



#HardwickeBrew Your Free Refill!

During the Coronavirus pandemic there have been a number of modifications to the operation of the Civil Procedure Rules and Practice Directions with the intention of ensuring that the administration of justice, including the enforcement of orders, is carried out so as not to endanger public health and in recognition of limited court resources during the pandemic.

*These notes, first offered as a takeaway on 9th April 2020 following the #HardwickeBrew, will be updated (**in red**) regularly to take into account some of the changes relevant to those practising in landlord and tenant and social housing work. All the information below was correct as at 11th May 2020.*

Coronavirus Act 2020 and Guidance

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| <p>Coronavirus Act 2020</p> <p>https://bit.ly/2V7zlyq</p> | <ul style="list-style-type: none">• In force from 26th March 2020 <p><u>Residential tenancies</u></p> <ul style="list-style-type: none">• S81 and Sch 29 of the Act deal with the protection from eviction for residential tenancies in England and Wales.• In short, the notice period for NoSPs and NTQs for assured, ASTs, rent act, secure tenancies, introductory, demoted and flexible tenancies is extended to <u>3 months</u>.• This notice period may be extended by ministers by up to 6 months if required. |
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- The Act does **not** include licences or unprotected/ contractual tenancies – but they would be covered by the general suspension on possession claims.

Business tenancies

- Section 82 of the Act deal with protection from eviction for business tenancies in England and Wales and, in short:-
 - prohibits enforcement of a right of re-entry/ forfeiture for non-payment of rent by action or otherwise between 26 March and 30 June 2020
 - S 82 anticipates possession claims being heard, but prevents any possession order made between 26 March and 30 June 2020 from taking effect before 30 June 2020:-

High Court

- in possession proceedings for non-payment of rent commenced in the High Court before 26 March 2020 any possession order made must take effect after 30 June 2020
- if a possession order has been made by the High Court which is to take effect between 26 March -30 June 2020 and T makes an application to vary the order before possession has been given to L, the court must make an order which ensure that the T does not have to give up possession before 30 June 2020.

County Court

- in possession proceedings for non-payment of rent commenced before 26 March 2020 in the County Court any order under section 138(3) of the County Courts Act 1984 must specify a date which expires after 30 June 2020
- there is an automatic extension of the relevant period under section 138(3) until 30 June 2020 in respect of all order made before or after 16 March 2020
 - modifies the common law of waiver, so that no act by L between 26 March and 30 June 2020 can waive a right of re-entry/

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| | <p>forfeiture for non-payment of rent other than an express waiver given in writing</p> <ul style="list-style-type: none"> • in opposed 1954 Act renewals, any failure to pay rent between 16 March and 30 June 2020 (whether rent due before or in that period) is to be disregarded pursuant to s 30(1)(b) of the Landlord and Tenant Act 1954 (persistent delay in paying rent which has become due) |
| <p>Coronavirus (COVID-19) Guidance for Landlords and Tenants</p> <p>(March 2020, MHCLG)</p> <p>https://bit.ly/39T80Lc</p> | <ul style="list-style-type: none"> • Non-statutory guidance for landlords and tenants in the private and social rented sectors on: <ol style="list-style-type: none"> 1. Measures relating to notices seeking possession as amended by the Coronavirus Act 2020 2. Court action on possession cases during the Coronavirus (COVID-19) outbreak 3. Property access and health and safety obligations in the context of Coronavirus (COVID-19) restrictions • The guidance reminds licensees that they are not protected by the Act but are caught by the general suspension of possession proceedings. • Confirms that repair obligations have not changed as a result of the act and access should still be granted where reasonable, safe and in line with government guidance. This includes obligations for gas and electrical safety inspections. • Work carried out to homes for repairs and maintenance is permitted to continue during the lockdown but work should not be carried out to the home of someone who is shielding unless it is to remedy an urgent and direct risk e.g. a flood. |
| <p>Coronavirus Act 2020 and renting: Annex A technical guidance for landlords on the provisions of the Coronavirus Act 2020.</p> <p>(April 2020, MHCLG)</p> <p>https://bit.ly/2Rg3wYD</p> | <ul style="list-style-type: none"> • Non statutory guidance for landlords in the private and social rented sectors on the measures relating to notices seeking possession modified by the Coronavirus Act 2020. The measures affect three eviction processes: <ol style="list-style-type: none"> 1. The Section 21 process (Assured Shorthold Tenancies) 2. The Section 8 process (Assured and Assured Shorthold Tenancies) 3. Notices under section 83 of the Housing Act 1985 seeking possession of property let under a secure tenancy. |

