**Were ‘Review Dates’ an Effective Part of the Response to the COVID-19 Pandemic in Housing Possession Cases in England and Wales? Views from the Frontline: Part 1**

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**Introduction**

This is the first part of an article that offers an assessment of one aspect of the court system’s response to the COVID-19 pandemic in housing possession cases in England and Wales, namely, the Review or ‘R date’. Drawing on data supplied by those at the forefront of the arrears and possessions process,[[1]](#footnote-1) both parts offer a snapshot of an extraordinary period of turmoil and change. Measures that would previously have been considered unthinkable were introduced with uncharacteristic speed in response to the COVID-19 pandemic. Measures such as the imposition of a stay on all possession hearings, a ban on bailiff enforced evictions (other than in the most serious cases),[[2]](#footnote-2) extended notice periods for tenants,[[3]](#footnote-3) and moratorium on the *enforcement* of mortgage possession proceedings,[[4]](#footnote-4) although mortgagees were still permitted to seek a possession order.[[5]](#footnote-5)

As we return to the pre-COVID ways of doing things, evidence suggests that the pandemic will continue to impact on the possession process for years to come.[[6]](#footnote-6) Not least will be the need to deal with a substantial backlog of cases and a possible rise in the number of new cases as a result of reduced household finances[[7]](#footnote-7) It is imperative therefore that lessons are learned from the initial response to the pandemic.

The articles offer an assessment of one of the temporary measures introduced between 17 September 2020 and 1 November 2021,[[8]](#footnote-8) known as the ‘R date’ which was introduced as part of the larger package of measures known as the ‘Overall Arrangements’(OA).[[9]](#footnote-9) In assessing the effectiveness of the R date, the yardstick used herein derives from the objectives set out by the architects of the court system’s response, the Master of the Rolls Working Group on Possession Proceedings (the Working Group). Those objectives were:

(a) reducing volume in the system by enabling earlier advice and increasing settlement,

(b) taking account, within limits that the law has imposed, of the effect of the pandemic on all parties, and

(c) maintaining confidence in the fairness of outcomes.[[10]](#footnote-10)

In addition to these COVID specific objectives is the overriding objective of the Civil Procedure Rules (CPR), which is to enable the courts to deal with cases justly and at proportionate cost.[[11]](#footnote-11) In assessing the extent to which these objectives have been met, this article supplements existing research[[12]](#footnote-12) with original first-hand accounts from those most closely associated with the possession process, namely, occupiers, debt advisers, landlords (private and social), legal practitioners (who represent landlords and mortgage lenders) and duty advisers, particularly legal practitioners who offer free legal advice to occupiers through the Housing Possession Court Duty Scheme (HPCDS). What the findings of this project reveal is that while the R date did not prove as effective as might have been hoped, it should be retained into the post-pandemic era.

This first part of the article begins by setting out the methodology of the project and the arrangements for possession claims under the OA. It then evaluates the effectiveness of the R date procedure.

**Methodology**

Due to the difficulties posed by the COVID-19 pandemic in conducting face-to-face interviews and the need to gather data over only a few months, this project used online survey tools in order to conduct both random and purposeful sampling of a range of respondents. In total, 176 respondents completed the surveys, a pleasing result given the small scale and time restricted nature of this project:

* The debt adviser survey ran from 15 June to 31 July 2021 and initiated 43 responses from debt advisers located in England and Wales.
* The duty adviser survey ran from 16 June and 31 July 2021 and initiated 35 responses from duty advisers all of whom were based in England.
* The legal practitioner survey ran from 14 July to 15 August 2021 and initiated 27 responses from legal practitioners located in England and Wales. Of those, 20 dealt with private landlords, five with public landlords and two with mortgage lenders.
* The landlord survey ran from 5 August to 5 September 2021 and initiated 56 responses from landlords (47 private, four local authority representatives, four non-profit registered providers, one non-profit unregistered provider and one for-profit registered provider). Their properties were located in Wales and all areas of England.
* The occupier survey ran from 11 August to 14 November and initiated 15 responses.

While the number of usable responses to the occupier survey proved disappointing, it highlights the difficulty of accessing occupiers with experience of housing debt; a theme that will recur throughout this article. Innovative and creative research methods will be needed to generate substantial and credible data which can ensure that the voice of occupiers is heard in relation to a process that impacts so significantly on their lives.

