<u>In the County Court at Liverpool</u>
<u>Case number LV07LV365</u>
<u>On Appeal from District Judge Colvin (Appeal No 33 of 2025):</u>

BETWEEN

PAUL CROSS

Claimant/Respondent

and

TRACEY MORS

Defendant /Appellant

Before **His Honour Judge Graham Wood KC**

Hearing : 6th March 2026

Mr James Stark (instructed by Lawstop Solicitors) for the Appellant

Mr Aqeel Qureshi (instructed by Excello Solicitors) for the Respondent

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APPROVED APPEAL JUDGMENT

His Honour Judge Graham Wood KC

Introduction

1. This is an appeal against the order of District Judge Colvin on 23 May 2025 following a possession hearing whereby he granted to the Claimant/ Respondent the outright possession of a dwelling house, 18 Elaine Street in Toxteth, Liverpool, which was let to the Defendant /Appellant,[1] Tracey Mors, under an assured shorthold tenancy. The appeal has proceeded with permission limited to grounds 1 and 6 of the notice of appeal granted to the Defendant on the papers by Her Honour Judge O'Brien on 29th September 2025. The Defendant has not sought to renew an application for permission orally in relation to the other five grounds.

2. I heard submissions from counsel on 5th March, and because the procedural history,[2] as well as the legal position was less than straightforward, I have taken time to reflect, and now provide this reserved judgment.

Background

3. The original tenancy was granted to the Defendant in 2014 for a period of 12 months, reviewed periodically thereafter, until August 2021 when the current tenancy commenced. The agreement is not included in the appeal bundle, but available in the original trial bundle. It is largely a standard form AST with no remarkable features. The tenant's obligations included at clause 3 a general requirement in relation to control of the property and a prohibition against nuisance and annoyance, and at clause 4 a covenant against alteration of the property without consent.

4. It would appear that the Defendant lived at the property for most of the time on her own. She is currently 64 years of age, but has not enjoyed good health with a variety of medical health conditions, including alcohol dependency, long covid, osteoarthritis, chronic pain and a depressive disorder. At some point in early 2024 the Defendant was hospitalised, and with her permission the Claimant and/or his wife entered the property seemingly to feed the Defendant's dog and to provide some cleaning. It was discovered that alterations have been carried out to the property and the loft space, and that attempts were being made to grow cannabis plants. Electricity had been diverted to enable a connection in the loft.

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[1] The parties are referred to throughout this judgment as Claimant and Defendant respectively for ease of understanding.

[2] There was at least one order (referred to at paragraph 12 below) which was not in the bundle, and of which the respondent was unaware. Further, it was not drawn to the attention of the first instance court.

5. A notice seeking possession (NSP) was served on the Defendant in August 2024 and on 17th September proceedings were commenced for possession of the property on grounds 12 and 13 of schedule 2 of the Housing Act 1988.

6. The Defendant did not file a defence to the possession claim, but on 8th November 2024 an N244 application notice was issued. It is said that she had received some advice from a law centre, to the effect that it was too late to file a defence, although the application notice did not identify the order which she was seeking. Instead it was accompanied by a lengthy handwritten letter of some 18 pages or so addressed to the court. The Defendant sought to explain her medical conditions in detail, and how she would be affected were she to be evicted. She also provided explanations as to what had been going on in the property, the work that she had arranged to be carried out herself, including improvements, but denying a lack of knowledge of any cannabis cultivation in the loft, which she had been unable to access. She thought the loft had been used by her son at some point to harvest bitcoin and accepted that in the past she had attempted to grow cannabis plants in her bedroom to help with her pain, but this had not been successful. She made complaints about abuse which she had received from the landlord and threats which have been directed to her son. The letter was somewhat rambling and incoherent and was not in the form of a witness statement, with a statement of truth, although it was clear that she opposed the claim for possession.

