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Possession Proceedings – Law, Rules and Overall
Arrangements



LAPG Conference 24th February 2021

Possession Proceedings – Law, Rules and
Overall Arrangements





Possession Proceedings – Law, Rules and Overall Arrangements

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1. Tenure
2. Notices
3. Grounds and priorities
4. Issue and listing – R bundles (electric ?)
5. Enforcement and exceptions
6. What's coming up?

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1. Tenure

Er ...



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[Home](#) > [Housing, local and community](#) > [Housing](#) > [Rented housing sector](#)

Press release

Government announces end to unfair evictions

Biggest change to the private rental sector for a generation.

Published 15 April 2019

From: [Ministry of Housing, Communities & Local Government](#), [The Rt Hon James Brokenshire MP](#), and [The Rt Hon Theresa May MP](#)



Related content

[Factors influencing the progress, timescales and outcomes of housing cases in county courts](#)

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- ▶ We will continue with our reforms to **leasehold** including implementing our ban on the sale of new leasehold homes, restricting ground rents to a peppercorn, and providing necessary mechanisms of redress for tenants.
- ▶ We will bring in a **Better Deal for Renters**, including abolishing 'no fault' evictions and only requiring one 'lifetime' deposit which moves with the tenant. This will create a fairer rental market: if you're a tenant, you will be protected from revenge evictions and rogue landlords, and if you're one of the many good landlords, we will strengthen your rights of possession.



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Press release

Complete ban on evictions and additional protection for renters

Government announces radical package of measures to protect renters and landlords affected by coronavirus.

Published 18 March 2020

From: [Ministry of Housing, Communities & Local Government](#) and [The Rt Hon Robert Jenrick MP](#)



Relat

Housing Secretary Robert Jenrick MP said:

- “ The government is clear – no renter who has lost income due to coronavirus will be forced out of their home, nor will any landlord face unmanageable debts.
- “ These are extraordinary times and renters and landlords alike are of course worried about paying their rent and mortgage. Which is why we are urgently introducing emergency legislation to protect tenants in social and private accommodation from an eviction process being started.
- “ These changes will protect all renters and private landlords ensuring everyone gets the support they need at this very difficult time.”

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2. Notices

Coronavirus Act 2020 Schedule 9

The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020 (S.I. 2020/914)

The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Wales) Regulations 2020 (S.I. 2020/1044)



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2. Notices

<https://www.gov.uk/government/publications/understanding-the-possession-action-process-guidance-for-landlords-and-tenants/understanding-the-possession-action-process-a-guide-for-private-landlords-in-england-and-wales>

Search: “understand possession gov”



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Annex A: Minimum notice period lengths under Section 8 of the Housing Act 1988 in England

Legislation: Section 8, Housing Act 1988 / For grounds see Schedule 2 to the Act / Applicable to assured and assured shorthold tenancies

Users: Private sector and private registered providers of social housing

Ground	Pre-coronavirus Act 2020 notice period: until 26 March 2020	Modified notice period: 26 March 2020 - 28 August 2020	Modified notice period: 29 August 2020 - 31 March 2021
Mandatory (judge must award possession if ground met)			
1: Landlord wants to move in	2 months	3 months	6 months
2: Mortgage repossession	2 months	3 months	6 months

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Annex A: Minimum notice period lengths under Section 8 of the Housing Act 1988 in England. Table with 4 columns: Surname, Residential Tenancy, Notice Period, and Right to Buy.

Annex A: Minimum notice period lengths for tenancies in England. Table with 4 columns: Surname, Residential Tenancy, Notice Period, and Right to Buy.

Notice period lengths under section 128 of the Housing Act 1996 (Demoted Tenancies). Table with 4 columns: Surname, Residential Tenancy, Notice Period, and Right to Buy.

Notice period lengths under section 143B of the Housing Act 1996 (Demoted Tenancies). Table with 4 columns: Surname, Residential Tenancy, Notice Period, and Right to Buy.

Annex B: Minimum notice period lengths for tenancies in Wales. Table with 4 columns: Surname, Residential Tenancy, Notice Period, and Right to Buy.

Notice period lengths under section 143B of the Housing Act 1996 (Demoted Tenancies). Table with 4 columns: Surname, Residential Tenancy, Notice Period, and Right to Buy.

Annex A: Minimum notice period lengths for tenancies in England. Table with 4 columns: Surname, Residential Tenancy, Notice Period, and Right to Buy.

Annex B: Minimum notice period lengths for tenancies in Wales. Table with 4 columns: Surname, Residential Tenancy, Notice Period, and Right to Buy.

Notice period lengths under Section 8 of the Housing Act 1988 (Assured and Assured Shorthold Tenancies). Table with 4 columns: Surname, Residential Tenancy, Notice Period, and Right to Buy.

Annex B: Minimum Notice Period Lengths under Section 8 of the Housing Act 1988 in Wales. Table with 4 columns: Surname, Residential Tenancy, Notice Period, and Right to Buy.