By combining this unique data with existing datasets and research, this article aims to contribute to an improved understanding of the possession process. The following section begins with a brief description of the OA.

**The Overall Arrangements**

Initially all possession hearings were suspended between 27 March 2020 and 20 September 2020. Landlords and mortgagees were then able to bring claims for possession under new rules known as the ‘Overall Arrangements’ (OA). The OA ushered in a number of procedural changes to the process. Unlike under pre-COVID conditions, for example, when only one hearing was scheduled, a new two-stage process came into operation. The first was constituted by the Review or ‘R date’ followed, if necessary, 28 days later by the Substantive or ‘S hearing’.

*The Review date (R date)*

The R date provided an opportunity for the parties to provide each other and the court with information relevant to the claim, for the defendant to receive free legal advice under the HPCDS and for the parties to reach agreement.[[13]](#footnote-13) While the provision of free-at-the-point-of-use legal advice continued under the OA the important point to note is that it was available at an earlier stage than was previously the case. Under the arrangements, legal advice was made available at least 28 days before the S hearing at which a possession order might have been made.[[14]](#footnote-14) As Renton notes, ‘the legislation did not change, but the guidance did, creating an additional occasion for the parties to seek settlement.’[[15]](#footnote-15)

The R date was intended to operate on the basis that the defendant would contact the duty adviser on a scheduled date with the R date advice delivered either face-to-face or remotely.[[16]](#footnote-16) The OA required the notice of listing to include information about the availability of non-means-tested advice from the HPCDS and the arrangements for accessing that advice.[[17]](#footnote-17)

The OA suggested that any resolution or directions agreed by the parties on the R date would be communicated by the duty solicitor to the usher and thence on to the judge.[[18]](#footnote-18) The judge would then undertake a ‘very short’ (five minute) appointment at the end of the R date during which a review of the paperwork would be undertaken with none of the parties in attendance.[[19]](#footnote-19) If no agreement was reached on the R date, then the judge would consider the material provided and if appropriate, proceed to the second stage of the temporary process known as the ‘S hearing’ which was scheduled 28 days later.[[20]](#footnote-20)

*The Substantive or ‘S hearing’*

Unlike pre-COVID hearings, the S hearing could take place remotely where the parties agreed,[[21]](#footnote-21) or legal representatives could appear by video link,[[22]](#footnote-22) and/or the parties could appear by video link or telephone.[[23]](#footnote-23) The OA also removed ‘block listing’,[[24]](#footnote-24) and instead scheduled S hearings for fifteen minutes, with five minutes in between hearings to allow for COVID-19 safety measures to be implemented.[[25]](#footnote-25)

*‘Enhanced Information’*

Under the OA, claimants were required to provide an electronic bundle of material to the court and the defendant 14 days before the R date.[[26]](#footnote-26) In addition to the usual information required (such as the claim form and particulars of claim) and in an effort to account for the impact of the COVID-19 pandemic on the parties, the bundle provided by the claimant had to include ‘enhanced information’, namely ‘what knowledge the claimant has as to the effect of the pandemic on the defendant and dependants.’[[27]](#footnote-27) An important point to note here is that claimants were not *required* to enquire about the impact of the COVID-19 pandemic on the defendant but rather, had to *consider* whether to make such enquiries.[[28]](#footnote-28)

*Post-OA*

As of 1 November 2021, the OA came to an end and the process reverted to the pre-COVID ways of doing things.[[29]](#footnote-29) The only measures retained include aspects of the CPR which require claimants to bring two copies of a notice that sets out what knowledge that party has as to the effect of the COVID-19 pandemic on the occupier and their dependants.[[30]](#footnote-30) The question, addressed in the next section, is whether the R date proved effective in:

(a) reducing volume in the system by enabling earlier advice and increasing settlement,

(b) taking account, within limits that the law has imposed, of the effect of the pandemic on all parties, and

(c) maintaining confidence in the fairness of outcomes.[[31]](#footnote-31)

**The R Date - Was it Effective?**

The fundamental objective underlying the OA is consistent with earlier research which emphasised the importance of early and meaningful engagement by both parties in avoiding the need for court action.[[32]](#footnote-32) The emphasis given to pre-action communication and negotiation within the OA and related measures was therefore welcome. While the motivation underlying this may well have been to avoid the court system being overwhelmed with possession claims, it nevertheless had the potential to assist some households in avoiding the anxiety associated with court proceedings and the threat of home loss.[[33]](#footnote-33) Unfortunately, the evidence gathered during this project suggests that occupiers did not take advantage of the opportunity to receive free advice at the R date.

