UNISON

Open College

BLOCK HL.101
STRUCTURE AND FRAMEWORK OF THE LEGAL SYSTEM

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Preface

Studying law is likely to be a new experience for you. However, it is important to remember that you are not setting out to be a lawyer with a detailed grasp of the law. Instead, you are going to develop a comfortable understanding of the principles of law relevant to your activities and developing responsibilities as a housing professional. It is such an awareness of legal influences that can make the difference between uncertain and effective decision-making. Also, having the knowledge to know when to seek appropriate legal advice will help to minimise unnecessary or avoidable disputes. This, in turn, will help enhance the performance of both your housing organisation and yourself, as well as providing personal job satisfaction.

In this Block of the Housing and the Law Unit, we will be examining the structure and operation of the English legal system. This will form the foundation of your further studies in the Unit, namely Block HL.102 '*Tenancies and Social Landlords' Responsibilities'* and Block HL.103 *'Key Legislation: Provisions and Applications'*. It will also form the framework that influences the formation, operation, and decisions of social housing organisations, as well as the rights and obligations of their tenants.

Generally, the three Blocks which make up the Unit 'Housing and the Law' are concerned with current and recent legislation. As a result, the differences between English and Scottish law are not that significant, especially for Blocks HL.102 and HL.103. This is because the main changes to the law relating to the various tenures took place in Scotland about the same time as changes in England and Wales. Nevertheless, to help students from Scotland, the relevant Scottish law has been identified in all three Blocks. In this Block, you will see that the Scottish law relative to sources of law and the Scottish judicial system has been identified in sections B.7 and C.4.

Learning Outcomes

By the time you complete this Block, you will be able to:

- describe the differences between statute law, case law, and equity, as well as recognise the differences between public and private law, and criminal and civil law, as they relate to social housing organisations;
- explain how social housing organisations are regulated and how they may be legally challenged; and
- identify sources of legal advice available to tenants.

Contents

We would first like you to spend five minutes on the following activity.

Activity 1

Think about the ways in which the law might affect the organisation you work for, and its major activities. Make notes in the space below.

Time allocation: 5 minutes

Activity 1 - Response

You may have found the exercise on the previous page a little demanding, or that it was hard to understand what was expected of you. This is because we are not used to thinking of the law as a framework which affects almost everything we do.

Among its other functions, the law:

- *implements the housing policies of central government;*
- *restricts and supervises the activities of social landlords;*
- *dictates how they finance these activities;*
- *gives local authorities the power to rent out houses;*
- *prescribes how tenancies can be created and ended; and*
- *imposes duties on landlords and tenants.*

A. Introduction

This Block gives an explanation of the English legal system within which housing organisations and their staff operate. You will see that Section B provides an introduction to the types and sources of law; Section C explains the system of courts which apply the law; and Section D describes how the decisions and policies of housing organisations can be subject to control by the courts. It also advises on the different sources of legal and other housing advice available to tenants.

You will notice that people talk of both law and laws. This is because the law of the country is made up of individual laws. The law regulates not only the rights and duties that are important for the common good, but also protects our individual rights and duties. It does this through a set of rules, principles and ideas that are recognised by the State. As a result, an understanding of law as a background to the provision and management of housing is of particular importance to all housing professionals. We shall start by developing an understanding of the sources of law.

B. Sources Of Law

1. Overview of the Law and Legal Concepts

1.1 What do we understand by the law?

Where did the law come from and what form does it take? The laws of England have evolved over a thousand years and were based on local customs or rules of conduct aimed at promoting safety and neighbourly relations. Sometimes they had their basis in moral or religious laws. Importantly, laws limit what individuals may do to each other and limit what society can do to individuals. Quite apart from deterring criminals from robbing or assaulting others, we require laws to bring general order to everyday living.

> *Just think how difficult and uncertain life would be without a Road Traffic Act requiring us to drive on the left-hand side of the road. Also, how would you be able to buy or sell a house confident of gaining its ownership or receiving payment for it, or claim for the washing machine or other product that failed to work when you came to use it? What, too, could you do if your landlord unfairly evicted you from your home?*

Law, in its widest sense, means a rule to which activities conform or should conform. However, law in the strict sense is rules of conduct imposed by the State upon its members and enforced by the courts. You will see from 1.2 below that these rules may be classified in different ways.

You may have encountered references to the Rule of Law which, in England, had it roots in the 13th century when it was accepted that:

> *The King himself ought not to be subject to any man, but he should be subject to God and the Law, for the Law makes him King.*

The Rule of Law is still the basis of the English legal system and it requires that:

- the powers of politicians and officials should have a justifiable legal foundation and their acts must be within the law; and
- the law should conform to minimum standards of justice.

You need to understand that English law is made up of Statute Law (Acts of Parliament) and the Common Law. New Acts come into being each year. Some of them introduce new laws and others replace outdated laws. Then there is the Common Law where case law decisions taken by the courts introduce and amend legal rules. As a result, the pace of legal change is considerable, and is influenced by social, economic, political and technological change.

Activity 2

Stop for a few moments and consider some recent social, economic, political and technological changes, which would not have been envisaged by early law-makers in the 19th century.

Make notes in the space below

Time allocation: 5 minutes

Activity 2 - Response

We need to remind ourselves of what did not exist in the 19th century. Although that period was a time of significant change, due to the expanding influence of Industrial Revolution, the following are some of the developments that the law-makers of the time would not have envisaged:

- ***technological developments** such as radio, television, aircraft, the modern motor car, space travel, computers and medical advances;*
- ***economic developments** such as globalisation of business and changing employment and business practices;*
- ***political developments** such as the emergence of the European Union; and*
- ***social and demographic developments** such as smaller households due to such influences as divorce, co-habitation, contraception, and people living longer.*

1.2 Legal concepts

The following four pairs of legal concepts form the basis of the English legal system:

- Common law and equity.
- Public law and private law *(this pair includes the distinction between criminal law and civil law.*
- Criminal law and civil law
- Statute law and case law.

We shall now look at each pair, which you need to be able to distinguish from each other.

(a) Common law and equity

The English common law system is made up of two parts.

- **Common law** is a mixture of ancient customs, memories, and records of previous cases. It is called the common law because after 1066 William the Conqueror ensured that the law was common to the whole country. Before this, each area had its own local system of law.
- **Equity** started as a means of giving relief where the common law resulted in cases of hardship or injustice. In such cases, people made personal petitions (appeals) to the King for relief. These were dealt with by his Chancellor (chief minister and secretary). Eventually, a special court - the Court of Chancery - was set up to deal with the petitions. Over time, the rules applied by the Court, which provided new rights and remedies, developed as part of the law.

Equity is still distinct from the common law. The Court of Chancery is now called the Chancery Division of the High Court.

There used to be completely separate courts and judges dealing with the two systems of the common law and equity. This situation changed with the Judicature Acts, passed between 1873-1875. These Acts stated that equity and the common law were to be administered side by side in all courts, and that where there is any conflict between the two '*the rule of equity should prevail*'.

The law still talks about **legal remedies** (e.g. damages in the form of a money payment as compensation) and **equitable remedies** (these are granted at the discretion of the courts and include *specific performance*, where a defendant is forced to do what he promised to do, such as selling a piece of land; and *injunctions*, where a court order compels somebody to do something, or forbids them to do something). Such remedies can be asked for and enforced in the civil courts.

The application of equity frequently occurs in land law disputes.

Example
A man and woman may jointly contribute, say equally, to purchasing a house, but the dwelling is registered only in the name of the man (who is said to have a *legal interest* in the dwelling). Under the common law, the person who has the legal ownership could sell the dwelling and keep all of the money received. However, equity would consider this to be unjust. As a result, it would hold that the woman has a *beneficial interest* in the house and should receive half the money received from the sale of the property. It would justify such a decision on the basis that the man holds the house on trust equally for himself and the woman.

Equitable remedies only apply to civil law cases and cannot be used in criminal cases, whereas the common law includes both civil and criminal law.

(b) Public law and private law

This brings us to another important distinction in the English legal system, that between:

- **Public law** which governs the legal relationship of central and local government and other public bodies with each other and with individuals. It also concerns relationships between individual countries. Public law includes criminal law, constitutional law, and international law.
- **Private law** which concerns relationships between individuals, businesses and organisations. It includes such important areas of law as the law of contract, the law of torts, and the law of property, which we shall consider later in the Block.

(c) Criminal law and civil law

Another way of classifying the law is by distinguishing between criminal law and civil law, where:

- **Criminal law** is concerned with the acts or omissions which conflict with public order and society as a whole and make the guilty person liable to punishment.
- **Civil law** defines the rights and duties of persons to one another and provides a system of remedies as compensation.

Note: The civil law is further sub-divided into the main branches of law, including the law of contract, the law of property, and the law of torts.

Housing law is mainly made up of civil law, although the criminal law does feature in some housing law provisions, which this Block will cover. We will also consider the difference between criminal law and civil law when looking at the way the courts operate.

(d) Statute law and common law

The main sources of law are statute law and common law.

- **Statute law** refers to Acts of Parliament and it is also referred to as legislation. It can embrace criminal and civil law.