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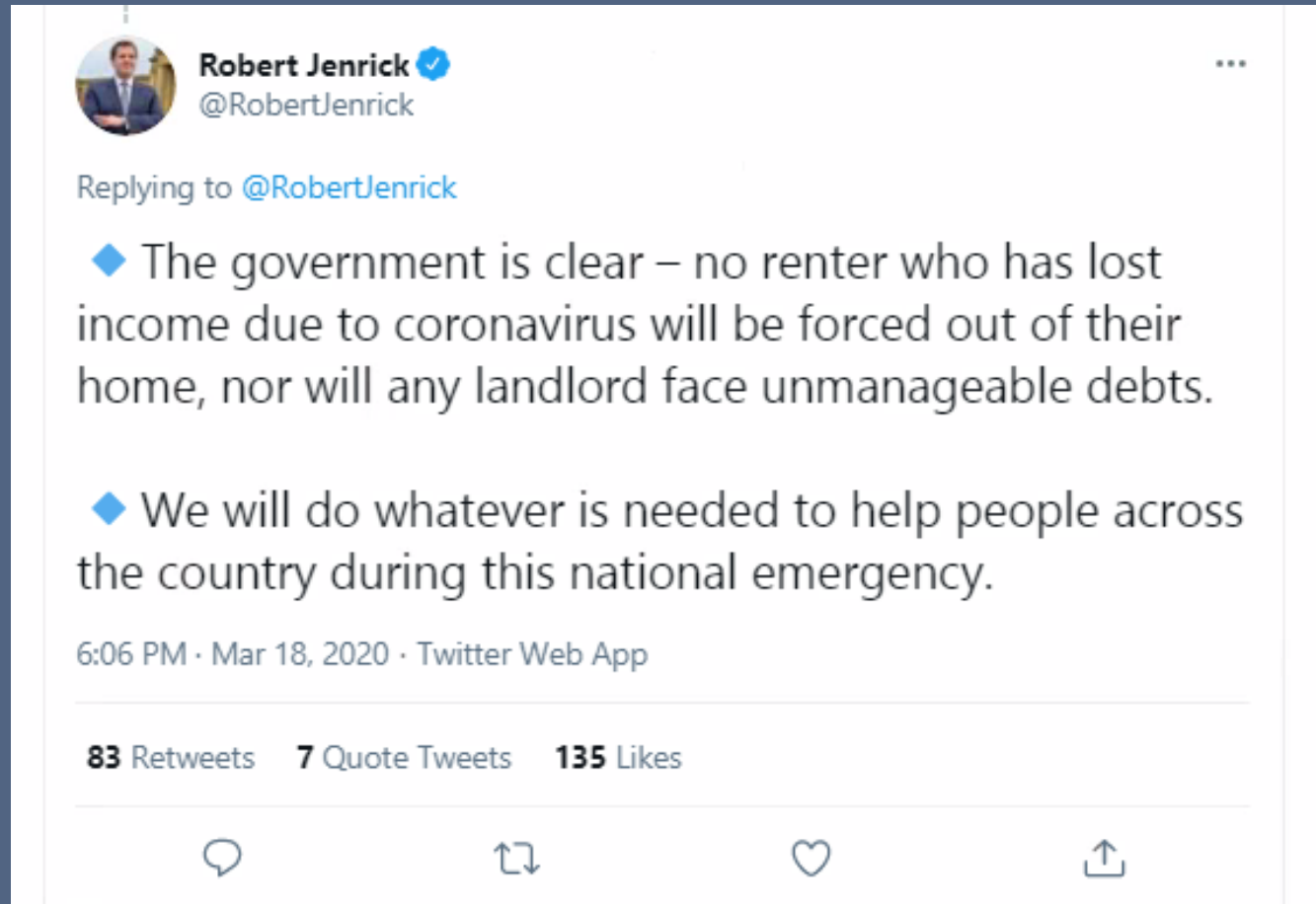


3. Grounds, priorities

Grounds . . . er . . .



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Robert Jenrick ✓
@RobertJenrick

Replying to @RobertJenrick

- ◆ The government is clear – no renter who has lost income due to coronavirus will be forced out of their home, nor will any landlord face unmanageable debts.
- ◆ We will do whatever is needed to help people across the country during this national emergency.

6:06 PM · Mar 18, 2020 · Twitter Web App

83 Retweets **7** Quote Tweets **135** Likes

Reply Retweet Like Share



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Housing, Communities and Local Government Committee

Commons Select Committee

Welcome to the Housing, Communities and Local Government Select Committee. The Committee scrutinises the policy, administration and spending of the Ministry of Housing, Communities and Local Government. The Committee is comprised of MPs from across the House of Commons. You can follow the Committee's work on its website.

[Find out more about this committee](#)

A screenshot of a report page from the Housing, Communities and Local Government Select Committee website. The main heading is 'Impact of COVID-19 (Coronavirus) on homelessness and the private rented sector'. Below the heading, there are two sections: 'Report:' with a document icon and 'Published On 22 May 2020', and 'Govt. response:' with a double arrow icon and 'Published On 30 June 2020'. At the bottom of the report card, it says 'Opened 16 April 2020'. The page is partially obscured by a dark blue overlay on the left.