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| | <ul style="list-style-type: none"> • AST S.21 NOTICE - New form 6a to reflect the changes to possession procedures in the Coronavirus Act 2020 Section 81, Schedule 29, Paragraph 7. The amended form now makes it clear that tenants are entitled to at least three months' notice before a landlord is able to apply to the court for a possession order. • S.8 NOTICE – New form 3 to reflect the changes to possession procedures in the Coronavirus Act 2020 Section 81 Schedule 29 Paragraph 6. The amended form now makes it clear that court proceedings cannot begin earlier than 3 months from the date the notice is served. • S.83 NOTICE – New 'Part I Notice of Possession under section 83 of the Housing Act 1985' form to reflect the changes to possession procedures in the Coronavirus Act 2020 Section 81 Schedule 29 Paragraph 3. The amended form now makes it clear that court proceedings cannot begin earlier than 3 months from the date the notice is served. Also new s.83 notice for secure tenancies for a fixed term ('Part II Notice of Seeking Termination of Tenancy and Recovery of Possession under section 83 of the Housing Act 1985') |
| <p>COVID-19 (Coronavirus) and the enforcement of standards in rented properties: Non-statutory guidance for local authorities on enforcing standards in rented properties during the COVID-19 outbreak</p> <p>(March 2020, MHCLG)</p> <p>https://bit.ly/2UQyFny</p> | <ul style="list-style-type: none"> • Guidance dealing with disrepair and housing condition for local authorities - applies to rented properties including housing association properties. • Appropriate action should be taken in relation to category 1 hazards (Housing Health and Safety Rating System). • Local authority may need to assess through photographs, video or live broadcasting. • Inspection that need to be conducted could be carried out ensuring those inspecting and occupiers remain in separate rooms or that personal protecting equipment is used. • Alternative accommodation may need to be provided in cases of extremely hazardous conditions, as an alternative to emergency remedial action. |
| <p>Coronavirus (COVID-19): guidance for social landlords on essential moves</p> | <ul style="list-style-type: none"> • Non-statutory guidance to support social landlords with allocations and transfers during the coronavirus outbreak. |

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| <p>27th April 2020</p> <p>https://bit.ly/3fd0xug</p> | <ul style="list-style-type: none"> • Regard must continue to be had for Part 6 of the Housing Act 1996 by local authorities. Housing associations should continue to cooperate. • Advice is to pause non-essential allocation and transfer activity. • Essential moves should continue over the period of the pandemic e.g. victims of violence, severe overcrowding, move-on from temporary accommodation, discharge from hospital and moving those living in unsafe or unsettled accommodation that pose a health risk. • Reminder of para 3.25 of the statutory guidance on allocation of accommodation: https://bit.ly/3f5Slq4 and government advice on home moving during the coronavirus outbreak published 26 March 2020: https://bit.ly/3f0IR65. |
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Guidance, protocols and notes from the courts

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| <p>Listing and hearing protocol for civil courts in Nottinghamshire, Derbyshire and Lincolnshire</p> <p>10 April 2020</p> <p>https://bit.ly/2xy6yAO</p> | <ul style="list-style-type: none"> • The blog Civil Litigation Brief have published the protocol issued by HHJ Godsmark QC for all civil courts in Nottinghamshire, Derbyshire and Lincolnshire |
| <p>Guidance from the Designated Civil Judge for Greater Manchester for civil cases and applications</p> <p>https://bit.ly/3bQbHmv</p> | <ul style="list-style-type: none"> • Kings Chambers' website contains a copy of a note given by HHJ Bird the Designated Civil Judge for Greater Manchester in relation to cases and applications in civil work in Manchester. The note contains guidance on the appropriate form of remote hearing, the preparation of core bundles and listing priorities and also draft orders for cases and applications heard after 31st March 2020. This includes a reminder that the maximum email size including attachments is 10MB. |