Each Act has gone through the same process to become law, and works in the same way. Every year, Parliament produces an average of 100 new Acts, covering many hundreds of pages. Every year, Parliament also repeals *(cancels out)* and amends *(changes)* either parts or the whole of many previously passed Acts.

Think of an Act which you know affects the work of your organisation. If you work for a local authority, you will probably be aware of the **Housing Act 1985** which governs most of its housing activities. If you work for a housing association, you may think of the **Housing Associations Act 1985** which gave formal recognition to the Housing Corporation. You may also be familiar with the **Housing Act 1988** which established Housing Action Trusts and Tenants Choice, as well as introducing assured tenancies.

- **Common law** (Summarised in 1.2 (a) and considered in detail in part 4 of this section.)

Self Test 1

1. *In this country, we have a codified legal system. TRUE? or FALSE?.*

2. *To which part of the law system does equity belong?*

3. *Where there is conflict between the common law and equity, which takes preference?*

   (a) common law remedies; or

   (b) equitable remedies and rights.

4. *Identify whether the following are classified as public law or private law:*

   (a) law of contract;

   (b) international law;

   (c) criminal law; and

   (d) law of tort.

Now turn to the Answers at the end of the Block.

2. The Role of Parliament and Functions of the State

You will appreciate that the establishment of a system of law requires direction and control by some form of government. In Britain, we have a democratically elected government which, through Parliament, develops policies, enacts legislation (Acts of Parliament) and is responsible for enforcing the law. However, as Britain is a constitutional monarchy, the Crown is the source of legal power. This means that the Queen possesses all the powers of government, but they are exercised on the advice of Ministers or by Ministers acting on her behalf.

It is important to recognise that Parliament has three parts, in the form of:

- the Queen,
- the elected House of Parliament, and
- the unelected House of Lords.

Another important consideration is that the State (Nation or Country) has three functions of government:

- **legislative function**, which is exercised through Parliament;
- **executive function**, which is undertaken by the Cabinet of government ministers headed by the Prime Minister. It determines policy and major decisions; and
- **judicial function**, exercised by independent courts.

Britain's Constitution

In many countries, such as the United States of America, a written constitution is the principal source of legal authority. However, Britain does not have a written constitution, but instead is based largely on custom, precedent, statutes and parliamentary supremacy, including:

- **Acts of Parliament**, including the **Bill of Rights 1689**, which limited the power of the monarch to rule; **Act of Settlement 1700**, which provided for succession to the Monarchy; **Parliamentary Acts of 1911 & 1949**, which amended the powers of Parliament; the **European Communities Act 1972**, which confirmed Britain's membership of the European Union, and the European Convention on Human Rights as incorporated into our law by the **Human Rights Act 1998**.

continued...

- **Case law**, which is determined by the courts and dealt with in part 4 below.
- **Conventions**, which are non-legal constitutional rules of conduct which are accepted as being binding and which regulate the working of the different parts (e.g. House of Parliament, House of Lords, Cabinet) of Parliament. Examples are:
  - the establishment of the post of Prime Minister;
  - although the Queen has wide powers, convention requires that she acts on Ministerial advice;
  - that the Cabinet (Government Ministers) is answerable to Parliament; and
  - civil servants must act neutrally in relation to political matters.

As a result, the British constitution is flexible, especially in respect of conventions which are adapted in response to changing political influences. Also, unlike most European countries, Britain does not have a codified or Roman legal system, with a written Code setting out the law on every issue.

3. Statute Law and the Legislative Process

3.1 Parliamentary supremacy

The two characteristics of English law are that Britain does not have a written constitution and, as a result, Parliament is the supreme legislative body. This means that, unlike America, the courts will not declare invalid any laws passed by Parliament. As a result, an important characteristic of our unwritten constitution is that Parliament is legislatively supreme, which is known as Parliamentary supremacy or Parliamentary sovereignty. This means that all legislative power is vested in Parliament *(though it can delegate to others - see sub-section 3.3 'Delegated legislation')* and there is no limit to its power to legislate. Thus, Parliament can pass any laws that it pleases. Also, it can confer and remove powers. However, this position has been altered significantly by our membership of the European Union.

In 1972, the **European Communities Act** took Britain into the European Community. As a result, Community law is now part of our law. If there is a conflict with European Union law, European Union law must prevail. In that sense, it is a form of 'higher law'.

Secondly, the passing of the **Human Rights Act 1998** means that the case law of the European Court of Human Rights now forms a part of our law, and any British legislation must conform with the European Convention on Human Rights. Some argue that these changes do not really challenge the legislative supremacy of Parliament because European Union law, for example, is only supreme where Parliament has legislated to that effect. We will examine this more closely in Section 5, 'European Union Law'.

Because Parliament is legislatively supreme, Acts of Parliament must be enforced, even if they conflict with existing laws and procedures.

3.2 The legislative process

Statute law is the description given to Acts of Parliament, e.g. **Housing Act 1996**. You will also find it being referred to as primary or direct legislation.

We considered earlier that Parliament, as a legislative body, consists of the House of Commons, the House of Lords and the Queen. A statute commences as a Bill and it has to pass through a series of debates in both Houses of Parliament. This allows for the proposed legislation to be debated and, as required, amended. Following approval by both Houses of Parliament, the Bill receives the Royal assent when it becomes law as an Act of Parliament.

Importantly, approval of the House of Lords is not essential for measures dealing with finance. There are also other restrictions on the power to reject a Bill. Under the provisions of the **Parliament Act 1911**, as amended by the **Parliament Act 1949**, the House of Lords may delay a Bill for up to a year. However, because of the shortage of time in the House of Commons for dealing with legislation, the Lords may use the threat of delays to obtain amendments to the Government's proposed legislation.

There are three types of Bill:

(a) Public Bill

These Bills may be introduced by the government or by a private member, and they create, alter or amend the law for the country at large.

(b) Private Member's Bill

A private member may introduce a Bill, but it is not likely to proceed successfully through each stage unless it is adopted by the government. Examples include the **Abortion Act 1967** and the **Sexual Offences Act 1967**.

(c) Private Bill

These are for the benefit or special interest of a public body and, occasionally, individual or groups of people. They are most commonly presented by local authorities or nationalised industries wishing to widen the scope of their powers beyond those granted by the general law of the land. Two examples are shown below:

- **City of Westminster Act 1999** - an Act to make further provision for the control of street trading in the City of Westminster.
- **Tyne Tunnels Act 1998** - an Act to amend provisions of the Tyne and Wear Act 1976 concerning tolls in relation to Tyne Tunnels; and to confer further powers upon the Tyne and Wear Passenger Transport Authority to facilitate the provision and operation of an additional tunnel crossing of the River Tyne.

Legislation assumes the existence of the Common Law

If the Common Law did not exist, statute law on its own would be a collection of uncoordinated rules. This is because the larger part of English law is Common Law in the form of case law decided by the courts. As such, most statutes rely on the Common Law to give them some sort of sensible reference. For example, the **Unfair Contract Terms Act 1977** imposes limits on the exclusion of liability for breach of contract or negligence by the use of contract terms. However, it is the Common Law that requires people to carry out their contractual obligations or pay their debts.

Activity 3

Reflect back on the relationship between Parliament and the courts and answer the following questions:

1. *The State has three functions of government - legislative, executive and judicial. Who exercises these functions of government?*

2. *Explain the reason and whether or not the British courts can declare invalid legislation passed by Parliament.*

Time allocation: 10 minutes

Activity 3 - Response

*The **legislative function** is exercised by Parliament, which debates and passes Bills that become Acts of Parliament.*

*The **executive** function, which formulates policy and determines major decisions, is undertaken by the Cabinet of government ministers headed by the Prime Minister.*

*The **judicial function** is exercised by independent courts.*

As Britain does not have a written constitution, the courts have accepted that Parliament is the supreme legislative body. As such, the courts will not declare void any Act of Parliament.

3.3 Delegated legislation

You saw above that Parliament legislates and passes Acts of Parliament. Such Acts are called statutes and are also known as **primary legislation**. The Act may allow for the delegation of powers to Ministers, local authorities and public agencies to enable them to make rules. This is called **secondary legislation** and is also known as **delegated legislation**.

You may wonder why Parliament delegates its powers. It is because Parliament, generally, does not have the time or required expertise to consider the complex and specialised requirements that are frequently necessary. It is also permits flexibility so that account may be taken of local conditions or changes in society that could not have been foreseen. You will also appreciate that passing secondary legislation to achieve change can be carried out more quickly than achieving change through a new Act of Parliament.

Delegated legislation takes several forms, including: statutory instruments, regulations, orders in Council, rules, by-laws, and schemes, and the type will be specified in the enabling Act of Parliament. Importantly, there are various safeguards for controlling the use of delegated legislation to prevent any abuse of power. These include various Parliamentary reporting and approval procedures, and scrutiny by the courts.