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20 Protecting rough sleepers and renters: Interim Report

Annex: Draft Coronavirus (Protection of Assured Tenants) Bill

Draft Coronavirus (Protection of Assured Tenants) Bill

CONTENTS

- 1 Application
- 2 Higher rent arrears: court discretion
- 3 Expiry or termination of assured shorthold tenancies: court discretion
- 4 Meaning of coronavirus and associated expressions
- 5 Extent, commencement, expiry and short title



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2 Higher rent arrears: court discretion

- (1) The 1988 Act is to have effect as if –
 - (a) Ground 8 in Part 1 of Schedule 2 appeared instead in Part 2 of that Schedule, and
 - (b) in section 8(5) for “, 7B or 8” there were substituted “or 7B”. 15
- (2) Subsection (3) applies if the court is considering under section 7(4) of the 1988 Act whether it is reasonable to make an order for possession on Ground 8 in Schedule 2 of the 1988 Act.
- (3) The court must consider, in particular, the extent to which the rent arrears are a result of coronavirus. 20
- (4) In subsection (3), rent arrears includes any part of the rent arrears.
- (5) This section does not affect the validity of any notice under section 8 of the 1988 Act.

Possession Proceedings – Law, Rules and Overall Arrangements

- | | | |
|----------|--|----|
| 3 | Expiry or termination of assured shorthold tenancies: court discretion | |
| (1) | The 1988 Act is to have effect as if – | 25 |
| | (a) in subsections (1) and (4) of section 21 | |
| | (i) for the word “shall” there were substituted “may”; | |
| | (ii) after paragraph (a), in both subsections, the word “and” were omitted; | |
| | (iii) after paragraph (b), in both subsections, there were inserted | 30 |
| | “ ; and | |
| | (c) that it is reasonable to make an order for possession.”; and | |
| | (b) section 9(6)(b) were omitted. | |
| (2) | Subsection (3) applies if the court is considering under section 21(1) or (4) of the 1988 Act whether it is reasonable to make an order for possession. | 35 |
| (3) | The court must consider, in particular – | |
| | (a) the extent to which the landlord or, in the case of joint landlords, any of them is seeking possession because (wholly or partly) of rent arrears, and | |
| | (b) the extent to which any rent arrears are a result of coronavirus. | 5 |
| (4) | In subsection (3)(b), rent arrears includes any part of any rent arrears. | |

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3. Grounds and priorities

Priorities – Overall Arrangements

43. As a guideline the following cases will be listed with priority:

(a) Cases with allegations of anti-social behaviour, including Ground 7A of Schedule 2 to the Housing Act 1988 and Section 84A of the Housing Act 1985.

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3. Grounds and priorities

Priorities – Overall Arrangements

43. As a guideline the following cases will be listed with priority:

(b) Cases with extreme alleged rent arrears accrued, that is, arrears equal to at least (i) 12 months' rent or (ii) 9 months' rent where that amounts to more than 25% of a private landlord's total annual income from any source.



Possession Proceedings – Law, Rules and Overall Arrangements



3. Grounds and priorities

Priorities – Overall Arrangements

43. As a guideline the following cases will be listed with priority:

(c) Cases involving alleged squatters, illegal occupiers or persons unknown.

Possession Proceedings – Law, Rules and Overall Arrangements



3. Grounds and priorities

Priorities – Overall Arrangements

43. As a guideline the following cases will be listed with priority:

(d) Cases involving an allegation of domestic violence where possession of the property is alleged to be important for particular reasons which are set out in the claim form (and with domestic violence agencies alerted).



Possession Proceedings – Law, Rules and Overall Arrangements



3. Grounds and priorities

Priorities – Overall Arrangements

43. As a guideline the following cases will be listed with priority:

(e) Cases with allegations of fraud or deception.

Possession Proceedings – Law, Rules and Overall Arrangements



3. Grounds and priorities

Priorities – Overall Arrangements

43. As a guideline the following cases will be listed with priority:

(f) Cases with allegations of unlawful subletting

Possession Proceedings – Law, Rules and Overall Arrangements



3. Grounds and priorities

Priorities – Overall Arrangements

43. As a guideline the following cases will be listed with priority

(g) Cases with allegations of abandonment of the property, non-occupation or death of defendant.

Possession Proceedings – Law, Rules and Overall Arrangements



3. Grounds and priorities

Priorities – Overall Arrangements

43. As a guideline the following cases will be listed with priority:

(h) Cases concerning what was allocated by an authority as 'temporary accommodation' and is specifically needed by the authority for reallocation as 'temporary accommodation'.



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3. Grounds and priorities

Priorities – Overall Arrangements

43. As a guideline the following cases will be listed with priority:

Other circumstances may warrant priority, and further amplification of this guideline may be published.

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4. Issue and Listing – R bundles (electric ?)

- Reactivation – for stayed claims brought up and including 03 August 2020 a reactivation notice is required (period for RN now extended to 30 July 2021) - PD55C 2.1
- There are enhanced information requirements for reactivated, and new cases OA 25-28 & PD55C 6.1-6.2
- 21 days notice of a hearing OA 36 & PD55C 3.1
- Will it be an R date?

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4. Issue and Listing – R bundles (electric ?)

- R date? - OA 36 - 38

36. At least 21 days' notice is required of a hearing in a stayed claim listed or relisted in response to a Reactivation Notice.

37. Cases (stayed and new) will ordinarily proceed with a Review (please see below) and then (where necessary) a Substantive Hearing (please see below). (For Accelerated Possession Claims please see separately below.)

