

**IN THE COUNTY COURT AT CENTRAL LONDON  
BETWEEN:**

**Claim No. F00HF362**

**MR MEHMET ARKIN (AS FIXED CHARGE  
RECEIVER) Claimant**

**- and -**

**(1) MR GARY RONALD MARSHALL Defendant**

**IN THE COUNTY COURT AT CENTRAL LONDON  
BETWEEN:**

**Claim No. F00HF363**

**MR GARY MARSHALL  
(ACTING BY MR MEHMET ARKIN AS FIXED  
CHARGE RECEIVER) Claimant**

**- and -**

**(1) MR BRETT MARSHALL  
(2) KIM BEVERLEY MARSHALL Defendants**

Counsel for the Claimants: Michael Walsh

Counsel for the Defendants: Julian Gun Cuninghame

**Approved Judgment**

I direct that pursuant to CPR PD39A para 6.1 no official shorthand note shall be taken of this judgment and that copies of this version as handed down may be treated as authentic

## HHJ Parfitt:

1. This brief judgment addresses an issue between the parties as to whether these proceedings are subject to the stay directed by Practice Direction 51Z “PD 51Z” which came into effect on 27 March 2020.
2. The Relevant Facts These are possession proceedings brought under CPR Part 55 on 24 September 2019 to enforce mortgage rights (“the Proceedings”). On 18 November 2019 the Proceedings were allocated to the multi-track. A CCMC was due to take place on 26 March 2020. The hearing did not happen but the parties’ counsel enabled the court to give directions leading to a trial in a window between October 2020 and January 2021.
3. The Practice Direction PD51Z provides at paragraph 2: *All proceedings for possession brought under CPR Part 55...are stayed for a period of 90 days...*
4. The Implications The 90 day period runs out on 24 June 2020. The directions in this case require the parties to carry out disclosure in that period. Witness statements are due on 26 June 2020. It is common ground between counsel that a stay would put a halt on the parties complying with directions during the period of the stay. Mr Walsh says that there is no increased risk to public health by the parties complying with the agreed directions and so it would be a nonsense for the stay to apply to these proceedings – which have developed beyond the usual Part 55 starting point. Mr Gun Cuninghame says the clear consequence of PD51Z is that the Proceedings are stayed and it would undermine that clarity if in any particular case the court will need to deal with disputes about whether the stay applies or whether if it does apply it should be lifted.
5. The Law Mr Walsh provided a summary in his written submission of the power to make practice directions. I approach the law slightly differently but what follows is informed by Mr Walsh’s submissions.
6. A convenient starting point is the summary contained in Zukerman On Civil Procedure 3<sup>rd</sup> ed starting at 2.11. The relevant power is now contained in section 5 of the Civil Procedure Act 1997 (as substituted by the Constitutional Reform Act 2005 (“the CPR 1997” & “the 2005 Act”)).
7. In making PD51Z, the Master of the Rolls and the Lord Chancellor referred to Schedule 2, Part 1, paragraph 2(2) of the 2005 Act. This refers to *designated directions* which are defined to include directions given under another Act (i.e. here under the CPA 1997). The definition of *Practice Directions* in the CPA 1997 is *directions as to the practice and procedure of any court...*
8. The actual power is contained in section 5(1) of the CPA 1997 which says that practice directions *may be given*. Section 5(4) gives indications about the power to make practice directions which includes a power to give directions containing *different provision for different cases* and to *vary or revoke directions given by any person*.

9. Professor Zukerman refers to *Sec. State for Communities v Bovale Ltd* [2009] EWCA Civ 171. This addressed whether a judge in charge of the administrative list could lay down matters of practice for other cases. The Court of Appeal reviewed the source of the law relating to practice directions and among other things concluded that the case management powers of particular judges did not give power to vary the rules or practice directions generally (paragraph 26) and nor does a judge have the power to ignore a practice direction (paragraph 28). It is helpful to set out paragraph 28 in full:

*How far is a practice direction binding? In our view a judge is bound to recognise and has no power to vary or alter any practice directions, whether brought in under the section 5(1) procedure or under the Section 5(2) procedure or indeed any existing practice directions issued pre-2005 Act. There are powers under the rules, as we have already indicated, to apply case management powers in particular cases but otherwise practice directions must, as it seems to us, be binding on the court to which they are directed. The issue of a practice direction is the exercise of an inherent power, even when carried out pursuant to section 5(1) or 5(2).*

10. Mr Walsh cited costs cases concerned with the circumstance where there is a conflict (or potential conflict) between primary legislation and a practice direction or a rule and a practice direction. There is no doubt about the relevant hierarchy in those circumstances. But no such issues arise in this case. PD51Z is not said to create a conflict. Mr Walsh suggests that it is a curtailment of the court's general power to stay cases (see CPR 3.1(2)(f)). However, on the contrary in the light of *Bovale* it seems to me that PD51Z is rather an exercise of that power and one of general application. It is a "direction" given with statutory authority which will apply to those cases within its scope.
11. I note that in *UCL Hospitals NHS FT v MB* [2020] EWHC 882, Chamberlain J at [3] and [37], the court drew the parties attention to PD 51Z as an absolute bar on seeking a possession order but not an injunction against a trespasser. There was no suggestion in that case of any discretion to disapply the practice direction.
12. Application The Proceedings were started as Part 55 claims and accordingly come within the PD51Z. *Bovale* requires any court to give effect to the practice direction. I agree with Mr Gun Cuninghame that this is not a discretion but a requirement arising out of the nature of this particular practice direction.
13. Conclusion These claims are stayed for 90 days. Mr Gun Cuninghame's submissions contain some practical suggestions about how the parties might adjust the existing directions to ensure they are ready for a trial within the window. Once the stay is over I would hope such adjustments can be made. I will make an order moving the TLA for the trial to after the stay is over and also assist by pushing back the start of the existing trial window by 4 weeks. I would ask Counsel please to draft an appropriate order.

HHJ Parfitt