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| <p>Guidance from the Business and Property courts in Leeds, Liverpool, Manchester and Newcastle</p> <p>31st March 2020</p> <p>https://bit.ly/35gyq8V</p> | <ul style="list-style-type: none"> • Kings Chambers’ website contains a copy of the guidance provided by Mr Justice Snowden, Vice-Chancellor of the County Palatine of Lancaster (Covid-19 Update Number 1) on urgent applications. • The guidance covers remote hearings, court closures, the CE filing system and other matters. |
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Residential L&T

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| <p>Practice Direction 51Z Updated 20th April 2020</p> <p>Which proceedings should be commenced or continued during the coronavirus outbreak?</p> <p>https://bit.ly/34kIBJb</p> <p>https://bit.ly/2Rm8TWI</p> <p>https://bit.ly/2SiDww1</p> | <ul style="list-style-type: none"> • Practice direction 51Z: stay of possession proceedings, coronavirus will be in force until 30 October 2020. <i>“All proceedings for possession brought under CPR Part 55 and all proceedings seeking to enforce an order for possession by a warrant or writ of possession are stayed for a period of 90 days from the date this Direction comes into force.”</i> • Although not in the PD51Z itself, the Government website specifically states that PD51ZA does not change the operation of the 90 days stay concerning possession proceedings. • Trespassers proceedings are brought under CPR 55 and are so were initially covered by the stay of proceedings. However, with effect from 18th April 2020 April 2020, PD51Z was amended so that: <ul style="list-style-type: none"> • A) the stay does not apply to trespasser proceedings covered by CPR 55.6 • B) the stay does not apply to applications and hearings for interim possession orders (“IPO”) • C) an application for agreed case management directions • The amendment also made clear that the fact that a possession claim will be stayed does not preclude the issue of such a claim. • The Queen’s Bench Division has provided practical guidance (Bulletin 6) on procedures for issuing and progressing trespasser possession proceedings, IPOs and filing agreed directions. • PD51Z, para 2A(c) allows the court to make case management directions agreed by the parties, which are then stayed. |
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| <p>https://bit.ly/2VOFWcO</p> <p>https://bit.ly/3dsNXp8</p> | <ul style="list-style-type: none"> On 30th April 2020, in <i>Arkin v Marshall</i>, the Court of Appeal heard an appeal against HHJ Parfitt’s decision on whether PD51Z is valid. The court considered whether the stay on possession proceedings was lawful (answer – yes (para 28 &33)), whether the stay applies to the requirements to comply with case management directions (yes, as neither party can apply to enforce compliance with the direction, but parties can carry out <u>agreed</u> directions for e.g. disclosure and exchange of witness statements during the stay (para 50)) and whether the stay should be lifted, in individual cases (yes, but only in the most exceptional cases (para 46)). HLPAs made a call for evidence. A copy of the approved judgement of HHJ Parfitt is available via the Nearly Legal website. A copy of the Court of appeal’s decision of 11th May 2020 is now available. The court’s theoretical power to lift a stay under CPR 3.1 should be exercised only in the most exceptional circumstances, therefore it would almost always be wrong to exercise it (para 46). Directions should only be revised during the stay if the parties agreed. |
| <p>PD 51ZA – agreeing extensions and variations of directions</p> <p>https://bit.ly/2UTd3XS</p> | <ul style="list-style-type: none"> Practice direction 51ZA – extension of time limits and clarification of practice direction 51Y – allows the parties to agree an extension to the time limits provided by CPR 3.8 by 56 days, instead of 28. Courts will take into account the impact of the coronavirus outbreak when dealing with any applications for extension of time. |
| <p>Temporary rent reduction or rent holiday during the outbreak</p> <p>https://bit.ly/2RhOAsU</p> | <ul style="list-style-type: none"> Recommended to record the agreement clearly via an exchange of emails or text messages Options include, an agreement for <ul style="list-style-type: none"> a rent-free period for a fixed amount of time reduced rent for a fixed period of time that a tenant will have additional time to pay rent due Tenant Fees Act 2019, schedule 1, paragraph 1(6)(b) allows for the variation of rent by agreement between a landlord and tenant after the tenancy agreement has been entered into. |
| <p>Obtaining an anti-social behaviour injunction during the coronavirus outbreak</p> | <ul style="list-style-type: none"> Central London CC - any urgent matters will proceed either by way of telephone or skype business once it has been assessed by the Judge and deemed as urgent. |