38. Unless there are existing case management directions that provide otherwise, for both stayed claims and new claims the first date to be listed is the Review (R) Date. (For Accelerated Possession Claims please see separately below.)

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4. Issue and Listing – R bundles (electric ?)

R date

- Not a hearing and no attendance by parties
- D may get advice from duty adviser usually remotely
- If agreement reached that can be communicated to the Judge
- Judge simply reviews the papers, approves agreements but otherwise lists S hearing

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4. Issue and Listing – R bundles (electric ?)

R date

OA 54. If the case is not resolved by agreement, the Judge will consider the bundle provided by the claimant and the Court file. If the claimant's documents are in order the case will proceed to a Substantive Hearing 28 days later. If the claimant's documents are not in order the Court can be expected to dismiss the claim (with liberty to apply for reconsideration at an oral hearing) or may give directions.

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4. Issue and Listing – R bundles (electric ?)

R bundle

OA 49. 14 days before the date listed as the Review (R) Date the claimant will be required: (a) to provide to the Court an electronic bundle (with a paper bundle allowed as an alternative); (b) to confirm to the Court that a paper bundle had been provided to the defendant (with an electronic copy in addition where the defendant is able to receive that);

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4. Issue and Listing – R bundles (electric ?)

R bundle

OA 49. 14 days before the date listed as the Review (R) Date the claimant will be required: [...]

(c) to confirm to the Court that the bundle includes all required material, specifically including enhanced information about the defendant now required; (d) to confirm to the Court that the claimant will be available during the Review Date to discuss the case (by telephone would be sufficient) with the defendant or a duty scheme (or other) adviser.



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4. Issue and Listing – R bundles (electric ?)

Mediation



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4. Issue and Listing – R bundles (electric ?)

S hearing

- Much more like a traditional first instance possession hearing, but . . .
- 15 minutes – more time for a judge to get into the issues
- Previous advice available – will judges take that into account?

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5. Enforcement and exceptions – England

22 February 2021 to 31 March 2021 - The Public Health (Coronavirus) (Protection from Eviction) (England) (No. 2) Regulations 2021 SI No 164

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5. Enforcement and exceptions – Wales

11 January 2021 to 31 March 2021 - Public Health (Protection from Eviction) (Wales) (Coronavirus) Regulations 2021 No 12 (W.5)

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6. What's coming up?

- **25 January 2021** in Wales - s.21 notices served on or after 24 July 2020 can be litigated from this date
- **29 February 2021** in England - s.21 notices served on or after 28 August 2020 can be litigated this from date
- **29 February 2021** in England - NOSP's on council, RSL and private tenancies where arrears less than 6 months can be litigated from this date

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6. What's coming up?

- **30 March 2021** in Wales - NOSPs on council, RSL and private tenancies for rent arrears can be litigated from this date
- **31 March 2021** - eviction ban set to end in England and Wales – FCA moratorium on lender enforcing possession set to end
- **4 May 2021** - The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 come into force