7. There were a number of procedural hearings, significantly in excess of that which might have been expected in a standard possession claim. The first order appears to be that of District Judge Baker on 18th November 2024, an order made on the papers, whereby he directed a witness statement to be filed on 16th December 2024 dealing with the grounds for possession. It is noted that he did not order the filing of a defence.

8. On 30th December 2024 the matter was dealt with by Deputy District Judge Dowrick, again on the papers, although her order was not drawn up until 9th January 2025. In the preamble to her order, the deputy judge notes that the Defendant was receiving assistance from the Whitechapel Centre, and required guidance on how to create a formal witness statement. The order itself extended time for filing and serving the witness statement to 10th January,[3] and helpfully set out the steps which had to be taken to complete the witness statement. The first hearing on 21st January was noted, as was an outstanding request by the Claimant that the "defence" be struck out. Of course at no stage did the Defendant file a formal defence, and the Claimant's reference was clearly to the assumption that the court would treat the lengthy handwritten letter as a defence.

9. Thus the matter proceeded to the first hearing on 21st January. The Defendant did not attend on this occasion, although District Judge Colvin noted her health conditions, and directed that the future participation could be by telephone. The key feature of this order was

[3] It should be acknowledged that if this order was not drawn up until 9th January, effectively the defendant had only been given one day to provide her witness statement

the direction for the serving of a statement from the Defendant dated 8th January on the Claimant. This was a much shorter statement in proper form and typed, and purporting to answer the grounds of possession relied upon. It is not entirely clear to me why a direction was necessary in relation to this statement which may have been seen by the court. The only logical conclusion is that it was not available to the Claimant, and the court did considered it appropriate that it be provided directly to the Claimant's solicitors. Be that as it may the order provided at paragraph 1 as follows (inter alia):

> "1. The Defendant must serve a copy of the statement dated 8 January 2025 upon the Claimant by not later than 4pm on 28th of January 2025, in default of the application dated 12th November and any defence is struck out without further order. The statement should be served by email..."[4]

10. The body of the order also directed the possession hearing to be listed on 7 March to be heard by telephone.

11. I note that again there was no direction for the provision of a formal defence by DJ Colvin, and the reference to the striking out of any defence is probably referring to the letter and the Defendant's ability to defend the possession claim. The problem with this order, as was the case with the order of DDJ Dowrick, is that it was not drawn up until some time after the hearing. In fact it would appear that it was sent to the Defendant on 3rd February 2025 (the date it was sealed) and thus the time had already expired for compliance with DJ Colvin's order.

12. However it is agreed that the statement of the Defendant was emailed to the Claimant on 5th February 2025. There is a key order dated 24th February 2025 (not processed until 6th March 2025). This is the order from Deputy District Judge Hanratty. A copy was not included in the appeal bundle and it was apparent that neither counsel on the hearing before me were aware of its contents.[5] The order was made on the papers and granted, seemingly retrospectively, an extension of time for compliance with DJ Colvin's order of 21st January to 6th February. The possession hearing remained listed for 7th March.

13. That hearing was conducted by Deputy District Judge Davies. A full transcript is available, and the hearing is significant because of the order which followed. In the course of this appeal reference was made to the transcript, and therefore I should outline briefly what happened before the deputy district judge, who adjourned the possession hearing. It is plain that it was being conducted by telephone and the Defendant was then unrepresented. At the outset he indicated that the court had been provided with insufficient time, and that his initial impression was that it was intended to be a further directions hearing. Neither of the party's

[4] This statement is not in the appeal bundle, but can be found at page 215 in the original trial bundle which was available to the court. It was clearly drafted by a lawyer, or someone with legal knowledge. The defendant was not yet represented by Ms Taylor Ward of Lawstop.

[5] It was certainly not referred to in the substantive possession hearing before DJ Colvin.

representatives were aware of the order of DDJ Hanratty, and the Claimant's position was that the Defendant was still in breach of DJ Colvin's earlier order, and that the Claimant should be entitled to possession by default with "the defence" struck out. Once it became apparent that there had been compliance because of the extension granted by DDJ Hanratty, DDJ Davies noted the absence of any earlier direction for a formal defence. He thought that the evidential position was somewhat "chaotic", noting the earlier N244 application made by the Defendant (without any indication as to the order which was sought), and considered that a formal defence was necessary for the Defendant to explain the "*legal basis of her defence*".