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| <p>https://bit.ly/34kIBJb</p> <p>https://bit.ly/2JRzciK</p> | <ul style="list-style-type: none"> • Practice direction 51Z: para 3 provides that claims for injunctive relief will not be subject to the stay for 90 days imposed on possession proceedings. • Helen Tucker, Anthony Collins recently posted about recent success in obtaining a without notice injunction: <i>“So....my team successfully obtained our first covid-19 without notice ASB injunction yesterday! Tenant having lots of visitors to his tower block flat, suspected drug dealing and spitting at staff. Court staff v helpful. Client did excellent succinct statement. Emailed papers and fixed a telephone hearing for next day. Circuit judge heard it. Detailed orders for alternative service and return date fixed for a telephone hearing...Neighbourhood police have agreed to arrest if breached as helps them tackle crowds ignoring isolation lockdown.”</i> • Injunctions, including ASBIs, are Priority 1 work which the court must deal with during the outbreak. • Landlords seeking to commit an individual who is at risk of severe symptoms if they contract coronavirus should consider the recent guidance in <i>Chelsea Football Club Ltd v Nichols & Anor [2020] EWHC 827 (QB)</i> concerning the early discharge of someone imprisoned for contempt. • On 27th April 2020, Morayo Fagborun Bennett represented Hyde in a committal hearing, in which the Defendant was physically in court but the legal representatives and the social worker were on the telephone. |
| <p>The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020</p> <p>https://bit.ly/3aR3TRe</p> | <ul style="list-style-type: none"> • Made on 18 March and will apply to all new tenancies on 1 July 2020 and for existing tenancies on 1 April 2021. • The Electrical Safety Regulations will require landlords to: <ul style="list-style-type: none"> ○ Ensure that the electrical safety standards are met during any period of a tenancy. ○ Have the electrical installations in their properties inspected and tested by a person who is qualified and competent, at least every five years, or more frequently if the most recent report requires this. ○ Provide a copy of the report (known as the Electrical Safety Condition Report or EICR) to their tenants, and to the local authority if requested. |

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| | <ul style="list-style-type: none"> ○ If the EICR requires investigative or remedial works, landlords will have to carry this out. ● A landlord would not be in breach of the duty to comply with a remedial notice if they can show that they have taken all reasonable steps to comply with their duty under the regulation e.g. through communications with the tenant and with electricians trying to arrange the works. |
| <p>The Gas Safety (Installation and Use) Regulations 1998</p> <p>https://bit.ly/2yJTDfo</p> | <ul style="list-style-type: none"> ● Require landlords to have annual gas safety check on each appliance and flue carried out by engineer registered with the Gas Safe Register and to keep a record of each safety check. ● A landlord would not be liable for an offence if they can show that they have taken all reasonable steps to comply with their duty under the regulation. |
| <p>Tenant Fees Act 2019</p> <p>https://bit.ly/2V55qMA</p> | <ul style="list-style-type: none"> ● The Act applies to Assured Shorthold Tenancies (“ASTs”), student accommodation and licences to occupy housing, in England only. ● The Act covers licences to occupy housing, to ensure that lodgers or tenants of houses in multiple occupation (“HMOs”) also cannot be charged fees. ● The Act applies to housing associations and local authorities, where they are letting an AST in the private rented sector. |

