Judiciary of England and Wales

PAUL GOLDSPRING
SENIOR DISTRICT JUDGE (CHIEF MAGISTRATE)
FOR ENGLAND AND WALES

Directions as to the listing and conduct of applications for warrants of entry by utility suppliers, their servants and agents

1. Listing and procedure

Uncontested cases will be assigned to a court by the Heads of Legal Operations by applicant. This also applies to emergency applications. Existing assignments will continue.

Senior legal managers will determine frequency and hearing slots based on predicted volumes, which may change from time to time.

Allocation to judiciary

Practice Direction 5.14 on the deployment of cases between district judges (MC) and justices of the peace will apply.

Notice

In addition to the statutory notices set out in the 1954 Act, in order to comply with EHCR Articles 6, 8 and Article 1 of the First Protocol, applicants will send a notice to occupiers informing them of their right to apply for a contested hearing.

No notice is required in the event of a genuine emergency, or where criminal activity is suspected and it is necessary to avoid disclosing the investigation. The applicant must satisfy the court of this.

Otherwise notice of 14 days before the application is made is required for applications on the grounds of safety, tampering or criminal activity (and water utilities applications under Sched 6 of the Water Industry Act 1991). In other cases, 21 days is required.

These notice periods also apply where access is sought to inspect equipment held on property other than that of the customer ("third party cases"). In those circumstances the customer and the third party must both be notified.

The notice must inform the occupier of their right to request a hearing at a courthouse other than the assigned courthouse, a list of which will be provided by HMCTS and which may change from time to time. These occupiers will be required to provide basic case management information with their request.

Where a contested hearing is requested, the applicant will contact the listing office at the selected court to fix the hearing with reference to the case management information provided by the customer.

Hearings

Uncontested hearings will be held by live link. Contested hearings may be held by live link, in accordance with Magistrates' Courts Rule 3B.

There is no requirement for applications to be heard in open court. However, for convenience in listing (for example where applications are combined with other types of business) they may be held in public.

Applications

Applications will be made by submitting the relevant data in a CSV file to the assigned court office and paying the prescribed fee.

Separate CSV files will be submitted for warrants sought for different purposes, viz: installation of pre-payment meters; commercial disconnection; safety, theft and tamper; any other purpose. This will assist the court in scrutinising a sample of applications and identifying the correct notice period.

Each CSV file will be accompanied by a further file which comprises the written Information for each case, to be confirmed on oath. This will be filed by the court officer.

Acknowledgment

The Chief Magistrate is grateful for the assistance of District Judge (MC) Goozee and the Justices' Legal Advisers and Court Officers' Service (formerly the Justices' Clerks' Society) in the preparation of this direction.

2. The information the court must establish

This is based on the requirements of the 1954 Act and Ofgem's standards, developed in the pathfinder exercise carried out by District Judge (MC) Goozee.

Justices and judges must scrutinise the applications in light of the requirements of the 1954 Act and good practice as prescribed by Ofgem. The key questions are whether the operator has a right of entry under the relevant Act and whether admission is reasonably required to exercise it.

It is recommended that courts do not hear each application individually. Experience has shown that the relevant evidence is the same in the vast majority of cases. Thus the oral Information should be provided generically for every case on the list, followed by more detailed scrutiny of a sample of cases, from which the justice/judge can assess the validity of the applications.

In particular it is not necessary to require individual evidence of matters which are the same in each case, for example service of notices and provision of credit on pre-payment meters. Scrutiny should take the form of an examination of a dip sample of cases (see below). If the court is satisfied in relation to the cases sampled, the remaining applications can be granted *en bloc* following confirmation of the information on oath.

It is recommended that the court sample five applications for lists of under 100 cases and 10 for lists over that. Courts should however ensure that at least five cases where pre-payment meters are sought are sampled. Note that the information sought differs depending on the purpose for which the warrant is sought. Justices/judges must be provided with the application list, either digitally or printed, from which to draw the samples.

Unusual applications (particularly where it is intended to disconnect a residential supply) should always be made individually.

In general, for all applications (*en bloc*):

- The applicant acts on behalf of the supplier as an employee or agent
- Their evidence is based on computer systems which were operating normally when the date was obtained
- The supplier provides energy to each of the occupiers
- The supplier [and agent] have complied with the terms of the supplier's licence and Ofgem's Codes of Practice

Additional information for applications other than debt cases (usually theft, tamper or safety)

- Notice has been sent to each occupier notifying them of the intention to apply for a warrant and their right to ask for a court hearing at least 14 days before the date of hearing

  Or
- Notice has not been sent due to the urgency or need to avoid tipping-off
- [Where notice has been given] none of the occupiers on the list has responded asking for a court hearing
- There are grounds to believe that someone in the premises has interfered with the supply, or damaged the fittings, or tampered with the meter.
- A member of staff has sought admission, giving at least 24 hours' notice, and admission has not been granted.
- As a result there is a right of entry under the Gas Act 1986 and/or Electricity Act 1989.

