Neutral Citation Number: [2024] EWCA Civ 1260

Case No: CA-2023-002200

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE WILESDEN COUNTY COURT
DEPUTY DISTRICT JUDGE SAMUEL
J02W1530

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/10/2024

Before :

LORD JUSTICE LEWISON
LORD JUSTICE NEWEY
and
LORD JUSTICE ARNOLD

- -

Between :

AMER HAJAN	**Appellant**
- and -	
THE MAYOR & BURGESSES OF THE LONDON BOROUGH OF BRENT	**Respondent**

- -
- -

Toby Vanhegan and Stephanie Lovegrove (instructed by) **G T Stewart Solicitors & Advocates**) for the **Appellant**
Nicholas Grundy KC and Serena Lee (instructed by) **Brent LBC Legal Services** for the **Respondent**

Hearing dates: 09-10/10/2024

Case No: CA-2023-001617

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON
HHJ LUBA KC
C1PP4593

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/10/2024

Before :

LORD JUSTICE LEWISON
LORD JUSTICE NEWEY
and
LORD JUSTICE ARNOLD

- -

Between :

JANET KERR	**Appellant**
- and -	
POPLAR HOUSING AND REGENERATION LIMITED COMMUNITY ASSOCIATION	**Respondent**

- -
- -

Martin Hodgson and Daniel Grütters (instructed by **T V Edwards LLP**) for the **Appellant**
Laura Tweedy, Jaysen Sharpe and Callum Reid-Hutchings (instructed by **In House at Poplar HARCA**) for the **Respondent**

Hearing dates: 09-10/10/2024

Approved Judgment

This judgment was handed down remotely at 11.30am on 23/10/2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Lewison:

Introduction

1. These two appeals, which were heard together, raise questions about the procedure which a landlord must follow in order to recover possession of a dwelling house on the ground of anti-social behaviour resulting in conviction for a serious offence. In *Hajan v Brent LBC* we are concerned with a secure tenancy; and in *Poplar HARCA v Kerr* we are concerned with an assured tenancy.

An outline of the legislation

2. It will be necessary in due course to consider some of the details of each of the two legislative schemes, but at this stage I set out some overall context.

3. *Secure tenancies*. Tenants of local authorities are protected by Part IV of the Housing Act 1985 ("the 1985 Act"). In order to attract that protection the tenancy must be a tenancy of a dwelling house in England; the landlord must be a specified public authority; and the dwelling must be the tenant's only or principal home. A periodic secure tenancy cannot be brought to an end by the landlord except by obtaining an order for possession from the court and executing the order. The grounds on which a landlord may seek possession are, for the most part, specified in Schedule 2 to the 1985 Act.

4. There are three broad categories of grounds for possession. In the case of grounds 1 to 8 the court may not make an order for possession unless it considers it reasonable to do so. In the case of grounds 9 to 11 the court must not make an order unless suitable accommodation will be available for the tenant when the order takes effect. In the case of grounds 12 to 16 the court must not make an order unless it both considers it reasonable to do so, and is also satisfied that alternative accommodation will be available for the tenant when the order takes effect. Grounds 1 to 8 include a number of grounds arising out of the tenant's default. These include rent arrears or breach of obligation (ground 1); anti-social behaviour (ground 2); domestic violence (ground 3); inducing the grant of the tenancy by a false statement (ground 5).

5. Where a landlord wants to recover possession on one or more of these grounds it must serve notice on the tenant complying with section 83 of the 1985 Act, although the court has power to dispense with this requirement if it considers it just and equitable to do so. The notice must be in a form prescribed by regulations, and must specify the ground on which the court will be asked to make an order, and give particulars of that ground: section 83 (2). The court may not make an order for possession on grounds other than those specified, but the grounds may be altered or added to with the leave of the court: section 84 (3).

6. Where the court makes an order it has wide powers to stay or suspend execution of the order and to impose conditions: section 85. I will return to the details of these powers in due course.

7. Thus when the matter comes to court on one or more of grounds 1 to 8, the court must proceed in three stages. Stage 1 is to consider whether the ground or grounds relied on have been established. Stage 2 is to consider whether it is reasonable to make an order for possession. Stage 3 is to consider whether to exercise the power to postpone suspend or stay the order or to do so on terms: *Gallagher v Castle Vale Action Trust Ltd* [2001] EWCA Civ 944, (2001) 33 HLR 810.

8. *Assured tenancies*. Assured tenancies are protected by Part I of the Housing Act 1988 ("the 1988 Act"). In order to attract that protection the tenancy must be a tenancy of a dwelling house in England; and the dwelling must be the tenant's only or principal home. A local authority tenancy cannot be an assured tenancy. An assured tenancy cannot be brought to an end by the landlord except by obtaining an order for possession from the court and executing it. Grounds on which possession may be sought are those in sections 7 and 21. Section 21 applies only to assured shorthold fixed term tenancies (the so-called "no fault eviction") and does not arise in these appeals. The grounds for possession are set out in Schedule 2 to the 1988 Act. Those in Part I of that Schedule (grounds 1 to 8) are grounds which, if established, require the court to order possession. These are generally referred to as mandatory grounds. Those in Part II of that Schedule (grounds 9 to 17) are grounds which, if established, empower the court to make an order for possession if it considers it reasonable to do so. These are generally referred to as discretionary grounds.

9. As in the case of secure tenancies, where a landlord wants to recover possession on one or more of these grounds it must serve notice on the tenant complying with section 8 of the 1988 Act, although the court has power to dispense with this requirement if it considers it just and equitable to do so unless possession is sought on a mandatory ground. The notice must be in a form prescribed by regulations, and must specify the ground on which the court will be asked to make an order, and give particulars of that ground. The court may not make an order for possession on grounds other than those specified, but the grounds may be altered or added to with the leave of the court: section 8 (2). The notice must also specify a window within which proceedings may be begun.

10. Where the court makes an order for possession on a discretionary ground it has wide powers to stay or suspend execution of the order and to impose conditions: section 9. Again, I will return to the details of these powers in due course.