Civil Litigation

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| <p>Statement of truth on pleadings</p> <p>https://bit.ly/34mUvID</p> | <ul style="list-style-type: none"> ● The wording of the statement of truth at Practice Direction 22 at paragraph 2.1 has been changed from 6 April 2020. ● The form of the statement of truth verifying a statement of case, a response, an application notice or a notice of objections should be as follows: <i>‘[I believe][the (claimant or as may be) believes] that the facts stated in this [name document being verified] are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.’</i> |
| <p>Statement of truth for witness statements</p> | <ul style="list-style-type: none"> ● The form of the statement of truth verifying a witness statement should be as follows: <i>“I believe that the facts stated in this witness</i> |

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| <p>https://bit.ly/34mUvID</p> | <p><i>statement are true I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.”.</i></p> <ul style="list-style-type: none"> • The statement of truth must be in the witness’s own language. • The statement of truth must be dated with the date on which it was signed.” • The changes also introduce a mandatory requirement that the witness statement should state <i>“the process by which it has been prepared, for example, face-to-face, over the telephone, and/or through an interpreter.”</i> E.g. <i>“This statement has been prepared following discussions taking place on the telephone (at a time when social isolation was in force).”</i> |
| <p>Personal service during the coronavirus outbreak</p> <p>https://bit.ly/3bX3JHS</p> | <ul style="list-style-type: none"> • The requirements for personal service have not currently been modified. • CPR rule 6.15 contains a general power to make a future or retrospective for service by an alternate method. • CPR 81.24 – committal proceedings, provides a power allowing the court to dispense with personal service • Some process servers are affecting personal service by ringing the door bell, placing the document on the doorstep and then talking to the person being served whilst standing 2 meters away. |
| <p>Remote cost hearings guidance</p> <p>24 April 2020</p> <p>https://bit.ly/2SiP0zD</p> | <ul style="list-style-type: none"> • Guidance has been provided for the conduct of remote costs hearings during the pandemic in detailed assessment, oral review hearings of provisional assessments listed pursuant to a CPR 47.15(7) request and application hearings in which the court is invited to certify an amount payable from a child or protected party’s damages under CPR 46.4(4). • The guidance can be accessed by clicking on Remote Cost Hearing Guidance under “Civil Guidance” |

Remote Hearings

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| <p>Courts and tribunals tracker list during coronavirus outbreak</p> <p>https://bit.ly/2WmdqKZ</p> | <ul style="list-style-type: none"> • HMCT maintain a tracker list of open, staffed and suspended courts during the coronavirus outbreak which is regularly updated. • There are currently 159 open courts, 116 which are staffed but not open to the public and 76 suspended. |
| <p>Priority Listing</p> <p>https://bit.ly/35OTyU4</p> | <ul style="list-style-type: none"> • HMCTS have released a list of civil court listing priorities which categorises work into Priority 1 which must be done by the court and Priority 2 which could be done. • The list designates injunctions (incl ASB), committals, stay applications of existing possession orders, homelessness applications and other urgent applications as priority 1 work that must be dealt with by the court. |
| <p>Civil Justice in England and Wales Protocol regarding remote hearings</p> <p>Issued 26 March 2020 Updated 31 March 2020</p> <p>https://bit.ly/2xWmBrW</p> | <ul style="list-style-type: none"> • Applies to trials, applications and all hearings including those involving litigants in person • Confirms that hearings should, as far as possible, be held in public. This will include enabling media to access the hearing if requested. • The available methods of conducting the hearing include: <ol style="list-style-type: none"> 1. BT Conference Call 2. Skype for Business 3. BT Meet Me 4. Zoom • Judges and clerks/officials, will, in each case, wherever possible, propose to the parties one of three solutions: - <ol style="list-style-type: none"> 1. An appropriate remote communication method for the hearing; 2. That the case will proceed in person with appropriate precautions to prevent the transmission of Covid-19; or 3. That the case will need to be adjourned, because a remote hearing is not possible • Any disagreement is to be made in writing by email or CE-file, copied to the other parties. The court will then make a binding determination on how to proceed. |

