

Dr J Sorabji
Legal Adviser to the Master of the Rolls
By email: John.Sorabji@judiciary.uk

Dear Dr Sorabji,

Practice Direction 51Z

Thank you very much for your letter of 20 April on behalf of the Master of the Rolls. We are grateful for the explanation that you gave in relation to our query about the intended scope of Practice Direction 51Z and have seen the amendments now made to it. Whilst these do not go as far as our letter of 8 April suggested, we recognise that they should substantially address our expressed concerns in many cases of trespass.

However, it would be right to let you know that members of our Associations have raised two further potential issues in relation to the new paragraph 2A of the Practice Direction:

1. Members have queried the distinction drawn between claims against “persons unknown”, served in accordance with Rule 55.6, and other claims falling within the definition of “a possession claim against trespassers” in Rule 55.1(b). It would seem, if taken literally, that all a squatter need do to obtain the benefit of the stay is to tell the landowner his or her name. Perhaps the lifting of the stay could apply to all situations in which the Claimant alleges the land is occupied by a person or persons who entered the land without consent. This would be consistent with the current disapplication of the stay to interim possession orders, which may be sought in any “possession claim against trespassers”, not just those against persons unknown, but may not be made against a defendant who entered or remained on the premises with consent.
2. There is also uncertainty as to the application of paragraph 2A to claims which are brought both against a named defendant and against persons unknown. On one view, these would also be claims against trespassers to which rule 55.6 applies, even though there would be at least one named defendant. There is therefore a risk of complexity and uneven application in relation to claims which involve both named defendants and persons unknown.

We appreciate that the Master of the Rolls may not wish to comment on the amendments to the Practice Direction pending the Court of Appeal's decision on the legality of the Practice Direction in *Arkin v Marshall*. However, we thought it right to bring these matters to his attention.

Yours faithfully,

Handwritten signature of Joanne Wicks in cursive script.

Joanne Wicks QC

Chair of the Property Bar Association

Handwritten signature of Mathew Ditchburn in cursive script.

Mathew Ditchburn

Chair of the Law Reform Committee of the
Property Litigation Association