14. There was an interesting exchange between the deputy judge and Mr Nam who appeared on behalf of the Claimant, where an unless order was sought on behalf of the Claimant in relation to the provision of the formal defence:

> "JUDGE DAVIES: Okay. So, in terms of the unless hearing, I mean, under the rules where a possession case, if somebody does not put in a defence, they are still entitled to take part in the hearing. Now, if no defence is filed you could, in any event, issue an application to strike out. I am not sure how your let unless order fits with the rules regarding possession hearings.
>
> MR NAM: I think the Claimants cannot make an application to strike out as there is nothing to strike out. And whilst the Defendant can take part in the hearing, perhaps in defence of an unless order one should say that the Defendant be debarred from the defending the claim, for the Claimant to prove their case."

15. As far as I can tell, this was the first and only time in which reference was made to participation by a Defendant tenant in possession proceedings were there was no defence filed. Notwithstanding the judge's concern as to what would happen in the event of non-compliance, he made an order in these terms:

> "3. The Defendant to send to the court and the Claimant a defence which complies with CPR part 16 (explained and read out in court) by 31st March 2025 failing which the Defendant will be debarred from relying on any defence."

16. The possession hearing was adjourned to a date to be fixed and the matter was allocated to the fast track to be heard by MS teams, and reserved to DJ Colvin.[6] Subsequently a notice of trial 23rd May 2025 was sent to the parties.

17. Needless to say no defence was ever filed. It is fair to say that following the March hearing the Defendant was having difficulty in finding solicitors to act for her, and to obtain the appropriate legal aid funding (to which she would have been entitled). Eventually on 27th March 2025 Ms Taylor-Ward from Lawstop was instructed and she has remained on record ever since. However, although there were only 3 or 4 days between that instruction and the expiry of the time for compliance (31st March) there was no application made for an

[6] There had been no previous allocation, nor was one strictly necessary on a possession claim

extension. It is said that the Defendant's solicitor had not been able to obtain legal aid because of a difficulty in obtaining the necessary financial information from the Defendant who at times appeared to be lacking capacity.

18. In April it would appear that the Claimant's solicitors were seeking the striking out of "*the right to defend*" (whatever that may mean) but no order was made by the court on the papers.

19. Thus the matter came on for the final possession hearing before DJ Colvin on 23rd May.

The hearing before DJ Colvin and his determinations

20. At the outset, DJ Colvin set out the difficulties for the Defendant as he understood them to be:

> "JUDGE COLVIN: ....I have seen your email, Ms Taylor-Ward of 22 May. Now as I have already, it is a claim for possession in respect of grounds 12 and 13. It is conceded in the email of 22 May that there is no present defence to this claim, the defence having effectively, the Defendant rather having been debarred from relying upon any defence having failed on at least two occasions to file a defence in response to this claim. There is also no witness evidence before this claim from the Defendant because the witness evidence that was served was served late and there is no application before this Court for relief from sanctions. Therefore, as it presently stands, we have effectively an undefended claim for possession."

21. At this point it is to be noted that there had not been drawn to the learned district judge's attention, either CPR 55.7(3), which will be dealt with in more detail later in this judgment, or the DDJ Hanratty order which made it clear that the Defendant was <u>not</u> in breach of DJ Colvin's earlier order and thus there was permissible evidence before the court upon which reliance could be placed. Nevertheless at this point and prior to further submissions from Mr Qureshi, counsel for the Claimant, the learned district judge addressed the approach which he would be taking:

> "It is for the Claimant to satisfy the Court on the balance of probabilities that the threshold in respect of grounds 12 and 13 are met ....it is then for the Claimant to satisfy me on the balance of probabilities that it is reasonable to make an order for possession. I do not think there would be any difficulty in the Defendant's solicitor making submissions in relation to reasonableness, albeit there is no evidence before the Court from the Defendant. Finally, if the Court is satisfied it is reasonable to make a possession order, the final question is, what possession order does this Court make? Again, I do not think there will be any difficulty in the Defendant's solicitor making submissions about that, albeit absent evidence. The orders that the Court are likely to make if I am satisfied in relation to the first two conditions would be either an outright possession order or a suspended or postponed possession order in some way. Those I think are the issues unless there is anything that I have missed."

