

Administration of magistrates' courts

The Courts Act 2003 unifies the Supreme Court *as it is currently constituted*, the county courts and the magistrates' courts into one system called Her Majesty's Court Service. The same Act makes provision for the practice and procedure in those courts and for accommodation for the court house and offices and staff. An important provision of the 2003 Act is to set up Courts Boards to be concerned with Crown Courts, county courts and magistrates' courts based on police authority areas. The members of these Boards are:

- a judge, e.g. a district or circuit judge;
- two lay justices from the area of the Board;
- at least two members being persons who have knowledge and experience of the work of courts in the area of the Board;
- at least two members who are representative of people living in the area of the Board.

The Board will keep under review the suitability or otherwise of the provision being made for local justice and consider, for example, the reallocation of court houses.

Section 6 of the Courts Act 2003 abolishes the former magistrates' courts, committees which used to carry out administrative functions.

Classification of criminal offences

Before discussing the powers of magistrates in regard to criminal prosecutions, it is necessary to classify criminal offences for procedural purposes. Proceedings are regulated by the Magistrates' Courts Act 1980 in the main. Criminal jurisdiction falls into three classes of offence listed in the Criminal Law Act 1977 (as amended) as:

- (a) offences triable only on indictment before a judge and jury;
- (b) offences triable only summarily by the magistrates;
- (c) offences triable either way.

Some examples

Examples of crimes which fall into the relevant categories appear below.

Offences triable only summarily

- driving without insurance;
- careless or inconsiderate driving;
- speeding;
- being drunk and disorderly in a public place.

Offences triable either way

- theft;
- burglary without violence or threat to a person;
- aggravated vehicle taking (this occurs, e.g. where after the taking a person is injured by the driving);
- assault occasioning actual bodily harm;
- dangerous driving.

Offences triable only on indictment

- murder and manslaughter;
- robbery, which involves a taking by force;
- rape.

The nature of proceedings

Summary offences are tried only in a magistrates' court. Offences triable either way may be tried by magistrates (see below). Indictable only charges cannot be dealt with at a magistrates' court and are sent to the Crown Court under s 51 of the Crime and Disorder Act 1998. By reason of s 41 of and Sch 3 to the Criminal Justice Act 2003 as it comes into force, committal proceedings which are used to send charges of either way offences to the Crown Court will be abolished so that all indictable and either way cases that have been allocated for Crown Court trial will be sent to the Crown Court under amendments to s 51 of the Crime and Disorder Act 1998.

Sending for trial

Where an adult defendant is brought before the magistrates charged with an indictable-only offence, the magistrates must send him forthwith for trial in the Crown Court. The magistrates' functions are only to determine whether what is charged is an indictable-only offence and to consider legal aid. The court will set the time for the first hearing in the Crown Court and will remand the defendant in custody or on bail to appear at the Crown Court. These proceedings can be heard by one magistrate.

A juvenile offender (i.e. a person under the age of 18) is not liable to be sent to the Crown Court for an indictable-only offence unless he is charged for that offence jointly with an adult, when he or she may be sent with the adult to the Crown Court if the magistrates think that it is in the interests of justice that he or she should be tried jointly with the adult.

The juvenile offender hearing should be before two or more magistrates and a Crown prosecutor must be present. The hearing will normally take place at the next available sitting of the court after the defendant has been charged.

Offence triable either way

These offences can be tried either in a magistrates' court or in the Crown Court before a judge and jury. Of major importance here is the requirement to have disclosure of the prosecution's case to the defendant. Rule 21 of the Criminal Procedure Rules applies. The 2005 Rules require the prosecution to supply a written statement containing the facts and matters which the prosecutor proposes to bring in as evidence during the proceedings. This includes evidence by video. All of this is to assist the defendant and his advisers with a decision as to the mode of trial or whether to plead guilty or not guilty. There are the following possibilities at the hearing:

- the magistrates may decide that the case is not suitable for summary trial. The defendant then has no choice and the case will be adjourned to a future date so that committal proceedings may take place. In reaching their decision, the main considerations will be whether, were there to be a conviction, the sentencing powers of the court would be adequate. If not, the magistrates will not accept the case but will send it to the Crown Court;
- if the magistrates are prepared to hear the case, the defendant must make his decision:
 - if he consents to be tried by magistrates and pleads guilty, his case will be dealt with immediately;
 - if he consents to be tried by magistrates and pleads not guilty, the case will be adjourned to a later date for trial;
 - if he asks for a trial in the Crown Court, he will not be asked to plead and there will be an adjournment to a later date for committal proceedings to take place. The defendant cannot be denied a jury trial.

