REPORT ON PROPERTY CHAMBER DEPLOYMENT PROJECT FOR

CIVIL JUSTICE COUNCIL MEETING 26TH OCTOBER 2018

Part One

Introduction

1. In May 2016 I provided an interim report of the Working Group on Property disputes in the courts and tribunals. A copy of the report is attached. The proposal made was that work should be undertaken to establish whether access to justice in property disputes could be improved by the innovative deployment of judiciary to sit concurrently in courts and tribunals. A pilot was established to test the premise. It has been very successful.

2. The full terms of reference for the project were:
   a. To consider the distribution of jurisdictions in landlord and tenant, property and housing disputes with a particular focus on the work of the Property Chamber and its overlap with the County Court and any associated dispute resolution schemes;
   b. To consider proposals for changes in the deployment of judicial resource between the County Court and the Property Chamber in the determination of landlord and tenant, property and housing disputes having regard to:
      (a) Access to justice;
      (b) Proportionality;
      (c) Judicial and administrative resource.

c. To consider, in parallel, the benefits of and the models for alternative dispute resolution in resolving landlord and tenant, property and housing disputes

d. To report on the following:

   (a) The benefits, if any, in making changes in the way landlord and tenant, property and housing disputes are resolved in the Court and the Tribunal;

   (b) The likely impact of such changes, with particular focus on resource and access to justice issues and

   (c) To make proposals for the practical steps required to implement any recommendations.

3. With the endorsement of a deployment working party chaired by Mrs Justice Paulfry, the Tribunal has heard cases where judges sitting concurrently in the court and in the tribunal. I estimate that about 300 cases have been dealt with in this way thus far.

4. In this report I reflect on lessons learned and practical challenges. I make recommendations that work be undertaken in co-operation with the Civil Procedure Rules Committee and the Tribunal Procedures Committee for amendments to be made to the respective court and tribunal rule regimes to streamline the process by which cases are dealt with concurrently.

5. It is worth reflecting that housing, landlord and tenant and property law are currently the subject of a number of reform initiatives: Firstly, the Law Commission has issued its consultation on changes to enfranchisement for long lessees. The consultation seeks views not only on the right to enfranchise and valuation but also on the simplification of dispute resolution. Further consultations are to be issued in 2019 in respect of the Right to Manage and Commonhold tenure. The Law Commission recommendations on changes to Land Registration law may include proposals for widening the Tribunal's jurisdictions on referrals. Recently the Ministry of Housing, Communities and

Local Government issued its consultation on implementing reforms to the leasehold system in England.

6. In the private rented sector the Housing and Planning Act 2016 introduced enhanced powers for local authorities to tackle "rogue landlords" and to improve the condition of sub-standard properties within their area. Appeals and applications under the Act are dealt with by the Property Chamber. In the summer of 2018, a consultation was issued on overcoming barriers to longer tenancies.

7. This is therefore a sensible time to consider whether these policy initiatives can be mirrored by an improved system of dispute resolution. Later this year, the Ministry of Housing, Communities and Local Government are likely launch a call for evidence as to the merits of establishing a Housing Court or other rationalisation of the distribution of housing disputes. The recommendations in this report to streamline judicial deployment between the courts and tribunals will be complementary to any proposals that might come from the call for evidence and will serve to inform policy initiatives for both MHCLG and MoJ.

8. Earlier this month I met with MoJ colleagues who are supportive of reform and are giving serious consideration to the proposal that a new CPR case management track be established. It is intended to set up a project board to include judicial representation with a view to taking the initiative forward.

Proposal and Recommendation

9. In summary the proposal is that the Civil Procedure Rules and the First-tier Tribunal Procedure (Property Chamber) Rules be amended to simplify the deployment of judges to sit concurrently in tribunal and court jurisdictions.

10. The detail of any required amendments will be the subject of consideration and detailed drafting. In outline however, my suggestion is that CPR rule 26 should be amended to include a new case management track, possibly known as the "court and tribunal" track." Cases on the proposed track would be sent by the county court to be administered by the tribunal staff. For that purpose I recommend that each of the regional Tribunal offices should be designated as county court offices. Judges would sit concurrently as judges of the court and judges of the tribunal. Provision will be made for the applicability of rules regimes, for costs and for appeals.