Examples of the use of delegated legislation

The **Housing Act 1985** contains the 'Right to Buy' provisions which enable local authority tenants to buy their council properties at a discount to market values. However, it does not contain the details of the amounts of discount or tenants' qualifications for such discounts. Instead, such details were introduced by a government minister, the Secretary of State for the Environment, through the use of secondary legislation in the form of regulations. This allowed the Minister to give careful consideration to the likely impact of the 'Right to Buy' measures before deciding on the level of discounts. Also, over time, adjustments were made. Without secondary legislation, any required changes would have involved the time-consuming process of seeking a new Act of Parliament or the amending of the **Housing Act 1985**.

Local authorities, under the provisions of the **Local Government Act 1972**, may make by-laws for *'the good rule and government of the whole or any part of the district and for the prevention and suppression of nuisance therein'*.

3.4 Legislation and case law

We examined in 3.1 Parliament's supremacy, which means that it is supreme in terms of making law in the form of statutes. Importantly, statutes cannot be changed by the courts, but Parliament can change law made by the courts and judges. However, judges do interpret statutes when they are relevant to cases being considered by the courts. To help them to do this, judges have evolved general rules to help interpret the words contained in statutes. They also use reports in Hansard - the printed report of debates in Parliament - to assist in interpreting ambiguous legislation. The process is called **statutory interpretation**.

Self Test 2

1. *What type of constitution does Britain have, and what form does it take?*

2. *Explain the difference between a Public Bill and a Private Bill.*

3. *Explain the difference between primary and secondary legislation.*

4. *What are the reasons for using secondary legislation?*

5. *Provide an example of secondary legislation.*

Now turn to the Answers at the end of the Block.

4. Case Law

4.1 Introduction

Case law is 'judge-made' and is still the basis of English law. Earlier, we considered how the Common Law gradually evolved from local customary laws and practices. We also saw how the Common Law and Equity have been developed through the centuries by the courts. They have achieved this by applying established or customary rules to new situations as they arose.

Statute law and case law are constantly changing the law in this country. In particular, flexibility is seen as one of the advantages of the Common Law system, and judges are proud of the part they have played and continue to play. For example:

> *The case of **Liverpool City Council v Irwin** in 1976 was about the duties of a local authority to keep tower block lifts in good repair and staircases adequately lit. There was no statute law to cover this situation by defining the responsibilities of landlord and tenant.*
>
> *In response, the courts applied contract law (a branch of the common law) to the facts of the case. Lord Salmon, one of the Law Lords who heard the case in the House of Lords, said, "... the law should not be condemned to sterility and ... the judges should take care not to abdicate their traditional role of developing the law to meet even the advent of tower blocks." As a result of the decision in the case, it became a legal duty of landlords to ensure that access to flats, whether lifts or stairs, is kept in a reasonable condition.*

If, as in the above case, the law of the land can be changed instantly, how can anyone be sure that similar cases will be treated alike? The answer lies in the system of binding precedence which applies to case law.

4.2 Binding precedence

A fundamental characteristic of law is that where the facts of cases are similar they should be treated alike. This means that courts follow their previous decisions, and this is called the **doctrine of precedent**. In effect, judges determine a case in accordance with legal principles established in previous cases. This doctrine is combined with the hierarchy of the courts, where decisions of the higher courts bind the decisions of the lower courts. This is known as ***stare decisis*** or the doctrine of binding precedent. The most senior court is that of the House of Lords and its decisions must be followed by all other courts.

The higher courts in order of descending seniority are the House of Lords, the Court of Appeal and the High Court, and the lower courts in seniority are the County and Crown Courts, and the Magistrates' Court.*(see sub-section C1.1 of this Block for a diagram of the court structure)*

The picture below illustrates an aspect of the precedent system in action. It shows a barrister's clerk outside the Royal Courts of Justice in the Strand. He is wheeling a trolley with all the law reports which have been referred to in court that day by one of the barristers in whose chambers he works.

(Photograph by Brian Harris, *Independent,* 30.9.94.)

4.3 Case law reports

(a) How law cases are reported

To find out what has been decided in court, the system of law reporting has developed. Cases are reported if they have an important impact on existing law. Whether reported or not, the decisions of the higher courts are binding on lower courts, and these decisions are cited (referred to) in court.

Cases are cited in a standard way and include:

- the names of the parties;
- the year the case appeared in the Law Reports (which is usually, but not necessarily, the year the case was actually heard);
- the volume and abbreviation of the Law Report series in which it is reported;
- the page number of that volume; and, finally,
- sometimes "HL" for House of Lords, or "AC" for Court of Appeal.

Law reporting is a commercial business and there are several different law report series. The most official and longest-established are called simply *'The Law Reports'*. If a case appears in more than one series of law reports, the Law Report citation will be given first. For example, the case we were looking at about tower block lifts which involved Liverpool City Council would be cited like this:

Liverpool C.C. v. Irwin (1977) A.C. 239, (1976) 2 All E.R.39; (1976) 2 W.L.R. 362.

The first reference is to the Law Reports, A.C. meaning Court of Appeal, and you would look up the case at page 239 of the 1977 volume. The second reference is to page 39 of the second volume for 1976 of the All England Reports (All E.R. for short); and the third reference is to the second 1976 volume of the Weekly Law Reports (W.L.R. for short).

If you looked up any of these references, you would find a full transcript of what each of the Court of Appeal judges said when giving their decisions.

(b) Differences in criminal and civil cases

The case of *Liverpool C.C. v Irwin* is a case involving a civil law matter, where the person who starts the case is called the *Plaintiff*. However, a criminal law case can be identified because it is written as *'R v...'*, where prosecutions always take place in the name of the monarch (R stands for Rex or Regina depending on whether the monarch is a King or Queen).

You will see from the following summary that the division between civil and criminal law is also reflected in the terminology used when referring to the parties and the respective actions taken.

The distinction between criminal and civil law is emphasised by different terminology

Note
Whereas criminal court cases are brought in the name of Regina (the reigning Queen) representing the State and the person charged, civil court cases are brought in the names of the two parties in dispute.

Criminal Law	Civil Law
R. v Johnson	**Liverpool C.C. v Irwin**
i. The Crown starts proceedings	i. The plaintiff starts proceedings.
ii. The Crown prosecutes.	ii. The plaintiff sues.
iii. The accused is prosecuted.	iii. The person sued is the defendant.
iv. If found guilty, the accused is punished by fine or imprisonment and decision of court is a conviction. If not guilty, decision of court is an acquittal.	iv. if the defendant is found liable, the plaintiff is provided with a remedy, e.g. damages. v. Decision of court is a judgement.

Note
In a criminal case, the police usually prosecute the case, although the law does provide for some other organisations to prosecute for particular offences, for example, the RSPCA in cases of cruelty to animals. Local authorities are empowered to prosecute private landlords who illegally evict their tenants, using the **Protection from Eviction Act 1977** *(Any town Borough Council v Doe)*. Individuals can also bring private prosecutions.

For the remainder of this Block, the legal concepts of statute law and case law will be referred to in the following way:

Statute law: sometimes a direct quote will be used, like this *"section 4 states that...."*; at other times, a section will be summarised and the actual words of the statute will not be used, like this *"local authorities cannot evict their tenants without a court order* **(s.82, Housing Act 1985)**". In the last example, you will see that the usual practice of abbreviating 'section' to 's' has been used.

Case law: if principles or guidelines can be extracted from a particular case, this will be used like this, *"Local authorities are responsible for keeping lifts in tower blocks in a reasonable state of repair (Liverpool CC v Irwin* (1977) AC 239*)."*

Self Test 3

1. *How do the courts continue to develop the common law and equity?*

2. *What system enables similar cases to be treated alike?*

3. *Explain what this reference after the name of a case would mean:* (1960) 3 All E.R. 327.

4. *In a criminal case where the police are prosecuting someone called Amanda Ali, how would the name of the case appear in a law report? Would this be different if Amanda Ali was being taken to court by Desmond Drake for breach of contract?*

Now turn to the Answers at the end of the Block.

5. European Union Law

5.1 The Status of European Union Law

Membership of the European Union has added a new and unusual dimension to the English legal system. European Law, in effect, has become a further source of law and prevails where there is a conflict with the existing law of the United Kingdom. The primary sources of European Union law are the foundation **Treaties of Paris (1951) and Rome (1957),** as amended by the **Merger Treaty (1965)** and the **Single European Act (1986).**

You may wonder how this is compatible with the doctrine of Parliamentary supremacy. Like delegated legislation, the validity of European law depends upon "enabling legislation" although the effects are far wider. It was the **European Communities Act 1972**, passed by the British Parliament, that gave effect to European Community (now European Union) law. S.2(1) of the Act stated that *'...all rights, powers, liabilities, obligations and restrictions ... created or arising under the Treaties ... are to be given legal effect or used in the United Kingdom...'*

It will be appreciated that European Union law is applied in the United Kingdom, not because it is seen to be valid, but because it has been given effect by the sovereign power of Parliament. It follows that Parliament could equally legislate to the effect that European Union law no longer had legal effect in the United Kingdom. However, this is unlikely, and the practical effect of the European Communities Act has been to surrender a degree of Parliamentary supremacy and limit the jurisdiction of the House of Lords as a final court of appeal.