Summary trial

Disclosure by prosecution and defence

As regards the prosecution, the Criminal Procedure and Investigations Act 1996 applies. Disclosure applies where the defendant pleads not guilty and the court proceeds to summary trial. The defence is not entitled to disclosure where the defendant has pleaded guilty. The prosecution must disclose any prosecution material which has not previously been disclosed and which might reasonably be considered capable of undermining the case for the prosecution or assist the case for the defence.

There is also a duty under the Criminal Procedure and Investigations Act 1996 for the prosecution to make available to the defence *any unused material* relating to the case on which it does not intend to rely. This applies where there is a not guilty plea. If there is no such material, the prosecution should confirm in writing that this is so. This could include, e.g. material casting doubt on a confession or the reliability of a witness. Where the prosecution has made the above primary disclosure, the defence may in a not guilty plea give a defence statement setting out in general terms the defence and disclosure of details of any alibi. The defendant is not required to make this statement but if he does so, the prosecution is required to make further disclosure of relevant and undisclosed prosecution material, e.g. in the light of the defence. The prosecution has a continuing duty of disclosure until the defendant is convicted or acquitted. It should be noted that the right to a fair trial as set out in the European Convention on Human Rights reinforces the need for maximum disclosure by the prosecution.

Further details of the trial procedure appear in Chapter 4, but it is enough here to note that the magistrates' verdict is by a majority and if the defendant is found guilty, the magistrates will proceed to sentence. An outline of the available sentences is also given in Chapter 4.

Committal proceedings

Offences which are triable either way and not tried by the magistrates as described above are currently the subject of committal proceedings before a magistrates' court. The purpose of these proceedings is to decide whether there is a case for the defendant to answer in the Crown Court.

As already noted, under s 41 of and Sch 3 to the Criminal Justice Act 2003, as they come into force, committal proceedings for either way cases allocated for trial in the Crown Court will be *sent for trial* in the Crown Court in line with the current procedure for indictable offences and committal proceedings will be abolished. (See further p 26.)

Types of committal proceedings

There are two types of committal proceedings as follows:

- committal without consideration of the evidence under s 6(2) of the Magistrates' Courts Act 1980; and
- committal with consideration of the evidence under the Magistrates' Courts Act 1980, s 6(1).

Section 6(2) committals

The prosecution can offer the defence a committal without consideration of the evidence. This is made in almost all cases usually by letter. The prosecution will serve the relevant bundle of prosecution documents on the defence and the defence solicitor will consider with his client what they contain. In most cases the defence will accept the prosecution's offer, though it may request a contested committal on the grounds that there is no case to answer that could

be put to a jury. In s 6(2) committals the magistrates' function is mainly administrative and the proceedings will take only a few minutes since the magistrates do not at any stage read the evidence which is in the prosecution statements. The defendant is committed for trial to the Crown Court and a date is set for the first hearing in the Crown Court. Legal aid and bail will also be dealt with.

Section 6(1) committals

In these cases the evidence for the prosecution is either read out aloud at the hearing or, if the court directs, it will be orally summarised. At the end of the case for the prosecution the defence may submit that there is no case to answer, e.g. that the case against the defendant is so unreliable that a jury could not convict the defendant on it. If no submission is made or if, being made, it is rejected, the magistrates will commit the defendant for trial in the Crown Court. If, in the very unlikely event that the magistrates decide that there is no case to answer, they will discharge the defendant. Where the defendant is committed for trial, a date will be set for the first hearing in the Crown Court and the matter of legal aid and bail will be considered.

It should be noted that if the prosecution requires a committal with consideration of evidence, the defence has no choice and must accept, but since the prosecution can no longer use such proceedings to test its own witnesses by requiring them to give oral evidence, it is very unlikely to require a s 6(1) committal.