11. What is sought from the CJC is its endorsement to take these proposals forward for consideration and discussion, recognising that the detail of any change will be a matter for the rules committees, for senior judiciary and the Lord Chancellor. The rest of this paper is structured as follows: Part Two sets out the justification for the proposal; Part Three describes the types of case suitable for the concurrent sitting and Part Four examines some of the practical implications of the recommendation.

Part Two

Justification for Change

Access to Justice

1. There is no doubt that the distribution of cases between the courts and the Tribunals causes confusion and may act as a deterrent to litigants who properly wish to bring a dispute for formal resolution. The split in jurisdiction detracts from access to justice. In May this year, the Chancellor, Sir Geoffrey Vos gave a lecture at the Professionalism in Property Conference where he observed:

   > "The problem is well-known and can be shortly stated. Property legislation in recent years has bifurcated the responsibility for determining specific property disputes in numerous areas between the courts and the tribunals, such that in a significant number of cases, the parties have no choice but to engage in both types of proceedings. This increases the costs, causes additional delay, and in some case, stress and frustration associated with an illogical judicial process. Many of the parties in this area are litigants in person and many are vulnerable."

2. There is a difficulty in measuring a negative. It is not possible to know how many potential litigants have been dissuaded from making an application to resolve a property dispute because of the complexity of the system. However, it is not difficult to infer that uncertainty and confusion may act as a disincentive to seek redress in the courts and tribunals. The distinctions between courts and tribunals and their judiciary are of little interest to litigants, many of whom act in person and without the benefit of legal advice.

3. It is not suggested that there is no difference between the courts and the tribunals. In Part 3 the types of case that are suitable for deployment are considered. There are different merits in the courts and the tribunals. The most appropriate judge and the most appropriate forum for property litigation should be decided as part of judicial case management. It should not involve procedural complexity for the parties.

Proportionality

4. Litigation in the courts and tribunals can be costly. It is imperative that where possible the justice system should seek to minimise that cost. The CJC has previously seen my written summaries of cases where deployment has been successfully engaged. I attach my report from January 2018 for ease of reference.

5. It is self-evident that if a case must be dealt with in more than one forum and involve more than one hearing then it will be more expensive than if the matter is resolved all at once. The majority of the cases or issues affected by deployment are of relatively low value. This is well illustrated in the only deployment case that has so far been heard on appeal to the Upper Tribunal In *Avon Ground Rents Limited v Child* [2018] UKUT 0204 (LC) Mr Justice Holgate and HHJ Hodge QC were considering an appeal against a decision about contractual costs. The initial sum claimed was for service charges of £343.02 plus administration charges of £1,355.16 for costs said to be incurred in contemplation of forfeiture for the arrears and finally a claim for further contractual post-issue costs incurred in the court and tribunal proceedings of £4,110. The total costs claimed were wholly disproportionate to the initial debt.

6. As well as cost, proportionality requires that the process for dispute resolution is not overly complex nor that there is inordinate delay. Complexity is inevitable if separate applications must be made to the court and the tribunal. Delay is inevitable if there must be two or more hearings rather than one.

7. A very specific aspect of proportionality is judicial expertise. Property law can be complex and demanding. The Tribunal is able to recruit specialist lawyers and experts who are listed to hear broadly specialist areas of law. This has

many advantages. In a speech to the Wales Commercial Law Association in October 2016[1], the then Lord Chief Justice, Lord Thomas observed that:

> "There is undoubtedly a perceived desire by most litigants to have a judge or single tribunal member who has deep knowledge and experience of the type of case to be tried. As lawyers become more specialised, the concept of what is deep knowledge of the area of law and experience becomes ever narrower; that perception is imparted to the litigant. There is undoubtedly greater pressure from litigants and lawyers for greater specialisation in any forum. The reasons are various – the case will go quicker before a forum where the decision maker knows the subject; it will therefore cost less. It is felt that the more expert the decision maker is, the greater the chances they will get it right"
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> ……….
>
> "It seems now that there is a greater appetite for specialist determination. For complex claims it is imperative that a judge understands the increasingly specialised law and in dealing with sophisticated expert evidence it must be beneficial if the Court or Tribunals includes a specialist in the discipline, not to give evidence but to effectively test it. For simple claims, it remains the case that a judge should understand the law (which will still be complex) but also that expertise is applied to provide proportional dispute resolution."