Illustration of the impact of European Union law

In the case of *McCarthy's Ltd v Smith* (1979), a man was paid £60 per week as a stockroom manager. A woman employed four and a half months later was only paid £50 per week for the same job. She claimed that this was contrary to the **Equal Pay Act 1970** and the **Sex Discrimination Act 1975**. Article 119 of the Treaty states that members of the European Union should ensure that men and women receive equal pay for equal work. On this basis, the matter was referred to the European Court, who said that Article 119 is not restricted to contemporaneous employment. As the UK Court agreed that European Community law must prevail, the woman won her case.

Activity 4

Can you list the 15 current Member States of the European Union?

For the answer, see sub-section 5.2 in the text that follows.

5.2 Who are the Member States?

The original six members are Belgium, France, Germany, Italy, Luxembourg and the Netherlands. They signed the **European Coal and Steel Treaty in 1951**, and **the European Economic Community Treaty** (the Treaty of Rome) and the **European Atomic Energy Community in 1957.** In 1973, Denmark, Ireland and the United Kingdom joined, followed by Greece in 1981, and Spain and Portugal in 1986. Austria, Finland and Sweden joined in 1995. The Norwegians voted against membership. In 2004 the membership of the European Union will increase from 15 to 25 countries. The 10 new countries, who signed an accession treaty on 15 April 2003 in Athens, are Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia.

5.3 The Institutions of the European Union

Before examining the different sources of community law, let us look at the different institutions which contribute to the legislative process. The European Union has four decision-making institutions:

The Council of Ministers, which is the decision-making body and the main political body of the European Union. It makes the final legal decisions on important issues based, mainly, on proposals from the European Commission. Article 145 of the Treaty empowers the Council of Ministers to ensure that the objectives of the Treaty are achieved. It comprises 15 representatives of Member States *(usually the foreign minister, but the representative changes depending on the subject under discussion).* The Presidency of the Council rotates every six months among Member States.

The European Commission, which formulates and co-ordinates policy, as well as proposing and initiating legislation. It is answerable only to the European Parliament and cannot take instructions from Member States of the Council of Ministers. The Commission is the Executive of the European Union, based in Brussels, and is responsible for ensuring that the measures of the Treaties are carried out. Its duties include administering European Union funds and investigating complaints of breaches of European Union laws by Member States.

The European Parliament, which supervises the Commission and Council. It comprises 626 elected members representing the Member States, who supervise the Commission and, to an extent, the Council. The European Parliament is divided into political rather than national groupings, e.g. the *Socialist Group,* the *Christian Democratic Group*, and the *Green Party.* It can also veto legislative proposals. Originally, the European Parliament only had supervisory powers, but the **Maastricht Treaty (1992)** has given it a greater role in the legislative process.

The European Court of Justice consists of judges from the Member States. The Court has the essential role of ensuring that European Union institutions and Member States act lawfully. It also ensures, through a 'preliminary reference *(of legal issues)* procedure', that national courts know how to apply European Union laws. Cases may, under Article 177, be referred to the European Court of Justice by any court or tribunal. As a result, individuals cannot take a case directly to the Court, but must take them through the domestic legal system of the relevant Member State.

5.4 The sources of European Union law

The basis of European law is formed by the Treaties themselves, referred to as **primary legislation**. These Treaties give power to the Council of Ministers and the Commission to make regulations, decisions and directives, known as **secondary legislation**. (These different terms of legislation are described in **Article 189 of the Treaty of Rome**). These instruments are the way in which the policies of the Treaty are implemented.

(a) Regulations

Regulations are the most important form of secondary legislation. They are directly applicable in all Member States. This means that they automatically have legal effect without any implementing legislation by the Member State, in the same way as the Treaties themselves. Such Statutory Acts of implementation are prohibited in case they alter the scope of the regulation or alter the uniformity of its application. For example, *Regulation 1408/71* defines the entitlement of European nationals to social security benefits when in other Member States.

(b) Directives

Directives are binding on all Member States, but each may choose the method of implementation. In the UK, this is normally done by statutory instrument. The directive provides objectives or goals which each state must achieve through legislative or administrative means, e.g. the *European Union Package Travel Directive* was implemented in Britain by the *Package Travel, Package Holidays and Package Tours Regulations 1992.*

(c) Decisions

Decisions may be made by the Council and Commission as a formal way of initiating action or of stating policy. A decision may be addressed to a Member State or a corporation. However, it is only binding on the person to whom it is addressed, and it takes immediate effect.

5.5 Interpretation of European Union legislation

In contrast to the detail contained in many United Kingdom Acts of Parliament, European legislation is drafted as broad principles, leaving the detail to be filled in by the courts. As a result, the courts interpret the Treaties, administrative acts and other sources of laws in promoting the general legislative purpose. To assist the courts, regulations, decisions and directives state the reasons on which they are based.

Under Article 177 of the Treaty, a court or tribunal may, and in some cases must, refer questions of European Union law to the European Court of Justice for a preliminary ruling on the interpretation of the Treaty, or the validity of community regulations, etc. The operation of Article 177 provides a valuable means of integrating the community legal system with those of Member States. It encourages a uniform application of European law and has given rise to many of the most important developments in European law. The decisions and principles expressed by the court form a part of European law.

5.6 Human Rights Act 1998

(a) Introduction

A particularly significant area of European Union influence has been the incorporation of the European Convention on Human Rights into our domestic law. This has, for the first time, provided the United Kingdom with a modern Bill of Rights.

It had long been considered that British political and legal institutions were well-suited to protecting human rights. In particular, it was held that the rights and freedoms guaranteed by the Convention could be delivered under our Common Law. However, it was decided that it was not sufficient to rely on the Common Law, and Royal Assent was given to the **Human Rights Act 1998** in November 1998: the effective date for the Act's provisions coming into force being 2 October 2000.

The Act protects the European Convention rights which, among other rights, include a right to peaceful enjoyment of possessions (property), right to respect for private and family life, home and correspondence, and the prohibition of discrimination on any ground. As a result, all public bodies and those exercising a public function have to act in accordance with the Convention rights. The significance of the legislation is that courts of Member States will directly rely on the provisions of the European Convention on Human Rights. As such, it will have a major effect on all areas of law, including housing law and related family law.

(b) Consequences of the Human Rights Act

Since 2 October 2000 judges have been faced with having to consider whether primary legislation (Acts of Parliament) is compatible with the provisions of the Human Rights Act. This raises political and ethical problems and could be seen as a challenge to the supremacy of Parliament. You will remember that when considering Parliamentary supremacy in Section 3.1, that, unlike America, the courts will not declare invalid any laws (Statutes) passed by Parliament. To preserve this convention, the Human Rights Act is based on the following principles:

i. All legislation should, if possible, be interpreted as being compatible with the European Convention of Human Rights (s.3). The assumption being that Parliament is deemed to have intended statute to be compatible with the Convention.

ii. If it is not possible to interpret primary legislation as being compatible with the Convention, then a declaration of incompatibility should be made (s.4). This will not affect the validity of the legislation, but will prompt the Government and Parliament to introduce legislative change.

> In November 1999 the House of Lords ruled in the case of *R v Director of Public Prosecutions ex.p. Kebilene & Others*. It related to a claim that parts of the Prevention of Terrorism Act, under which suspected terrorists had been charged, were in breach of the Human Rights Convention. Judgement in the case would seem to make clear that while Parliamentary sovereignty has been preserved, it has been drastically curtailed. Lord Hope in his judgement said "*It is now plain that the incorporation of the European Convention on Human Rights into our domestic law will subject the entire legal system to a fundamental process of review and, where necessary, reform by the judiciary.*".

However, judges are now able to set aside delegated legislation made by Government departments, local authorities and other public bodies. Undoubtedly, judges will now have to think more about policy, and whether the legislation safeguards the defined human rights. This should lead to an increase in the constitutional rights of the public.

Undoubtedly, there will be difficult choices to be made by the Executive (*Cabinet of ministers*) or the legislature (*Parliament*) between the rights of the individual and the needs of society. You will appreciate the dilemma facing the courts and Parliament, especially when bearing in mind that the courts, being unelected,

lack the democratic legitimacy of Parliament. As you saw from the principles, outlined above, Parliament's intent is that the role of courts not to undermine the sovereignty of Parliament will be maintained.

(c) Impact of the Human Rights Act: Initial impact appraised

You will remember that when the provisions of the Human Rights Act 1998 came into force on 2 October 2000 it was immediately engulfed in media controversy. All sorts of predictions were made, including that it was likely the legal system would be '*brought to its knees*'. This has not proved to be the case. In part this is because the courts and judges have been well prepared for the implementation of the Human Rights legislation. Lord Justice Laws, when addressing a Supreme Court Judiciary seminar on human rights in October 2000, stated '*We must regard these new rights – this statutory code – as belonging to a continuum with the principles already established in common law*.'. He went on to add that '*with minor exceptions the English law has always been European Convention on Human Rights compliant*'. This, perhaps, explains why so few Human Rights Act challenges so far have been successful.

