# The Briggs Report on the Civil Courts Structure

*Implications for Housing Law Practitioners*

On 6 January 2017 the senior judiciary endorsed Lord Justice Briggs' Final Report ('the Report') of the Civil Courts Structure Review, and declared its support for the 62 recommendations within it. In a joint statement, the Lord Chief Justice, Lord Thomas of Cwmgiedd and The Master of the Rolls, Sir Terence Etherton noted that "the judiciary will continue to work with the Government and HMCTS to develop further the conclusions Lord Justice Briggs reached, and bring them to fruition alongside wider court modernisation."

As the Report has been welcomed in this way, it is now likely that many of its 62 recommendations will form part of the ongoing HMCTS Reform Programme.[1] From the judicary's perspective, a team of civil judges has already been established to lead on the recommendations. It is perhaps therefore time for housing law practitioners to consider the implications, if any, that the recommendations in the Report may have on their practices.

## The Online Court

The Report's primary focus is on the novel idea of an 'Online Court', or as Briggs LJ prefers to call it, an 'Online Solutions Court'. The cases before this Online Court ('OC') would progress through three stages:

i. a predominantly automated, inter-active online triage process to enable users to articulate their case and to identify documentary evidence;
ii. conciliation and case management by case officers; and
iii. resolution by judges (either on the documents, face to face or by phone or video, as deemed appropriate).

The proposed jurisdiction of the OC is money claims up to the value of £25,000, although a soft launch is envisaged with an initial ceiling of £10,000. It will ultimately be a compulsory forum for cases within its jurisdiction and will be entirely separate from the County Court. Accordingly, it will be authorised by primary legislation, and regulated by simple rules made by a new cross-jurisdictional OC rules committee, rather than by the CPR (para 6.88-91). This means that there will need to be limited amendment to the CPR in order to accommodate cases that are transferred from the OC to a higher court on grounds of complexity or public importance.

[1] Launched in March 2015, the Reform Programme focuses on three main areas: (1) using IT to improve the issue, handling, management and resolution of cases; (2) reducing reliance on buildings and rationalising the court estate; and (3) allocating aspects of the work currently done by judges to court officials under judicial supervision.

## The Online Court and Housing Law

### *Possession Claims*

The Report indicates that housing law practitioners will rarely encounter the OC. In his Interim Report ('IR') Briggs LJ had suggested that some possession claims, namely 'no fault' claims under s.21 of the Housing Act 1988 and claims where there is a mandatory ground for possession and no dispute that it applies, would be appropriate for the OC's jurisdiction.

However, following a submission by the Housing Law Practitioners Association, Briggs LJ notes at 6.95 in the Report that:

*There has been virtually unanimous support for the wholesale exclusion of claims for the possession of homes, and even those few which (in IR6.43(a)) I originally thought might perhaps be safely included. I have been easily persuaded by a paper from the Housing Law Practitioners Association (HLPA) that they are no more suitable for the OC than other possession claims, and no-one has suggested otherwise. I need therefore say no more about them.*

The difficulties in designing an adequate automated system to tackle the complexity of triaging possession claims is likely to have been a motivating factor in excluding such claims.[2] Despite this, Briggs LJ does appear to leave the door open to claims for possession falling under the jurisdiction of the OC in the future. Recommendation number 16 in the Report notes:

*Claims for possession of homes (even if accompanied by a money claim) should at least initially be excluded from the Online Court.* (emphasis added).

### *Disrepair*

The question of disrepair claims is a little less straightforward. In the IR at IR6.49, Briggs LJ had suggested that these claims might qualify for exclusion from mandatory assignment to the OC if statistics proving the availability of an active CFA market for such claims were provided, but that they should still be admitted to the OC on a voluntary basis.

Following on from this, in the Report and in light of submissions by HLPA, Briggs LJ notes at 6.102 that:

*I am persuaded that there should not be compulsory inclusion within the Online Court of damages-only sector of these claims, particularly where fixed costs recovery still supports an economic model for CFAs. But I continue to see no reason why there should not be voluntary admission of those cases, where a tenant claimant so wishes.*

Of course the reality of practice is that disrepair claims often arise by way of counterclaim in possession proceedings brought by a landlord. Briggs LJ was alive to this and acknowledges that:

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[2] Giles Peaker explores this in a comprehensive blogpost on this issue here: https://nearlylegal.co.uk/2016/07/online-courts-unified-enforcement/

*At the moment I cannot see how these counterclaims could easily be brought within the Online Court if the possession claim is to be excluded.*

All of the above means that for housing law practitioners, at least initially, the only encounters with the OC should be those involving claimants in damages only claims below the £25,000 threshold, who have elected to use the OC. Practitioners will thus have to familiarise themselves with the software when it launches in the next few years. The current roll-out date for an online system is April 2020 although even Briggs LJ accepts that this will be a 'real challenge'.

## Enforcement

The other main area of interest that the Report concerns is that of enforcement. Briggs LJ has proposed a single court as the default court for the enforcement of the judgments and orders of all the civil courts (including the OC). He suggests that this court should be the County Court (10.20).

Practitioners may have been disappointed to see that he declined to address the merits of the various means of enforcement. Instead, he took the view that the strengths and weaknesses of enforcement by High Court Enforcement Officers, Enforcement Agents and County Court bailiffs deserve a separate review. However, his recommendation that "urgent steps need to be taken to address the under-investment and consequential delays which clearly undermine the quality of the County Court bailiff service", must be seen as very welcome news for social landlords. Although it would not be surprising, given constraints on funding, if this were one of the recommendations not taken up by HMCTS.

The uniformity of enforcement via the County Court will only be tempered by what Briggs LJ refers to as a 'permeable membrane' with the High Court so that certain disputes such as cross-border enforcement, which call for judicial expertise, may be readily sent to the High Court for determination. It has been pointed out elsewhere that this is likely to mean the demise of High Court writs following county court possession orders.[3]

## *Conclusion*

In many respects, current housing law practitioners may pay little attention to a Report that affects a comparatively small area of their practice and may not ultimately be implemented in full. However, that would be a mistake. This Report forms part of a more general trend towards the rationalisation and digitalization of HMCTS and is part of a wider conversation about court spaces and the judicial system.[4] The success of any early reforms will inevitably have an impact by way of mission creep on housing practitioners and their clients in the future.

**John Fitzsimons**

**Cornerstone Barristers**

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[3] *Ibid.*

[4] A Report by JUSTICE entitled 'What is a Court?' addresses many interesting questions on this topic and can be read here.