The County Court challenge: a practical view from the Bar

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In his monthly column, James Bickford Smith discusses the substantial modifications to the County Court’s jurisdiction and structure that took effect on 22 April 2014.

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Given the continued attention commanded by the stream of relief from sanctions decisions and the implementation of the Jackson reforms, it is unsurprising that the secondary legislation that brought into force section 17 of the Crime and Courts Act 2013, and which made related changes to the CPR (see Legal update, The Civil Procedure (Amendment) Rules 2014 published), passed by relatively unnoticed. It would, however, be a mistake not to note the significant changes to the County Court and its jurisdiction. These will throw up significant practical issues for the courts themselves and, in some regions more than others, will create a number of tactical dilemmas for litigators.

The changes in summary

It is worth noting at the outset that the changes have been implemented in a range of statutory instruments and that many links or internet searches throw up only some of these. Some, rather confusingly, also include other CPR changes or matters that, on analysis, mark very minor change (for example, the tweaks to the jurisdiction of District Registries: see Legal update, The Civil Courts Order 2014 coming into force on 22 April 2014). There have also been a number of changes to insolvency jurisdiction and enforcement provisions that fall outside the scope of this article. These points noted, it is as well for the convenience of readers to summarise the key changes concerning the County Court, which are:

- Claims for damages or a specified sum less than £100,000 should now be commenced in the County Court unless they are personal injury claims (see Legal update, The High Court and County Court Jurisdiction (Amendment) Order 2014: in force from 22 April 2014). By PD 7A, such claims "may not" be started in the High Court; for personal injury claims, the High Court minimum figure remains at £50,000.
- The equity jurisdiction of the County Court (section 23 of the County Courts Act 1984) is increased from £30,000 to £350,000 (see Legal update, Correction to the 69th CPR update and The County Court Jurisdiction Order 2014 published).
- The restrictions on the granting of freezing orders by the County Court have now been lifted; these may now be granted in all cases by nominated Circuit Judges.
- The High Court will take exclusive jurisdiction of proceedings under section 1 of the Variation of Trusts Act 1958 and the reduction of share capital provisions of the Companies Act 2006.
- The current jurisdictional boundaries for county courts are abolished and a single, unified, County Court is introduced; ensuing changes are that:
all references to a specific county court are now to be changed to references to a particular hearing centre;

- hearing centres are attached to specific administrative offices; and

- cases will no longer be judicially transferred between county courts but sent from one hearing centre to another as an administrative measure.

- County Court judges will no longer be restricted to particular geographical boundaries and will be able to sit in any part of the country.
- Some judges not currently automatically entitled to sit in the County Court will be able to do so without the need for any special procedure to be followed.
- The defendant’s address will continue to define the hearing centre. Nevertheless, it seems to be intended that a great deal of administration will be conducted centrally either from Northampton (the County Court Business Centre) or Salford (the County Court Money Claims Centre).

Comment

As detailed as these changes are, their overall intent is clear: to increase substantially the range of cases disposed of in the County Court. It is arguable that the changes reflect informal local listing practices in some combined court centres, where the same judges sit both as section 9 High Court judges and County Court judges and there is often a freer transfer of matters between the County Court and High Court District Registry. The changes will, however, have very significant effects in those centres where a starker division is made between High Court and County Court claims and, perhaps above all, in London and the South East.

Three points merit more detailed attention:

- The administrative challenges posed by the changes.
- The practical dilemmas thrown up by County Court case management practices in high value or complex cases.
- Ensuing choice of forum considerations.

The administrative challenges

It is of some interest to note that the genesis of the current changes lies in the debate over the possible introduction of a unified court system. This proved adept at dividing the higher judiciary, and saw very unusual shows of disagreement between them (culminating in the failure of the 2007 Dyson Working Party to reach agreement). The response to that disagreement was the Brooke Report of August 2008 (which, for those interested in dissection of judicial fallings-out, contains a detailed account of them). Brooke travelled England and Wales discussing the management of judicial business with the judiciary in the regions. The thrust of the ensuing Brooke Report was to reject a unified court system but to suggest a number of ways that the relationship between County Court and High Court could be changed. Most of the current changes follow on from specific recommendations made by it.

What makes these points of more than historical interest is that many of the question marks about the likely effect of the current changes can be seen embedded in the Brooke Report itself. For what Brooke suggested was a package of measures, of which the current measures were only a part. Other measures either expressly set out in or standing as underlying assumptions to the Report were:

- “A five-year strategy for taking our civil justice arrangements out of the doldrums and making them something we can all feel proud of again”.
- Substantial investment in IT.
- Relocation of the Central London County Court to the RCJ.
• Cross-fertilisation of regional best practice.

It follows that there must be real question marks as to whether it is feasible to implement cherry-picked recommendations from the Brooke report in a context where the hoped-for investment has been most notable by its absence or, in cases where it has been promised (notably IT: see Judiciary.gov: Joint letter to judges and staff regarding HMCTS reform (28 March 2014) and Legal update, Thomson Reuters to provide new electronic filing system for Rolls Building), remains something that will not bear fruit for some time to come.

