March 2020 - 28 August 2020	Modified notice period: 29 August 2020 - 31 May 2021	Modified notice period: from 1 June 2021	Return to pre Coronavirus Act 2020 notice period
1: Landlord wants to move in	3 months	6 months	4 months	2 months
2: Mortgage repossession	3 months	6 months	4 months	2 months
3: Out of season holiday let	3 months	6 months	4 months	2 weeks
4: Let to student by an educational institution	3 months	6 months	4 months	2 weeks
5: Property required for use by minister of religion	3 months	6 months	4 months	2 months
6: Demolition / redevelopment	3 months	6 months	4 months	2 months
7: Death of tenant	3 months	3 months	2 months	2 months
7a: Serious anti-social behaviour	4 weeks (periodic tenancy)	3 months	4 weeks (periodic tenancy)	4 weeks (periodic tenancy)
	1 month (fixed term tenancy)		1 months (fixed term tenancy)	1 month (fixed term tenancy)
7b: No right to rent in the UK	3 months	3 months	2 weeks	2 weeks
8: Serious rent arrears at time of service of notice and possession proceedings	3 months	(a) 4 weeks where arrears are at least 6 months  (b) 6 months where arrears are less than 6 months	a) 4 weeks where arrears are at least 4 months  b) 4 months where arrears are less than 4 months  From 1 August 2021- 2 months where arrears are less than 4 months	2 weeks

# Timings – Service of notice - Discretionary Grounds

Ground	Modified notice period: 26 March 2020 - 28 August 2020	Modified notice period: 29 August 2020 - 31 May 2021	Modified notice period: from 1 June 2021	Return to pre Coronavirus Act 2020 notice period
9: Alternative accommodation available	3 months	6 months	4 months	2 months
10: Some rent arrears at the time of service of notice and possession proceedings 3 months	(a) 4 weeks where arrears are at least 6 months  (b) 6 months where arrears are less than 6 months	(a) 4 weeks where arrears are at least 4 months  b) 4 months where arrears are less than 4 months  From 1 August 2021- 2 months where arrears are less than 4 months		2 weeks
11: Persistent late payment of rent	3 months	(a) 4 weeks where arrears are at least 6 months  (b) 6 months where arrears are less than 6 months	a) 4 weeks where arrears are at least 4 months  b) 4 months where arrears are less than 4 months  From 1 August 2021- 2 months where arrears are less than 4 months	2 weeks

# Timings – Service of notice - Discretionary Grounds (Cont'd)

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Ground	Modified notice period: 26 March 2020 - 28 August 2020	Modified notice period: 29 August 2020 - 31 May 2021	Modified notice period: from 1 June 2021	Return to pre Coronavirus Act 2020 notice period
12: Breach of tenancy agreement	3 months	6 months	4 months	2 weeks
13: Tenant deteriorated property	3 months	6 months	4 months	2 weeks
14: Nuisance/annoyance, illegal/immoral use of property	3 months	None - proceedings may be commenced immediately after service of notice	None- proceedings may be commenced immediately after service of notice	None- proceedings may be commenced immediately after service of notice
14A: Domestic abuse (social tenancies only – where victim has permanently left the property)	3 months	2 weeks	2 weeks	2 weeks
14ZA: Rioting	3 months	2 weeks	2 weeks	2 weeks
15: Tenant has deteriorated furniture	3 months	6 months	4 months	2 weeks
16: Employment	3 months	6 months	4 months	2 months
17: False statement	3 months	2 weeks	2 weeks	2 weeks

## One more thing – notice requirements

### **Landlord and Tenant Act 1987, s.48**

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

**(2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.**

## How do I make a claim?

- Part 55
- N5 Claim form
- N119 Particulars of Claim – attach key documents
  - tenancy agreement and notice
- Claim Form and Particulars must be filed and served together: CPR 55.4



## Claim Form and Particulars of Claim

- Identify the land;
- State whether claim relates to residential property;
- **State the ground, including statutory ground (if applicable);**
- Full details of tenancy agreement;
- Details of every person who occupies the property to best of landlord's knowledge;
- Details of any alleged conduct.



## Particulars of Claim – Rent Arrears

- If ground relates to rent arrears:
  - (1) Amount due at start of proceedings;
  - (2) In schedule form, dates and amounts of all payments due for past two years before issue or from date of default;
  - (3) Daily rate of rent and interest;
  - (4) Any previous steps to recover the arrears with full details of any court proceedings;
  - (5) Details about tenant's circumstances, e.g. social security benefits.

## Hearing Date

- Hearing date will not be less than 28 days from issue of claim form;
- Defendant must be served with Claim Form and Particulars not less than 21 days before hearing date;
- Time periods can be shortened by the court;
- W/S must be served at least two days before hearing: CPR55.8(4).