It should also be acknowledged that the Act, effectively, provides a constitutional transfer of power to the courts. Consequently, it will take time for judges to develop a full understanding of the implications of such influential legislation. As a result, there is, understandably, a cautiousness in applying the Act too rigorously. One particularly beneficial impact of the Act is not so much in the resultant decisions, but in the way decisions are being delivered. This is because courts have a greater responsibility to provide clearer and fuller reasons behind their decisions.

(d) Implications for Housing Organisations

Prior to the Human Rights Act coming into force, it was thought that several aspects of housing law and practice might infringe rights introduced by the provisions of the Act. In particular, the use of discretionary tenancies, possession proceedings, declarations of intentional homelessness, and failure to deal with noise or neighbour nuisance were thought likely to infringe provided rights. If this proves to be the case then you will appreciate that such decisions could pose considerable difficulties for housing organisations. However, the few case law decisions since October 2000 suggest that much concern would seem to have been unwarranted (see case report below).

Human Rights Act case law decisions

Introductory tenancies

In the High Court case of *R v Bracknell Forest DC [21 December 2000]* a challenge was made concerning the compatibility of Introductory Tenancies regime with Articles 6 (Right to a fair trial), 9 (Right to respect for private and family life, home and correspondence), 14 (Prohibition of discrimination), and Article 1 of the First Protocol (Protection of property). It was held that, although a local authority's review of a decision to seek possession was not impartial, there was no violation of Article 6 because the decision is amenable to judicial review. As regards Article 8, whilst the introductory tenancy scheme interfered with the tenant's rights, the interference was for a relevant and sufficient reason and also corresponded to a pressing social need. Also, it was limited by procedural safeguards and after one year the tenant became a secure tenant. For the same reasons, the introductory regime was held not to be incompatible with Article 1 of the First Protocol. It was also held that there was no violation of Article 14 because all new tenants become introductory tenants and, unless the tenancy is terminated, become secure tenants after one year.

This case was appealed in 2001, together with a similar case of *Banstead BC v Benfield and Forrest (EWCA Civ 1510, 16 [2001]*), again on the basis that introductory tenancies were incompatible with the Human Rights Act 1998 Schedule 1, Articles 6, 8 & 14. The Court of Appeal decision, which was published on 3 December 2001, dismissed the tenants' appeals and held that the cases in the lower court had been correctly decided, inasmuch as the requirements of Article 6 were satisfied by the availability of judicial review to correct any irregularity in the conduct of the review under the Housing Act 1996 s.129 (2). As regards an introductory tenant's right to respect for his or her home, as provided by Article 8, this was sufficiently recognised by the power of the county court judge to adjourn a possession claim pending an application for judicial review.

Possession proceedings

In *Lambeth LBC v Howard [6 March 2001]* a possession order was made against a secure tenant who had been convicted of harassing a female neighbour and her daughter. On appeal the defendant submitted that the possession order breached convention Article 8 (Right to respect for private and family life, home and correspondence). In dismissing his appeal the judge stated that there was a need to find a fair balance and to protect the rights of neighbours and other members of the public.

continued...

Intentional homelessness

As a result of the possession order arising from the decision in *Donaghue v Popular Harca*, the Court of Appeal held that the Human Rights act did not provide protection against possession orders issued on people declared intentionally homeless (*Report - Housing Today, 3 May 2001*.)

The facts of the original case were that the local authority had granted Ms Donoghue a weekly non-secure tenancy pending a decision as to whether she was intentionally homeless. When the property was transferred to Popular HARCA, which was created by the council to administer its former housing stock, Ms Donoghue became an assured shorthold tenant and Popular commenced proceedings for possession, having previously served a statutory notice.

It will be appreciated that the aim of the **Human Rights Act 1998** is to bring about a better balance between rights and responsibilities. Inevitably, case law will continue to develop and you should be alert to the rulings of the courts, which will influence future practices of housing organisations.

Importantly, you should be aware that the Act under s.6 states that *'It is unlawful for a public authority to act in a way which is not compatible with a Convention (European Convention on Human Rights) right'*. As a result, a person who claims that a housing organisation, or other public body, has acted in a way that is unlawful under s.6 can bring proceedings against the authority. In doing so, they will be able to rely on the Convention right or rights in any legal proceedings (s.7). Inevitably, this will affect social housing organisations and their staff in their day-to-day operations.

Although the Act does not contain a clear definition of a public authority, it includes local authorities and other bodies performing a public function. The courts in analysing whether something is a public function will consider the source and nature of the power being exercised, as well as the social purpose of the function. This would suggest that the provision of housing will be considered by the courts as a public function. Also, although registered social landlords do not see themselves as non-public bodies, for purposes of the Act and the Convention they will be regarded as public bodies. Consequently, in relation to their public functions, the provisions of the Human Rights Act will apply. Housing organisations need to ensure that their activities and decisions are compliant with the Convention on human Rights. This means considering how their actions affect the private rights

of individual tenants and service users. This requires changes within organisations' administrative and legal cultures. There is a need to be mindful that one tenant's right of expression may conflict with another person's right to privacy, so the resultant decision must be justified. Questions to be asked when making a decision include whether it was compatible with the Convention, and whether what was done or decided was necessary, proportional, fair, and does not have discriminatory effects.

In conclusion, it is important not to be alarmed over the implications of the Human Rights Act. After all, the European Convention on Human Rights has been in existence since 1950 and we have had the benefit of subsequent decision of the European Court of Human Rights. Evidence indicates that the Court's decisions, in seeking common European standards, have reflected changing societies and changing values. As such, affected organisations who are well-prepared should find that the provisions of the Human Rights Act should help rather than hinder good management.

Self Test 4

European Union law is beginning to have a significant influence on the law of Britain and the other Member States. With this in mind, answer the following questions.

1. *Why does European law apply to Britain?*

2. *What are the primary sources of European law?*

3. *What are the secondary sources of European law?*

4. *What are the main institutions of the European Union, and what are their functions?*

Now turn to the Answers at the end of the Block.

6. Other Sources of Law and Policy influences

6.1 Introduction

So far in this Section of the Block you have considered the following sources of law:

- **Statute law**, which is enacted by Parliament (see Section 3);
- **Case law**, which is judge-made law in the courts (see Section 4); and
- **European law**, which is determined by the European Union (see Section 5).

In addition, there is:

- **Secondary legislation**, which is also called delegated legislation (see Section 3.3). You will recall that this is when Parliament provides within an Act for the delegation of power to Ministers, local authorities and public agencies to enable them to make rules.

6.2 Codes of practice and other policy influences

Earlier, when considering the role of Parliament, we saw that policy is determined by the Executive (Cabinet Ministers - see Section 2), and it is the Government's policies that form the basis of Acts. Policy intentions are frequently contained in government White Papers, or in Green Papers that are circulated for consultation. What is not always appreciated is that policy can be expressed in many forms, including:

- **White (policy) or Green (policy consultation) Papers**: e.g. the Housing Green Paper *'Quality and Choice: A decent home for all'*, which was issued in April 2000.
- **Government Department Circulars**: e.g. Circular 3/97 *Houses in Multiple Occupation: Guidance on Provision in Part II of the Housing Act 1996;*
- **Guidance notes**: e.g. the Planning Policy Guidance Note 3: *Housing*, issued in March 2000;
- **Press Notices**: e.g. Press Notice 297 *Household Growth Down - John Prescott*, issued 29 March 2000.
- **Codes of Practice**, such as the *Homelessness Code of Guidance* issued by the Department of the Environment, Transport and the Regions;

- **Ministerial statements**, which might be made in Parliament, at conferences, to the press or elsewhere: e.g. Mr Gordon Brown, Chancellor of the Exchequer, stated in his Budget Speech on 9 March 1999 that *"We are investing heavily to improve the social housing stock and to tackle the problems of the most deprived communities. But the extra money must go hand in hand with better management of social housing and reforms to personal housing support.*".

Remember that, although such documents and statements do not have the force of law, the courts have held that government statements of policy are material considerations that must be taken into account. If not, the courts may override decisions taken by housing authorities and other bodies.

6.3 Court rules and procedures

The courts have their own rules which set out how cases are conducted, the time limits for appealing a court decision, and similar matters of procedure. So, as well as knowing what legal rights an individual has, you need to be aware that there are court rules which will affect how those rights can be enforced.

So far, in looking at sources of the law, we have discussed statute law, common law, other sources, including EC law, secondary legislation, Codes of Practice, court rules and procedures. All these sources of the law interrelate with each other, and they are all constantly changing.

How can anyone who needs to know the law on a particular issue find out the current position? The answer is that they can use one of the loose-leaf and regularly updated law reference books, like *Halsbury's Laws,* or the *Encyclopaedia of Housing Law and Practice.* These well-indexed reference books collect all the sources of law together, and can be found in university and good public libraries. Also, local authorities and social housing bodies frequently retain copies.

7 Sources of Law in Scotland

7.1 Sources of law and other influences

(a) Introduction

The sources of law in Scotland are similar to those for English law, namely legislation and case law. Although there are differences, it should be remembered that the legal source of Scots law is that of the State through its legislature and courts. The sources and principles recognised in Scots law as legally authoritative are:

- statutes of the Parliament of the United Kingdom;
- statutes of the recently formed Parliaments and former Parliaments of Scotland and of Great Britain;
- Subordinate legislation resulting from statutes;
- European Union and European Community Treaties and resultant rules; and
- judicial decisions of the superior courts.