Judicial and Administrative Resource

8. There are a number of advantages in having one judge deciding all issues in a case. Firstly, this provides saving in judicial time and resource. Secondly, it means that there is better consistency in the consideration of all aspect of the decisions that must be made. Thirdly, there can be more effective case management.

[1] The Right Hon, The Lord Thomas of Cwmgiedd, Lord Chief Justice of England and Wales: Building the best Court forum for Commercial Dispute Resolution (Wales Commercial Law Association, Cardiff, 21 October 2016)

9. Litigation in property disputes can often involve tactical manoeuvring by the parties who may seek an advantage in delay. In tribunal cases it is not uncommon where jurisdiction is split with the court, that unjustified applications for a stay of proceedings are made on the basis that the court case must be concluded before a case can proceed.

10. One challenge in the pilot has been finding sufficient judicial resource to conduct all of the cases. Initially this was because we confined deployment cases to the salaried judiciary. From last year deployment was expanded to include judges with fee-paid court appointments and those with current experience of CPR. We have now secured funding from the judicial college to undertake deployment training for 47 judges in February 2019. If the training is successful we will be able to make further bids as required.

11. The other way that this challenge could be met if concurrent sitting becomes more common, will be to more actively push forward courts' judiciary sitting concurrently as tribunal judges. Although this has not yet occurred in many cases, it is an essential aspect of the project.

12. The purpose of deployment is to ensure that a case is heard in the most effective forum and by the most effective judge. My recommendation is that deployment should be a case management tool and not that there should automatically be a blanket transfer of dual jurisdiction cases from one forum to another. If access to justice and proportionality are best served by a case being decided by the court exercising a tribunal jurisdiction then the purpose of the project is fulfilled.

13. Effective judicial deployment forms a key part of reform. As Lord Thomas said:

> "But we have in reality a single judiciary: the courts' and tribunals' judiciary. Some judges may sit predominantly in the courts, some in the tribunals. Others sit for significant periods of time in both. This is

> particularly true of courts' judges who sit in the Upper Tribunal. And post-2013 the judiciary is developing the means by which there is greater deployment of tribunal judges into the courts. With common training and common qualifications for the legally qualified judges in both courts and tribunals, and comparable provisions governing their deployment across the courts and tribunals, the idea that we have two different cohorts of judges sitting in two different sets of judicial forum is becoming increasingly historic a concept."

14. Tribunals usually sit as a panel with experts and experienced lay members. The Tribunal may therefore be constituted of two or three members. This is so unless the issue is one that does not require the application of expertise when a judge will sit alone. Tribunal wing members take part in making the Tribunal decision. In deployment cases the wing members sit as county court assessors and do not take part in the decision making. The additional cost of having assessors in the consideration of county court issues in this way has not noticeably added to the cost of hearings.

15. As to the cost of HMCTS staff, case officers working in the Tribunal who have dealt with deployment matters thus far have reported that the additional work engendered by dealing with concurrent cases has not been significant. Of course this might need to be reviewed if a higher number of cases were dealt with in this way but in that event there might need to be a resource transfer rather than a resource increase.

16. In considering whether the pilot demonstrated that the proposed changes were justified I consulted with the five Regional Tribunal judges for the Residential Property division of the Chamber and with the Principal Judge for the Land Registration division of the Chamber. Their experience of the pilot has informed understanding of the procedural challenges dealt with in part four of this paper. However, they are all clear that the cases dealt with under the pilot demonstrate that the concept is sound and that there are benefits for the parties

and for the judicial system and they are enthusiastic about their experience of working with the court judiciary. They have received no adverse feedback from either litigants in person or from legal representatives.

The options

17. There are I think, three options:

    Option One – Deploy judges to sit concurrently in the court and the tribunal.
    The deployment of judges to sit in both the court and the tribunal concurrently provides a practical solution to a difficult challenge. The concept is supported by the MoJ who have agreed to provide resource to explore rule changes in more detail; to engage with judiciary and the CPR committee and the TPC and to provide analytics about the practical impact of deployment.

