

CIVIL WAY

BY STEPHEN GOLD, NLJ COLUMNIST

IN BRIEF

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- ▶ Bankrupt service.
- ▶ Agency workers wait.
- ▶ Appeal masterclass.
- ▶ Glancing dark teal.

LANDLORD TRAP CORNER

We are truly sorry but the prescribed s 21 Housing Act 1988 notice seeking possession of a property let on an assured shorthold tenancy—the much maligned form 6A—is amended as from 1 June 2019 by the Assured Tenancies and Agricultural Occupancies (Forms) (England) (Amendment) Regulations 2019 (SI 2019/915). Lest you should be instructed by a LiP (Landlord in Pickle who tried to save money and been told they have messed it up), it's worth remembering that the prescribed form is not mandatory, although it can be used, for assured shortholds created before 1 October 2015 or statutory periodic tenancies which have come into being on or after 1 October 2015 at the end of fixed terms created before 1 October 2015 (see 'Civil Way', 168 *NLJ* 7817, p20).

The revised form is inspired by the Tenant Fees Act 2019 (see 'Civil Way', *NLJ* 3 May 2019, p17 and 17 May 2019 p19) and draws the tenant's attention to the fact that s 17 prevents the landlord from serving a s 21 notice so long as all or part of a prohibited payment or unlawfully withheld deposit has not been repaid. There's also new guidance to the tenant on homelessness support services. And the tenant's attention is now directed in a more helpful way to the paralysis inflicted on the landlord in serving a s 21 notice where a house in multiple occupation (HMO) is unlicensed (and see 'Civil Way', 168 *NLJ* 7813, p14 as to the toughening up of HMO accommodation as from 1 October 2018). Incidentally, the Houses in Multiple Occupation (Specified Educational Establishments) (England) Regulations 2019 (SI 2019/904) exempt student accommodation provided by a scheduled list of educational establishments from HMO obligations, apart in respect of condition, as from 1 June 2019. A new code of management practice has been approved for premises managed and controlled by educational establishments (see SI 2019/884).

POOR SERVICE

An order for substituted service of a bankruptcy petition cannot be made

retrospectively. This was the ruling of Roth J in *Ardawa v Uppal and another* [2019] EWHC 456 (Ch) based on r 6.14 of the Insolvency Rules 2016 and the then prevailing insolvency PD and an order for such service which the court lacked jurisdiction to make could not be saved by what was r 7.55. The 1986 rules and the PD have been replaced, the former by the Insolvency (England and Wales) Rules 1986 which came into force on 6 April 2017 (see 'Civil Way', 167 *NLJ* 7737, p17) and a subsequently effective PD. The position would appear to be the same under the replacement regime. Over in civil jurisdiction, CPR 6.15(2) provides that the court may order steps already taken to bring a claim form to the attention of the defendant by an alternative method or at an alternative place, is good service.

UP THE WORKERS

Take your partners for The Taylor Quartet. Dancing commences on 6 April 2020 (not 2019) with the Agency Workers (Amendment) Regulations 2019 (SI 2019/724) and the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019 (SI 2019/725) joining two other pieces of employment rights subordinate legislation (see 'Civil Way', *NLJ* 8 February 2019 p14), inspired by the Matthew Taylor review of modern working practices (and, incidentally, the Employment Rights (Miscellaneous Amendments) Regulations 2019 (SI 2019/7341) were duly made on 28 March 2019).

Currently, an agency worker, after 12 weeks in the same role with the same hirer, is entitled to the same pay as a permanent employee of the hirer. However, they can waive this right if they sign a 'pay between assignments' contract which makes them a permanent employee of the agency and they are then paid between assignments. But abuse occurs where they are kept on minimum hours contracts between assignments or their 'between assignments' pay is deducted from their 'on assignment' pay. From 6 April 2020 agency workers will no longer be able to opt out of an equal pay entitlement. And from the same date, an agency will be obliged to provide a key information document to any person seeking work from them ahead of signing agency terms. Pay and a multitude of other details are to go in.

CURSING THE JUDGE

If you are serious about seeking permission

to appeal from the hearing judge and not simply wanting to take revenge for being given a rough ride or otherwise to intimidate, you'll find a useful summary of how to go about it from the Court of Appeal in *McDonald v Rose and others* [2019] EWCA Civ 4. One novel piece of guidance there. Where the judge has announced their decision with reasons to follow, that would start time running for filing notice of appeal. But it should be standard practice, unless there are very unusual circumstances, for the court to adjourn the decision hearing and extend time under CPR 51.12(2)(a) until a specified period, normally 21 days after the reasons are promulgated. And a reminder that in the case of a formal hand-down where counsel has been excused attendance, an application for permission can be made in writing before the hand-down. The judge will usually be able to give their decision at the hand-down hearing but there might be occasions where further submissions and/or time for reflection are required, in which case the permission decision could post-date the decision hearing.

GLANCING IN THE DARK (TEAL)

Dark teal. That's got the cover colour of the new edition of *At a Glance: Essential tables for financial remedies* out of the way. Is it any good? Of course, it's good and, even it was lousy, its acquisition would be mandatory as the judge and opposing counsel will have it. Published by the Family Law Bar Association, it is selling at £70 which would probably be allowable as a one-off need if you were a LiP. The jokes are eschewed this year with the death of lead editor Sir Peter Singer. The moving funeral address delivered by Mr Justice Mostyn is reproduced in full.

Annuities are back in and, more excitingly, the international living costs table tells us that Hong Kong has overtaken Singapore as the most expensive venue about which to be cross-examined. London has dropped to 12th out of 28 in the table. Cheapskates will wine and dine their paramours in Karachi which limps in at the bottom.

The intro signals possible FPR changes on costs which would steer the court to making an adverse costs order against a party who has unreasonably refused to negotiate and to render a *Calderbank* offer admissible at the final hearing.