

# COVID-19 UPDATE FROM CITIZENS ADVICE BRENT – 15 DECEMBER 2021

## Debt update

### **Mortgage possession pause by trade body members**

Members of [UK Finance and the Building Societies Association](#) will not try to seek or enforce possession of residential property, including buy-to-let, between 13 December and 4 January. They will only continue with possession where:

- the client asks for this
- the property is vacant
- the client has died.

### **Onus on bankruptcy applicants to prove they meet insolvency test**

In [The Office of the Bankruptcy Adjudicator & Anor v Shaw](#), the High Court has ruled on the issue of meeting the 'insolvency test'. In this case, Mr Shaw's bankruptcy application was initially refused on the basis that he failed the 'insolvency test' in section 263K(1)(b) of the Insolvency Act 1986. He owed around £170,000 but was over 55 and had various pensions, one of which was valued at over £400,000. He appealed and the district judge granted his bankruptcy order, stating that the test was whether the applicant could pay their debts as they fell due and, since the pensions were not capable of prompt or instant conversion into cash, he was insolvent.

The Insolvency Act specifically prevents costs being awarded against the adjudicator, however, the district judge made a non-party costs order against the Secretary of State, stating that the case was 'out of the ordinary'.

The High Court overturned the district judge's decision. Although the insolvency test was indeed a 'cash flow' test, it was for the applicant to prove that their assets were not realisable within a time-frame which creditors could properly have tolerated. The district judge was wrong to have found that Mr Shaw was insolvent when he had not provided any evidence of the timeframe for drawing down his pension.

The High Court acknowledged the fact that approved pension funds would have been excluded from Mr Shaw's estate if it had been a creditor who had made the bankruptcy petition, however, this did not alter the fact that Mr Shaw was obliged to prove his insolvency at the time of his bankruptcy application.

The High Court also overturned the costs order, stating that, even if the appeal had not been upheld, it was wrong in principle to make an order against the Secretary of State simply because no order could be made against the adjudicator.

### **ASA upholds complaint over misleading ads**

The [Advertising Standards Agency \(ASA\) has upheld complaints against Financial Support Systems](#), a firm trading as 'National Debt Service'. Among the required actions, the company was told to make information about their fees more prominent, to make sure ads don't mislead customers about the ease and speed of their service, and not to imply that they were endorsed by the government or affiliated with other debt advice providers.

## **Employment update**

### **Government changes to working from home guidance in England**

The government had updated its ['working safely during coronavirus'](#) guidance for England in line with new recommendations to work from home wherever possible. It also updates guidance for people who work in shops and close contact services who have to go into work. There is a separate [guidance for apprenticeships](#).

### **Mandatory vaccinations in care homes**

The deadline for expiry of self-exemption certificates for those working in care homes in England has been [extended from 21 December 2021 to 30 March 2022](#) so long as the [self-certification form](#) is received before 24 December 2021.

### **What to do if you have been in close contact with someone testing positive**

From Tuesday 14 December, anyone in England, who has been identified as a contact of someone with Covid-19 is 'strongly advised' to take daily lateral flow tests for 7 days or until 10 days after their last contact with the person. Unvaccinated adults must continue to self-isolate for 10 days. You can read the [government guidance for contact of people with confirmed Covid-19 who do not live with the person](#). The same advice applies to [those living in the same household as someone with Covid-19](#).

### **Penalties for employers who were overpaid under the Coronavirus Job Retention Scheme (CJRS)**

The government has updated its [guidance on penalties charged by HMRC to employers who have abused the CJRS scheme](#).

## Minimum wage

BEIS has published the names of [208 employers who have failed to pay minimum wage](#) rates to 12,000 of the lowest paid workers in the UK.

## Workforce recruitment and retention fund in social care

The government provides [special funding schemes to help employers in England who are providing adult social care](#)

# Consumer update

## Covid restrictions

Face coverings - England

- People must now wear face coverings in most public places and on public transport, including taxis
- People don't have to wear face coverings in hospitality venues
- Even when face coverings are not required, people should wear a face covering in crowded or enclosed spaces

Vaccine passports for large events - England

- [From today, everyone over 18 must have proof](#) that they have been fully vaccinated (not including booster jabs), or have proof of a negative lateral flow test or PCR test within the last 48 hours, to enter certain venues and events
- venues and events

## [Self-isolation changes](#)

- If someone has tested positive for Covid-19, or has Covid-19 symptoms they must isolate straightway and get a PCR test confirmation
- If someone over 18 years and 6 months lives with, or has been in close contact with a person who has tested positive for Covid-19, they must self isolate if they are not fully vaccinated
- If anyone is asked by Test and Trace to isolate because of a Covid contact they must do so
- Anyone 5 years and over who is a close contact of a Covid-19 case, and who does not have to self isolate is strongly advised to do a daily lateral flow test for 7 days

## **Lateral flow tests access**

[You can get a code via the NHS website](#) and collect tests from a local pharmacy.

## **Energy**

Ofgem has removed the [£700 maximum compensation cap](#) for customers whose electricity supply was affected by Storm Arwen.

Consumers will be able to claim £70 compensation for the first 48 hours, and then £70 for every 12 hours thereafter without power. The additional compensation will apply to customers without power for more than 6.5 days, which would otherwise have been capped at £700. [Northern Powergrid has advice on compensation and welfare support payments following Storm Arwen](#). They will be paying compensation by cheque and will never ask for bank details.