    Option Two – Wait and see if a Housing Court will be established
    In September 2017, Sajid Javid announced that work would be commenced to consider whether there should be a consultation with judiciary on establishing a Housing Court. It is likely that there will be a call for evidence on the idea later this year. A Housing Court which incorporates both court and tribunal jurisdictions would clearly provide a solution to the challenge of split jurisdictions. However, the outcome of any consultation remains uncertain. If recommendations are made then it could be a considerable time before they are implemented. The introduction of concurrent sitting as a mainstream case management tool could be a valuable preparatory tool for any Housing Court of the future

    Option Three – Do nothing
    There is always an option to do nothing. This is very unattractive. The pilot has demonstrated that concurrent sitting does work and that it provides savings for parties and for HMCTS. It is also probable that it enhances consistency in decision making.

18. My recommendation is that the courts and tribunals continue to work together deploying concurrent sittings and that work commence to consider rule changes to make concurrent deployment a mainstream case management tool. I therefore recommend that the CJC endorses Option One.

Part Three

Types of Case suitable for Concurrent Sitting

Introduction

1. Traditionally landlord and tenant, property and housing disputes (property disputes) were dealt with in the county court and exceptionally by the High Court. The main exceptions being rent valuation in short-term and periodic tenancies and enfranchisement valuations under the Leasehold Reform Act 1967 and the Leasehold Reform and Housing Development Act 1993. Those valuation issues were dealt with by members of Rent Assessment Panels. Also the Lands Tribunal had first instance jurisdictions in land compensation and compulsory purchase matters.

2. During the last thirty years however, dispute resolution has shifted from the traditional court arena to specialist Tribunals. By 2003 there were at least seven such Tribunals: the Adjudicator to HM Land Registry; the Agricultural Land Tribunal; the Lands Tribunal; the Leasehold Valuation Tribunal; the Rent Assessment Committees; the Residential Property Tribunal, and the Rent Tribunal.

3. In 2011 the Lands Tribunal became part of the unified Tribunal service as the Upper Tribunal (Lands) Chamber, intended to be an appellant body but retaining some first instance jurisdictions. In 2013 the First-tier Tribunal (Property Chamber) was established and brought together the remaining first instance Tribunals listed above into one organisation.

4. The structure of the Tribunals has therefore been rationalised but there has not been a similar rationalisation of the jurisdictional distribution of cases between the courts and the tribunals.

5. In summary the courts deal with the following types of property case:

(a) *Claims for possession*: by private and social landlords; by residential mortgage lenders; by lessors seeking forfeiture from flat owners and against squatters

(b) *Claims for other remedies*: by landlords/lessors for unpaid rent and/or service charges; by tenants for damages for disrepair and injunctions; by tenants in respect of tenancy deposits; by tenants for damages for unlawful eviction and injunctions

(c) *Appeals*: by landlords against civil penalty notices under 'right to rent'; by homeless people against council decisions on their housing applications

(d) *Other Disputes*: between neighbours about boundaries and rights of way; between landlords and their agents (and vice-versa); about succession to tenancies; about breach of tenancy/lease terms; about action by public authorities on housing-related anti-social behaviour

(e) *Ownership*: Trusts; disputes about who owns what and in what shares; claims to enfranchise leaseholds

6. In summary the First-tier Tribunals deal with the following types of property case:

   (a) *Leasehold* : service charges; administration charges; appointment of managers; Right to Manage; lease variation; tenant's breach of covenant; enfranchisement valuation and terms

   (b) *Housing*: appeals against local authority enforcement notices; appeals against financial penalties for housing offences; banning orders; rogue landlord database; Houses in Multiple Occupation (licencing and management); Rent Repayment Orders; Local authority management orders; Empty Dwelling Management Orders.

   (c) *Rents*: assessment of market rents; assessment of fair rents.

   (d) *Park Homes disputes*: private disputes under the Mobile Homes Act; site licencing

   (e) *Land Registration*: title, beneficial interests and notices; adverse possession; boundary disputes

   (f) *Agricultural Land and Drainage*: succession; husbandry; drainage

7. In the county court the majority of property cases are claims for possession (circa 50,000 per annum in the private sector). Cases are bulk listed and dealt with, in the main, by district judges. It is difficult to find statistics for the number property cases other than possession dealt with by the courts but the number is likely to be comparatively low.