Anti-social behaviour

11. Anti-social behaviour has been a discretionary ground for possession in both regimes ever since their enactment. Amendments to both regimes have been made over the years in order to make it easier for landlords to recover possession in cases of anti-social behaviour. In the case of assured tenancies, section 16 (2) of the Anti-social Behaviour Act 2003 inserted a new section 9A into the 1988 Act, which required the court to consider in particular (a) the effect that the nuisance or annoyance has had on persons other than the person against whom the order is sought; (b) any continuing effect the nuisance or annoyance is likely to have on any such persons; (c) the effect that the nuisance or annoyance would be likely to have on such persons if the conduct is repeated. A similar amendment was made by the insertion of section 85A into the 1985 Act. These amendments were made because Parliament was concerned that judges were not paying sufficient attention to these particular matters when deciding

whether or not it was reasonable to make a possession order: *Moat Housing Group-South Ltd v Harris* [2005] EWCA Civ 287, [2006] QB 606 at [144].

12. Further amendments were made by the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"). These amendments introduced new mandatory grounds for possession, which are largely the same for both regimes. But the procedural requirements are different.

Anti-social behaviour: secure tenancies

13. Section 84A of the 1985 Act (inserted by the 2014 Act) creates five mandatory grounds for possession, each expressed as a "Condition". It provides, so far as relevant to these appeals:

> "(1) If the court is satisfied that any of the following conditions is met, it must make an order for the possession of a dwelling-house let under a secure tenancy. This is subject to subsection (2) (and to any available defence based on the tenant's Convention rights, within the meaning of the Human Rights Act 1998).
>
> (2) Subsection (1) applies only where the landlord has complied with any obligations it has under section 85ZA (review of decision to seek possession).
>
> (3) Condition 1 is that—
>
> (a) the tenant, or a person residing in or visiting the dwelling-house, has been convicted of a serious offence, and
>
> (b) the serious offence—
>
> (i) was committed (wholly or partly) in, or in the locality of, the dwelling-house,
>
> (ii) was committed elsewhere against a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or
>
> (iii) was committed elsewhere against the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and directly or indirectly related to or affected those functions."

14. Serious offences are defined by Schedule 2A. The Act also lays down procedural requirements. Section 83ZA relevantly provides:

> "(1) This section applies in relation to proceedings for possession of a dwelling-house under section 84A (absolute ground for possession for anti-social behaviour), including

proceedings where possession is also sought on one or more of the grounds set out in Schedule 2.

(2) The court must not entertain the proceedings unless the landlord has served on the tenant a notice under this section.

(3) The notice must—

(a) state that the court will be asked to make an order under section 84A for the possession of the dwelling-house,

(b) set out the reasons for the landlord's decision to apply for the order (including the condition or conditions in section 84A on which the landlord proposes to rely), and

(c) inform the tenant of any right that the tenant may have under section 85ZA to request a review of the landlord's decision and of the time within which the request must be made.

(4) In a case where possession is also sought on one or more of the grounds set out in Schedule 2, the notice must also—

(a) specify the ground on which the court will be asked to make the order, and

(b) give particulars of that ground.

(5) A notice which states that the landlord proposes to rely upon condition 1, 3 or 5 in section 84A—

(a) must also state the conviction on which the landlord proposes to rely, and

(b) must be served on the tenant within—

(i) the period of 12 months beginning with the day of the conviction, or

(ii) if there is an appeal against the conviction, the period of 12 months beginning with the day on which the appeal is finally determined or abandoned.

…

(8) A notice under this section must also inform the tenant that, if the tenant needs help or advice about the notice and what to do about it, the tenant should take it immediately to a Citizens' Advice Bureau, a housing aid centre, a law centre or a solicitor.

(9) The notice—

> (a) must also specify the date after which proceedings for the possession of the dwelling-house may be begun, and
>
> (b) ceases to be in force 12 months after the date so specified.
>
> (10) The date specified in accordance with subsection (9)(a) must not be earlier than—
>
> (a) in the case of a periodic tenancy, the date on which the tenancy could, apart from this Part, be brought to an end by notice to quit given by the landlord on the same day as the notice under this section.
>
> (b) in the case of a secure tenancy for a term certain, one month after the date of the service of the notice."

There is no prescribed form for notices given under this section.

15. Section 83A relevantly provides:

> "(2) Where—
>
> (a) a notice under … 83ZA has been served on a tenant, and
>
> (b) a date after which proceedings may be begun has been specified in the notice in accordance with … section 83ZA(9)(a),
>
> the court shall not entertain proceedings for the possession of the dwelling-house unless they are begun after the date so specified and at a time when the notice is still in force."

16. The review process is contained in section 85ZA which relevantly provides:

> "(1) A tenant may request a review of a landlord's decision to seek an order for possession of a dwelling-house under section 84A if the interest of the landlord belongs to—
>
> (a) a local housing authority, or
>
> (b) a housing action trust.
>
> (2) Such a request must be made in writing before the end of the period of 7 days beginning with the day on which the notice under section 83ZA is served.
>
> (3) On a request being duly made to it, the landlord must review its decision.
>
> (4) The landlord must notify the tenant in writing of the decision on the review.

> (5) If the decision is to confirm the original decision, the landlord must also notify the tenant of the reasons for the decision.
>
> (6) The review must be carried out, and the tenant notified, before the day specified in the notice under section 83ZA as the day after which proceedings for the possession of the dwelling-house may be begun."

17. Where possession is sought on this ground, the court has no power to dispense with the statutory notice: section 83 (A1).

Anti-social behaviour: assured tenancies

18. Ground 7A (inserted by the 2014 Act) relevantly provides:

> "Any of the following conditions is met.
>
> Condition 1 is that—
>
> (a) the tenant, or a person residing in or visiting the dwelling-house, has been convicted of a serious offence, and
>
> (b) the serious offence—
>
> (i) was committed (wholly or partly) in, or in the locality of, the dwelling-house,
>
> (ii) was committed elsewhere against a person with a right (of whatever description) to reside in, or occupy housing accommodation in the locality of, the dwelling-house, or
>
> (iii) was committed elsewhere against the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions, and directly or indirectly related to or affected those functions."

19. Serious offences are the same as in the case of the 1985 Act. Amendments were also made to the requirements in section 8 about the service of notice seeking possession. These amendments related to the window within which proceedings could be begun. The prescribed form of notice is scheduled to the Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) and Suspension (Coronavirus) Regulations 2021. Since ground 7A is in Part 1 of Schedule 2 to the 1988 Act, it is a mandatory ground for possession.