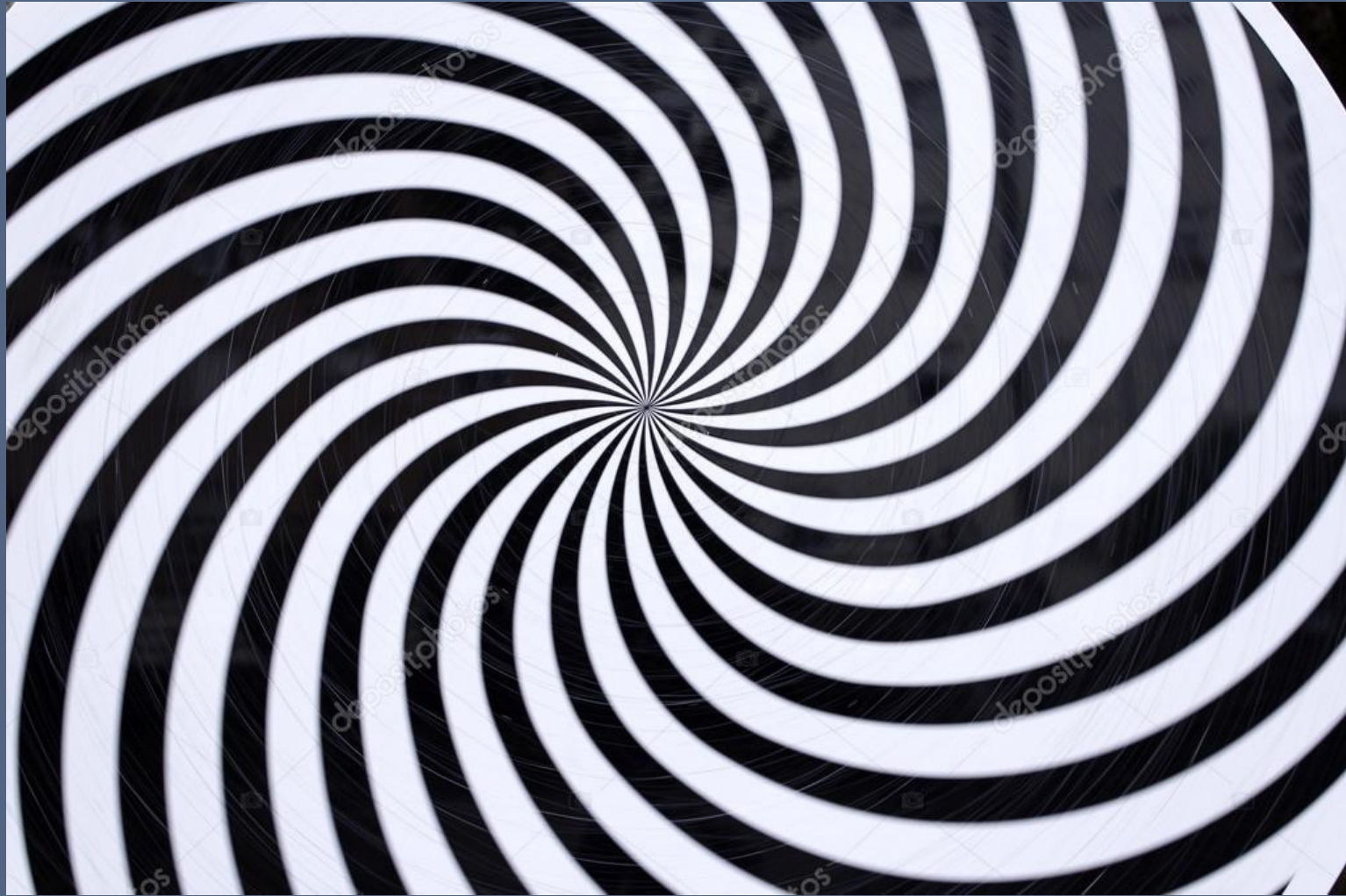
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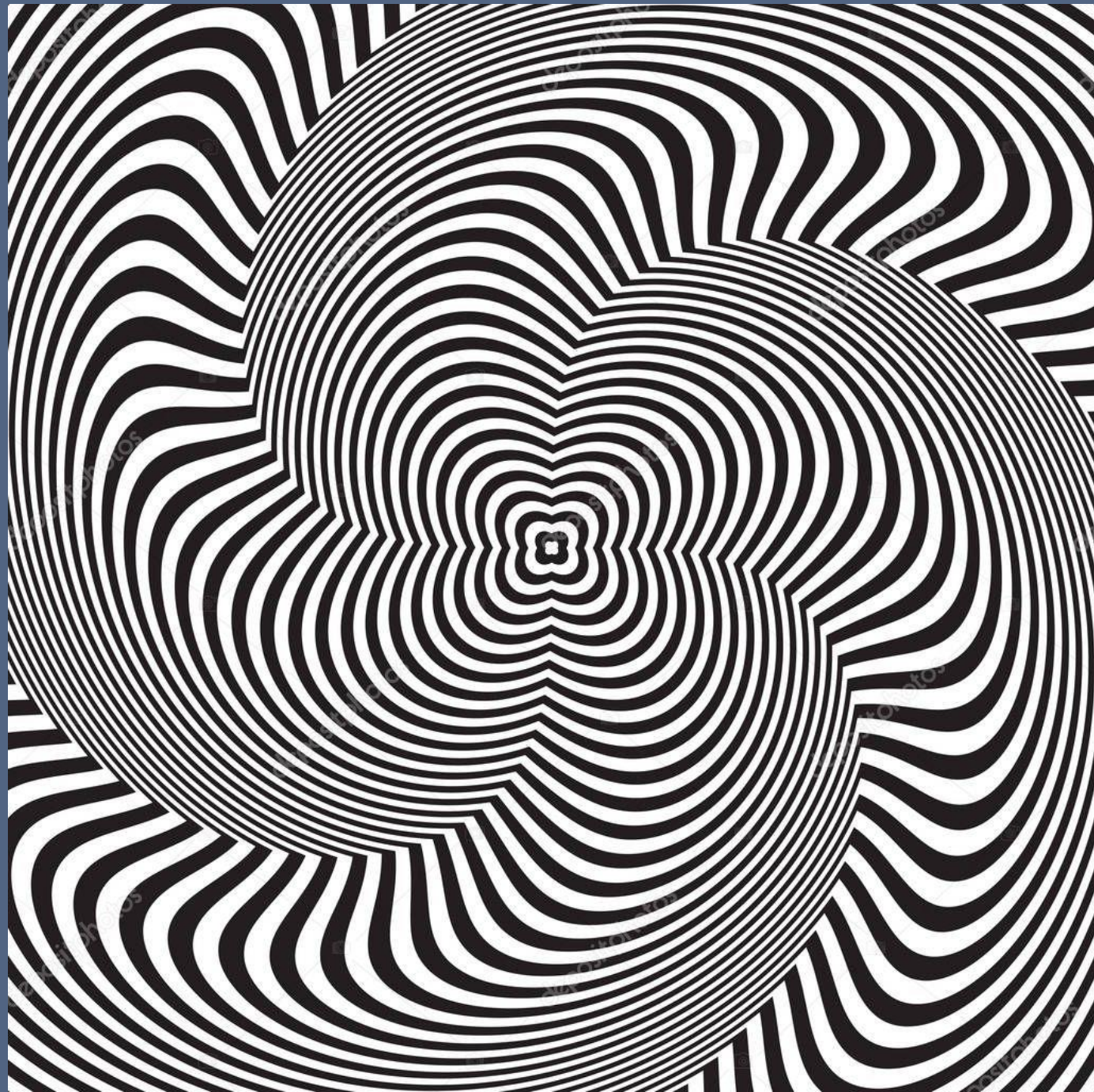


6. What's coming up?

- What else?