8. In the Tribunal the number of cases received varies widely between the various jurisdictions but the highest number is in leasehold management and leasehold enfranchisement. The annual case load of the Chamber is about 11,000.

9. Apart from formal court and tribunal proceedings there are a number of other ways in which property disputes may be resolved: Specialist arbitration is provided by a number of bodies including the RICS; Tenancy deposit schemes offer free adjudication if both landlord and tenant agree; landlords and agents are required to be members of a redress scheme and finally there is the Housing Ombudsman and the Property Ombudsman.

Suitability for Concurrent Hearing

10. Our experience is that there are certain characteristics that make cases suitable for deployment (whether to the court or to the tribunal):
    (a) Cases where the court and the tribunal have a parallel jurisdiction and the issues for determination require the application of expertise. For example, the payability of service charges;
    (b) Cases where the issues in the case may require a separate determination by the court or the tribunal but where the same facts and evidential basis apply to both. For example applications for lease variation (exclusively tribunal) and claims for rectification (exclusively court)
    (c) Cases where the court and the tribunal each have partial jurisdiction. For example, enfranchisement claims where the landlord is missing.
    (d) Cases where it would be convenient to decide all issues in one set of proceedings. For example when deciding the payability of service charges

and dealing with a counter-claim for breach of a landlord's repairing covenant.

11. If a case is identified as being suitable for deployment on the basis that jurisdictions is split or shared then a number of other factors come into play in a decision whether or not to engage deployment. Those factors include:
    (a) Whether the residual issues are subsidiary to the main issue. For example where a service charge case is transferred from the court to be dealt with under the Tribunal jurisdiction, the residual issues are interest and ground rent.
    (b) Whether the residual issues are connected to the main issue. For example where a service charge case is transferred from the court to be dealt with by the Tribunal and there is a counterclaim for damages for failure to repair.
    (c) Where a case would benefit from case management in a single forum. For example in missing landlord cases in enfranchisement claims where entitlement and valuation would otherwise be dealt with separately by the court and the tribunal;
    (d) Where concurrent sitting is proportionate.

12. The main types of case that we have dealt with under the pilot are leasehold management, leasehold enfranchisement and park homes. I believe that it would be sensible not to make a definitive list of jurisdictions. It is possible that in some cases the court may wish the tribunal to decide a case simply because it is expedient for an expert tribunal to deal with the matter. Equally, the tribunal may wish a court to decide a case because of its legal technicality. A list is not necessary.

13. In its London region, the tribunal has worked with Central London County Court to trial the determination of undefended business leases by tribunal judges and members sitting as county court judges and assessors. This is not an example of concurrent sitting. The initiative has worked very well and the feedback has been positive and the county court bench is supportive. It is

likely that the court and the tribunal will continue to work together on the project. Rule changes would make such deployment more straightforward.

Part Four

Practical Matters and Challenges

Introduction

1. The Tribunal has now dealt with about 300 cases under the deployment scheme. We therefore have sufficient experience to have been able to identify the practical challenges in the scheme.

2. The objective of any rule or legislative change is to ensure that:
   (a) the County Court should have the discretion to transfer cases and issues to the Tribunal, and the Tribunal should have the discretion to transfer cases and issues to the County Court and
   (b) the County Court should have the discretion to retain cases and issues that it would otherwise have had to transfer to the Tribunal, and the Tribunal should have the discretion to retain cases and issues that it would otherwise have had to transfer to the Court.

3. In order to understand what needs to be done it is necessary to consider some of the detail in stages of the case management process

Starting Proceedings

4. In the courts proceedings are governed by the Civil Procedure Rules. Generally (and leaving aside the question of possession) an action is commenced when a claim form (N1) is delivered to the court and a fee is paid. At this stage the court seals the claim with its official seal and the claim is issued. Particulars of claim may be provided at the same time or may follow within 14 days.

5. In the county court, non-money claims and Part 8 claims can be issued at any county court hearing centre (PD 2C, para 2). Claims for recovery of land will be sent to the county court hearing centre serving the address of the land if the claim was not issued there (CPR r55.3(1)). County Court money claims are

issued at the County Court Money Claims centre if issued in hard copy, or at the County Court Business Centre if issued electronically.