20. Unlike the case of secure tenancies, there is no statutory right to a review of the landlord's decision; but government guidance expects housing associations to offer a similar non-statutory review procedure: *Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory Guidance for frontline professionals (revised edition March 2023)*.

Hajan v Brent: the facts

21. On 12 March 2010 Brent granted Mr Hajan a tenancy of a one-bedroom flat in Empire Way. The tenancy was a secure tenancy and thus protected by the Housing Act 1985. In June 2022 Mr Hajan went to the Brent Civic Centre where he threatened staff and caused damage. The police were called, and he was arrested. On 5 August 2022 Mr Hajan pleaded guilty to an offence under section 1 of the Criminal Damage Act 1971. On 7 September 2022 the Crown Court at Harrow sentenced him to 200 hours of community service and a rehabilitation activity requirement of 10 days. That offence is a serious offence as defined.

22. On 30 November 2022 Brent served Mr Hajan with a notice seeking possession of the flat, as required by section 83 of the 1985 Act. The grounds on which possession was sought were those in grounds 1 and 2 in Schedule 2 to the 1985 Act. Ground 1 concerns arrears of rent or breach of tenancy obligations, and ground 2 concerns anti-social behaviour. The notice relied on noise nuisance, drug dealing, attempted arson and possession of a weapon. It also relied on the conviction. Where a landlord relies on those grounds, the court may only make an order for possession if it considers it reasonable to do so.

23. Brent issued the proceedings on 21 December 2022.

24. In April 2023 Brent received the certificate of Mr Hajan's conviction. On 4 May 2023 Brent served on Mr Hajan a further notice seeking possession on the ground of anti-social behaviour but this time seeking to rely on the mandatory ground for possession contained in section 84A of the 1985 Act. The notice relied in particular on Mr Hajan's conviction. The notice also stated that court proceedings for possession would not be begun until after 5 June 2023; and it informed Mr Hajan of his right to seek a review of the landlord's decision to seek an order on that ground. Mr Hajan did not seek a review.

25. On 6 June 2023 Brent applied in the pending proceedings to amend the Particulars of Claim so as to rely on the mandatory ground for possession. On 5 July 2023 DDJ Samuel granted permission to amend. The order simply said:

> "The application for amendment of the Particulars of claim is granted."

26. Mr Hajan sought permission to appeal against that order. The application came before HHJ Luba KC. He granted permission to appeal but transferred the appeal itself to this court. On 12 January 2024 Andrews LJ accepted the transfer.

Poplar HARCA v Kerr: the facts

27. Mrs Kerr is the tenant of a three-bedroom house in Poplar. Poplar HARCA became her landlord following a stock transfer in May 2004. The tenancy is an assured tenancy protected by the Housing Act 1988. She lives with her younger son Liam who is also her carer. She fell into arrears of rent, and Poplar HARCA began possession proceedings against her. On 7 February 2017 DJ Pigram gave judgment for Poplar HARCA for £2,512.35 in respect of rent arrears; and made an order for possession. The relevant parts of the order read:

> "1. The defendant give the claimant possession of [the house] on or before 07 March 2017.
>
> …
>
> 3. This order not to be enforced so long as the defendant pays the claimant the rent and arrears and the amount for rent arrears
>
> Payment required
>
> £3.75 per week the first instalment being paid on or before 13 February 2017."

28. On 25 August 2020 a group of men forced their way into Mrs Kerr's home and threatened violence. Mrs Kerr's son Bradley arrived and in the course of scaring off the intruders he fired an imitation firearm. He was charged with possession of an imitation firearm with intent to cause violence. On 19 November 2020, in the Crown Court at Wood Green he pleaded guilty to that offence and was sentenced to a term of immediate imprisonment for 14 months. That offence is a serious offence as defined.

29. In the light of that offence Poplar HARCA decided to seek possession of the house on the mandatory ground for possession set out in ground 7A in Schedule 2 to the 1988 Act. Notice seeking possession was served on Mrs Kerr in February 2021. It gave particulars of the offence to which Bradley Kerr had pleaded guilty and said how seriously the landlord took such behaviour. It went on to say that the "court proceedings will not begin until after 28 March 2021". The notice informed Mrs Kerr of her right to a review of the landlord's decision to seek possession on that ground. Mrs Kerr took up that right, but on 30 March 2021 a review panel upheld the landlord's decision.

30. Poplar HARCA thereupon applied to the court in the extant proceedings for a variation of the suspended order which it described as "converting the suspended order…into an outright possession order".

31. That application came before DJ Bell on 16 February 2022. One of the arguments put forward on Mrs Kerr's behalf was that the judge had no jurisdiction to make the order she was asked to make. She rejected that argument and held that section 9 of the 1988 Act gave her that power. She varied the original order to an outright order; and ordered possession to be given on or before 2 March 2022. Mrs Kerr appealed against that decision. In his judgment on 26 July 2023 HHJ Luba KC held that section 9 of the 1988 Act was not in play. Rather, he held, a suspended order for possession carried with it an implicit "liberty to apply" which gave the court power to vary a suspended order in the manner sought by Poplar HARCA.

32. With the permission of Andrews LJ, Mrs Kerr appeals.

Approach to interpretation

33. In the light of one of Mr Hodgson's written arguments on Mrs Kerr's behalf, it is necessary to say something about the court's approach to the interpretation of statutes. In his skeleton argument, Mr Hodgson argued that, because legislation relating to the security of tenure of residential tenants should be clear, simple and consistent, there

was no need for a purposive approach to interpretation. I agree with the premise, but disagree with the conclusion.

34. On the contrary, as it is put in Bennion Bailey & Norbury on Statutory Interpretation (8th ed para 12.2):

> "Every enactment to be given a purposive construction."

35. Three examples will suffice. In *Barclays Mercantile Business Finance Ltd v Mawson* [2004] UKHL 51, [2005] 1 AC 684 at [28] Lord Nicholls said:

> "… the modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose."

36. In *Kostal UK Ltd v Dunkley* [2021] UKSC 47, [2022] ICR 434 at [30] Lord Leggatt said:

> "First, as with any question of statutory interpretation, the task of the court is to determine the meaning and legal effect of the words used by Parliament. The modern case law… has emphasised the central importance of identifying the purpose of the legislation and interpreting the relevant language in the light of that purpose."