Additional information for debt cases where the intention is NOT to install a pre-payment meter (i.e. commercial disconnections)

- A demand has been made for payment in each case
- The provider has sent by post or email a written demand for payment to each occupier
- Payment has not been made within 28 days of that demand
- As a result there is a right of entry under the Gas Act 1986 and/or Electricity Act 1989 to disconnect the supply.
- Notice has been sent by to each occupier notifying them of the intention to apply for a warrant and their right to ask for a court hearing at least 21 days before the date of hearing
- The sums owing are not in dispute to the knowledge of the supplier [and agent].
- All outstanding debts exceed £200, taking into account payments made after the notice was sent
- If on entry the supplier/agent becomes aware that someone other than the customer is living in the premises they will investigate further.

Additional information for applications where the intention is to install a pre-payment meter

- The supplier has been authorised by Ofgem to install pre-payment meters
- No staff are incentivised by the number of pre-payment meters they install.
- All field agents wear body worn cameras/audio recording equipment and the recordings are retained for [period]
- A demand has been made for payment in each case
- The provider has sent by post or email a written demand for payment to each occupier
- Payment has not been made within 28 days of that demand
- The sums owing are not in dispute to the knowledge of the supplier [and agent].
- All outstanding debts exceed £200, taking into account payments made after the notice was sent
- Notice has been sent by to each occupier notifying them of the intention to apply for a warrant and their right to ask for a court hearing at least 21 days before the date of hearing
- As a result there is a right of entry under the Gas Act 1986 and/or Electricity Act 1989 in order to install a pre-payment meter. There is no intention to disconnect.
- The supplier [and agent] have complied with the terms of the supplier's licence, Ofgem's Codes of Practice and the Safety Net
- In none of the cases is the customer in the process of setting up a pre-payment plan.
- If a pre-payment meter is applied it will be fitted with £30 credit.
- Supplier/agent will conduct an aftercare visit.
- If supplier/agent becomes aware that a customer or member of their household is highly vulnerable (as defined by Ofgem[1]) they will withdraw the installation.

[1] See below for Ofgem's categories of vulnerabilities

- If supplier/agent becomes aware that a customer or member of their household has medium vulnerability (as defined by Ofgem[2]) they will stop and assess further.

Questions for sampled cases

All cases

Question	Notes
When was the HR notice sent (if it was)	If sent, must be at least 21/14[2] days before the date of hearing
What type of contact details do you have?	i.e. address, phone, email
How many contact attempts have you made and how?	For theft, safety and tamper, there may properly have been none.

Additional questions for safety, theft and tamper

What are your grounds for believing there is a need to enter to inspect?	E.g. information from third parties, or supply known to continue but no metering
If no notice was given, why	E.g. urgency, need to avoid tipping off

Additional questions for commercial disconnection only

What dates were bills sent?	Must be at least 28 days before the date of hearing
How much is owed?	Must be over £200
Has anything been paid?	
Are you aware of anyone living in the premises?	Any details known, particularly are they the customer or a third party.

Additional questions for pre-payment meters only

What dates were bills sent?	Must be at least 28 days before the date of hearing
How much is owed?	Must be over £200
Has anything been paid?	
How many contact attempts have you made and how?	Must be at least 10 by multiple methods, less if they only have a postal address
What was the result of these contacts?	
Have you made a welfare visit(s) and if so when	1 visit is required
What happened?	They should outline any contacts and any observations, e.g. was it empty, any indication of vulnerability
Are you aware of any high or medium risk vulnerability?	

[2] 21 for debt cases, 14 for safety, theft or tamper and water.

Summary of Ofgem Code of Practice on Vulnerability

High Risk – Do not install

- Household requires a continuous supply for health reasons, including:
    - dependency on any powered medical equipment (such as heart/lung ventilators, dialysis equipment, stair lift, or hoist);
    - Refrigerated medication;
    - dependency on carelines or health and wellbeing alarms;
    - a medical dependency on a warm home (for example due to illness such as emphysema, chronic bronchitis, or sickle cell disease).
- Households with a very elderly occupant (85+), without support in the house;
- Households with chronic/severe or terminal health conditions (such as cancer, cardiovascular/ respiratory disease and organ failure).

Medium Risk – Further assessment required by suppliers on a case-by-case basis

- Age: Children under 5/Elderly 75+
- Other serious medical/Health Conditions (such as neurological diseases (Parkinson's, Huntingdon's, Cerebral Palsy), respiratory conditions (COPD) and mobility limiting conditions (Osteoporosis, Muscular Dystrophy, Multiple Sclerosis)).
- Serious mental/developmental health conditions (such as clinical depression, Alzheimer's, dementia, learning difficulties, Schizophrenia).
- Temporary situations (such as pregnancy, bereavement).

We also encourage suppliers to consider whether a PPM is safe and reasonably practicable for any household with adults over 65 and/or children under 16.

Precautionary Principle: Suppliers must assume that any customer faced with Involuntary PPM for debt is likely to be in a financially vulnerable situation and therefore more likely to self-disconnect.

Suppliers must therefore assess the ability to pay of any household they have reason to believe has a medium risk characteristic, to understand if the customer will be unable to afford their ongoing energy consumption. If a supplier concludes (taking into account meter type, aftercare support and reasonable energy saving assumptions) that the household will, frequently or for prolonged periods, self-disconnect and risk causing significant consumer harm, then the supplier must consider PPM to be not safe and reasonably practicable.