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| | <ul style="list-style-type: none"> On the date of the hearing, all parties should log in in good time for the stated start time and parties are not permitted to record the hearing. Electronic paginated and indexed bundles are important for remote hearings to ensure every party is working from the same documents. |
| <p>Practice direction 51Y – video or audio hearings during coronavirus pandemic</p> <p>https://bit.ly/2xYMBTw</p> | <ul style="list-style-type: none"> The practice direction provides the legal basis for courts to hold hearings by video or audio means during the pandemic. The PD ceases to have effect on the same date as the Coronavirus Act 2020. The PD provides that where the court directs that proceedings are to be conducted wholly as video or audio proceedings and it is not practicable for the hearing to be broadcast in a court building, the court may direct that the hearing must take place in private where it is necessary to do so to secure the proper administration of justice. |
| <p>Principles for Remote Advocacy</p> <p>16 April 2020</p> <p>https://bit.ly/3cfDjBw</p> | <ul style="list-style-type: none"> The Inns of Court College of Advocacy has published a guide consisting of 8 principles designed to help produce more effective remote advocacy during hearings. The appendix contains a list of UK court and tribunal protocols and updates. In summary, the 8 principles are to liaise in advance, understand the technology, make sure all parties can be seen and heard, know how to handle the documents, make the best use of written arguments, be prepared then be brief and to the point, avoid overspeaking and maintain confidentiality. |
| <p>Guidance: HMCTS telephone and video hearings during coronavirus outbreak</p> <p>Updated 14 April 2020</p> <p>https://bit.ly/2KbjqQ5</p> | <ul style="list-style-type: none"> The guidance provides a link to the guidance published 8th April 2020 on how to join telephone and video hearings during coronavirus: https://bit.ly/2VaOZzG It also provides guidance on use of technology to join hearings, access to the media, ensuring privacy of communication between legal professionals and clients and oaths and affirmations |
| <p>Tips for conducting remote hearings</p> | <ul style="list-style-type: none"> Be considerate as to your surroundings – plain backgrounds to videos and limited risk of interruptions. Aim to log in at least 5 minutes before the hearing to enable time to deal with technical issues. |

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| | <ul style="list-style-type: none"> • Notify the judge at the start of the hearing about who will be speaking and also who else is in attendance if you are not attending alone. • Say your name before speaking during a telephone conference • Tell clients that the judge may speak directly to them, rather than going through legal representatives because of the nature of the hearing. • Some courts are requiring lawyers to prepare a core bundle of 100 pages (some courts 50 pages) to be used during the hearing, excluding e.g. solicitor correspondence. • Some further tips can be found in this post by Civil Litigation Brief: https://bit.ly/3bdYQKD and the Principles for Remote Advocacy. |
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Further Information

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| <p>Hardwicke Property team updates</p> <p>https://bit.ly/3cRv278</p> <p>https://bit.ly/3f2FwCv</p> <p>https://bit.ly/2x3HRMw</p> | <ul style="list-style-type: none"> • With the residential and commercial property markets severely affected by the Covid-19 situation, Hardwicke is perfectly placed to assist you with any issues you have. Recognised by the legal directories as a leading chambers in the area, we handle commercial L&T, development work, housing (both privately rented and social housing), leasehold and leasehold management, real property, mortgages and trusts of land. |
| <p>Hardwicke Covid 19 Resources</p> <p>https://bit.ly/34lOdTq</p> <p>https://bit.ly/2zhiOGn</p> | <ul style="list-style-type: none"> • Hardwicke has a dedicated resource page dealing with immediate, commercial and practice advice across all of our main practice areas during the crisis. • Civil Litigation Brief by Hardwicke’s Gordon Exall provides updates and commentaries on civil procedure, remote hearings, working remotely, staying in business, guidance from the LC Justice, well being, remote help for pupils and useful links |

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Cameron Stocks

11th May 2020

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