## What should the order state?

- Order should state on its face whether it was made on a mandatory or discretionary ground: ***Diab v Countrywide Rentals*** 1 plc (2001), unreported.
- Money judgment : rent + interest + rent at daily rate

## Costs

- Statement of costs – N260
- Fixed costs may apply – CPR r.45.1(2)(d):

"(d) the claim is for the recovery of land, including a possession claim under Part 55, where one of the grounds for possession is arrears of rent, for which the court gave a fixed date for the hearing when it issued the claim and judgment is given for the possession of land (whether or not the order for possession is suspended on terms) and the defendant

(i) **has neither delivered a defence, or counterclaim, nor otherwise denied liability;** or

(ii) has delivered a defence which is limited to specifying his proposals for the payment of arrears of rent"

- Fixed costs = fixed commencement costs (usually £69.50) + court fee + £57.25

## “I beg for some grace, m’Lord” – mandatory grounds

Housing Act 1980, s.89

(1) Where a court makes an order for the possession of any land in a case not falling within the exceptions mentioned in subsection (2) below, the giving up of possession shall not be postponed (whether by the order or any variation, suspension or stay of execution) to a date later **than fourteen days** after the making of the order, unless it appears to the court that **exceptional hardship** would be caused by requiring possession to be given up by that date; **and shall not in any event be postponed to a date later than six weeks after the making of the order.**



## Application to set aside CPR 39.3

(3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside.

(4) An application under paragraph (2) or paragraph (3) must be supported **by evidence**.

(5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant –

**(a) acted promptly when he found out that the court had exercised its power to strike out or to enter judgment or make an order against him;**

**(b) had a good reason for not attending the trial; and**

**(c) has a reasonable prospect of success at the trial.**

## Section 21 claims



**Miriam Seitler**

- What is section 21?
- Will it be around for much longer?

## 10 point checklist for section 21 claims

1. Nature of tenancy
2. Stage of tenancy
3. Timing
4. Length of notice
5. Form of notice
6. Prescribed legal requirements (EPC, GSC and HtR)
7. Deposit
8. Licensing
9. Tenants Fees Act 2019
10. Retaliatory Eviction

## 1. Nature of tenancy

- Fixed term v contractual periodic tenancy
- S.21(1) v s.21(4)
- Contractual periodic: the date given in the notice must not be earlier than the earliest date that the tenancy could be brought to an end by a notice to quit given on the date of the s.21 notice.

## 2. Stage of tenancy

- Notice that expires during the fixed term
- Notice served during the fixed term that expires after the fixed term

### 3. Timing

(1) Cannot have possession order taking effect earlier than 6 months from date of grant of original tenancy (s.21(5))

(2) Cannot give notice within 4 months of when original tenancy began (s.21(4B))

(3) Must issue within six months from when notice was given (s.21(4D))

[NB.

Extensions for notices served between 29 August 2020 and 31 May 2021

Extensions for s.21(4) notices]



## 4. Length of notice

- Minimum of 2 months
- Exception 1: covid notices
  - From 26 March 2020 to 28 August 2020: 3 months
  - 29 August 2020 to 31 May 2021: 6 months
  - 1 June 2021 to 30 September 2021: 4 months
  - After 1 October 2021: reverted to 2 months
- Exception 2: s.21(4)
- Cannot start proceedings until the notice has expired

## 5. Form of notice

- Prescribed Form: Form 6A
- Errors in the notice: *Pease v Carter* [2020] EWCA Civ 175 at [39]

## 6. Prescribed legal requirements

- Only applies to tenancies granted on or after 1 October 2015 (*Minister v Hathaway* [2021] EWCA Civ 936)
- Energy performance certificate: can be complied with any time before service of the s.21 notice
- Gas safety certificate: can be complied with any time before service of the s.21 notice
- How to rent booklet: can be complied with any time before service of the s.21 notice

## 7. Deposit

- When LL receives deposit, they must do do things:
  - Protect it and comply with initial requirements of scheme, within 30 days of receipt
  - Give the tenant the prescribed information within 30 days of receipt
- if fail to do that, financial penalty
  
- What is the effect on ability to serve s.21 notices?
  - If failure to protect deposit/lrs within 30 days, **return** deposit before serving s.21 notice
  - If failure to give prescribed information within 30 days, provide info before serving s.21 notice (or return deposit)
  - Exception: s.215B

## 8. Licensing

- Mandatory, additional or selective licensing
- Cannot serve s.21 notice if required to be licensed and not licensed.
- Unless:
  - Temporary exemption notice; or
  - Valid application for licence has been made

## 9. Tenant Fees Act 2019

- No s.21 notice if the LL has breached the Act by requiring a prohibited payment and not repaying it
- Only in respect of payments charged by a **landlord**, not a letting agent
- Permitted payments =
  - Rent
  - Rent is less than £50,000 annually, deposit of no more than 5 weeks rent
  - Rent is £50,000 + annually, deposit of no more than 6 weeks rent
  - Holding deposit that is refundable and not more than one week's rent
- Returning of PP can be done by applying it to the rent account, but only with the consent of the tenant (not unilaterally by the landlord)

## 10. Retaliatory eviction

(1) Service of improvement notice or notice of emergency remedial action served by local authority

→six month moratorium period when s.21 notice cannot be served.