Effect of the Criminal Justice Act 2003

Before considering the substantial changes that will be made by the Criminal Justice Act 2003 as it comes into force, it should be borne in mind that s 41 and Sch 3, which carry the changes, are not yet in force, although it is over three years since Royal Assent. Therefore, at the present time the material referred to above is the procedure that is followed. When the relevant parts of the 2003 Act are in force, the material set out below will take the place of the above material in terms of the trial of each way offences. The rules under which the magistrates send for trial in the Crown Court forthwith in indictable offences will be covered by the CJA 2003 procedures but these will be substantially the same as those applying at present. The trial of each way offences will change significantly. The purpose of the changes is to encourage defendants to accept the opinion of the magistrates that the case is more suitable for summary trial and to achieve that result by minimising uncertainties about the sentence.

Committal proceedings as described above will be overtaken by the CJA 2003 provisions and the current expression of 'committal for trial' in the Crown Court will become 'sending for trial' in the Crown Court.

Allocation and transfer of offences triable either way

Section 41 of the Criminal Justice Act 2003 introduces Sch 3 of the Act and deals with the allocation of offences triable either way and transfer of cases to the Crown Court. The magistrates must decide whether cases triable either way should be tried summarily or on indictment. The provisions are aimed at ensuring that only cases that need to go to the Crown Court are sent there. Paragraphs 5 and 6 of Sch 3 deal with the preliminary stages of an either-way case including the defendant's plea before venue and allocation of the case. A single justice may hear the plea, called a *plea before venue*, but cannot conduct a contested case following a plea of not guilty. He or she may hear a guilty plea but cannot impose sentence on the defendant.

Paragraph 5 enacts a new s 19 of the Magistrates' Courts Act 1980 to provide the procedure to be followed by magistrates when deciding whether a case triable either-way where the defendant has not entered a guilty plea should be tried summarily or on indictment.

The new procedure differs from the former procedure in that the magistrates must be informed about and take account of previous convictions of the defendant in assessing whether the sentencing powers available to magistrates are adequate. The court must have regard not only (as before) to representations made by the prosecution or defence but also to allocation guidelines that may be issued by the Sentencing Guidelines Council under s 170 of the 2003 Act (see further Chapter 4). *These new procedures are referred to as allocation procedures.*

Cases suitable for allocation for summary trial

Paragraph 6 of Sch 3 substitutes a new s 20 of the Magistrates' Courts Act 1980 which sets out a procedure to be followed by magistrates when they decide that a case is suitable for summary trial. This is as follows:

- defendants will be told that they can consent to be tried summarily or if they wish on indictment;
- when making that decision defendants (and their advisers) are likely to be influenced by the knowledge that it is not possible for the magistrates to commit them to the Crown Court for sentence. Once the magistrates have accepted jurisdiction to try summarily, they cannot give a sentence beyond their powers. Under s 154 of the CJA 2003, as it comes into force, the magistrates can impose custodial sentences of up to and including 12 months in regard to any one offence and up to 65 weeks in regard to two or more offences to be served consecutively. The current provisions appear on p 28. Clause 139 gave the Secretary of State power to increase these limits by order up to 18 months in regard to any one offence and 24 months in regard to two offences to be served consecutively. *This clause was not enacted.*
- defendants have the opportunity to request an indication from the magistrates whether, if they plead guilty at that point, the sentence would be custodial or not;
- the magistrates have a discretion whether or not to give an indication. Where an indication is given, defendants may reconsider their plea;
- where a defendant then decides to plead guilty, the magistrates will proceed to sentence. A custodial sentence will only be available if such a sentence was indicated, and if so, the magistrates will not have the option of committal to the Crown Court for sentence;
- where the defendant declines to reconsider his plea indication or where the magistrates do not give a sentence indication, the defendant has the choice of accepting summary trial or electing for trial on indictment;
- where an indication of sentence is given and the defendant does not plead guilty because of it, the sentence indication is not binding on the magistrates who later proceed to summary trial or on the Crown Court if the defendant elects for trial on indictment.

Cases suitable for trial on indictment

Paragraph 7 amends s 21 of the Magistrates' Courts Act 1980. Under this amendment, where the magistrates decide that a trial on indictment would be more suitable, they will proceed forthwith to send the case for trial in the Crown Court under s 51(1) of the Crime and Disorder Act 1998 (see below).

There is currently no power for magistrates, having started to hear a case summarily, to switch to committal proceedings. There is a new power in the CJA 2003 for the prosecution to apply for an either-way case that has been allocated for summary trial to be tried on indictment instead.