37. This purposive approach applies to all legislation: *Rossendale Borough Council v Hurstwood Properties (A) Ltd* [2021] UKSC 16, [2022] AC 690 at [10].

38. So, it is necessary to ask: what is the purpose of the mandatory ground? The overall purpose of the mandatory ground (in both the 1985 Act and the 1988 Act) is to expedite the eviction of landlords' most anti-social tenants to bring faster relief to victims. This offers better protection for victims, saves landlords costs and frees up court resources and time. The provisions were introduced to speed up the possession process in cases where anti-social behaviour or criminality has already been proven by another court: *Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory Guidance for frontline professionals (revised edition March 2023)*.

Hajan v Brent: the issue

39. The issue in *Hajan v Brent* is whether a landlord who serves notice under section 83ZA of the 1985 Act may apply to amend existing proceedings to allow reliance on that ground; or whether such a landlord must begin fresh proceedings in order to rely on it. The essence of the argument for Mr Hajan is that the combination of section 83ZA (9)(a) (the notice must "must also specify the date after which proceedings for the possession of the dwelling-house may be begun") and section 83A (2) ("the court shall not entertain the proceedings unless they are begun after the date so specified") means that the landlord must "begin" proceedings after the specified date. Amending existing proceedings does not comply with that requirement, because the proceedings have already been begun.

40. In *Lower Street Properties Ltd v Jones* (1996) 28 HLR 877 the landlord gave notice to the tenant under section 21 of the 1988 Act requiring possession of the property. Section 21 (4) required the court to make such an order if satisfied that the landlord had given notice to the tenant stating that possession was required after a date "not earlier than two months after the date the notice is given." The notice in question stated that the landlord "cannot apply for such an order [i.e. an order for possession] before the notice has run out." In fact, the landlord began proceedings the day before the expiry of the notice. This court held that the trial judge had been right to dismiss the claim. Kennedy LJ had "considerable misgivings" about the landlord starting proceedings before the expiry of the notice, although he did not express a final view on the principle. His reason for dismissing the appeal was succinctly stated as follows:

> "In the present case there is, I believe, an even more compelling reason for saying that the notice served on the June 16, 1994 could not be used to support proceedings commenced on the August 26, 1994 and that is that the notice itself said: "The landlord cannot apply for such an order (i.e. an order for possession) before the notice has run out".
>
> It may be that if the notice had been differently worded the landlord could, without offending against any of the County Court Rules, have started proceedings when they did and in due course obtain a possession order but this notice, worded as it is, could not in my judgment be used in proceedings begun on August 26, because those proceedings were themselves in breach of the assurance given in the notice."

41. Schiemann LJ said:

> "It must have been Parliament's intention that the tenant should not be forced to give possession until the expiry of the two month notice. Yet the court, under the sub-section, "shall make an order for possession if it is satisfied that appropriate notices have been given by the landlord". There is, as was pointed out, no mention of waiting until the expiry of the periods referred to in the notice. It seems that the way in which the court is prevented from making the order under section 21 (4) prior to the date specified in the notice is because it is implicit that the landlord cannot bring proceedings until after that date. In argument it was common ground that the court had no power to make such an order prior to that specified date."

42. Phillips LJ agreed with the result.

43. The substantive judgments were very compressed, and it is not easy to discern a common ratio decidendi. In my view they give different reasons for their conclusions. I consider that Kennedy LJ based his reasoning on the form of the notice, in that the commencement of proceedings was contrary to the assurance given in the notice. Schiemann LJ, on the other hand, thought that it was an implicit requirement of the legislation that proceedings could not be begun before the expiry of the notice.

Phillips LJ did not expressly concur with the reasoning in either judgment, although he agreed with the result.

44. Mr Vanhegan, for Mr Hajan, relies on that case. The general principle underpinning it, he says, is that a cause of action must have arisen before proceedings are issued; and that a claim for possession must be brought by originating process rather than by means of an application within existing proceedings. Although in other cases, the courts have been willing, at the stage of deciding whether to enforce an order already made, to consider evidence of matters that could have justified the making of an order for possession even though they had not been the basis for making the order in the first place, they were cases in which the court had the ability to dispense with service of a notice if it was just and equitable to do so. That power does not apply in this case: the requirement to serve a notice is a strict one. Moreover, one very important component of the statutory procedure is the tenant's ability to request a review of the decision to serve the notice. The purpose of that review is to seek to persuade the landlord not to issue proceedings. If the landlord has already done so, the right to a review is meaningless.

45. He did at one stage in his oral submissions suggest that the reasoning in *Lower Street* meant that the form of notice created some form of estoppel or (in a public sector case) a legitimate expectation from which a landlord should not be allowed to resile. But he disavowed any suggestion that Mr Hajan had relied on the notice, or that he had suffered any prejudice by the procedure that the landlord had in fact adopted. Even if the point were a good one in principle (which I doubt) the facts do not support it.

46. Mr Grundy KC, for Brent, does not challenge the result in *Lower Street*. But he distinguishes it on the basis that in this case, unlike the position in *Lower Street*, there were already proceedings on foot, and that although Brent was seeking to add a new claim it did so *after* the expiry of the notice seeking possession under section 84A. So, the mischief identified in *Lower Street* does not arise. There is no rule of law (except perhaps where a limitation defence is raised) which precludes the addition of a cause of action to existing proceedings where that cause of action has arisen after the proceedings have been begun. If there is any doubt about the matter, the court has power under CPR to direct that an amendment shall only take effect as from the date when the amendment is made: *The Football Association Premier League Ltd v O'Donovan* [2017] EWHC 152 (Ch).

47. In any event, the real gravamen of Mr Vanhegan's argument, in my judgment, is not what effect the notice itself had, but the link between what the landlord must do and what the court can do. Section 83A (9) (a) requires the landlord to specify a date in the notice after which proceedings for possession may be begun; and section 83A (2) prohibits the court from entertaining proceedings for possession of the dwelling house unless they are begun after the date specified in the notice. There is, therefore, no need to rely on what may or may not be implicit in the legislation, or to resort to estoppel or its public law equivalent.

48. The issue therefore resolves itself into two questions: what is the meaning "proceedings" in sections 83ZA (9) and 83A; and when are proceedings "begun" for the purposes of those sections?