6. The claim must be served within four months of issue. The documents to be served comprise the sealed claim form, the particulars of claim and a 'response pack' which consists of form of acknowledgement of service, admission, defence and counterclaim.

7. Having been served, the defendant has 14 days from the deemed date of service of the particulars of claim to either file or serve an admission; or file a defence (which may have a counterclaim) or file an acknowledgement of service. Ultimately a defence must be filed otherwise a default judgement may be entered on the claimant's request.

8. Defended cases may be allocated to one of three tracks: small claims; fast track or multi-track. A provisional track allocation is made by a court officer and the parties are informed of this and the requirement for filing a directions questionnaire. Under CPR r 26.5(1) the court will allocate the claim to a track when all parties have filed their directions questionnaire or when giving directions under r.26.3(8).

9. In the Tribunal proceedings are governed by the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. Rule 26 governs how proceedings may be started. An applicant starts proceedings by sending or delivering a notice of application to the Tribunal. For Residential Property cases, the notice must be sent to the appropriate regional office. Where an application is made to which a paragraph in a practice direction relating to a residential property case or leasehold case applies, it must be accompanied by the particulars and documents specified in the relevant paragraph.

Transferred cases

10. Provision is already made for the transfer of issues to the Tribunal by the court. Section 176A of the Commonhold and Leasehold Reform Act 2002 and section 231B of the Housing Act 2004 provide that "Where, in any proceedings before a court, there falls for determination a question which the First-tier Tribunal or Upper Tribunal would have jurisdiction to determination" then the court may transfer that part of the proceedings for determination by the Tribunal and then adjourn or dispose of the remaining proceedings.

11. It is important to note that this is a limited power. Transfer under these sections is limited to matters within the Tribunal's statutory jurisdiction and not matters that would otherwise be in the exclusive jurisdiction of the court.

12. Where a court transfers issues for determination by the Tribunal, it may only determine those issues identified in the transfer order and is limited to the case stated within the pleadings. On transfer the Tribunal's procedural rules are applied for case management. The Tribunal *per se* cannot exercise any county court power when sitting as a Tribunal[2]. Therefore, for example, it cannot deal with applications to amend the pleadings and importantly it cannot dismiss a case or make any other final order. If a party wishes to make this type of application the case must be returned to the court.

13. Under the deployment scheme these procedural difficulties can be resolved as the Tribunal judge is able to sit as a county court judge and make appropriate orders.

14. There is no express power in statute for the Tribunal to transfer cases or issues to the county court. Section 22 of the Tribunal Courts and Enforcement Act 2007 makes provision for procedural rules to be made. Further detail is given in schedule 5 to the Act and paragraph 16 of that schedule states that "rules

[2] *Avon Ground Rents v Child* [2018] UKUT 0204

may confer on the First-tier Tribunal, or the Upper Tribunal, such ancillary powers as are necessary for the proper discharge of its functions."

15. Rule 6 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 provides at paragraph (3)(n) that the Tribunal may:

    "(n) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and

    (i) Because of a change of circumstances since the proceedings were started, the Tribunal no longer has jurisdiction in relation to the proceedings; or

    (ii) The Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case."

16. Again, the power is limited. The Tribunal may only transfer proceedings where it had jurisdiction at the outset of the application[3] and furthermore it may only transfer proceedings where the other court or tribunal has jurisdiction. Where the Tribunal has exclusive jurisdiction in a case, the matter cannot be transferred.[4]

17. The experience of the Tribunal Regional Judges is that deployment works most effectively if cases are transferred at an early stage and preferably before directions are given in the county court. The challenge therefore has been to establish working practices with the courts judiciary and staff to achieve an early handover.

18. Even where this occurs however difficulties remain. In particular where parties wish to make applications during the course of a case, that application will have to be made to the county court offices rather than the Tribunal offices.