Sending for trial procedure

Amendments effected by the Criminal Justice Act 2003

The sending for trial procedure will apply to either-way cases allocated for trial on indictment. Furthermore, committal of defendants by the magistrates to the Crown Court will no longer be available where the magistrates have accepted jurisdiction in an either-way offence whether as a contested case or guilty plea. Where a guilty plea has been indicated at plea before venue as distinct from at allocation and the magistrates deal with the case summarily, *the power to commit to the Crown Court for sentence will be available to the magistrates.*

Disclosure in criminal cases to assist trial management

Part 5 of the Criminal Justice Act 2003 amends the provisions of the Criminal Procedure and Investigations Act 1996 which govern disclosure of material. These provisions are now substantially in force, with some exceptions, and are included in the disclosure material in this Chapter (see p 25). They are now part of the 1996 Act, which is the authority for them.

The duty solicitor

The duty solicitor scheme is concerned to provide an emergency service to defendants appearing in magistrates' courts who might otherwise be unrepresented. Representation is free. A duty solicitor can make bail applications, apply for adjournments and present pleas in mitigation. Duty solicitor schemes are staffed by local solicitors in practice who are paid hourly rates from the Legal Aid Fund.

Magistrates – sentencing powers

Unless there is a lower maximum for a given offence, the magistrates may only impose a custodial sentence on an adult of up to six months unless that adult is convicted of two or more either-way offences. In such a case the maximum becomes 12 months. The minimum sentence is five days, although there is a power to impose detention for one day as a sentence or for non-payment of a fine (see s 135 of the Magistrates' Courts Act 1980). The common practice is to express the sentence in months, but when the provisions of the CJA 2003 come into force (see below), a sentence will have to be expressed in weeks. The maximum fine that can be imposed generally is £5,000. However, in certain cases, for example, under s 35 of the Food Safety Act 1990 for the offence of selling food not of the nature or substance or quality demanded, the maximum custodial sentence is six months but the maximum fine is £20,000.

For individuals under 18, the maximum fine is £1,000 and for those under the age of 14 it is £250.

In addition, it should be noted that if the magistrates are trying an either-way offence summarily and feel that the circumstances are such that the defendant should be given a greater sentence than can be given in a magistrates' court, they may transfer the defendant to the Crown Court for sentence under s 38 of the Magistrates' Courts Act 1980. Further details are given at the sentencing section which appears in Chapter 4.

The Criminal Justice Act 2003, as it comes into force, increases the magistrates' general sentencing powers from six months to 12 months in regard to any one offence and up to 65 weeks in regard to two or more offences to be served consecutively. The Secretary of State's power to increase these limits by order was not in the end enacted with the Act. It is felt that this increased sentencing power will encourage magistrates to retain and hear more either-way cases thus keeping them out of the Crown Court and within the cheaper regime of the magistrates' court.

Civil jurisdiction

The magistrates and civil debt

The magistrates have power to make an order, on complaint, for the payment of any money which is recoverable as a civil debt. On making the order the court may require immediate payment or give time for payment or allow payment by instalments. If payment is not made as required, the magistrates may issue a distress warrant under which the bailiff service may enter the debtor's premises and remove goods for sale in order to pay the debt.

Family proceedings

The magistrates also have a limited civil jurisdiction which includes what are known as family proceedings hearing applications for matrimonial relief, such as maintenance orders sought by women for themselves and/or children who do not initially opt for divorce on breakdown of marriage. They can also deal with questions regarding the custody of children, and so far as parents and other relatives are concerned, they can decide the place of residence of a child and rights of contact with him or her. There is also power to order a violent spouse to leave the home in order to protect the other spouse and children (if any). They may also consent to the marriage of a minor of 16 or 17 years of age who is not a widow or widower, where other relevant consents, e.g. those of parents, are not forthcoming. These family matters are dealt with in separate branches of the magistrates' court known as the family proceedings court and family panels (see the Children Act 1989, s 92 and Sch 11). The magistrates also deal with matters relating to the enforcement of the Council Tax and VAT. Where a foreign state wants an alleged criminal living in England and Wales to be returned, the request for extradition is heard under the provisions of ss 67 and 137 of the Extradition Act 2003 by a district judge (magistrates' court).

