

## Property / Landlord & tenant

# Out of line

**James Naylor** reports on why jurisdiction trumps good intentions in Leasehold Valuation Tribunals

### IN BRIEF

- In a transferred LVT case, it is essential to ensure the Tribunal's jurisdiction has been invoked either by the terms of the transferring Order, or by an additional application. Failing that, the panel's hands will be tied and unnecessary further litigation will be required.

What fetters are placed upon the LVT's jurisdiction when the court transfers a discrete issue to it? Can it go beyond the transferred issue and determine other issues in dispute? These were the questions before the Upper Tribunal in *John Lennon v Ground Rents (Regisport) Limited* [2011] UKUT 330 (LC).

The matter started life as a standard service charge insurance premium dispute in the Lambeth County Court. At trial, the District Judge transferred proceedings: "To the Leasehold Valuation Tribunal... for determination of the reasonableness of [the] sum charged for insurance." The LVT proceedings reached dénouement with a finding on the tasked insurance premium issue. However, the LVT didn't stop there: in fact, it went on to decide other issues over and above the question of reasonableness of insurance charges. This was no accident or mistake. As the judgment makes clear, it was a calculated decision: "It is noted that the Order states that the transfer was 'for determination of the reasonableness of sum charged for insurance' but the Tribunal has jurisdiction in respect of the service charge issues and has therefore included all such matters within the claim, namely insurance and administration charges."

Accordingly, the question that reached the Upper Tribunal on appeal was whether the LVT was right to determine matters over and above the question posed by the County Court?

On appeal, His Honour Judge Nicholas Huskinson considered *Staunton v Taylor*

LRX/87/2009 (9 August 2010). In *Staunton*, the President of the Lands Tribunal found that the powers of the LVT in determining issues in transferred proceedings were no wider than that the court and the court would be limited by the terms of the statements of case (as amended). Further, "the powers of the LVT in transferred proceedings are necessarily limited [to the parties statements of case], but the LVT has no power to permit the pleadings to be amended and thus to widen the scope of the questions

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that it is required to determine under the transferred proceedings”.

Responding, the landlord dealt with *Staunton* head on: while accepting the President's decision, it argued that even if there was nothing in the statements of case regarding the issues subject to the appeal, provided such issues were: "raised in the County Court proceedings", *Staunton* would not prevent the LVT deciding upon such issues.

Understandably, the Upper Tribunal then looked at the pertinent para 3 of Sch 12 to the Commonhold and Leasehold Reform Act 2002: "Where in any proceedings before a court there falls for determination a question falling within the jurisdiction of a leasehold valuation tribunal, the court—(a) may by order transfer to a leasehold valuation

tribunal so much of the proceedings as relate to the determination of that question."

Particular emphasis was paid to the effect of para 3(a) whereby "so much of the proceedings" as fall within the jurisdiction of the LVT must all be transferred to the LVT. The landlord argued that where the court decides to transfer a question to the LVT, there is transferred to it all of the question or questions falling within the jurisdiction of the LVT. To exemplify the argument, if there are three issues falling within the LVT's jurisdiction, the court cannot ask the LVT only to determine one LVT issue. In such circumstances, the LVT must determine all three issues.

### Unconvincing & unnecessary

Entirely unconvinced by these arguments, HH Judge Huskinson allowed the appeal and found that the LVT's jurisdiction was limited to the terms of the court's transferring Order. The judge also commented, on several occasions, that the jurisdictional issue could have been easily avoided had a further application been made to the LVT to deal with the issues subject to the appeal.

Residential service charge litigators would do well to bear this case in mind on a transfer to the LVT: the LVT's jurisdiction will be

limited to the scope of the Order transferring the proceedings. While the LVT's possible motives in trying to deal with all issues at once may have been perfectly understandable and laudable, ie saving time and costs, in the end the opposite was the case.

The message is therefore clear: in a transferred LVT case, it is essential to ensure the Tribunal's jurisdiction has been invoked either by the terms of the transferring Order, or by an additional application. Failing that, the panel's hands will be tied and unnecessary further litigation will be required. NLJ

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