*Occupier Engagement in R dates*

Both duty advisers and legal practitioners were asked how often the occupier (or defendant) engaged with the R dates they had been involved in. A majority of duty advisers (23 out of 35) and legal practitioners (seven out of 10) said that the occupier had engaged in 0-10% of the R dates they had been involved with.

*"We have had very little contact from those facing a review of possession proceedings.” Duty Adviser #24.*

*"I have not yet had a claim where there has been engagement by a defendant at the review stage." Legal Practitioner #8.*

These findings are supported by the Bureau of Investigative Journalism’s (BIJ) investigation into the possession process, ‘… lawyers and judges told the Bureau that review hearings were not working: they were rarely attended and often just delayed proceedings, causing debts to mount up further.’[[34]](#footnote-34) The reason for this is obviously difficult to assess without hearing from occupiers but, some respondents indicated that the information initially provided to occupiers did not encourage attendance.

*"Clients do not engage at the Review stage mainly because of the information provided to them by the court - the information is lengthy and opaque and clients do not understand it." Duty Adviser #7.*

*“Defendants… are reporting that they expect someone to contact them at review stage rather than them making contact with the advice provider using the details on the papers sent to them by the court.” Duty Adviser #13.*

For others, the reason derived from the lack of sanctions arising out of an R date. Given the R date does not have the ‘force’ of a S hearing, i.e. it does not present to occupiers as a formal court hearing at which the home might be lost, this appears to have increased the likelihood of a large proportion of occupiers not engaging with it.

*“It amazes me that anybody expected defendants to engage at the review date stage. Why would they? Nothing bad can happen at it. Given that only 10 - 20% attended the hearing pre-COVID, when they could actually lose their home, why did anyone expect them to engage with a non-event?” Duty Adviser #9.*

The lack of engagement by occupiers is necessarily an issue of concern but without effective data regarding the number who engage with their housing provider early in the arrears management process or attend R dates it is impossible to make any claims regarding the reasons for non-engagement, the relationship between engagement and outcomes or how best to tackle the issue.

*Other Views on the R date*

The surveys completed by landlords and legal practitioners indicated that they believed that the R date simply delayed matters, allowing rent arrears to accumulate, and increased costs for the claimant. Of those landlords who were familiar with the R date process, three found the process helpful while 18 did not:

*"It is not an improvement. It has no function other than to increase delay and costs." Legal Practitioner #16.*

*"It just wasted more time and extended the time for tenants to stay and not pay anything." Private Landlord #39.*

*"They cause an unnecessary delay to the whole process and place a great burden on the landlord in terms of pulling together bundles of information to be served on the tenant and the court." Social Landlord #8.*

**Part 2 of the article**

Part 2 of the article will examine whether the R date process offered a better alternative to the pre-COVID process and provide recommendations and priorities for research.