(b) Primary legislation

There are three types of legislation which apply to Scotland. They are:

- **Acts of the Old Parliament of Scotland**

  Some Acts enacted before 1707 *(union of Scotland and England)* still apply, although many Acts were repealed by the **Statute Law Revision (Scotland) Acts of 1906 & 1964** and the **Statute Law (Repeals) Acts of 1973 & 1993**. In addition, some Acts have fallen into disuse and, under the doctrine of **desuetude** (obsolescence), are obsolete, for example: an Act passed under James 1 of Scotland in 1424 (c.17) banned the playing of football. It has not been repealed, but has fallen into disuse. As a result, it has been implicitly repealed by the operation of the doctrine of desuetude.

- **Acts of the Westminster Parliament**

  Since the union of Scotland and England in 1707, there has been a presumption that Acts of the Westminster Parliament apply to the whole of the United Kingdom, unless there is evidence of contrary intent. Usually, Acts intended to apply just to Scotland have the word 'Scotland" in their title, e.g. the **Housing (Scotland) Act 1987**.

- **Acts of the new Scottish Parliament**

  The provisions of the **Scotland Act 1998** led to the establishment in 1999 of the newly-formed Scottish Parliament. As a result, the Scottish Parliament can now pass statutes dealing with matters that have been devolved from Westminster.

(c) Secondary legislation

You will remember that secondary legislation is also called delegated legislation. This is because Parliament delegates legislative power to local authorities and other public or authorities *(see sub-section B3.3).* These may take the form of **statutory instruments** made by Ministers, **by-laws** made by

local authorities or other public bodies, and, in Scotland only, **acts of sederunt and adjournal.** Acts of sederunt are rules made by the Court of Session to regulate proceedings in the Scottish civil courts. Acts of adjournal are rules made by the High Court of Justiciary to regulate proceedings in the Scottish criminal courts *(see section B7).*

(d) European Community legislation

You will remember from sub-section B5.4 that the sources of European Community law are the founding Treaties of the European Union. You will recall, too, that the secondary legislation take the form of three types of instrument, namely:

- **Regulations**, which are directly applicable in all Member States;
- **Directives**, which state what must be achieved but leave the means of implementation up to individual Member States; and
- **Decisions**, which require action and which are binding on individuals, corporations or Member States.

(e) Case law

Again, the legal source of case law is the same as for English law *(see section B4).* Case law refers to the authoritative influence of judicial precedence of previous decisions by the courts. Judicial precedence means that where the facts in cases are similar they should be treated alike. This means that judges decide cases in accordance with legal principles determined in previous cases by a superior court (*stare decisis*, which means standing by decisions). It is important to remember that it is only the reasons (called *ratio decidendi*) upon which a decision is based that form the basis of the judicial precedent.

(f) Other influences

There are other influences on the law of Scotland, including:

- **custom**, which can apply where particular courses of action are well-practised and are not contrary to legislation and case law;
- **English law**, of influence because the Scottish and English legal systems have shared the same legislature since 1707; and

- **equity**, which applies in the civil courts of England and Wales, can influence Scottish law as a basis for mitigation only. However, as detailed in section C4, the Scottish Court of Session and the High Court of Justiciary do have a discretionary equitable power called *nobil officium,* i.e. in the case of the civil Court of Session, *nobile officium* can be exercised on petition to provide a remedy where one is not provided by legislation or case law. In the criminal High Court of Justiciary, *nobile officium* can be exercised on petition to prevent injustice or to seek redress of injustice.

Summary

1. **The law is a framework that affects the work of every housing organisation.**
2. **One of the functions of statute law is to implement government policy.**
3. **Common law and equity make up the English legal system.**
4. **The law comes from many sources, the most important being statute law and common law.**
5. **The system of precedents ensures that similar facts and situations are dealt with by the courts in similar ways.**
6. **The law is always changing, through new legislation being introduced by Parliament and, increasingly, by the European Union, as well as interpretation by the courts, and through the courts developing the common law.**

C. Civil And Criminal Law And The Courts System

1. Structure of the English Courts System

1.1 Introduction

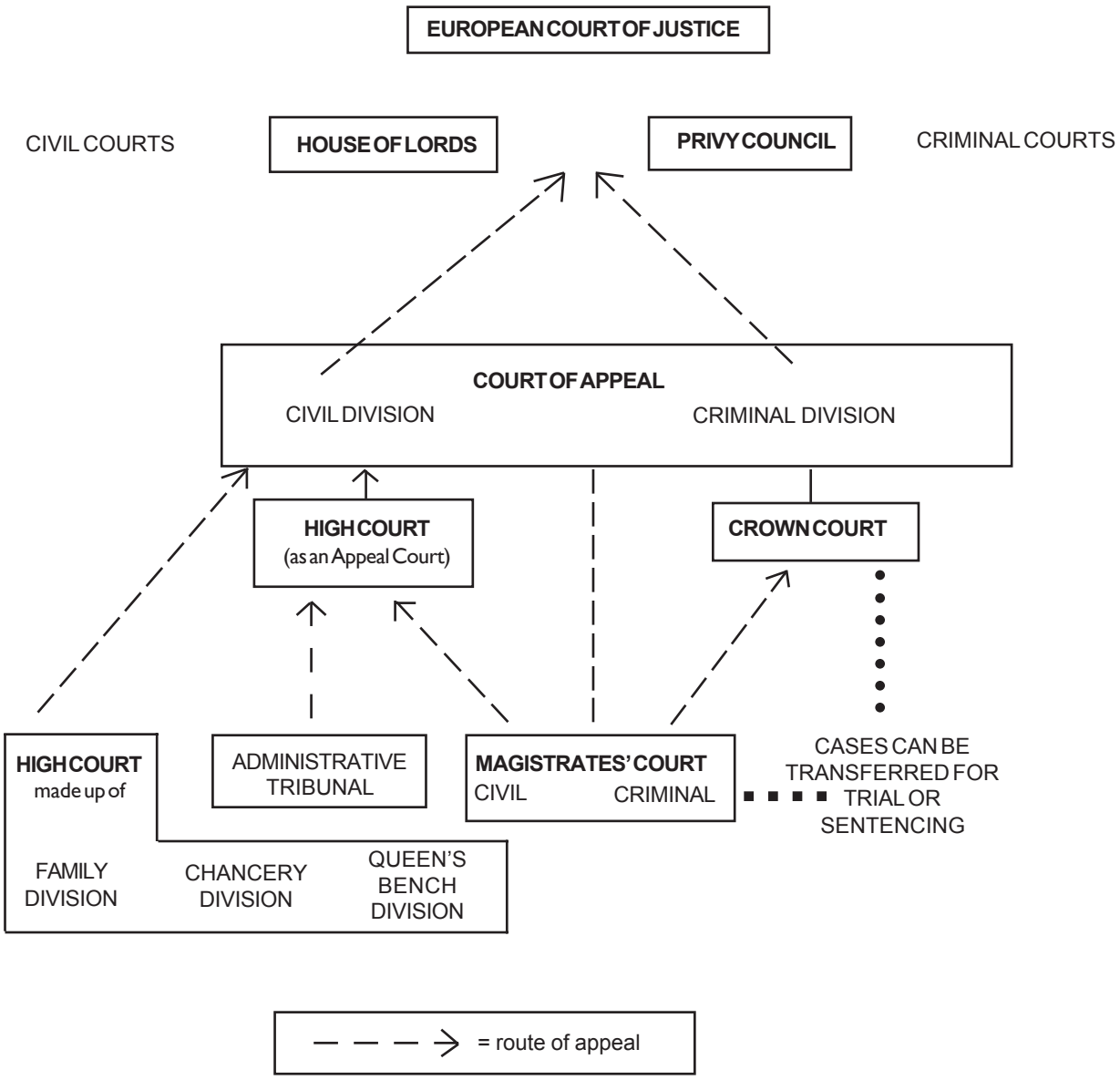
What does the ordinary person associate with the law? The likelihood is that it is not the rules of law, but the means of enforcing the law, namely the courts and, usually, magistrates or judges. When considering the sources of law in Section B, we examined what was understood by the law. Law in its widest sense was considered to be a rule to which activities conform or should conform. However, law in the strict sense was considered to be rules of conduct imposed by the State upon its members and enforced by the courts. The enforcement of the law by the courts is important, both to punish a crime or to provide a remedy to civil disputes. Such action is also seen to be a deterrent for others against breaking the law.

When lay people think of courts, they usually have in mind the Magistrates' Court, Crown Court and County Court. These courts, together with the High Court, Court of Appeal and House of Lords are known as the **courts of normal jurisdiction**. There are also **courts of special jurisdiction**, which include such bodies as administrative and domestic tribunals, as well as Coroners' and other specialist Courts.

The courts system, like the law, developed gradually to suit the changing needs of the community. However, the present courts structure is largely based on the **Judicature Act 1873-75** and later statutes, such as the **Courts Act 1971** and the **Supreme Courts Act 1981**.