22. Thus the position adopted by the learned District Judge at this stage was that the Defendant would be allowed to make submissions, even though there was no admissible evidence, (as he believed, and for good reason being unaware of the DDJ Hanratty order) both in relation to the reasonableness of making an order (grounds 12 and 13 being discretionary grounds) and the extended discretion in relation to the type of order which should be made. After hearing further submissions from Mr Qureshi to the effect that the Defendant could play ***no*** further part in the proceedings because of the debarring order arising from the absence of any defence (order of DDJ Davies) and obtaining a response from Ms Ward-Taylor on behalf of the Defendant, (whose primary position had been that her late instruction, issues over the Defendant's health and capacity and the absence of any legal aid up to this point necessitated an adjournment, but who maintained that submissions could still be made on the type of possession order which might be made, if not on the issue of reasonableness), the learned judge provided a ruling:

> ".......I was taken to the order of Deputy District Judge Davis. Paragraph three says this. "The Defendant to send to the Court and to the Claimant a defence which complies with CPR16 ....failing which the Defendant will be debarred from relying on any defence". ....What Mr Qureshi says, "any defence" means exactly what it says, and it will preclude the Defendant from raising arguments about reasonableness because of course that potentially could be a complete defence to a claim for possession. It also precludes the Defendant from raising arguments about the type of possession order made because for the Court to consider making a suspended or postponed possession order the Court would have to have some enquiry in relation to the Defendant's circumstances in respect of which there is no evidence. I invited submissions from Ms Taylor-Ward on behalf of the Defendants in relation to those points. Her last submission was that the order is so clear. I agree. The order is very clear. It precludes the Defendant from being able to rely upon any defence to this claim. That order has not been appealed. That order is not subject to an application to vary............ I am satisfied that submissions that relate to reasonableness amount to a defence. I also am satisfied that the Court's consideration of the type of possession order the Court should make also fall into the category of "any defence", and for all of those reasons it will not be open for the Defendant to make submissions about the reasonableness or the type of possession order that this Court should make in light of the order of Deputy District Judge Davis. Indeed, as I have already said but I am going to repeat for the sake of completeness, that order has not been appealed nor is it subject to an application to vary, so I am bound by what it says and I am satisfied that that precludes the Defendant really from taking any substantive part within these proceedings."

23. I have underlined the two sections above to indicate the two potential errors upon which the learned district judge should have been corrected, at least by counsel for the Claimant, namely that there was permissible evidence before the court by virtue of the order of DDJ Hanratty, being the statement dated 8th January, and that the participation in the possession proceedings in the absence of a defence was subject to CPR 55.7.

24. Following this ruling, Ms Taylor-Ward sought an adjournment on the basis of a potential absence of capacity and to obtain evidence of her health conditions. This application was refused and that a ruling is not the subject of any appeal to this Court.

25. Having dealt with the preliminary matters, the learned district judge received submissions from Mr Qureshi in relation to the evidence before the court, the reasonableness of making an order for possession, and the type of order which should be made, namely immediate and not suspended, and did not invite any submissions from Ms Ward Taylor in respect of the substantive matters.

