How to avoid dancing in a ring

ONE JUDICIARY By **Siobhan McGrath**

In September 2016, the Lord Chancellor, the Senior President of Tribunals and the Lord Chief Justice issued a joint statement explaining the plan 'to create one system and one judiciary'.[1] The plan is intended to bring about an end to the parallel existence of courts and tribunals and to create a single judiciary in a system that combines the best qualities and processes of the present courts and tribunals.

There are important differences between courts and tribunals. They deal with different types of work and have different procedures. Tribunals are often specialist and courts are only specialist sometimes. But there are no real differences between the two types of judiciary. To an outsider, the distinction may well be reminiscent of Alice in *Through the Looking Glass* and her meeting with the Tweedle twins:

> 'They were standing under a tree, each with an arm around the other's neck, and Alice knew which was which in a moment, because one of them had "Dum" embroidered on his collar, and the other "Dee".'

In fact, the courts judiciary have always been judges of the First-tier Tribunal by virtue of the Tribunals Courts and Enforcement Act 2007. Now, by virtue of amendments made to the County Courts Act 1984, First-tier Tribunal judges are also judges of the county court. How best are we to take advantage of this newly conferred office? In the Property Chamber we are conducting a pilot to test 'double-hatted sitting'[2], i.e. where we have cases that require the exercise of both county court and tribunal jurisdictions we will, with permission[3], consider both at the same time.

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The idea for the project is simple: judges and tribunal members should be deployed in a way that ensures that litigants are able to resolve all issues in dispute in one forum. The idea is not new. In a different context, section 49(2) of the Senior Courts Act 1981 requires that:

> '. . . every court shall so exercise its jurisdiction in every cause or matter before it as to secure that as far as possible, all matters in dispute between the parties are completely and finally determined, and all multiplicity of legal proceedings with respect to any of those matters is avoided.'

And, as the White Book note observes, this lies at the heart of the administration of civil justice in England and Wales.

Lack of a consistent principle

In property disputes, the distribution of cases between the courts and the tribunals means that in some instances litigants are required to make separate applications and obtain several determinations in more than one forum to achieve a final outcome for their dispute. The boundaries between issues considered fit for determination by the court, and those allocated to the tribunal, are not always drawn by reference to any consistent principle and are largely unrelated to complexity or value. In some cases, a party must choose whether to apply to the court or to the tribunal. In other cases, they have no choice but to apply to both.

Returning to Alice and her meeting with Tweedledum and Tweedledee:

> 'Alice did not like shaking hands with either of them first, for fear of hurting the other one's feelings; so, as the best way out of the difficulty she took hold of both hands at once; the next moment they were dancing round in a ring.'

Avoiding dancing in a ring is one of the benefits of having property disputes decided in one place rather than two. Furthermore, it is likely to reduce costs for parties and for HMCTS, it is likely to provide continuity and consistency in decision-making, and may mean that disputes are resolved more quickly.

The operation of the pilot may be best explained by an example. In a case under the Mobile Homes Act 1983, the tribunal received an application from a mobile home owner seeking a determination that her right to the peaceful and quiet enjoyment of the pitch had been breached by the site owners. The site owner took exception to her behaviour and a few weeks later issued proceedings in the county court seeking an order that they be able to terminate her occupation agreement and then obtain a mandatory injunction for her park home to be removed from the site. The same facts and statutory framework applied to both actions but the claims had to be brought in different places. The court judiciary agreed that all issues should be decided by the tribunal and that the county court claim should be allocated to the small claims track. There was one hearing, one reasoned tribunal decision and one county court order.

There are many other areas of our jurisdictions that can benefit from dual sitting. For example, in service charge cases we could decide rent arrears issues, in enfranchisement we could decide the validity of notices and in land registration cases we could decide the extent of beneficial interests and exercise TOLATA powers – the list goes on growing. The pilot is not intended to be all one way. In some instances, jurisdictions that would be exercised by the tribunal are better dealt with by the court, in which case the transfer will go the other way.

The challenge now is to identify and resolve some of the practical issues: should we apply CPR or the tribunal rules? What about costs? Which appeal route should be used? Ultimately we may need special rules to make the project effective. For now we are taking the pilot very slowly. We want to make sure that we get the process right before extending it too widely. However, I am pleased to say that so far, the feedback from parties, staff and judges has been very positive. We will get there in the end.

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[1] See here.

[2] A phrase coined by counsel in one of our cases – but not 'Mad Hatting'.

[3] Permission for the Property Chamber salaried judiciary to sit in dual jurisdictions has been given by the Flexible Deployment Group chaired by Mrs Justice Paufley.

New-look panels – a brave new world?

POLICE MISCONDUCT By **Leslie Cuthbert**

From 1 January 2016, the hearing of misconduct cases against police officers was changed by the Police (Conduct) (Amendment) Regulations 2015 which introduced legally qualified chairs (LQCs) with responsibility for chairing Police Misconduct Panels (PMPs) replacing senior police officers who previously had chaired such hearings.

This change came about as a result of a public consultation conducted by the Home Office in 2014[1] and is one of a number of measures designed to make the police disciplinary system more transparent, just and independent. Another major change was the expectation that hearings would be held in public and this was introduced in May 2015. Until this time, all misconduct hearings and meetings were held in private, unless the Independent Police Complaints Commission considered, because of the gravity of the case or some other exceptional circumstance, that