You will recall that the law is classified into criminal law and civil law. This division is reflected in the system of courts, as can be seen the accompanying diagram of the structure of the courts system, which shows the hierarchy of the courts. The reference to appeals in the structure relates to the provision to appeal against the result of a court case to a higher court. This is because there are rights of appeal to a higher court available to the party who loses a case. An appeal does not mean a retrial, but a reconsideration of whether the trial judge has made an error of law or on the facts in reaching the decision.

STRUCTURE OF THE ENGLISH COURTS



You will see that there are two paths in the diagram:

- The right-hand route is the line of **criminal courts** relating to the appeals procedure, namely: Magistrates' Court, Crown Court, Court of Appeal, with the final appeal being to the House of Lords.
- The left-hand route is the line of **civil courts**, with appeals from both Magistrates' Courts and Crown Courts being to the High Court, Court of Appeal an then to the House of Lords.

However, with the exception of the Crown Court, all courts consider both criminal and civil cases.

Reminder of the distinction between criminal and civil law

Criminal courts deal with crimes that are acts or omissions which conflict with public order and society as a whole and make the guilty person liable to punishment.

Civil courts deal with private disputes between individuals, firms, companies or other organisations, and provide a system of remedies as compensation.

Significantly, most civil disputes are not heard in civil courts, but through tribunals or arbitration arrangements (*see Part C.3 'Tribunals and arbitration').*

2. The Work of the Different Courts

2.1 Introduction

The English **courts of normal jurisdiction** are divided into two groupings:

- The **superior courts** of the House of Lords, the Court of Appeal, the High Court, and the Crown Court, which have unlimited jurisdiction and deal with the more important and difficult cases; and
- The **inferior courts** of the County Court and the magistrates, which have a limited jurisdiction and hear the less difficult cases.

Before we define each of these courts in turn, reference needs to be made first to the European Court of Justice and the European Court of Human Rights. This is because of the growing influence of the law of the European Union, which applies to Britain following the passing of the **European Communities Act 1972** (see B.5.1).

(a) European Court of Justice

You will recall that the European Court of Justice, as one of the institutions of the European Union, has the essential role of ensuring that European Union institutions and Member States act lawfully and, as required, takes action against them. It also hears applications from Member States for preliminary rulings

on legal issues, provides opinions on international law and European Union treaty matters, considers tort claims *(see Section B.1 of Block HL.102)*, and considers judicial review applications (*see Section D.1 of this Block*).

(b) European Court of Human Rights

This is a criminal court that is independent of the European Union. It enforces the European Convention on Human Rights, including matters of liberty, security, fair trial, freedom of thought, conscience, assembly, right to life, and right not to be tortured. We noted earlier that Britain has passed its own **Human Rights Act 1998** *(for a reminder see Section B5.6),* which protects the rights contained in the European Convention on Human Rights.

2.2 The superior courts

(a) The House of Lords (Judicial Committee)

Apart from some European element of law, the Judicial Committee of the House of Lords is the highest court in the land. It has little original jurisdiction (i.e. sitting as an ordinary court, not an appeal court) except in such matters as contempt of the House or disputed peerage claims. Normally, it sits as an appeal court. The number of judges or law lords (called Lords of Appeal in Ordinary) is between 7 and 11 and its President is the Lord Chancellor.

In civil cases, it hears appeals from the Court of Appeal (civil division), with leave from either the Court of Appeal or the Appeals Committee of the House itself. Appeals may relate to an error on the facts of a judgement, but usually concern a point of law and the interpretation of legislation.

In criminal cases, the House of Lords hears appeals from the Court of Appeal (criminal division). Here, the lower court must grant a certificate that a point of law of general public importance is involved, and that court or the House of Lords must give leave to appeal. The House also hears appeals from the courts-martial Appeal Court and the Scottish and Irish Appeal courts. At least three Lords must sit but, in practice, there are usually five and, exceptionally, seven. Its decisions are binding on all lower courts and, since 1966, it may depart from its own previous decisions.

Previously, the court was bound by its own decisions, but it was considered that this could lead to injustice in future cases, as well as unduly restricting the development of law, especially in relation to society's changing social, economic, and physical conditions.

There is also what is known as a *'leap-frog'* procedure by which appeal may be made direct from the High Court to the House of Lords. Both parties must agree and the trial judge must grant a certificate to sanction it. The judge must be satisfied that a point of law of general public importance is involved, or it relates to a matter of construction of an Act or statutory instrument, or the judge feels bound by a decision of the Court of Appeal or House of Lords.

(b) The Court of Appeal

The Court of Appeal has a criminal and a civil division. As its name suggests, it is an appeal court only. The Judges here are called Lord Justices of Appeal and, like the House of Lords, at least three Judges must sit together. The court may dismiss or allow an appeal, *quash (legal term meaning annul or declare invalid)* a conviction, or order a new trial if there is new evidence.

The civil division hears appeals from the High Court and County Court and also various tribunals.

The criminal division hears appeals from the Crown Court against conviction and sentence. The defendant may appeal against conviction on a matter of law as of right. Leave of the court to appeal is required if the appeal is one of law and fact, or against a sentence.

(c) The High Court

The work of the High Court, which is divided for administrative convenience into three divisions, is concerned with the more complicated civil cases and hears civil and criminal appeals from the County Court (civil appeals only) and the Magistrates' Court. The three divisions of the court are:

- the **Queens Bench Division**, which includes the Admiralty Court and the Commercial Court, is mainly concerned with contract and tort cases, judicial review; and appeals from the magistrates' courts and tribunals;
- the **Chancery Division** hears cases relating to property, trusts, wills, partnerships, charities, tax revenue, and contentious probate and bankruptcies. It also hears rare appeals from the County Court; and
- the **Family Division** is concerned with family law, including divorce, matrimonial property, custody of children, as well as appeals on points of law on family matters from the magistrate's court.

(d) The Crown Court (Criminal Court)

The work of the Crown Court solely concerns the most serious criminal cases and sits with a jury composed of lay-people. As a result, the judge is responsible for decisions of law and the jury is responsible for decisions on the facts of a case. The court accounts for some 2 to 3% of all criminal cases, with the balance being dealt with in the magistrates' court.

Offences heard by the court are either indictable offences or offences that are 'triable either way' *(the defendant can decide whether to be tried by a Magistrates' Court or by a jury in the Crown Court).* All offences are divided into four classes, the first three of which are indictable offences with 'triable either way' offences being in the fourth class. The four classes are:

- **First class offences**, e.g. murder, attempt to murder, incitement and conspiracy, which are tried by a High Court judge;
- **Second class offences**, e.g. manslaughter, unlawful abortion, rape, which are tried by a High Court judge and, occasionally, a Circuit judge;
- **Third class offences**, e.g. arson and robbery, which are tried by a Circuit judge; and
- **Fourth class offences**, e.g. burglary, wounding, grievous bodily harm, robbery or assault with intent to rob, and all 'triable either way' offences agreed by magistrates, which are tried by a Circuit judge or Recorder *(a part-time judge).*

The role of lay-people in the courts

A remarkable feature of the English legal system is the role played by lay-people, whether as magistrates or serving on juries, in the participation of the administration of justice. In the Crown Court, where the judge decides the law, the jury decide the facts. However, in the Magistrates' Court, the magistrates decide both the law, advised by a legally-qualified clerk, and the facts.

Juries used to be a regular feature in civil cases, but now there is only a right to be tried by a jury in cases of fraud, libel, slander, malicious prosecution or false imprisonment. Subject to legislation, the Home Office intend, in 'triable either way' criminal cases, to remove for certain defined offences the defendant's right to select a jury trial in the Crown Court. However, the right of an appeal against the judgement in a case would remain. The proposal is part of the Government's modernisation of the criminal system to reduce delay. (At the time of writing, June 2001.)

2.3 The inferior courts

(a) The County Court (Civil Court)

Circuit judges sit in some 400 County Courts in England and Wales without the support of juries and deal with some 25% of all civil court actions. Civil cases are divided between the County Court and the High Court on the basis of financial value of the case, the nature of the case, degree of complexity, and whether an important point of law is involved. Generally, there is a presumption that cases below £25,000 will go to the County Courts and cases over £50,000 will normally go to the High Court.

Importantly for housing organisations, the Court deals with landlord and tenant disputes, e.g. possession *(eviction)*, rent arrears and repairs. It also deals with such matters as:

- consumer disputes;
- personal injury cause by negligence, e.g. traffic accidents, injury at work, and falling over faulty pavements;
- undefended divorce cases *(only in some courts)*;
- race and sex discrimination cases; and
- debt problems, e.g. creditor seeking payment.

The County Court is also the court of appeal for persons not satisfied with the outcome of a requested review by a local authority of decisions relating to that person's homelessness case. Section 202 of the **Housing Act 1996** gives a homelessness applicant the right to request a review of any decision of a local housing authority relating to eligibility for assistance, what duties are owed under ss.190 to 193 and 195 to 197 of the Act, and other specified provisions. However, the applicant must bring an appeal within 21 days of the decision.