26. At the conclusion he provided his judgment. This addressed all the issues which had to be determined, starting with a consideration of the evidence relating to the substantive grounds for possession under grounds 12 and13. He made appropriate findings on that evidence and concluded that they were properly made out. The learned district judge then dealt with the question of reasonableness, again on the basis of the evidence which he believed was available to him, acknowledging that a possession order was a draconian sanction, but ensuring that a balancing exercise of all the circumstances was undertaken. Of course those circumstances, as the judge acknowledged, did not and could not take into account anything which the Defendant had said because of the debarring order. Finally he dealt with the type of order under the extended discretion provision and chose not to suspend or postpone suspension. His findings were summarised in paragraph 12:

> "I am also satisfied on the balance of probabilities that it is reasonable to make an outright order for possession. There is no evidence before this Court at all to persuade me that the possession order should be postponed or suspended in some way. The order of Deputy District Judge Davis precludes the Defendant from relying on any defence, and that would include in my judgment some consideration of her circumstances. That order has not been set aside, and so in my judgment for all of those reasons I am satisfied firstly on the balance of probabilities that grounds 12 and 13 to schedule two of the Housing Act are met. Secondly, that it is reasonable to make an order for possession on the balance of probabilities based upon the unchallenged evidence before this Court. Thirdly, it is reasonable for the Court to make an outright order for possession. There is no evidence before me to persuade me to make a postponed or suspended possession order."

<u>The relevant law</u>

27. Schedule 2 of the Housing Act 1988 contains the grounds upon which possession of assured tenancies, including ASTs can be obtained. Some of these are mandatory, and some discretionary.

28. Ground 12 relied upon by the Claimant deals with any tenancy breach and states simply:

> "Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed."

29. The breaches relied upon are in relation to clause 3 (general control and use of the property, including illegal or immoral use and damage) and clause 4.12 (alteration of the property without consent).

30. Ground 13 stipulates:

> "The condition of the dwelling-house or any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling-house and, in the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant."

31. In relation to the extended discretion which must be considered by the court in a possession claim when the grounds in Part 2 of schedule 2 have been established, section 9 of the Housing Act is relevant:

> **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.

32. Turning to the CPR, the rules relating to the filing of a defence, and the consequences for not doing so are dealt with in parts 12 and 15, whilst part 16 is relevant to the contents of the defence. These provisions are extremely well known and do not require repetition here for the most part, but it may be helpful in order to provide a context for CPR 55 to identify the basic provisions.

> **Consequence of not filing a defence**
>
> 15.3. If a Defendant fails to file a defence, the Claimant may obtain default judgment if Part 12 allows it.

33. In part 12, which deals with default judgment, rule 12.2 states:

> **Claims in which default judgment may not be obtained**

12.2 A Claimant may not obtain a default judgment—

(a) …………………

(b) ………………..

(c) in any other case where a rule or practice direction says that the Claimant may not obtain default judgment.

34. The rule that applies here relates to possession proceedings and it is such a provision that has been the focus of the argument on appeal:

Defendant's response

55.7

(1) An acknowledgment of service is not required and Part 10 does not apply.

(2) In a possession claim against trespassers rule 15.2 does not apply and the Defendant need not file a defence.

(3) Where, in any other possession claim, the Defendant does not file a defence within the time specified in rule 15.4, he may take part in any hearing but the court may take his failure to do so into account when deciding what order to make about costs.

(4) Part 12 (default judgment) does not apply in a claim to which this Part applies.

Grounds of Appeal

35. As I have indicated above, Her Honour Judge O'Brien when dealing with the permission application limited the grant to grounds 1 and 6. Ground 1 asserted that

> "The learned judge erred in law and/or his decision was affected by a serious procedural irregularity in that he failed to have regard to CPR 55.7 (3) …..in deciding to refuse to hear any evidence from the Defendant or to allow her representative to make any submissions on the substantive claim or to allow her to participate in the hearing."

36. Ground 6, which was the Defendant's alternative or fallback position in the event that the court regarded the Defendant as debarred from participating in the "trial issues" asserted:

> "The learned judge erred in law and/or acted unfairly in prohibiting the Defendant's solicitor from making any submissions as to whether any order for possession should be postponed or stayed under section 9 (2) of the Housing act 1988 as the determination of that question is not a defence to the claim for possession but as to its enforcement and was accordingly not prohibited by the unless order of 7 March 2025."