[3] Where the Tribunal lacks jurisdiction it is required to strike out the application: r.9(2)(a).
[4] For example under s.20ZA of the Landlord and Tenant Act 1985

Starting and Transferring Proceedings – Impact on Deployment

19. The purpose of the deployment project is to achieve a simplified process in accessing dispute resolution for the parties. We have found that deployment cases reach the Tribunal in two ways. Firstly, where a court is engaged in the pilot, a district judge may send an appropriate case to the Tribunal for determination of all issues. The case papers are transferred to the Tribunal office and a judge is authorised to deal with both the Tribunal and the county court issues. The judge who decides the case makes a Tribunal decision with reasons, gives a county court judgement and makes an appropriate county court order.

20. When dealing with the county court aspects of the case, the judge applies CPR, makes an order for costs and asks the case officer to enter details on caseman. Concurrently when dealing with the tribunal aspects of the case, the judge applies the Tribunal procedural rules, deals with costs issues (if any) and asks the case officer to enter the details on the Tribunal's case management system.

21. The second way in which county court cases come to the Tribunal is when a matter associated with the main Tribunal proceedings is raised by one of the parties and it is sensible for the new issue to be dealt with concurrently. In these circumstances it is necessary for the party wishing to bring the claim to issue in the county court and to ask for the matter to be sent to the Tribunal office.

Costs

22. There have been few problems in dealing with costs. Originally it was anticipated that the difference between the Tribunal and court regime on costs would be confusing for parties and difficult to administer. That has not been the case. Summary assessments of costs have been carried out in appropriate

cases and where necessary more complex matters cases have been referred for detailed assessment.

Appeals

23. Appeals are conceptually a challenge in deployment cases as different regimes apply to the Tribunal and to the court. In practice this has not been a problem. In *Avon Ground Rents Limited v Child* [2018] UKUT 0204 (LC) the Upper Tribunal was dealing with an appeal in a deployment case. Permission to appeal had been given under the Tribunal rules and to address any jurisdictional void, the UT arranged for permission also to be given by the court. The Upper Tribunal therefore also sat concurrently. In my view that process could be streamlined with an appropriate rule change.

CPR vs Tribunal Rules

24. The fact that two sets of rules are being applied in concurrent cases has not caused difficulties. This was anticipated by the Association of District Judges who we consulted prior to completing the interim report as follows: "The Association takes the view that the issues raised should not cause particular problems in practice." Similar issues arise for example when dealing with cases partly within the family court jurisdiction: "The question whether CPR or FPR apply to which issue and which costs rules apply to which bit of the litigation have to be considered as does the appropriate ticketing for the judge. The cases cannot be consolidated but they can be heard by the same judge consecutively or at the same time as appropriate."

25. Judges have taken a pragmatic approach to case management and I am not aware of any difficulty or complaint as a result. However it would be preferable to have one set of rules rather than two and the view of the judges is that the Tribunal rules are sufficient for case management purposes. The rules were devised for property cases and are fit for dealing with matters at a Tribunal level.

Case Management Track

26. An approach that would facilitate deployment of cases suitable for determination by the Tribunal would be the addition of a further case management track, perhaps a "court and tribunals track" under CPR rule 26. This would have the advantage of embedding concurrent sitting within CPR and under the clear control of judiciary. It would mean that litigants would have a clear option of seeking (or opposing) allocation to the track. It would give judges of both the courts and the tribunals clarity on how cases are to be transferred.

27. It is a matter for debate as to whether cases on the court and tribunal track should be subject to both CPR and the Tribunal rules or whether one set of rules should be selected.

28. MoJ policy colleagues have been aware of the deployment project for some time. They intend to set up a project board to consider whether deployment can be more easily accommodated with a rule change. They plan to involve senior judiciary and judiciary from the county courts. They have indicated that they will engage analysts to measure the impact of the deployment proposals.

Designation as county court hearing centres and offices

29. Part of the difficulty in the administration of deployment cases has been the need for parties to make applications during the course of a case to the county court office rather than to the Tribunal office. This could be addressed simply by the designation as a county court office and hearing centre. This could be considered by MoJ as part of its project on a new court and tribunal track.

Conclusion

30. The main challenges in the pilot thus far have been procedural. I consider that a rule change would resolve these difficulties. It would provide an opportunity to improve access to justice and to provide broad specialism by courts and tribunals in a technical and important area of law.

Siobhan McGrath

President, First-tier Tribunal (Property Chamber)

October 2018