(2) Written complaint by tenant to landlord, landlord does not provide adequate response within 14 days, tenant then complains to local authority, landlord serves a s.21 notice, local authority serves a notice before possession order is made

→s.21 notice becomes invalid.

## Claims against trespassers



**Brooke Lyne**



## What we will cover:

- What is a trespasser possession claim?
- Which court?
- The procedure
- Interim Possession Orders – an whistlestop tour

## What is a Trespasser Possession Claim?

- Distinction between trespassers at common law and trespassers under CPR
- CPR 55.1(b):  
“a possession claim against trespassers’ means a claim for the recovery of land which the claimant alleges is occupied only by a person or persons who entered or remained on the land without the consent of a person entitled to possession of that land but does not include a claim against a tenant or sub-tenant whether his tenancy has been terminated or not”

## What is a Trespasser Possession Claim?

- The special possession procedure is only available against trespassers within this definition
  - Former licensee – yes
  - Former tenant – no
- Quicker process
  - Hearing should be listed more quickly
  - Time for service shorter

## Which Court?

- County Court – default
  - Can be issued at any County Court
  - BUT will then be sent to the County Court hearing centre which serves the address where the land is situated

## Which Court?

- High Court - Practice Direction 55A

“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.”

## Which Court?

- Wrong court – PD 55.3 para 1.2
  - Strike out or transfer
  - Delay and cost consequences

## Procedure – Persons Unknown

- CPR 55.3(4):

“Where, in a possession claim against trespassers, the claimant does not know the name of a person in occupation or possession of the land, the claim must be brought against ‘persons unknown’ in addition to any named defendants.”

## Procedure – Service

- Time - CPR 55.5
  - “(2) In a possession claim against trespassers the defendant must be served with the claim form, particulars of claim and any witness statements –
    - (a) in the case of residential property, not less than 5 days; and
    - (b) in the case of other land, not less than 2 days,  
before the hearing date.



## Procedure – Service

- Method – CPR 55.6
- Service against Persons Unknown:
  - Attaching copies of the claim form, particulars of claim and any witness statements to the main door or some other part of the land so that they are clearly visible; **and**
  - if practicable, inserting copies of those documents in a sealed transparent envelope addressed to ‘the occupiers’ through the letter box;
  - or**
  - Placing stakes in the land in places where they are clearly visible and attaching to each stake copies of the claim form, particulars of claim and any witness statements in a sealed transparent envelope addressed to ‘the occupiers’.”

## Procedure – Claim

- Claim form – N5
- 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.
  - N121
    - No mesne profits in prayer
  - Additional particulars required?

## Procedure – D's Response

- CPR 55.7(2)  
“In a possession claim against trespassers rule 15.2 does not apply and the defendant need not file a defence.”

## Procedure – hearing

- Will anyone attend?
- If so, is the claim genuinely disputed on grounds that appear to be substantial?
- Immediate order for possession?
  - *McPhail v Persons Unknown* [1973] Ch. 447
- Costs

## Interim Possession Orders

- Alternative route to recover possession
- Quick procedure
- Threat of criminal offence/ sanction

## Interim Possession Orders

- IPOs are only available if certain conditions are met:
  1. For the recovery of premises and not open land
  2. Can only be used to evict squatters who entered the land without the consent of the owner
  3. 28-day deadline from when the landowner had knowledge of the trespasser
  4. The applicant must have been the owner/lessee of the land throughout the period of occupation by the squatters
  5. The applicant must have an immediate right to possession

## Interim Possession Orders - Procedure

- To be issued in the County Court:
  - Claim form (N5)
  - Application notice (N130)
  - Written evidence in support
    - Witness statement from the claimant personally or a duly authorised officer (if the claimant is a company)
- May be issued against “Persons Unknown”
- Listed at the point of issue

## Interim Possession Orders - Procedure

- Service
  - Within 24 hours from issue of the application, the claimant must serve the defendants with:
    - Claim form
    - Application and evidence
    - A blank witness statement form
- The claimant should file a certificate of service before the hearing



## Interim Possession Orders - Procedure

- The interim hearing
  - Any defendant who attends is entitled to participate
  - The court should grant an IPO if:
    - The proper service procedure has been followed
    - All the relevant conditions for an interim possession order are met
    - The claimant has given adequate undertakings in support of her/his application
  - The court will re-list it for the substantive hearing (not less than 7 days later)

## Interim Possession Orders - Procedure

- After the interim hearing
  - The order must be served within 48 hours of being sealed
  - A squatter who fails to leave the premises within 24 hours of service of an IPO commits a criminal offence
  - If he returns within 1 year an offence is also committed
  - It is also an offence for anyone to trespass where an IPO is in force unless a copy of the order is not fixed to the premises
  - But, late service means an offence won't have been committed

## Interim Possession Orders - Procedure

- The next hearing,
  - The claimant must file a certificate of service in advance
  - The interim possession order will expire on the date of the hearing of the claim
  - The court can:
    - Make a final order for possession
    - Dismiss the claim
    - Direct that the matter be dealt with as an ordinary possession claim
    - Enforce any of the owner/landlord's undertakings

# Thank you for listening

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