

Exceptional circumstances for the purposes of PD51Z: *Copeland v Bank of Scotland Plc* [2020] EWHCA 1441 (QB)

In the much-discussed¹ decision of the Court of Appeal in *Arkin v Marshall* [2020] EWCA Civ 620, it was said that whilst judges do strictly retain the power to lift the blanket stay on possession proceedings imposed by PD51Z, this would require exceptional circumstances. The Court had “*great difficulty in envisaging*” a case where it would be appropriate to do so.

Copeland v Bank of Scotland Plc [2020] EWHC 1441 (QB), which involved a mortgagee’s application, made out of time, for permission to appeal a refusal to set aside a possession order (listed with the appeal to follow), provides an example.

The judgment can be found here: [https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2020/1441.html&query=\(copeland\)+AND+\(v\)+AND+\(bank\)+AND+\(of\)+AND+\(scotland\)](https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2020/1441.html&query=(copeland)+AND+(v)+AND+(bank)+AND+(of)+AND+(scotland))

A hearing had been conducted before Freedman J in February 2020, at which judgment was reserved. PD51Z came into force shortly after a confidential draft of the judgment was sent to the parties. The respondent mortgagee’s representatives drew the Court’s attention to the stay, although their position was that it did not prevent hand-down or the making of a consequential order, provided that no steps were taken by either party during the stay period.

Freedman J considered the issue as a preliminary point in his judgment. Although he did not explicitly confirm that PD51Z applies to the handing down of judgment, this was a necessary step to his conclusion that it would in this instance be appropriate to lift the stay so that judgment could be handed down and a consequential order made. He gave careful consideration to the Court of Appeal’s comments in *Arkin* about the purposes behind PD51Z (namely lifting the burden on judges and court staff of dealing with possession proceedings, and avoiding the public health risk of evictions). In this instance, hand-down did not have an effect inimical with those purposes and so it was appropriate for the stay to be lifted.

¹ <https://www.falcon-chambers.com/publications/articles/the-scope-of-pd-51-z-court-of-appeal-decision-in-marshall-acting-by-mehmet->; <https://www.falcon-chambers.com/publications/articles/arkin-v.-marshall-some-dicey-implications>

This was however subject to two provisos: 1) in the event that the appeal was dismissed (as it ultimately was) the possession order itself would continue to be subject to the stay, and 2) there would be an extension of time to apply for permission to bring a second appeal until after PD51Z ceased to apply. Freedman J also emphasised that his decision to lift the stay was not “*intended to inform any other Court about what to do in connection with a reserved judgment in another case: it is a course of action taken by reference only to the circumstances of this case*”.

As my colleague Gavin Bennison has recently noted² (in relation to the Court of Appeal’s decision in *London Borough of Hackney v Okoro* [2020] EWCA Civ 681 that PD51Z does apply to the hearing of appeals) a number of judgments have already been handed down during the stay period without consideration having been given (at least expressly) to the appropriateness of lifting the stay in order to do so. Gavin’s “pragmatic” conclusion, with which I agree, is that it will likely have to be presumed that the judges in those cases were implicitly exercising their power to lift the stay, having given the question of whether that was appropriate due consideration.

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² <https://www.falcon-chambers.com/publications/articles/your-appeal-fails-london-borough-of-hackney-v-okoro-2020-ewca-civ-681>