37. In granting permission HH Judge O'Brien provided a brief explanation of her reasoning:

> *"It is at least arguable that the decision of district judge Colvin was wrong and/or unjust because of a serious procedural or other irregularity in the proceedings before him. CPR 55.7 (3) states........ It is arguable that a defendant who is debarred from relying on a defence should be in no worse position than a defendant who simply fails to file one. It is at least arguable that the Defendant should have been permitted to make submissions on the substantive claim and on whether an order for possession should be postponed or stayed."*

38. The learned judge did not otherwise engage directly with ground 6. It is unnecessary to consider her reasons for refusing permission in relation to the other grounds save to note that she regarded the decisions which were challenged as being within the reasonable range that was open to the learned district judge taking into account the length of time that the case had been proceeding.

Respective Submissions

39. The court is grateful to both counsel for the submissions presented succinctly to supplement their respective skeleton arguments. I do not intend to provide a detailed elucidation of those submissions but to deal with the headline points made. The parties can be assured that I have read the arguments carefully, not only at the outset of the hearing, but also subsequently in the light of the oral submissions and having had an opportunity to consider the various orders and transcripts in far greater depth.

40. Mr James Stark appeared for the Defendant. He did not appear in the original hearing or in any case management hearing. His overarching submission was that there was no consideration at all of section 55.7 by the learned district judge either from the point of view of determining what exactly is meant by "taking part" in the possession proceedings, or in considering its effect in the light of an apparent debarring order from DDJ Davies. By excluding the Defendant or advocate from making submissions on either the reasonableness of a possession order, or the extended discretion as to the type of the order, DJ Colvin was effectively creating a scenario of a default judgment which was specifically precluded by CPR 55.7 (4). Earlier directions hearings had also not taken into account how CPR 55.7 might have been applied, although DDJ Davies from the transcript appears to have been aware of the special position of a tenant in possession proceedings who had not filed a defence, without actually identifying the CPR rule. He submitted that DDJ Davies in principle had been wrong in to make an unless order, because there was no power to exclude the rights granted under CPR 55.7, although acknowledged that he could only challenge the decision of DJ Colvin. Nevertheless, DJ Colvin should have regarded the unless order as having no effect in the light of 55.7, which already indicated what the consequences of non-compliance should be in a possession action, namely an adverse order for costs.

41. The effect of a possession order was serious and grave, it was said, in that a Defendant was being shut out of his or her home, and this was the very reason why there were several discretionary stages built into the process of eviction under these grounds (the consideration of reasonableness and the extended discretion) and it was understandable why a tenant was not penalised through the non-provision of a defence by being denied an opportunity to participate in the hearing.

42. Mr Stark referred the court to the decision of the Supreme Court in the case of **HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Limited and another [2014] 1 WLR 4495** and in particular paragraph 23 to justify the disapplication of the unless order as a "special factor".

43. Insofar as it might be suggested that "taking part" in the proceedings was limited to the initial stages, where the absence of a defence might not be crucial, this could not be an appropriate interpretation, said Mr Stark, because the wording of the CPR rule referred to "any hearing".

44. In relation to ground 6, which Mr Stark accepted was his fallback position, it was submitted that the making of submissions under section 9 (2) was not in defence of a claim, because the section only applied once a ground for possession and been made out, and it was reasonable to make an order for possession. In other words the defence ceased to have any relevance at that stage because the court had made its determination, it would have been appropriate to hear submissions from the Defendant in relation to the type of order which should be made.

45. In relation to the material before the court, it was submitted that the statement of the Defendant dated 8th January 2025 was lawfully before the court, and not precluded (although there was no specific ground of appeal in relation to this aspect), and it was evidence upon which submissions could be based, contrary to the conclusion of the judge that there was no evidence.