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   The project was generously funded by the Economic and Social Research Council and ran from 26 April 2021 to 13 December 2021. [↑](#footnote-ref-1)
2. Public Health (Coronavirus) (Protection from Eviction) (England) (No. 2) Regulations 2021 SI 2021/164 and Public Health (Protection from Eviction) (No. 2) (Wales) (Coronavirus) Regulations 2021 SI 2021 No. 325 (W. 84). The ban lasted until 31 May 2021 in England, see Reg 2(1) of Public Health (Coronavirus) (Protection from Eviction and Taking Control of Goods) (England) Regulations 2020 SI 2020/1290 and Reg 2 of Public Health (Coronavirus) (Protection from Eviction) (England) Regulations 2021 SI 2021/15, from 22 February 2021 Public Health (Coronavirus) (Protection from Eviction) (England) (No. 2) Regulations 2021 as amended by Public Health (Coronavirus) (Protection from Eviction) (England) (No. 2) (Amendment) Regulations 2021 SI 2021/362. In Wales, it lasted until and 30 June 2021, see Reg. 3(2) of Public Health (Protection from Eviction) (No. 2) (Wales) (Coronavirus) Regulations 2021 SI 2021 No. 325 (W. 84). [↑](#footnote-ref-2)
3. In England the original two-month notice period was extended to six months for notices served between 29 August 2020 and 31 May 2021, see Sch 29, para. 7 of the Coronavirus Act 2020, as amended by Reg. 2(2) of Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2021, SI 2021 No. 284 Regulation 2. It was reduced to four months between 1 June 2021 and 30 September 2021, see The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) (No. 2) Regulations 2021, SI 2021 No. 564 Regulation 2. Returning to the pre Coronavirus Act 2020 notice period from 1 October 2021, see Coronavirus Act 2020 (Residential Tenancies and Notices) (Amendment and Suspension) (England) Regulations 2021, SI 2021/994. In Wales, the notice period has been extended to six months for notices served between 24 July 2020 and 31 December 2021, Sch 29, para. 7 of the Coronavirus Act 2020, as amended originally by Reg. 2 of Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (Wales) Regulations 2021 so as to extend the date to 30 June 2021. The date was then extended to 30 September 2021 by the Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No. 2) (Wales) Regulations 2021 and extended again to 31 December 2021 by the Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No. 3) (Wales) Regulations 2021. [↑](#footnote-ref-3)
4. Financial Conduct Authority, ‘Mortgages and Coronavirus: Tailored Support Guidance’, Finalised Guidance, March 2021, para. 7.2, available at <https://www.fca.org.uk/publication/finalised-guidance/mortgages-and-coronavirus-tailored-support-guidance.pdf> [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. See, for example, Bank of England, ‘Household debt and Covid, Quarterly Bulletin 2021 Q2’, 25 June 2021, p. 10, available at: <https://www.bankofengland.co.uk/quarterly-bulletin/2021/2021-q2/household-debt-and-covid>, Derricourt, R., Hann, C. and Byrne, G., ‘New year, same arrears: How the pandemic is leaving private renters with unmanageable debt’, Citizens Advice, January 2021, p. 3, available at <https://www.citizensadvice.org.uk/Global/CitizensAdvice/Housing%20Publications/New%20year,%20same%20arrears.pdf> and StepChange, ‘Tackling the coronavirus personal debt crisis’, November 2020, p. 11, available at <https://www.stepchange.org/Portals/0/assets/pdf/tackling-the-coronavirus-personal-debt-crisis.pdf> [↑](#footnote-ref-6)
7. Judge, L., ‘Getting ahead on falling behind: Tackling the UK's building arrears crisis’, Resolution Foundation Briefing, February 2021, p. 16, available at <https://www.resolutionfoundation.org/app/uploads/2021/02/Getting-ahead-on-falling-behind.pdf> [↑](#footnote-ref-7)
8. See ‘Statement from the Master of the Rolls: the end of the ‘overall arrangements for possession proceedings’ <https://www.judiciary.uk/announcements/statement-from-the-master-of-the-rolls-the-end-of-the-possession-proceedings-overall-arrangements/> [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. The Master of the Rolls Working Group on Possession Proceedings, ‘Overall Arrangements for Possession Proceedings in England and Wales’, 17 September 2020: Version 1.0, para. 4, available at <https://drive.google.com/file/d/1_y5yCXBCMid1klKyrSh7sIznJFsSwbtl/view?usp=sharing> [↑](#footnote-ref-10)