This point can be exemplified quite easily. The Brooke Report detailed the numerous problems that had been encountered at the Central London County Court which "has encountered formidable difficulties in recent years with the quality and quantity (and rapid turnover) of its administrative staff". The ensuing difficulties of lost papers, files and skeleton arguments will be well-known to many readers, and were referred to in the Report. This stood in stark contrast to the level of administration in the High Court and the Mercantile Court. As a judge who had sat in both was recorded as saying:

"Wealthy people use the High Court and get a fine judge and adequate administrative service. Poor people who use the County Court pay much the same fees but, at least in London, have inferior facilities and much worse service. This is an unfair product of a divided system."

(The Brooke Report, paragraph 153.)

Regrettably, I fear that this is an assessment with which few readers would disagree today despite the considerable efforts made by the judges at Central London and, to a lesser extent, by the Court Service itself. The next step in the proposed turnaround plan is the move of the Court into the RCJ (where insolvency business is already being conducted). No one can doubt the commitment of those involved to that plan, nor have I heard criticism of the judges in Central London themselves (in fact, rather the reverse). Unless and until that move is complete, however, the rather odd prima facie position created by the reforms would appear to be that the self-styled business capital of Western Europe has no efficient method of dispute resolution (other than arbitration) for a wide variety of civil claims valued at less than £100,000.

The practical difficulties

The greatest challenge to litigators thrown up by any wholesale move of higher value claims to the County Court will be at case management stage rather than trial. The latter point can be dealt with swiftly: in many cases, and notably outside London, the identity of the trial judge would be the same whether the claim was issued in the County Court or High Court. What is, by contrast, starkly different (at least in this author’s experience) is case management with and without Masters or docketed judges. The recurrent problem is the straightforward one of speed in securing resolution of case management issues. This does not obtain so much at those regional centres where cases are informally handled by designated teams. But where there are slow response times and delays in drawing orders there is the well-known spiral of letters crossing and getting mislaid, uncertainty as to what correspondence was before the district judge making the order, cross-applications, more or less ill-advised and "expedited" appeals, and the derailment of the orderly management of the case. Such issues are, of course, now heightened by the more or less inevitable decision of at least one party to take a Mitchell point.

By way of contrast, if in an RCJ or Rolls Building case, one concludes on the Monday morning that urgent action is needed to keep a case on track, it is often possible to resolve the situation by the end of the Friday, even if that involves a potentially challenging appearance before a Master or interim applications judge, whose first question is why on earth the parties have had to come to court at all. And, of course, the fact parties can be heard quickly, if necessary, provides a remarkable incentive to other parties to reach sensible agreement and have a Consent Order
sealed. That does not seem to be a dynamic that the sending of case materials between administrative and hearing centres is likely to encourage. A more likely outcome, unless IT systems prove much better than expected, would seem to be protracted correspondence battles. As this author has found, even where a case has been taken hold of by a section 9 judge as requiring High Court level case management, documents can, and do, get delayed, to the point where an important interlocutory Order repeatedly sought in correspondence can arrive on the eve of trial or after settlement, long after the parties would have benefitted from it.

Beyond noting that the basic rules of accuracy, brevity and clarity in correspondence are of particular value in such circumstances, it is very hard to suggest straightforward ways of resolving such issues. Nor is it any longer the case that trial judges will simply treat all interlocutory disputes and any question of non-compliance with directions as "water under the bridge". Some do; others are mindful of Mitchell. In any event, however, it will also be more challenging for parties, their representatives and the court itself to take that stance if the figures in dispute are significantly higher than in the past.

**Searching for a forum**

Given the above issues and their impact on orderly management of cases, it seems distinctly possible that parties will seek to find ways to have their case managed by more efficient courts.

That does not necessarily mean the RCJ in London: even before the latest reforms, there were plenty of consensual transfers to specific courts (or hearing centres, as they must now be described) on such pragmatic grounds. Unfortunately, the new system, and notably the new administrative system, would not appear set up for this. Further, the Court of Appeal is unlikely to have much time for "forum shopping".

This notwithstanding, parties may be well advised in some cases to frame the case with a view to where they would like it to be heard. For most readers, that will require no substantial thought: where there is a combined court centre at which complex breach of contract claims will always be dealt with by the same teams, there is little to be said for issuing a claim under £100,000 in the High Court unless, for commercial reasons, a judgment is sought from a court of record for use in later cases. For other readers, however, the position will not be viewed with such equanimity. While I would not advise those readers to include claims under the Variation of Trusts Act 1958 in their next debt recovery claim, they may wish to reflect carefully on whether the claim can be brought in specialist jurisdictions or courts, notably the specialist Chancery lists and the relevant Mercantile Courts. One hopes that the court system resolves the administrative problems that give rise to such reflections sooner rather than later.