46. On behalf of the Claimant, Mr Qureshi, who did appear before DJ Colvin, accepted that the issue of a tenant's position under CPR 55 was not raised before the district judge, nor was the judge informed that evidence in the form of 8th January statement had been legitimately filed in the light of extensions that had been afforded to the Defendant. However the Defendant's position, he submitted, had always been that there was insufficient clarity in what was meant by "take part" in the hearing. This provision has to be properly understood as applying to the initial stage of a possession claim where a defence had not yet been filed and where a tenant Defendant should not be unfairly disadvantaged. He described it as a "procedural indulgence at the outset" which did not entitle continuing participation in the

absence of a defence, and that the function or advantage which the provision bestowed related to case management directions at the outset. This was the only possible interpretation, submitted Mr Qureshi because otherwise it would confer an enduring right depriving CPR 15.2 of any meaning.

47. It was highly germane that the Defendant had failed to comply with the debarring order that was imposed and there had been no application for relief from sanction.

48. In relation to ground 6, and the extent to which the Defendant should have been allowed to participate in the extended discretion by way of submissions, Mr Qureshi's accepted that the power under section 9 could be exercised at the time of judgment or at any later point. However, postponement of a possession order should not be considered as a matter of enforcement but was integral to the substantive relief which a landlord was seeking, namely the recovery of the property and was thus relevant to any defence. It cannot be ignored that in considering its overall discretion, and in particular addressing the question of the reasonableness of the possession order, the court was carrying out a single evaluative exercise. The same matters would be relevant to both aspects, namely conduct, hardship and proportionality.

49. In any event, the finding that cannabis was being grown in the loft was sufficiently serious to have justified an immediate order for possession without suspension or postponement, and there was little which could have been put before the court to justify the court exercising its discretion in favour of the Defendant. It was to be noted that the Defendant, said Mr Qureshi, had not challenged the learned district judge's findings of fact. Further, where a tenant was seeking to ask the court to exercise its extended discretion, this was a *quasi* defence, and thus should be considered as also precluded by the debarring order.

50. Insofar as the Defendant's appeal depended upon the "wrong" decisions that had been made by other courts, it should be noted that that there had been no application in relation to any of those decisions, said Mr Qureshi.

Discussion

51. I should say at the outset of this determination that if the learned district judge was correct in respect of the effect of the debarring order, then his approach to the issues which had to be decided cannot be faulted. Whilst having the case of only one side for whatever reason can be somewhat artificial, it is not uncommon for such a situation to arise. I am quite satisfied that DJ Colvin took into account all the matters which were relevant and that this was not simply a rubberstamping exercise in a possession claim where possession was granted by default.

52. It is also noteworthy that at the beginning of the hearing, DJ Colvin was prepared to receive submissions from Ms Taylor Ward on both the reasonableness of making an order for possession, and the extended discretion. As will become apparent, this would have been entirely the correct approach if there had been no admissible evidence. It is regrettable that he was not made aware by either advocate that the 8th January statement was properly in evidence before the court because of the order of DDJ Hanratty. Be that as it may, it is self-evident in a possession claim, that absent any compelling reason, a judge should receive submissions from a tenant's representative even if there is no evidence. The discretion that is vested in the court requires a balancing exercise to be undertaken, and fairness requires that reasons advanced by a tenant's representative for not making a possession order need to be taken into consideration. This process is frequently followed in a possession list, even if in many cases the outcome is inevitable.

53. To decline to hear submissions would in my judgment be an exceptional course. Unfortunately in this case DJ Colvin was persuaded by Mr Qureshi that a compelling reason existed in the form of the debarring order of DDJ Davies. That submission was misconceived in the initial possession hearing, and its repetition, albeit with greater qualification before me, is equally misconceived. Although there has been no attempt to appeal or set aside the order of DDJ Davies, in my judgment it was unnecessary because of the effect of CPR 55.7. As I indicated during the course of oral submissions on the appeal, I am surprised that this was not raised before the learned district judge. I have little doubt that if it had been, DJ Colvin would not have been dissuaded from his initial proposal to hear submissions.