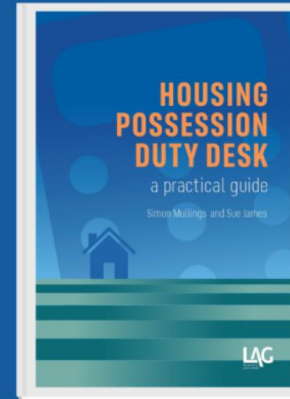
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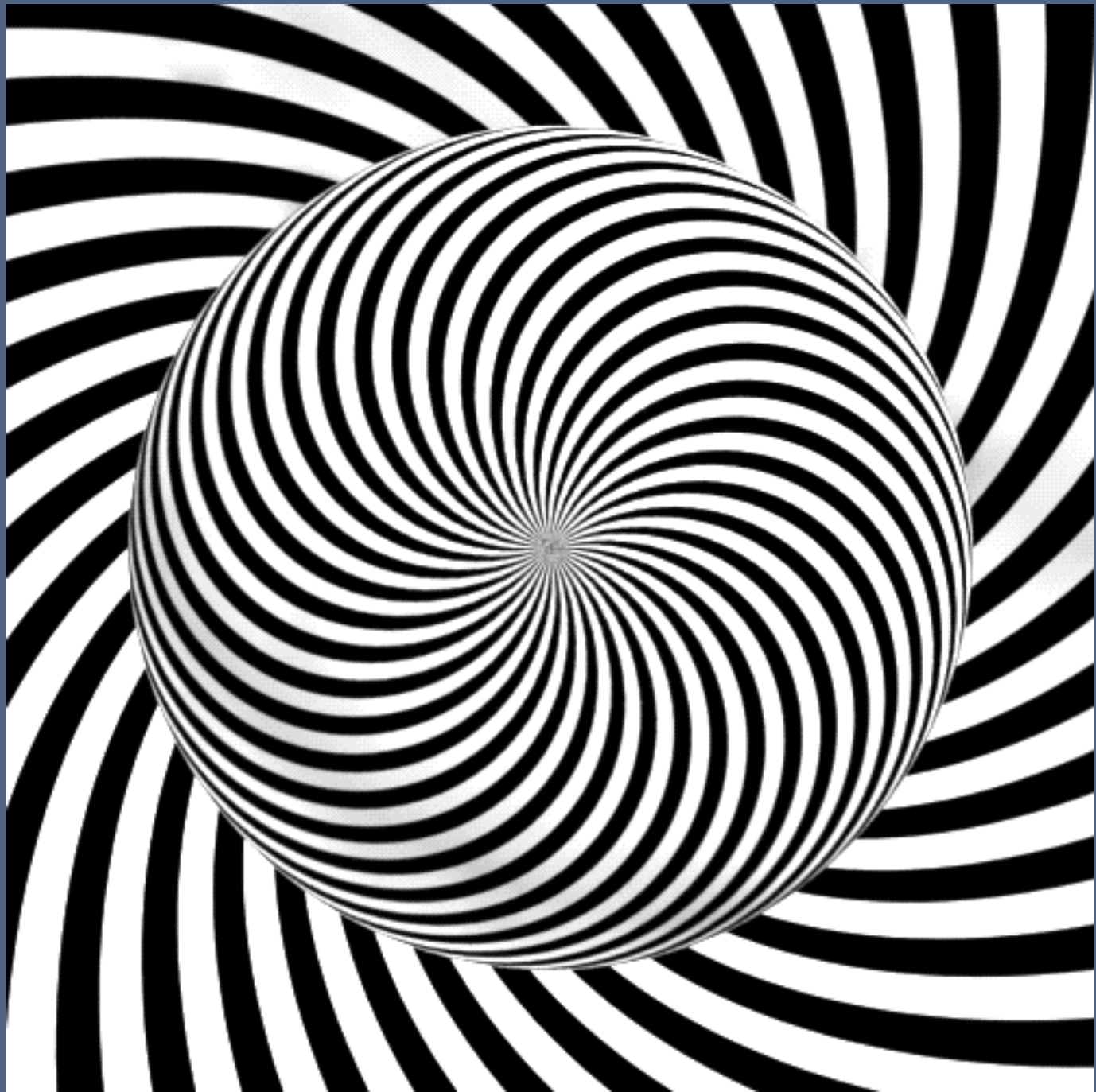