Appeals

Appeals from the magistrates in family proceedings are to the Divisional Court of the Family Division. As regards criminal offences, appeal may be to the Crown Court or to the High Court as follows:

(a) Crown Court. An appeal to the Crown Court may be made by the accused only, provided he did not plead guilty. The appeal may be against conviction or sentence on law or fact and no permission is required. If he pleaded guilty, he may appeal against sentence only. Appeals against conviction and/or sentence take the form of a re-hearing. Where the appeal is against conviction, all the evidence will be heard but, if it is against sentence the prosecution will outline the facts of the case to the court, which will decide what the appropriate sentence is after offering the defendant an opportunity to address the court in mitigation of sentence.

The Crown Court may confirm, reverse or vary the decision of the magistrates and can give any sentence which may be heavier or lighter than that given by the magistrates but it must be within the powers of the magistrates, e.g. in general a custodial sentence of up to six months or a fine of up to £5,000. Defendants should therefore be informed that an appeal to the Crown Court may result in the sentence being increased up to the maximum sentencing powers of the magistrates who first dealt with the case.

On appeal to the Crown Court the judge will sit with two magistrates who did not participate in the hearing in the magistrates' court.

(b) High Court. An appeal to the High Court may be made by either the accused or the prosecution by means of *case stated*. This means that the magistrates must set out in writing their findings of fact together with the arguments put forward by the parties and their decision and

the reasons for it. The appeal questions the decision of the magistrates on the ground that it is wrong in *law* (Magistrates' Courts Act 1980, s 111). Issues of *fact* should not be appealed against by way of case stated (*James v Chief Constable of Kent, The Times*, 7 June 1986). It is available to a person who has pleaded guilty. The procedure for the appeal is not a re-hearing. The appeal is decided after hearing legal arguments put forward by the parties on the relevant points of law. If the lower court or the House of Lords (as the Constitutional Reform Act 2005 comes into force the Supreme Court) gives leave, there may be a further appeal to the House of Lords, (which will become the Supreme Court as the CRA 2005 comes into force) but the lower court must certify that the case raises a matter of law of public importance.

Proceedings by way of case stated by magistrates or the Crown Court are regulated by the Supreme Court Act 1981, s 28A (becomes the Supreme Courts Act 1981). The High Court is now given the task of dealing with case stated proceedings and is also given the necessary powers to amend the stated case and to make any final orders on the application. In particular, it may reverse, affirm or amend the decision of the magistrates and may order a rehearing. As regards the constitution of the High Court, for these appeals a case stated is heard by a Divisional Court of Queen's Bench and at least two judges must sit on the appeal. If their opinions are divided, the appeal fails (*Flannagan v Shaw* [1920] 3 KB 96).

(c) **Judicial review.** Whenever a court, including, obviously, a magistrates' court, acts without jurisdiction, or fails to observe the rules of natural justice (see further Chapter 3) or makes an important procedural error (as where there is inadequacy of disclosure of material to the defence) any person affected, and obviously a defendant, may apply to the High Court to review the decision of the magistrates and issue a quashing order, as it is called, to make ineffective the decision of the magistrates (see further Chapter 3). These types of defects in a magistrates' court must be challenged by judicial review and not by case stated (*R v Wandsworth Justices, ex parte Read* [1942] 1 All ER 56).

(d) **The European Court.** The magistrates may refer matters to the European Court. Thus, in *R v Marlborough Street Stipendiary Magistrate, ex parte Bouchereau* [1977] 3 All ER 365, the magistrate indicated that he proposed making a recommendation for the deportation of B, but it was said that the magistrate had no such power since B was a migrant worker protected by Article 39 (now 33) of the Treaty of Rome. The magistrate decided to refer the matter to the European Court under Article 234 (now 307) of the Treaty and this was held to be in order by a Divisional Court which decided also that legal aid legislation allows a magistrates' court to order legal aid for the purposes of proceedings before the European Court of Justice.

(e) **Rectification of mistakes by the magistrates themselves.** Section 142 of the Magistrates' Courts Act 1980 (as amended by s 26 of the Criminal Appeal Act 1995) provides an alternative to appeal to the Crown Court or High Court. The section gives magistrates the power to re-open a case to rectify their mistake, regardless of the plea made by the defendant at the relevant proceedings, but only if the defendant has been found guilty, not if he has been acquitted. The power may be used, e.g., to deal with a sentence passed in excess of the court's powers and also where the defendant asks for a review of his sentence on the grounds that it is too harsh. The prosecution or the defence may institute a review and it would seem that the magistrates may do so of their own volition. The magistrates may vary, rescind or replace a sentence imposed at the relevant proceedings.

