

## **HOUSING DISPUTES – JURISDICTION TABLES - WORKING METHODS**

- 1.1 This paper explains how we produced the following papers:
  - (1) Housing disputes - county court jurisdictions;
  - (2) Housing disputes - High Court jurisdictions;
  - (3) Housing disputes - magistrates' court jurisdictions;
  - (4) Housing disputes - Crown Court jurisdictions; and
  - (5) Housing disputes - tribunal jurisdictions.
- 1.2 The five documents listed above were originally prepared in October and November 2004, but thoroughly revised and updated in November and December 2005 (eg to take into account the enactment of the Housing Act 2004).
- 1.3 This document does not represent the Law Commission's official view of the matters discussed, nor is it an authoritative statement of the law.
- 1.4 It was completed on 1 December 2005.

### **Which provisions were searched?**

- 1.5 The Acts listed in the four court jurisdiction minutes are those included in the Sweet and Maxwell Encyclopaedia of Housing Law. We searched only the extracts from those Acts in the encyclopaedia, save for the Building Act 1984, the whole of which was searched. We used Butterworths LexisNexis legislation service to search these statutes.
- 1.6 We have not searched secondary legislation, although we include a few references to statutory instruments which appeared critical in conferring a particular jurisdiction.

### **What have we searched for?**

- 1.7 We searched through the Acts listed in the four court jurisdiction minutes for references to "court", "offence", "summary" and "convic\*". The Acts may have created offences in provisions which include none of those words (for example simply refer to a fine on the standard scale). We have not searched separately for references to "standard scale" or "fine".
- 1.8 The court jurisdiction minutes do not give an exhaustive list of provisions containing the words "court", "offence", "summary" and "convic\*": they include provisions which appeared to confer a jurisdiction (as opposed to eg constraining the exercise of a discretion by requiring certain matters to be taken into account).

- 1.9 Our approach to the tribunals paper was different. We went through the annexes to the Law Commission Consultation Paper No 170 on Land, Valuation and Housing Tribunals, trying to work out which tribunal jurisdictions in that paper related to housing disputes (commenting on this in capital text). We then checked (using Butterworths LexisNexis) whether the provisions referred to in that paper were still in force. My comments (on whether I think the tribunal jurisdictions relate to housing disputes) are in capital letters.
- 1.10 We also included reference to the “appeals tribunals” (the Appeals Service) which deals with housing benefit, but have not included provisions relating to child support, pensions or other (non-housing) benefit appeals to the appeals tribunals.
- 1.11 When updating the tribunals document in November 2005, we also searched all statutes in Butterworths LexisNexis legislation service for references to “Lands Tribunal”, “rent assessment committee”, “Agricultural Land Tribunal”, “leasehold valuation tribunal”, “rent tribunal”, “valuation tribunal”, “residential property tribunal”.

#### **High Court and county court jurisdiction issues**

- 1.12 We have not attempted to list housing matters which might be the subject of an application for judicial review in the High Court. Arguably such a list would have to comprise every statutory provision conferring a discretion or duty on a public authority in a housing related matter.
- 1.13 We are also conscious that we have not included much in the way of land, trust and other “traditional” property law provisions which may affect owner occupiers.
- 1.14 In footnote 2 on page 30 of Consultation Paper No 170 on Land, Valuation and Housing Tribunals, the Law Commission stated that
- It seems most likely that when land, valuation or housing cases are dealt with by the “courts” applications will in practice almost always be made to the county court. Where individual statutes do not specify that cases are to be brought in the county court, there remains the possibility of applicants choosing the High Court instead.
- 1.15 We are not entirely confident that we have identified all the possible High Court jurisdictions in housing matters.
- (1) Firstly, in very few cases (eg section 25 of the Disability Discrimination Act 1995) did we find a provision which says that proceedings shall only be brought in the county court.