49. Mr Grundy argues that the word "proceedings" has no fixed and immutable meaning. Its meaning depends on the statutory context and the purpose of the provision in which it appears. It may refer to proceedings both at trial and on appeal relating to the same claim (as in *Plevin v Paragon Personal Finance Ltd (No 2)* [2017] UKSC 23, [2017] 1 WLR 1249). In the context of qualified one-way costs shifting rules in personal injury claims, "proceedings" may exclude a separate claim for contribution from a third party by a defendant to such a claim, even though all claims are part of the same action (as in *Wagenaar v Weekend Travel Ltd* [2014] EWCA Civ 1105, [2015] 1 WLR 1968). In this case what is in issue is the meaning of "proceedings" in sections 83ZA and 83A, rather than, say, its meaning in the CPR.

50. It is therefore necessary to inquire: what is the purpose of sections 83ZA and 83A where the landlord relies on a conviction for a serious offence? Their first purpose is to inform the tenant that the landlord will seek possession on the mandatory ground and give reasons for that decision. Their second purpose is to inform the tenant of their right to request a review of that decision. Their third purpose is to ensure that the landlord acts promptly after the conviction. Their fourth purpose is to specify a date after which proceedings may be begun (which will generally be a month or thereabouts after service of the notice), and to ensure that proceedings are begun within a year thereafter. The date specified in the notice will also be the deadline for completing any review under section 85ZA. Overall, therefore, the purpose of section 83ZA is to inform the tenant of the landlord's decision (with reasons); to give him a fair opportunity to request a review of it and to ensure that the tenant is not subjected to proceedings based on a stale conviction. The purpose of section 83 A (2) is to preclude the court from acting unless that process has been concluded. It is true that the court has no power to dispense with the giving of notice under section 83ZA, but in a case where notice under section 83ZA has in fact been given, I do not regard that as significant.

51. Mr Grundy concentrated most of his fire on the meaning of "proceedings." His skeleton argument did not in terms address the argument that the statute requires the notice to state that the proceedings will not be "begun" until after the specified date. Here the proceedings had already been begun well before notice under section 84A had been served. In ordinary language proceedings are "begun" by the issue of originating process (in this case, a claim form). That is reflected in CPR rule 7.2 (1):

> "Proceedings are started when the court issues a claim form at the request of the claimant."

52. Clearly, where a landlord proposes to amend existing particulars of claim rather than issue a new claim form that statement cannot be applied. But in oral submissions Mr Grundy argued that the amendments themselves could be regarded as "proceedings" and that they are "begun" at some point in the process of obtaining permission to amend and making the amendment. He proposed various dates for the date when proceedings are "begun," but his final position was that proceedings are "begun" when the landlord applies for permission to amend. Mr Vanhegan objected that the date of the application cannot be correct, not least because at the date when the application is made no one knows whether permission to amend will be granted. In my judgment there is considerable force in that point. Moreover, all that the order does is to permit the applicant to amend. The applicant may choose not to take up that permission. In some cases, however, the grant of permission to amend has been held

to be mandatory (e.g. *Fresenius Kabi Deutschland gmbh v CareFusion 303 Inc* [2011] EWCA Civ 1288, [2012] CP Rep 8; *Hague Plant Ltd v Hague* [2018] EWHC 2517 (Ch)) but that depends on the terms of the order. It is not, I think, possible to interpret the order made in this case as being mandatory in that sense.

53. However, by way of Respondent's Notice (which we permitted to be relied on by way of cross-appeal) Mr Grundy argued that the order should be amended by stating that the amendment should take effect "from the date of this order" (not the date of the application). The editors of Civil Procedure (the White Book) suggest in paragraph 17.3.4:

> "A direction that expressly obliges a party to serve an amended statement of case by a certain date *or specifies the date when the amendment will take effect*, will avoid the potential uncertainty created by a direction that merely grants permission in abstract to a party to amend." (Emphasis added)

54. As I have said, the court has that power.

55. The interpretation for which the tenant contends is wasteful of costs and court time, and results in an unnecessary duplication of effort. That is contrary to the judgment of Ward LJ in *Manchester CC v Finn* [2002] EWCA Civ 1998, [2003] HLR 41; and the observations of Lord Neuberger in *Knowsley Housing Trust v White* [2008] UKHL 70, [2009] 1 AC 636 (both of which I cite below). It is also contrary to the policy of the CPR which encourages all issues between parties to be decided in the same action. The substantive protections given to the tenant by the statutory scheme (i.e. the time lapse between service of the notice and taking steps to recover possession on the mandatory ground, and the ability to apply for a review of the landlord's decision to serve the notice) have been adhered to. The procedural tail should not be allowed to wag the substantive dog.

56. Nor can it be said that the ability of the court to permit the amendment means that the statutory right to review is pointless. Where a landlord has begun an action based on a discretionary ground for possession, it has necessarily placed in the hands of the court the decision to decide whether it is reasonable to make an order and if so whether that order should be suspended. If, for example, the landlord has begun an action based on nuisance or annoyance, the court might make an order suspended on terms that the impugned conduct is not repeated. So one purpose of the review in circumstances like the present is to give the tenant the opportunity to persuade the landlord to leave the decision whether to make a possession order in the hands of the court, rather than to deprive the court of discretion.

57. In the light of these considerations, I consider that it is possible to interpret "proceedings" as referring to an amended claim and that those proceedings are "begun" when the landlord obtains the assistance of the court in securing possession on the ground of satisfaction of one of the conditions in section 84A by permitting an amendment and specifying when it comes into effect.

58. Accordingly, in my judgment, and giving a purposive interpretation to sections 83ZA and 83A (2), if the court were to exercise its power to fix a date from which the amendment took effect, there would be no difficulty in interpreting the word

"proceedings" as referring to the amended proceedings, and as regarding those proceedings as having been "begun" on the date when the amendment took effect.

59. I would dismiss this appeal, subject to varying the order in the manner proposed in the Respondent's Notice.

Poplar HARCA v Kerr: the issue

60. The issue in *Poplar HARCA v Kerr* is whether either in exercise of its wide powers under section 9 of the 1988 Act or under an implied "liberty to apply" the court has power to vary a suspended order for possession originally made on a discretionary ground by making an unconditional order on a mandatory ground.

The extent of the court's power to suspend or vary

61. Although we are concerned with the powers of suspension and variation under section 9 of the 1988 Act, most of the case law concerns section 85 of the 1985 Act. So, I start there.