An inspectorate

Part 5 of the Courts Act 2003 sets up an inspectorate known as Her Majesty's Inspectorate of Courts Administration. The inspectorate has power to inspect the system that supports the carrying on of the business of all magistrates' courts, county courts and the Crown Court.

Youth courts

The magistrates also have a part to play in regard to children over 10 but under 14 and young persons who are 14 or over but have not attained the age of 18. Criminal proceedings cannot generally be brought against a person under the age of 10. For this purpose the magistrates sit as a youth court. This court must sit in a different building or room from that in which other courts are held or else must sit on a different day. The court consists of not more than three magistrates who are drawn from a special panel of persons who need no longer be under 65 years of age and it is usual for one or more female magistrates to be present. The public is excluded from these courts and there are strict controls on press reports. In particular, the restrictions relate to not identifying the defendant and this may also be applied to other juveniles concerned in the case, e.g. witnesses. The court also has power to order the juvenile's parent or guardian to attend. This applies also in the adult court and the Crown Court where relevant. Youth courts have a range of sentences at their disposal including custodial measures (see further Chapter 4). In general defendants under the age of 18 must be dealt with in a youth court (but see further p 136).

The county court

The magistrates' courts deal with most of the less serious criminal matters in this country. At something like the same level, but dealing exclusively with civil cases, is the county court. County courts were created by the County Courts Act 1846, to operate as the chief lower courts for the trial of civil disputes, and a large number of cases are heard in these courts annually. They are now governed by the County Courts Act 1984. Section references are to that Act unless otherwise stated.

A county court is presided over by a circuit judge. The judge usually sits alone, though, under ss 66 and 67, there is provision for a trial by a jury of eight persons in some cases, e.g. where fraud, libel, slander, malicious prosecution or false imprisonment is alleged. The judge is assisted by a district judge who acts as clerk of the court and may try certain cases. A district judge may try:

- claims with a financial value of not more than £5,000 (or a larger sum if all parties consent to allocation to what is known as the small claims track);
- matters relating to attachment of earnings orders so that a creditor with a judgment may receive payment directly from the debtor's employer through the payroll;
- matters relating to the appointment of receivers so that a judgment creditor can collect rents from the debtor's tenants;
- the conduct of case management conferences in multi-track cases;
- the approval of settlements out of court for minors and mental patient claimants;
- undefended cases.

Cases where the claim is not for a set amount (i.e. an unliquidated sum), as in a claim for damages for the tort of nuisance (see further Chapter 21), where, unless the claimant states in his particulars of claim that the amount is likely to exceed £5,000, it will be regarded as worth less than that amount and will normally be allocated to a district judge for decision. There is a right of appeal to a circuit judge from the decision of a district judge.

Assistant district judges may be appointed for carrying out the work of the court. Deputy district judges may also be appointed as a temporary measure to dispose of business in the

county court. An assistant district judge and a deputy district judge have the same powers as the district judge. District judges, assistant district judges and deputy district judges are appointed from persons who have a seven-year general advocacy qualification within the meaning of the Courts and Legal Services Act 1990. (See ss 6–9 of the 1984 Act (as amended by the Courts and Legal Services Act 1990).)

Jurisdiction

Generally

Under s 15(1), the county court has a virtually unlimited jurisdiction in most contract and tort cases. There are some exceptions including, most importantly, cases of libel and slander unless such cases are commenced in the county court by consent of the parties or having been commenced in the High Court a particular case is transferred to a county court from the High Court under s 15(2). In contrast to the above common law jurisdiction, the equity jurisdiction of the county court, e.g. in regard to matters concerning mortgages, has remained at a maximum of £30,000 for many years.

Proceedings for a specified or unspecified sum of money in regard to a claim which does not include a claim for death or personal injury must be commenced in the county court unless the value of the claim is *more* than £15,000. It is likely to be tried there, though the High Court would also have jurisdiction in respect of it. The procedure regarding the allocation of cases is dealt with in Chapter 5. However, the claimant's solicitor knows at least that the claim must commence in the county court.