- (2) Secondly, some provisions expressly conferred on the county court jurisdiction to determine claims under one Part of an Act, while conferring jurisdiction on the county court or High Court to determine other claims under that Act (see, for example, section 63 of the Landlord and Tenant Act 1954). Where jurisdiction was expressly conferred on the county court alone, the provisions did not expressly state that the High Court did not have jurisdiction. It appears possible that the High Court retains its inherent jurisdiction, even if it is not intended that such claims be determined there.
- (3) Thirdly, in some cases (eg section 63 of the Landlord and Tenant Act 1954) legislation conferring jurisdiction on the county court expressly stated that it was without prejudice to the High Court's power under the section 41 of the County Courts Act 1984 to order the transfer of cases from the county court to it. Most legislation was silent on this point. Even if it a case cannot be started in the High Court, if the High Court always has jurisdiction to order the transfer to it of a case started in the county court, in theory any case could end up in the High Court.

The power to order the transfer of cases can lead to odd decisions like *South v Chamberlayne* [2001] 43 EG 190, a case under the Leasehold Reform Act 1967 started in the High Court, which the High Court judge decided should have been started in the county court, given the wording of section 20 of that Act. He ordered the transfer of the case to the county court, and the immediate transfer back to the High Court under section 41 of the County Courts Act 1984 (to avoid the parties having to start all over again in the county court, which would have wasted a further 6 months).

- (4) Fourthly, in some cases (eg section 141 of the Rent Act 1977, section 26 of the Rent (Agriculture) Act 1976) several subsections of a provision conferred jurisdiction on a county court. A further subsection provided that where a person brings proceedings in the High Court which could have been brought in the county court by virtue of one of the subsections conferring jurisdiction on the county court, costs won't be recoverable. The provision was silent as to the possibility of bringing proceedings in the High Court, and recovering costs of doing so, in the case of proceedings which could have been brought in the county court by virtue of a different subsection of that provision. The commentary to section 26 of the Rent (Agriculture) Act 1976 in the Sweet and Maxwell Encyclopaedia of Housing Law stated that:

Subsection (3) makes clear that a landlord who seeks to recover possession under one of the mandatory grounds in the High Court will be able to claim costs just as if he had proceeded in the county court instead, but otherwise costs are not obtainable in the High Court.

It therefore appears that the High Court may retain an inherent jurisdiction, and be able to award costs, in cases where the statute was silent.

- (5) Fifthly, rule 56.1(1) in Part 56 of the Civil Procedure Rules which governs landlord and tenant claims (defined as claims under the Landlord and Tenant Acts 1927, 1954, 1985 and 1987 and under the Leasehold Property Repairs Act 1938) states that “the claim” must be started in the county court for the district in which the land is situated unless paragraph (2) applies or an enactment provides otherwise. Rule 56.1(2) provides that the claim may be started in the High Court if the claimant files with his claim form a certificate stating the reasons for bringing the claim in that court verified by a statement of truth in accordance with rule 22(1). Paragraph 2.2 of the Part 56 Practice Direction states that claims should be started in the High Court only in exceptional circumstances. It therefore appears that any “landlord and tenant claim” (as defined in the CPR) could be brought in the High Court in exceptional circumstances.
- (6) Sixthly, some Acts (eg the Landlord and Tenant Act 1987) expressly confer jurisdiction on the county court in some matters, but also include a definition which states simply that “the court means the High Court or county court”. Again, this suggests that the High Court has jurisdiction over such cases.

1.16 In the High Court paper, we include only those provisions where the statute either

- (1) expressly confers jurisdiction on the High Court;
- (2) refers to the availability or non-availability of costs where proceedings which could be brought in the county court are brought in the High Court;
- (3) refers to the jurisdiction of the High Court to order cases to be transferred to it from the county court;
- (4) defines court to include the High Court; and
- (5) provisions where the Green Book states that the High Court has jurisdiction.

There are therefore some provisions referred to in the county court minute but not the High Court minute, where we cannot rule out the possibility of the High Court having jurisdiction, but nothing clearly says that it does have jurisdiction.

1.17 We have not looked at matters where “jurisdiction” is conferred on some form of public inquiry as opposed to a court or tribunal.