62. Section 84 of the 1985 Act specifies the grounds on which a possession order may be made against a secure tenant. Thus, any order for possession is made under that section.

63. Section 85 of the 1985 relevantly provides:

> "(1) Where proceedings are brought for possession of a dwelling-house let under a secure tenancy on any of the … cases in which the court must be satisfied that it is reasonable to make a possession order, the court may adjourn the proceedings for such period or periods as it thinks fit.
>
> (2) On the making of an order for possession of such a dwelling-house on any of those grounds, or at any time before the execution of the order, the court may—
>
> (a) stay or suspend the execution of the order, or
>
> (b) postpone the date of possession,
>
> for such period or periods as the court thinks fit.
>
> (3) On such an adjournment, stay, suspension or postponement the court—
>
> (a) shall impose conditions with respect to the payment by the tenant of arrears of rent (if any) and rent unless it considers that to do so would cause exceptional hardship to the tenant or would otherwise be unreasonable, and
>
> (b) may impose such other conditions as it thinks fit.

> (4) If the conditions are complied with, the court may, if it thinks fit, discharge or rescind the order for possession."

64. The equivalent provision dealing with the grounds of making possession orders against an assured tenant are contained in section 7 of the 1988 Act.

65. Section 9 of the Housing Act 1988 relevantly provides:

> "(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.
>
> (3) On any such adjournment as is referred to in subsection (1) above or on any such stay, suspension or postponement as is referred to in subsection (2) above, the court, unless it considers that to do so would cause exceptional hardship to the tenant or would otherwise be unreasonable, shall impose conditions with regard to payment by the tenant of arrears of rent (if any) and rent and may impose such other conditions as it thinks fit.
>
> (4) If any such conditions as are referred to in subsection (3) above are complied with, the court may, if it thinks fit, discharge or rescind any such order as is referred to in subsection (2) above.
>
> …
>
> (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."

66. It can be seen almost at once that the wording of the two sections (although applying to different schemes for security of tenure) is remarkably similar. Although section 85 of the 1985 Act does not contain an equivalent to section 9 (6), it achieves a similar effect by limiting the application of section 85 to grounds which do not include the mandatory ground. In fact their ancestry goes back for over a century.

Similar powers are found in section 5 of the Increase of Rent and Mortgage Restrictions Act 1920 and have been repeated in successive Rent Acts.

67. Under previous iterations of these powers, the court had the power to convert an absolute order for possession into a conditional order: *Payne v Cooper* [1958] 1 QB 174, 181. Lord Browne-Wilkinson took the same view in relation to section 85 of the 1985 Act in *Burrows v Brent LBC* [1996] 1 WLR 1448, 1455. It does not, of course, necessarily follow that the converse is true.

68. In *Sheffield City Council v Hopkins* [2001] EWCA Civ 1023, [2002] HLR 12 the landlord brought proceedings against a secure tenant on the ground of rent arrears. The court made an order for possession; and in exercise of the powers in section 85 of the 1985 Act suspended it on terms that the tenant paid the current rent and a specified amount towards the arrears. She failed to comply with the terms; so the landlord applied for a warrant. The tenant thereupon sought a suspension of the warrant. On that application the landlord wished to rely on evidence of nuisance and annoyance which had not been an original ground for possession, even though it could have been. This court held that the landlord was entitled to do so. The tenant, for whom I appeared, argued that the ground specified in the notice seeking possession governed the proceedings and that additional grounds should not be considered when exercising the powers under section 85. This court rejected that argument. Lord Woolf CJ said at [22]:

> "Under section 85(2) I have little doubt that the legislation did not seek to confine the discretion of the court to facts connected to the ground which was relied upon for initially seeking possession. Nor is the court restricted to the ground on which the order is made. It would be very unfortunate if the position were otherwise. *There could be matters occurring subsequent to the order for possession which make it very clear that it would be wrong to suspend or stay the execution of an order for possession.* The consequence of Mr Lewison's submission if that were to happen would be that the only remedy that the landlord could have would be to seek a new order for possession if the court were to suspend or stay the execution of the order which had already been made because they were not able to take into account the new material which had arisen since the order for possession was made." (Emphasis added)

69. He did, however, consider that the tenant should have proper notice of additional matters on which the landlord relied. He went on at [29] to give general guidance to district judges. That guidance included the following:

> "(d) …If a claimant has included an allegation as part of the original proceedings, or sought to have a condition inserted, then that will be in favour of the district judge exercising his discretion to take into account the material sought to be relied upon by the landlord in opposing the tenants' application to prevent execution.

> (e) Whether the allegation relates to events which occurred prior to the order for possession being made. While allowance must be made for the fact that the local authority may not have wanted to have the expense of complex and contested proceedings, generally the discretion should be more readily exercised in favour of taking into account matters which had occurred subsequent to the order for possession being made than it would be if they relate to matters prior to the proceedings being commenced."

70. A similar point arose in *Manchester CC v Finn*. In that case the court made an order for possession against a secure tenant on the ground of arrears of rent. The order was suspended on terms that the tenant paid the current rent and a specified amount towards the arrears. The tenant was complying with those conditions. The landlord subsequently discovered that the property was being used for the storage of stolen goods. The landlord sought a variation of the terms of suspension by the inclusion of an additional condition prohibiting the use of the property for illegal activity. The circuit judge, on a first appeal, framed the issue as follows:

> "… is it open to the court, where a tenant is complying with a suspended order for possession, to entertain an application either to revoke that order and substitute an immediate order for possession or to amend the terms of the suspension?"

71. He answered that question in the affirmative. The argument for the tenant was no different in substance to that which the court had rejected in *Sheffield*. This court dismissed the appeal. Arden LJ said:

> "[14] Mr Luba relies heavily on the fact that the Act contains no express provision entitling the court to rescind or vary an order for possession. All the court can do is to postpone the date for possession, which means that all it can do is put the date further forward. He relies on the fact that Parliament has stepped in to provide, as he puts it, a statutory cloak to protect tenants.
>
> [15] Accepting all of that, however, I do not consider that it is necessary to impute to Parliament an intention to require procedural steps to be undertaken simply for their own sake, and in substance, in my judgment, that is what the submission would achieve. It seems to me to be the trend of authority to give a purposive construction to the Act."