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a practical guide

Simon Mullings and Sue James





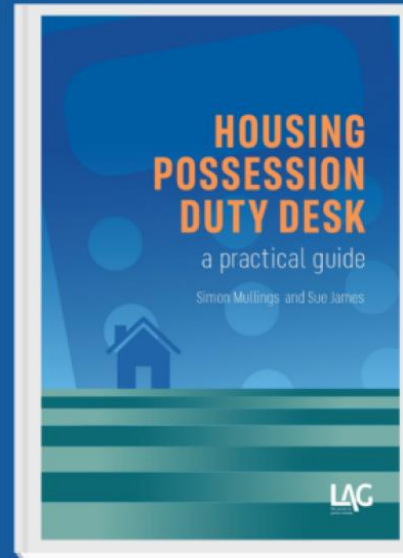
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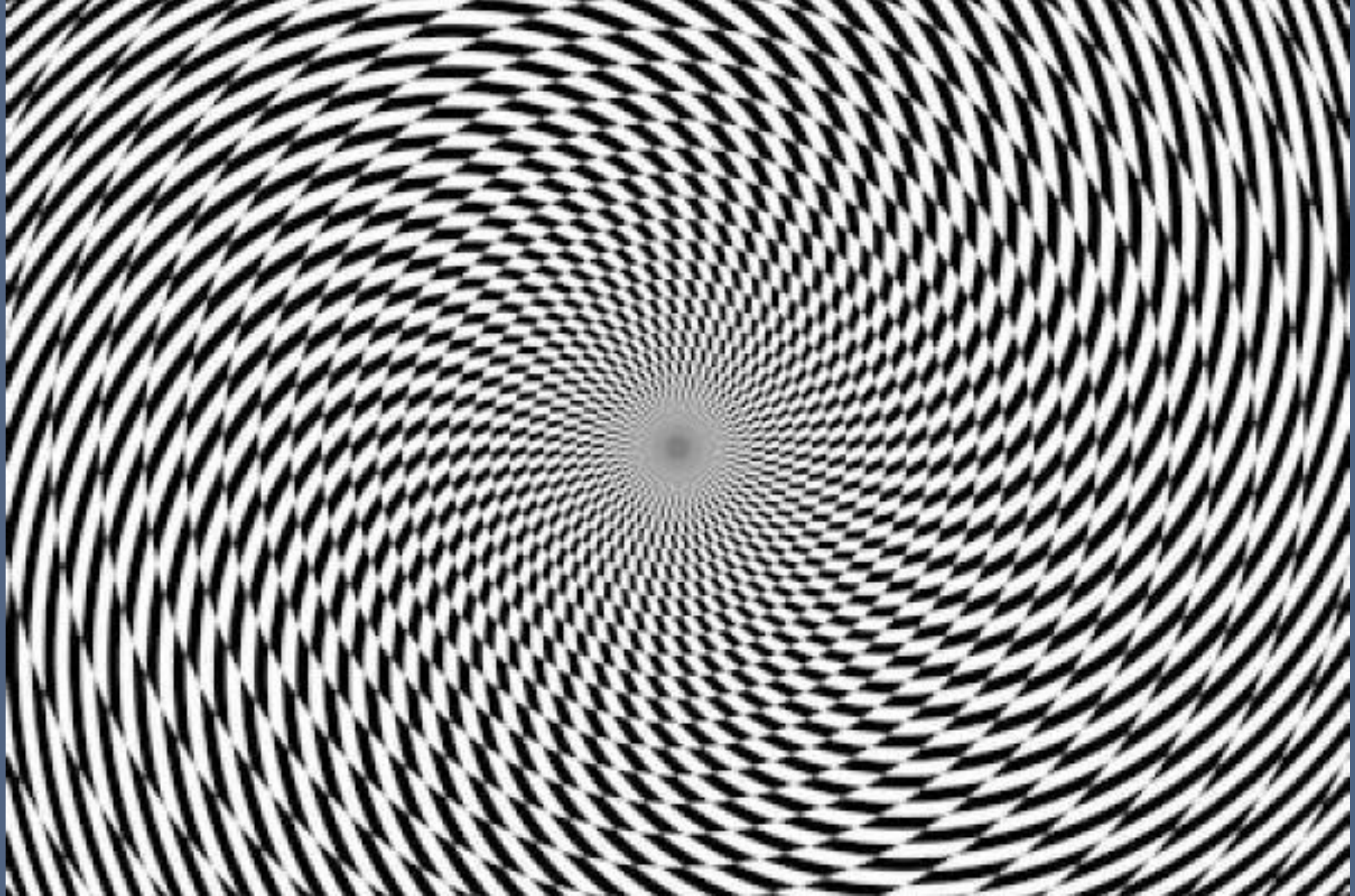