11. CPR, Part 1 —Overriding Objective, 1.1(1). [↑](#footnote-ref-11)
12. See for example Byrom, N., Beardon, S. and Kendrick, A., *The impact of COVID-19 measures on the civil justice system* (Civil Justice Council and Legal Education Foundation, May 2020), available at <https://www.judiciary.uk/wp-content/uploads/2020/06/FINAL-REPORT-CJC-4-June-2020.v2-accessible.pdf>, McClenaghan, M., ‘Evicted in Less Than 10 Minutes: Courts Fail Tenants Broken By Pandemic’, The Bureau of Investigative Journalism, 23 September 2021, available at <https://www.thebureauinvestigates.com/stories/2021-09-23/evicted-in-less-than-10-minutes-courts-fail-tenants-broken-by-pandemic>, and Whitehouse, L., ‘Housing Possession in the Time of Pandemic’, (2021) 85:2 *Conv* 197-212. [↑](#footnote-ref-12)
13. The Master of the Rolls Working Group on Possession Proceedings (n. 10), para. 50. [↑](#footnote-ref-13)
14. Ibid, para. 39. [↑](#footnote-ref-14)
15. Renton, D., *Jobs and Homes: Stories of the Law in Lockdown* (Legal Action Group: London, 2021), p. 155. [↑](#footnote-ref-15)
16. S. Mullings, and S. James, *Housing Possession Duty Desk: A Practical Guide*, (Legal Action Group, London: 2021), para. 2.31. [↑](#footnote-ref-16)
17. Ibid, para. 2.29. [↑](#footnote-ref-17)
18. The Master of the Rolls Working Group on Possession Proceedings (n. 10), para. 52. [↑](#footnote-ref-18)
19. Ibid, para. 51. [↑](#footnote-ref-19)
20. Ibid, para. 39. [↑](#footnote-ref-20)
21. Ibid, para. 15(c). [↑](#footnote-ref-21)
22. Ibid, para. 20. [↑](#footnote-ref-22)
23. Ibid, para. 21. [↑](#footnote-ref-23)
24. Ibid, para. 34. For more on block-listing see Mullings and James (n. 16), para. 2.1., Renton (n. 15), p. 12, Bright, S. and Whitehouse, L., *Information, Advice and Representation in Housing Possession Cases,* (April 2014), available at <https://www.law.ox.ac.uk/sites/files/oxlaw/housing_possession_report_april2014.pdf>, pp. 41-43. C. Hunter, S. Blandy, D. Cowan, J Nixon, E. Hitchings, C. Pantazis and S. Parr, ‘The Exercise of Judicial Discretion in Rent Arrears Cases’ (London: Department for Constitutional Affairs, Research Series 6/05, October 2005), p.29. [↑](#footnote-ref-24)
25. The Master of the Rolls Working Group on Possession Proceedings (n. 10), para. 56. [↑](#footnote-ref-25)
26. Ibid, para. 49. [↑](#footnote-ref-26)
27. Ibid, para. 25. See Civil Procedure Rules 1998 (CPR) Practice Direction (PD) 55C, 6.1(ii) and 6.2. [↑](#footnote-ref-27)
28. Mullings and James (n. 16), para. 2.18. [↑](#footnote-ref-28)
29. See Peaker, G., ‘Possession proceedings – end of the “overall arrangements”’, *Nearly Legal: Housing Law News and Comment*, 4 November 2021, available at <https://nearlylegal.co.uk/2021/11/possession-proceedings-an-unannounced-announcement/> [↑](#footnote-ref-29)
30. For claims issued on or after 1 December 2021 and up to 30 June 2022, PD 55C paras 6.1 and 6.2 will continue to apply. See Peaker, G., ‘Possession News’, *Nearly Legal: Housing Law News and Comment*, 12 November 2021, available at <https://nearlylegal.co.uk/2021/11/possession-news/> [↑](#footnote-ref-30)
31. The Master of the Rolls Working Group on Possession Proceedings (n. 10), para. 4. [↑](#footnote-ref-31)
32. Bright and Whitehouse (n. 24), pp. 14-15. [↑](#footnote-ref-32)
33. See, for example, Mind, ‘Still in the Red: Update on Debt and Mental Health’ (2011), at <https://www.mind.org.uk/media-a/4348/still-in-the-red.pdf>; Royal College of Psychiatrists and the Money Advice Trust, ‘Debt Collection and Mental Health: Ten Steps to Improve Recovery’ (November 2010); and S. Nettleton, ‘Losing a Home through Mortgage Repossession: The Views of Children’ (2001) 15 *Children and Society* 82. [↑](#footnote-ref-33)
34. McClenaghan, M., ‘Open Justice? The closed doors of possession courts’, The Bureau of Investigative Journalism, 9 November 2021, p. 7, available at <https://www.thebureauinvestigates.com/stories/2021-11-09/evictions-open-justice-possession-courts> [↑](#footnote-ref-34)