72. She continued at [23]:

> "I would therefore hold that the court can make a new order even if the old order for postponement of possession has not expired and *even if the new order provides for possession to be given up forthwith*." (Emphasis added)

73. It is, in my view, clear that Arden LJ (like the circuit judge) considered that a conditional (or suspended) order could be replaced with an unconditional order. She went on to say at [25]:

> "Thus it is common ground in this case that it would not be right to make an order for immediate possession on new material if that order could not properly have been made if new proceedings had been issued and were being heard on that date. The court should be astute to see that the tenant is not taken by surprise, but is not, as I see it, bound to allow additional time simply because it would have taken the landlord longer to bring the matter before the court if he had had to issue fresh proceedings."

74. In his concurring judgment Ward LJ said:

> "[35] Mr Luba submits, however, that, although such an application can be made, if it is made, the court's powers are restricted to the powers available to the court under s.85 (that is to say, to adjourn, stay, suspend or postpone). "Postpone", he says, means to cause the possession to take place at a later time, and that must necessarily mean at a later time than is already ordered. He submits that there is no power to bring forward an ordered date for possession.
>
> [36] I am unable to accept his submissions. First, it would be absurd if the landlord could achieve an earlier date for possession by bringing separate proceedings, yet not be able to do so by application in the existing proceedings. That would not be a pragmatic procedure. On the contrary, it is unnecessarily wasteful of costs.
>
> [37] Secondly, the essential task of the court is to judge the new case afresh and on its merits and decide, in accordance with ss 84 and 85, what order would be appropriate in the new circumstances. Having established the facts, the court would be obliged to ask itself whether or not, on grounds 1 to 8, for example, it would be reasonable to make an order for possession on one of those grounds and, if so, whether it would then be right to postpone that date for possession. The court would then be exercising its power to postpone or not to postpone. Far from being functus officio, it would be the court's duty to apply s.85 de novo and to consider the question of postponement. *If the result is an earlier date, the order may need to be varied, but variation is a procedural necessity to give effect to an original exercise of the power*. Purposively construed, that must be the effect of the Act." (Emphasis added)

75. Those two cases are, in my judgment, authority for the propositions that:

i) On an application under section 85 the court may consider matters that were not within the scope of the original proceedings which led to the making of the possession order in the first place.

ii) In the light of those matters, the court may reconsider any terms of suspension or postponement of possession; and

iii) In the exercise of its powers under that section the court may vary a conditional order so as to turn it into an outright order.

76. It is also clear that the court may exercise its powers under section 85 at any time before the execution of the order; and may do so on multiple occasions either at the instance of the tenant or of the landlord: *Burrows v Brent LBC* at 1457.

77. I note also that in *Knowsley Housing Trust v White* at [85] Lord Neuberger referred to the court's "very wide powers to vary or discharge the order". He also said at [97] that the section (in that case section 85 of the 1985 Act) "should be construed, so far as permissible, to confer as much flexibility as possible on the court, and in such a way as to minimise future uncertainty and need for further applications".

78. Section 9 of the 1988 Act is in very similar terms. Although strictly speaking, cases on a different statute are not binding, the wording of the two is so similar that it would do a disservice to the certainty of the law if we were to distinguish those two cases on that ground.

79. The precise jurisprudential basis of the power was not explored in *Sheffield*, where it was treated as simply a question of interpretation of section 85 itself. This court seems to me to have taken the same approach in *Plymouth CC v Hoskin* [2002] EWCA Civ 684, [2002] CP Rep 55, where Pill LJ described section 85 as conferring a "continuing jurisdiction" on the court. In the same case Clarke LJ said at [32]:

> "(1) … the applicant is entitled to make a fresh application to a district judge for an order staying or suspending the execution of the order for possession; (2) that on such an application the district judge has a wide discretion; and (3) that on such an application the discretion of the district judge is not in any way affected or fettered by the reasons given by District Judge Child for refusing to suspend the order for possession which he made. In short, on such an application the district judge can take all relevant circumstances into account as they appear at the time of the application."

80. In *Manchester*, however, the question was raised. *Manchester* had, by Respondent's Notice, sought to argue that the power to vary was covered by CPR rule 3.1 (7) (A power to make an order includes power to vary or revoke the order). But the appeal was dismissed without hearing argument on that point. Instead, Arden LJ said at [22]:

> "In my judgment the terms of that subsection are satisfied if the order sought would provide for the date of possession to be postponed to a date subsequent to that on which possession was originally to be given up. Moreover, since the order is still

> running, in my judgment liberty to apply to the court is implicit and the liberty to apply in those circumstances does not need to be expressly stated in the court's order. Parliament must be taken to have enacted s.85 in the knowledge that it is the practice of the court to allow applications in proceedings at any time when orders are running without the need to start new proceedings. Parliament must therefore be taken to have known that an application could be made with respect to the present order while it was still running."

81. That approach was followed by this court in *Reading BC v Holt* [2013] EWCA Civ 641, [2014] PTSR 444 at [59], where an express "liberty to apply" was included in the court's order, at least in part to cater for changes in circumstances between the date of the order and the date on which it took effect.

82. Mr Hodgson, for Mrs Kerr, argues section 9 does not expressly give the court the power to *vary* an order. That was one of the arguments raised in *Manchester*, but the court rejected it on the basis that it was necessary to give a purposive construction to the Act. In his skeleton argument Mr Hodgson argued that that observation was *obiter*; and that a purposive interpretation is no longer necessary. For the reasons I have given, I disagree.

83. The purpose of section 9 of the 1988 Act is the same as that of section 85 of the 1985 Act; and neither purpose has changed since their enactment.

84. As I have said, in *Manchester* the court considered that the court had a power to vary an order for possession. A contrary conclusion would have potentially harsh results. Suppose that an order is made on the ground of rent arrears, but requires the tenant to pay £20 per week towards the arrears. The tenant subsequently loses their job and can no longer afford the payments. It would be very harsh if the court could not revisit the terms of suspension and vary them.

85. The second point that Mr Hodgson made in his skeleton argument was that the power under section 9 is a power to postpone the date for possession. It does not permit the court to substitute an outright order for a conditional order. I consider that both *Sheffield CC v Hopkins* and *Manchester CC v Finn* are authority to the contrary. For the reasons I have given, I consider that we should follow those decisions. In the course of his oral submissions, I think that Mr Hodgson accepted that the court could vary a conditional order made on a discretionary ground into an outright order, at least where the material on which the court acted was itself directed towards a discretionary ground. Thus, he accepted that the court could, on an application under section 9, discharge conditions on which a suspended order was made, and thereby allow it to be enforced and executed. But, he said, that did not apply where the landlord relied on material which would have established a mandatory ground. Section 9 (6) expressly forbade the court from exercising any of the powers under section 9 where the court is satisfied that the landlord is entitled to possession on a mandatory ground.

