

CIVIL WAY

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IN BRIEF

- ▶ Ground rents get corny.
- ▶ That silky feeling.
- ▶ Distance law.
- ▶ Service charge dispute costs.
- ▶ Revised civil forms.

PEPPERCORNER

Phew! The Department for Levelling Up, Housing and Communities knows how to make you sweat. It waited until 21 June 2022 to make regulations (SI 2022/694) which commenced the Leasehold Reform (Ground Rent) Act 2022 on 30 June 2022 (see Civil way, *NLJ* 3 June 2022 p19). The regulations go further. The Act with its peppercorns et al does not currently apply to leases of retirement homes (it is a term of the lease that the premises may only be occupied by persons who have attained the age of at least 55—s25(5)). Its application will be extended to these leases on 1 April 2023. Expect your next invitation to a sunset home open day to include nosh beyond afternoon tea as the pressure is on to demise before next year's deadline. My last one was throwing in a glass of champagne. With lunch at an equity release seminar, I can cancel *Ocado* for the week except for the ear plugs.

JACK SPRAT QC (HONS)

Nominations for the award of honorary QC must be in by 29 August 2022. If you don't take wine with any serving lord justice of appeal, you may self-nominate. You need to have made a major contribution to the development of the law of England and Wales or how it is advanced. You may be awarded for a significant impact over a long or short period. The scale of the impact is important. Might three *Civil Ways* do? Solicitors without higher rights of audience and in-house lawyers are among those eligible. Take out March 2023 in your diary for the awards ceremony.

REMOTE ENTERTAINMENT

Covid required temporary and urgent legislation for the remote observation of court and tribunal proceedings by the media and other non-participating nosy parkers. It was provided by the Coronavirus Act 2020 s 55, sch25. That legislation is replaced by the Police, Crime and Sentencing Act 2022 s 201(2) which was generally commenced on 28 June 2022 by SI/2022/704 made the day before, so thanks again for the notice, guys.

The Remote Observation and Recording (Courts and Tribunals) Regulations 2022 (SI/2022/705) made on the same day at 10.05 am and laid at 5pm were also brought into force on the next day as was practice guidance from the Lord Chief Justice and Senior President of Tribunals 'to help judicial office holders understand and apply the new law.' The Supreme Court will look after itself and its cohort.

The new regime is wider than the old. Remote observation is now allowable for hybrid and in-person hearings. Two kinds of direction are envisaged: transmission to live-streaming premises—which might suit the final *Merricks v Mastercard Inc* outing, and me, where the O2 could be a useful arena and, incidentally, on 22 June 2022 the Competition Appeal Tribunal made cross orders for costs resulting in a net interim payment to Mr Merricks of circa £226,000 with criticism of high solicitors' charging rates on both sides (including £825 and £725 ph for two Merricks' partners but I digress)—or, more usually, transmission to which individuals are given access. The threshold criteria for allowing in these troublemakers include consideration as to whether transmission would create an unreasonable administrative burden (otherwise known as the court staff cursing factor).

There is a menu for the court's direction, the ingredients for which can be built into standard forms of messaging. Conditions or limits on access can be imposed. Standard access arrangements may be developed for regular reporters. It will be summary a offence and a contempt for a remote attender to make or attempt to make an unauthorised recording or transmission of an image or sound transmitted to them. Two years maximum then.

HMCTS has issued guidance at *bit.ly/3Iv6LF2*.

CONTEMPLATION

Issues on the reasonableness of residential service charges in landlords' claims made in the county court will be transferred to the first-tier tribunal (property chamber) for determination unless the district judge has an aberration or has a predilection for faulty lightbulbs and the going rate for gardeners. No costs issue may be so transferred. When the case comes back to the county court with the tribunal's determination, the court does not have the power to deal with the parties' costs in the tribunal. Those costs will have been for the tribunal to deal with, in the

face of it having to be satisfied that the party against whom an application is being made acted unreasonably in bringing, defending or contesting the proceedings, before moving on to exercise its discretion. The Court of Appeal ruled on this lack of county court jurisdiction in *Mayor and Burgesses of the Tower of Hamlets LBC v Khan* [2022] EWCA Civ 831 and so disapproving *Avon Ground Rents Ltd v Child* [2018] UKUT 204 (LC) (and see Civil way, *NLJ* 3 August 2018 p18) which has come in for previous stick.

There was even more to *Khan*. The landlord had alternatively argued for contractual costs for the tribunal part of the proceedings on the strength of them being 'incidental to the preparation and service' of forfeiture notices. But no s146 notice had been prepared or served and so the costs were too remote from preparation and service. The landlord sought to take the additional point on appeal that the costs concerned were 'in contemplation' of forfeiture proceedings for which the lease also provided but was not allowed to run it as it had not been taken previously. They might well have otherwise succeeded on it. All the Court of Appeal would say was that costs could be incurred 'in contemplation' without preparation or service.

The tribunal determination on reasonableness had gone against the tenant. What the landlord did secure costs wise for all its trouble was an order for the costs of the county court part of the proceedings under s 51 of the Senior Courts Act 1981.

ON FORM

They've quietly tinkered with forms N1 (claim form), N161 (appeal notice for non-small claims), N170 (listing questionnaire), N181 (directions questionnaire: fast track and multi-track); and my beloved N244 (application notice). The revisions reflect the court's obligation to watch out for party or witness vulnerability (see revised CPR PD1A and Civil way, *NLJ* 18 March 2022, p18) and more. But what did the PD do for the beaks? Nothing? They needed something for civil proceedings such as applications for stalking orders, restraining orders and sexual harm prevention orders. The contention is that they have had an implied power to direct special measures. The Magistrates' Courts (Amendment) Rules 2022 (SI 2022/523), in force on 7 June 2022, gives them express powers, on application or of their own volition. Screens, questioning through an intermediary: the whole caboodle.