## **Travel**

### NHS Covid Pass - England

Fully vaccinated children from 13 to 15 can now [request an NHS Covid Pass letter](#) to prove their vaccination status for travel.

### Red list

All 11 countries on the red list have been removed as of 4am Wednesday 15 December.

### Pre-departure testing - England and Wales

[Travellers must take a PCR or lateral flow test before their service to England departs](#). If their journey includes a stop in another country they should take the test in that country. However, some countries have entry restrictions which may make it impossible to get tested. If this happens, and travellers don't have proof of a test, they can still board their service but will be liable to a £500 fine on arrival in England as they won't have a test result.

## **Scams**

[The Financial Conduct Authority is running a campaign](#) to encourage people to watch out for loan fee fraud. Fraudsters ask victims to pay an upfront fee for a loan or credit that they never receive. You can visit their [loan fee fraud page](#) for more information.

# **Immigration update**

## **Afghan Citizens Resettlement Scheme update**

Relatives and friends in the UK may have questions about the scheme. [The Afghan Citizens Resettlement Scheme](#) (ACRS) was announced in August but has not yet been launched and no details have yet been released about how people will be able to apply to it.

## Housing update

In [Global 100 Ltd v Laleva \[2021\] EWCA Civ 1835](#) the Court of Appeal considered property guardianship and the threshold for when a defended possession claim should be dealt with summarily.

The main issue was whether the court should have summarily decided the claim at the first hearing or whether they should have adjourned the matter, with directions, for trial. This situation will be familiar to advisers who have worked on court desks where dozens of possession cases are listed to be heard in a morning or afternoon session and are typically decided after a 10-15 minute hearing.

Practice Direction 55.8(2) allows for a claim that is “genuinely disputed on grounds which appear to be substantial” to be adjourned with directions for a fuller hearing. At the county court appeal, HHJ Luba held that the threshold for PD55.8(2) ‘must be a relatively low one’. The Court of Appeal disagreed and instead held that the test must be the same as under Part 24 of the Civil Procedure Rules. For example summary judgement can be entered if a defence does not have ‘real prospects of success’.

The Court of Appeal proceeded to consider whether the landlord was entitled to possession of the property, including whether the occupation agreement be considered as a licence or tenancy. The court held that the nature of the agreement was to provide guardian services and occupation of the property was key to the provision of these services. The court held that ‘on the proper interpretation of Ms Laleva’s agreement considered in the light of the surrounding circumstances and the purpose of the agreement, the argument that it created a tenancy rather than a licence has no real prospect of success’.

For a more detailed discussion of the case and its implications read [more on the Nearly Legal blog](#)

## Family update

### **HMCTS previews new divorce procedure**

HM Courts and Tribunals Service (HMCTS) has recently held a fifth Annual Public User Event. This included a presentation ‘Ending the ‘blame game’: the Divorce, Dissolution and Separation Act’, which previewed the proposed new online application for divorce. The changes are due to be implemented in April 2022. The event also included a separate session on ‘Domestic abuse and other protective orders’. You can [view the slides from all the sessions on GOV.UK](#) and [watch the presentations on YouTube](#).

### **New case on the use of ‘barring orders’**

Section 91(14) Children Act 1989, allows the court to make an order stopping a person from making further applications under the Act, without the court’s permission, This is usually to

stop repeated, unnecessary applications and limit harm. In [Re A \(A CHILD\) \(supervised contact\) \(s91\(14\) Children Act 1989 orders\) \[2021\] EWCA Civ 1749](#) a section 91(14) order was made alongside a supervised contact order on a first application. The leading case on these orders is [Re P \[1999\]](#) some 22 years old, and this new authority acknowledged that the use of bombarding emails and social media, rather than repeated court applications, could justify a barring order. You can [read a case summary on Family Law Week](#) and it highlights the importance of how clients conduct themselves in proceedings.

### **Family Court guidance on 'e-bundles'**

The President of the Family Division has issued guidance on the preparation of electronic court bundles for court hearings. If your client is unrepresented they should contact the court as far in advance of the hearing as possible for guidance if they are unable to comply. You can [read the guidance on the Judiciary website](#).

## **Benefits update**

### **Local Housing Allowance (LHA) rates frozen for a second year**

In force from 28 January 2022, the [Rent Officers \(Housing Benefit and Universal Credit Functions\) \(Amendment and Modification\) Order 2021](#) makes provision to freeze LHA rates for 2022/2023 at the rates set for 2020/2021.

### **Disregard of certain compensation payments for means tested benefits**

In force from 1 January 2022, the [Social Security \(Income and Capital Disregards\) \(Amendment\) Regulations 2021](#) amend regulations relating to the calculation of Income Support, Jobseeker's Allowance, State Pension Credit, Housing Benefit, Employment and Support Allowance and Universal Credit to provide for the disregard of certain compensation payments as income and capital.

The regulations apply to payments made under any of the four schemes currently operating, or that are in the process of being established, that compensate victims of historical institutional child abuse in Northern Ireland, Scotland and the London Boroughs of Lambeth and Islington. They will also apply to any future schemes providing compensation for historical institutional child abuse in the UK which are established or approved by the Secretary of State.

The Secretary of State for Work and Pensions has confirmed in a [Ministerial Direction](#) that payments from historical institutional child abuse compensation schemes will be disregarded prior to the coming into force of the regulations.

The regulations also apply to payments made under the Windrush Compensation Scheme. These were previously disregarded under extra-statutory arrangements with the Treasury.