If the proceedings include a claim for death or personal injury, a claim for *less* than £50,000 must be commenced in the county court though, again, the High Court would also have jurisdiction and allocation will decide ultimately in terms of where the trial takes place. There is an exception in regard to medical claims which includes claims in respect of dental and nursing treatment. Such proceedings can be brought in the High Court even if the claim is less than £50,000. *There is thus a remaining distinction between the High Court and the county court which is that claims should not be brought in the High Court unless the above limits are exceeded.*

Human rights jurisdiction

The county court has no jurisdiction to hear applications that Acts of Parliament or statutory instruments are incompatible with the Convention on Human Rights (s 3 of the Human Rights Act 1998) (see further Chapter 3), and transfer to the High Court would be required if such a point arose in a county court case. County courts do have jurisdiction in other human rights cases such as proceedings against education authorities and the police.

Choice of court

Where, as in the case of a claim for breach of contract or in tort not involving death or personal injury the value of the claim is, say, £40,000, the claimant has the choice of issuing the claim in the High Court or the county court. Then, by reason of a Practice Direction to Part 7 of the Civil Procedure Rules 1998 (SI 1998/3132), a claim should be started in the High Court if because of:

- the financial value of the claim and the amount in dispute; and/or
- the complexity of the facts, legal issues, remedies or procedures involved; and/or
- the importance of the claim to the public in general;

the claimant's solicitor believes that the claim should commence in the High Court, then he should commence it there.

In summary, therefore, there is a presumption of trial in a county court but this presumption can be rebutted:

- by the financial value of the claim in some cases (see above); and/or
- by one of the grounds mentioned above, such as complexity of facts or high value of the claim.

These matters are also taken into account when the court is considering the transfer of a case from one court to another.

Territorial limits

The territorial limits of the county court have been largely swept away, but the following material should be noted.

A claimant in a default action may sue out of any county court he wishes regardless of the defendant's place of residence or business or where the cause of action arose. A default action is one where the *only* relief claimed is the payment of money, e.g. a liquidated sum such as a debt for goods sold but not paid or an unliquidated sum such as a claim for damages for personal injury. However, if in a liquidated claim the defendant files a defence, this will generally result in the case being transferred to the defendant's home court and the defendant has a right to apply for a transfer to his home court in unliquidated claims. In actions in which there is a claim for relief other than the payment of money, e.g. a possession order for land or the recovery of goods or an injunction to restrain a nuisance, the general rule is that the claimant must bring his action in the court of the district where the defendant dwells or carries on business, or that for the district in which the cause of action wholly or mainly arose, and where land is involved, the action is generally brought in the court of the district in which the land is situated. Under s 3 of the Courts and Legal Services Act 1990 the county court has the same jurisdiction as the High Court to grant an injunction or a declaratory judgment setting out the rights of the parties, in respect of, or relating to, any land or the possession, occupation, use or enjoyment of any land. This jurisdiction applies only where the capital value of the land or interest in land does not exceed £30,000.

Apart from this, a county court can give the same remedies as the High Court although the orders of *mandamus*, *certiorari* and prohibition (now referred to as mandatory orders, quashing orders and prohibiting orders respectively) are available only in the High Court (see further Chapter 3). County courts are also prohibited – patent court apart – from granting a search order or a freezing injunction (see further Chapter 18). A freezing injunction is an order which restrains a party from moving his assets, for example, overseas so that they are not available to meet any judgment made against him. A search order is an order requiring the defendant to allow his premises to be searched by the agents of the claimant for documents or property. If the injunction or the order is asked for in a county court, the matter must be heard by a High Court judge. This involves a temporary transfer to the High Court after which the proceedings return to the county court.

The general jurisdiction of county courts and the procedure therein are governed by the County Courts Act 1984, the Courts and Legal Services Act 1990 and the High Court and County Courts Jurisdiction Order 1991 (SI 1991/724 (L5)) (as amended by the High Court and County Courts Jurisdiction (Amendment) Order 1999 (SI 1999/1014)) and the Civil Procedure Rules 1998 (SI 1998/3132). The latter are in the form of delegated legislation. In general terms, the extent of the jurisdiction apart from contract and tort, is as follows:

Other jurisdictions

(a) **Equity matters**, e.g. mortgages and trusts where the amount involved does not exceed £30,000, unless the parties agree to waive the limit. Under this heading would be found requests for repossession orders by building societies against mortgage defaulters.