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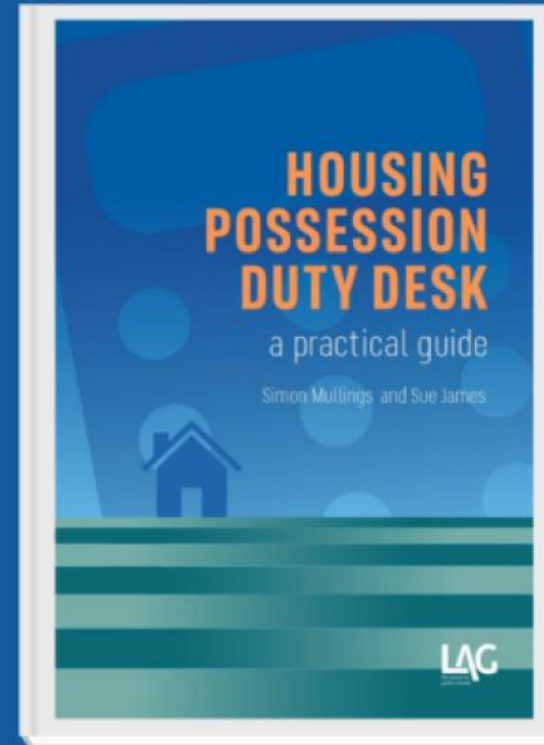
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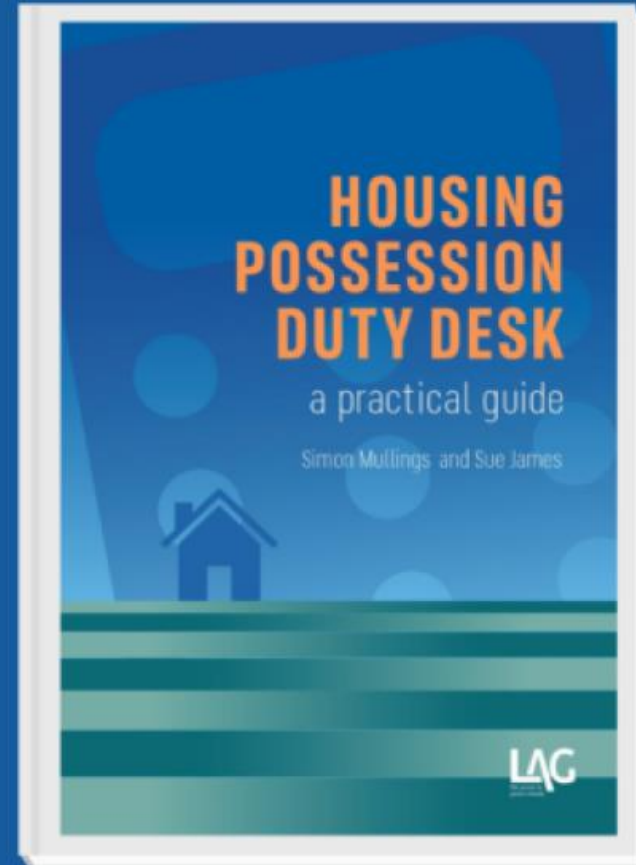
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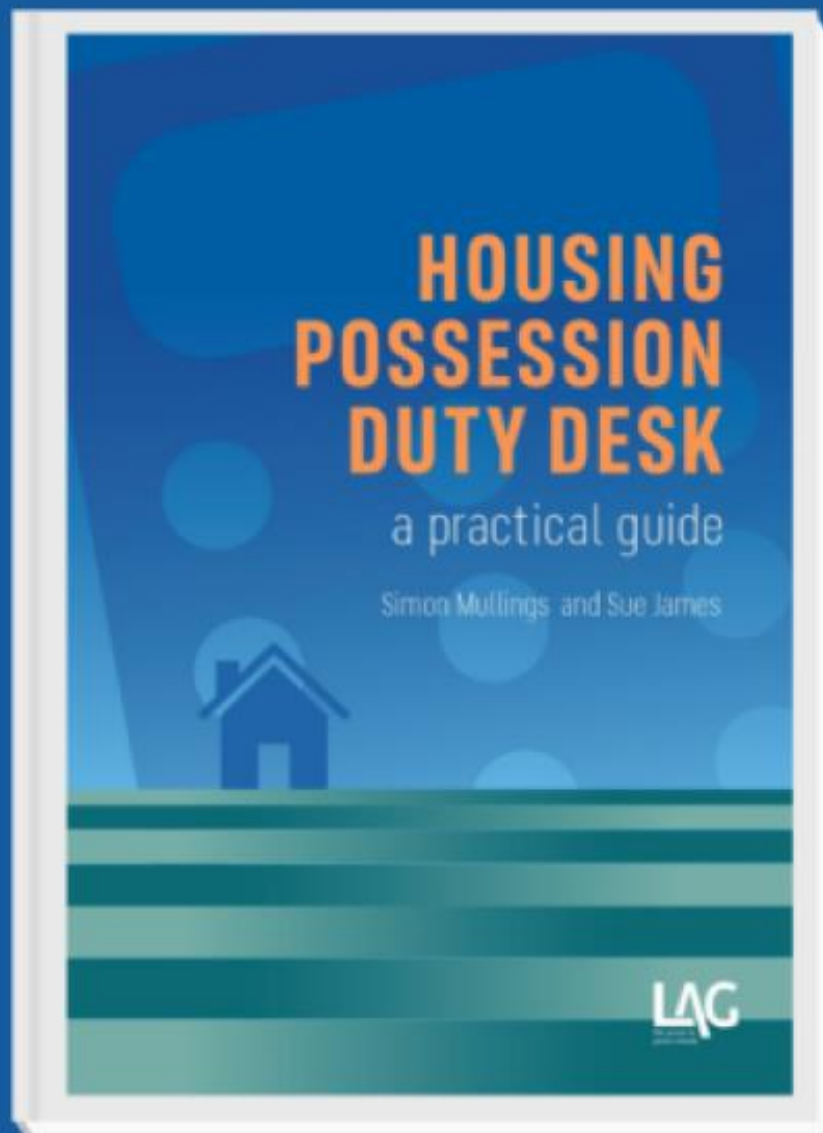
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LAPG Conference 24th February 2021

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