86. In order to evaluate that argument, it is, in my judgment, necessary to examine the original order more closely.

87. In the present case paragraph 1 of the original order required Mrs Kerr to give possession of the house. That, in my view was an order made under section 7 (not section 9). Before that order could be made the judge would have had to be satisfied that the ground (rent arrears) had been established and that it was reasonable to make an order. It is only then that the powers conferred by section 9 come into play. Thus, the exercise of the powers given by section 9 comprise paragraph 3 of the order (the imposition of conditions) and possibly that part of paragraph 1 which fixed the date for possession.

88. The trigger for section 9 (2) and the power to suspend an order is the making of an order for possession ("On the making of an order for possession…"). In this case, that was the original order. The powers under section 9 (3) to impose conditions are triggered by the suspension of the order under section 9 (2) ("… on any such suspension…"). Section 9 remains engaged for as long as the original order (made on a discretionary ground) remains unexecuted. So far as section 9 (6) is concerned, its effect is to remove the court's power to stay, suspend or vary, where the landlord is entitled to possession on mandatory grounds. In my judgment it does not preclude the court from considering material that would have established a mandatory ground when considering varying an order for possession which had originally been granted on a discretionary ground. It is still necessary for the court to exercise its discretion in the light of the new material; whereas if section 9 (6) had applied it would have had no discretion to exercise. That said, if the court is satisfied that the mandatory ground has been made out, the discretion can, in reality only be exercised one way.

89. Since the power under section 9 includes the discharge of conditions originally imposed, the court may discharge conditions subject to which the order for possession was suspended and allow it to take effect as an immediately enforceable order.

90. The second main argument for Mrs Kerr is that "liberty to apply" does not entitle the court to vary an order fundamentally by turning a conditional or suspended order into an outright order. We were shown a number of cases in which the scope of such an express provision in a court order has been considered. In *Cristel v Cristel* [1951] 2 KB 725 a husband and wife entered into a consent order by which the wife agreed to give up possession of the matrimonial home. The order was suspended until such time as the husband had provided the wife with a two or three bedroom "house or bungalow". The order contained an express liberty to apply. The husband applied under that provision for a variation of the suspension by adding "or flat". Somervell LJ said that such a provision "does not entitle people to come and ask that the order itself shall be varied." He considered that the words "liberty to apply" referred to the actual working out of the terms of the order. But he did leave open the possibility that a change of circumstances might allow a substantive change to be made in exceptional circumstances. Denning LJ clearly took the view that if there was an unforeseen change of circumstances the court might vary the order. Hodson LJ reserved his opinion on that question. In *Jordan v Norfolk CC* [1994] 1 WLR 1353 Nicholls V-C applied the approach of Denning LJ.

91. In my judgment these cases are a red herring. Section 9 of the 1988 Act, like section 85 of the 1985 Act, confers on the court a continuing jurisdiction (until execution of the possession order) to re-examine the terms of any suspension in the light of circumstances existing at the time when it is asked to carry out that review. That was the view that the court took in *Sheffield* and in *Plymouth*. Whether this is or is not

analogous to liberty to apply does not matter. Moreover, Mr Hodgson's argument overstates what the judge actually did. She did not rewrite the *order*; she simply discharged the conditions of suspension upon which it has already been made.

92. If it is necessary to accommodate the application into the literal words of the statutory power under section 9 it can, I think, be readily done. First, the court may discharge the conditions of suspension. Second, the court may postpone the original date for possession (here 7 March 2017) to a new (and later) date (here 2 March 2022). That is what DJ Bell did; and I consider that she had the jurisdiction to do so. I have read Arnold LJ's additional observations on the scope of section 9; and I agree with them.

93. Finally, I should say that although Ms Tweedy made a brief reference to CPR rule 3.1 (7) in Poplar HARCA's skeleton argument, a deliberate decision was made not to rely on it in the Respondent's Notice. I therefore say no more about it.

94. I would dismiss this appeal too.

Result

95. I would dismiss both appeals.

Lord Justice Newey:

96. I agree that the appeals should be dismissed for the reasons given by Lewison LJ and Arnold LJ.

Lord Justice Arnold:

97. I agree that both appeals should be dismissed for the reasons given by Lewison LJ. I would just add a few words concerning *Poplar HARCA v Kerr*. I agree with Lewison LJ that Poplar's application can be accommodated within the language of section 9 on a purposive interpretation.

98. Section 9 (2) empowers the court to "stay or suspend execution of the order" or to "postpone the date of possession". As Mr Hodgson accepted, it is implicit in the language of "stay", "suspend" and "postpone" that the court may lift the stay, terminate the suspension and curtail or extend the postponement. To that extent, the possibility of a variation of such an order is implicit in the statutory language. I do not think that section 9 (4) indicates otherwise, since that merely ensures that, even if conditions imposed under section 9 (3) are complied with, the court retains a discretion as to what to do about the order made under section 9 (2). Furthermore, for the reasons explained by Lewison LJ, it would be contrary to the purpose of section 9 (2) to interpret it as only empowering the court to make a once-and-forever order.

99. If it is accepted that it is implicit in section 9 (2) that the order may subsequently be varied, then it naturally follows that the court must be able to reconsider conditions imposed under section 9 (3) when originally ordering the stay, suspension or postponement under section 9 (2). Again, it would be contrary to the purpose of section 9 (3) to interpret it as preventing the court from doing so.

100. I would interpret Poplar's application as an application to (i) terminate the suspension of the possession order, (ii) discharge the conditions attached to the suspension and

(iii) extend the postponement of the date of possession to a new future date. Another way of looking at (iii) is that the court was being asked to set a new date for compliance with the possession order, just as a court can set a fresh date for compliance with a mandatory injunction after the original date for compliance has passed. DJ Bell had jurisdiction to do all of these things. For the reasons given by Lewison LJ, she also had jurisdiction upon that application to take into account a mandatory ground which had arisen since the date of the original order.