54. In my judgment, the wording of CPR 55.7 does not give rise to any uncertainty, and the position is unequivocal. I am unable to accept that the Defendant's entitlement to take part in the proceedings applies at only the initial stage, as is the submission of Mr Qureshi. This would render the entire purpose of permitting a defendant an opportunity to defend despite not filing of a formal defence completely nugatory. The rules make it clear that not only is an acknowledgement of service not required in claims of this nature, and that a default judgment cannot be entered, but also that a failure to comply with the rigid formality of the various stages of a claim, including providing a pleaded defence, should not prevent a defendant tenant from challenging his or her eviction, especially where there are residual discretions vested in the court. The obligation to provide a defence is not ignored altogether, because there is a specific sanction provided by way of a potential costs penalty.

55. It is noted that prior to the involvement of DDJ Davies, none of the four district judges or deputy district judges who had been involved in making orders in this case (DJ Baker, DJ Colvin, DDJ Hanratty or DDJ Dowrick) had considered it appropriate to require the Defendant to file a formal defence. It was considered more important that the Defendant's position was dealt with by way of evidence, and even though the court already had a somewhat confusing handwritten statement, a statement set out in proper form with a statement of truth would have sufficed, and enabled the Defendant's full participation in the

eventual possession hearing. This was not an unusual course. In a possession claim it is very common to find that no formal defence is filed. More often than not tenants are unrepresented, and because of the dire consequences for many of losing their homes, the rules have specifically provided what has been described as an "*indulgence*". I have no doubt that the intention of CPR 55.7 was to allow for tenants such as Ms Mors in the current case to take part in the final possession hearing, and the additional hurdle of a debarring order was in direct conflict with this purpose.

56. It seems to me that whilst DDJ Davies was not wrong to require a defence, which would have been very helpful for any final hearing, particularly if it had legal input from the Defendant's representative, and set out the clear issues which had to be addressed, the difficulty arose with the unless order that was put in place. The learned deputy should have been told by the advocate then appearing (Mr Nam) of the effect of CPR 55.7 which effectively rendered the unless order meaningless. Be that as it may, the error was compounded, in my judgment, when DJ Colvin was deflected from the initial course that he had been minded to take, with a submission made by Mr Qureshi which was simply wrong.

57. If the learned district judge had been made aware, furthermore, that there was a statement legitimately filed in accordance with a previous court order, it is quite likely that this would have impacted his decision in relation to the Defendant's participation. As far as he was concerned, and he was not told to the contrary, the Defendant had not only ignored the debarring order, but had persistently failed to comply with earlier orders in relation to the filing of her evidence. The impression was given that this was a disinterested tenant who was stalling, and who knew that the writing was on the wall in relation to her tenancy. That, in my judgment, was an incorrect impression.

58. Accordingly I allow this appeal in relation to the first ground. CPR 55.7 had primacy, and the Defendant should have been allowed to participate in the hearing which led to her eviction. This included all aspects, namely the discretion in relation to making the possession order, the extended discretion, and the consideration of her evidence in the form of the statement which had been properly filed.

59. It is unnecessary to consider the Defendant's fallback position in any detail. However, there is attraction in the submission of Mr Stark that because the extended discretion only fell to be considered once the order for possession had been made, and whilst it would not be uncommon to find an objection to an immediate order for possession in a formally filed defence, it is clearly open to a tenant to seek the court's discretion to suspend or postpone at any time up until the execution of the order. To deny a tenant an opportunity to make representations as to the form of possession order in my judgment would have been wrong because it had not been raised in a defence. Accordingly if there had been no merit in relation to ground 1 of this appeal, I would have allowed it under ground 6.

60. I invite the parties to consider the consequences of this appeal judgment. Clearly the matter will have to be returned for some form of rehearing with directions given at this stage. It would be helpful if agreement could be reached in respect of the approach, and the issue of costs. In the absence of any agreement, and in the interests of proportionality, I will deal with the consequences on the receipt of brief written submissions (no more than 2 pages of A4) from counsel.

GW

12th March 2026