The County Court - Small claims cases

The County Court also hears cases brought under the County Court Arbitration Scheme in respect of small claims to a limit of £5,000, which was increased on 26 April 1999 from the previous limit of £3,000 *(The limit is reduced to £1,000 for personal injury cases and for repair claims against landlords).* The most common forms of small claims are for faulty services, faulty goods, disputes between landlords and tenants, and wages owed in lieu of notice.

The procedure is simpler than for normal County Court cases and hearings are held in the Judge's chambers rather than in open court. Also, the costs of most cases will not be paid by the losing party.

(b) The Magistrates' Court (Criminal and Civil Court)

Magistrates' Courts deal with both criminal and civil cases. All criminal cases commence in the Court, and some 97 to 98% of all criminal cases are dealt with by the Court. Less serious criminal offences, called summary offences, are dealt with by the Court, together with 'triable either way' cases *(you will remember that this is where the defendant elects to be tried by Magistrates rather than by jury in the Crown Court)*. The more serious indictable offences are committed to the Crown Court.

There are two forms of magistrate: the lay magistrate and the stipendiary magistrate who is legally qualified (the title of stipendiary magistrate was changed to District Judge on 31 August 2000). Magistrates, who are also known as Justices of the Peace, date back to the 12th century. They are unusual in that almost all magistrates are unpaid lay-people without any legal qualifications. However, they do receive training and are advised by a full-time and legally-qualified justices clerk. There are some 30,000 lay magistrates, who always sit in groups of two or more, and 80 stipendiary magistrates (district judges), who are based in large cities and sit alone in deciding cases.

The sentencing powers of the Court are limited to a maximum of six months or a fine of up to £5,000. However, the Court may commit the guilty party to the Crown Court for sentencing if, after conviction and having seen information on the guilty person, they consider a greater penalty should be imposed.

There is a youth court to deal with people aged between 10 and 17 who have committed criminal offences. In cases where a young person is charged with a serious offence which, for an adult would result in a punishment of 14 years or more, they can be committed to the Crown Court for trial.

People often think that the Magistrates' Court is only concerned with criminal matters, but they also have a sizeable civil caseload, which includes:

- matrimonial proceedings concerned with separation, maintenance, removing a spouse from the matrimonial home and custody of children;
- domestic violence;
- enforcement of debts, e.g. non-payment of council tax;
- Licensing for public houses and clubs; and
- welfare of children, e.g. local authority care or supervision orders, adoption proceedings, and residence orders.

Finally, the Magistrate's Court is less formal than the higher courts, and ordinary clothes rather than gowns and wigs are worn by magistrates, clerks, solicitors and barristers.

Activity 5

We would like you to read the following two recent reports from 'Inside Housing', all concerning a court case which has happened or is about to happen. For each case, write down whether it is a civil or criminal case.

HINT
Look closely at the terminology used in the cases to determine whether the cases are civil or criminal matters. To help, refer back to sub-section 4.3.b and the boxed example listing the distinction between criminal and civil law terminology.

Time Allocation: 15 minutes

CASE 1

The court heard that the landlord, Mr Norman, who had enlisted the help of several people, refused the tenants entry to the home despite the intervention of a council investigations officer. It also heard that Mr Norman and his associates verbally and racially abused the tenants, calling them 'filthy blacks' and 'illegal immigrants' but he denied the allegations.

He was found guilty of unlawful eviction and harassment under the Protection from Eviction Act 1977 and was fined £700 with £1000 costs.

CASE 2

Up to 30 Liverpool MDC tenants are preparing damages claims against the council over severe damp.

The cost of the cases could reach hundreds of thousands of pounds in repairs, damages and costs. Some plan to claim up to £5,000 for the cost of injury to health, plus damage to decorations and furniture.

Activity 5 - Response

Now compare the results of your activity with the following:

Case 1 - *Criminal case. The clues are 'found guilty' and 'fined'.*

Case 2 - *Civil case. The clue is 'damages claims', which means a judgement in a civil court for damages, i.e. money compensation. The claim is against the local authority for breach of its obligations to keep its properties in repair.*

Self Test 5

1. *Which courts make up the courts of normal jurisdiction?*

2. *Which statutes are the present courts system based on?*

3. *What important roles do lay persons play in the court system?*

4. *In jury cases, the judge decides the law; but what do the juries decide?*

6. *What is the difference between a lay magistrate and a stipendiary magistrate?*

Now turn to the Answers at the end of the Block.

3. Tribunals and Arbitration

3.1 Tribunals

(a) Introduction

In Section B.2, we identified the **courts of normal jurisdiction**, and also identified that there are another group of courts known as **courts of special jurisdiction.** This second group of courts includes tribunals, and specialist courts such as the Coroners Court, Restrictive Practices Court, the Court of Protection, and the Official Referees Court. It is the group of tribunals which are relevant to this Block and housing studies.

Just as Parliament has delegated secondary legislative powers to others*(see Section B.3.3)*, it has also delegated a judicial function to a variety of boards and bodies. These are called tribunals, established by statute to help settle disputes outside the courts of normal jurisdiction. They are judicial or quasi- (almost) judicial bodies which deal with a wide range of subjects, for example:

- **Lands Tribunal** considers land valuation disputes and appeals to the rateable value of property.
- **Rent Assessment Committees** assess levels of rent for statutory controlled tenancies, including assured tenancies under the **Rent Act 1977** and **Housing Act 1988**.
- **National Insurance Tribunal**, which hears disputes over unemployment benefit.
- **Employment Tribunal**, which deals with matters relating to employment, race relations, and sex discrimination.

There are some 60 sets of tribunals, each one of which is specialised and deals with one area of law. In most cases, they are chaired by a barrister or solicitor and sit with lay persons representing special interests. Generally, persons in dispute are permitted to have legal representation. Not all of the tribunals have the word 'tribunal' in their title, but they still remain tribunals. From the selected tribunals described above, you will also see that not all tribunals relate to disputes between individuals and the State. Sometimes they relate to disputes between individuals, an example being the Rent Assessment Committee, which resolves differences between landlords and tenants.

(b) Development of tribunals

In the main, tribunals developed during the twentieth century, although some date back to the nineteenth century, e.g. the General and Special Commissioners of Income Tax (1791/1805).

As the business of government expanded due to the complexity of modern society and welfare provisions, the number of decisions taken by central and local government increased rapidly. It was recognised that this would increase the potential for disputes and lead to an overwhelming burden on the courts. As a result, governments sought an alternative to the courts, and independent tribunals were seen as a quicker and more cost-effective solution. However, they developed piecemeal, with each tribunal being tailored to suit particular needs, rather than following a model procedural framework. Practices varied, with some tribunals sitting in private, others held hearings in public, and some gave reasons for their decisions and others did not.

In 1957, the Franks Committee on Tribunals and Enquiries published an influential report recommending that all tribunals should be better regulated to ensure openness, fairness and impartiality. It also advised that tribunals should be seen as performing a judicial rather than an executive function. The Committee identified the following reasons for the success of tribunals:

- Cheapness, as there was an absence of the formality associated with the buildings and personnel of the courts;
- Accessibility and speed of decision-making;
- Expert knowledge of members: by comparison, a judge has to embrace a wider range of subject matters; and
- Absence of technicality.

The Franks Committee report resulted in the **Tribunals and Inquiries Act 1958**, which included some of the recommendations of the Franks report. This piece of legislation also set up the Council on Tribunals, who may make recommendations as to the procedure and membership of tribunals. As a result, a standard form of tribunals has developed in relation to organisation, membership, procedures and appeals. Reasons for tribunal decision are given and, generally, a right of appeal on a point of law lies from tribunals to the High Court. Such rights of appeal require statutory authority and, in practice, apply to most tribunals. However, the form of appeal varies, e.g. it can be from one tribunal to another, or from a tribunal to a minister, or from a tribunal to a court of law. An appeal relates to the merit of a decision, whereas judicial review is concerned with the legality of the decision and lies to the Queens Bench Division of the High Court, *i.e. to determine whether the tribunal has acted intra vires (within its powers). A tribunal that exceeds its powers is considered to be ultra (outside) vires).*

A further review, *Tribunals for users – one system, one service*, which was undertaken by Sir Andrew Leggatt and published by the Law Commission in August 2001, recommended the reform of the tribunal system as a whole. It emphasised two key principles: coherence and independence. As a result, it is expected that a new Tribunals system will result. However, the Law Commission has been asked to undertake a more detailed review of the particular problems associated with land, valuation and housing disputes and develop ideas for reform. The objective is to meet the need for an expert decision-making forum, but with a structure that was clear to users and without unnecessary overlaps between the tribunals and the courts.

Activity 6

You will remember that the positive aspects of a tribunal system were identified as:

- *Cheapness*
- *Accessibility and speed of decision-making;*
- *Expert knowledge; and*
- *Absence of technicality*

Can you think of any negative aspects to tribunals? Why not dispense with the traditional court system altogether? Write down your comments.

Time allocation: 15 minutes

Activity 6 - Response

Did you find the tribunal exercise difficult? If so, you need to remember that the normal courts have a wide responsibility to consider a breadth of subjects, whereas tribunals have a narrow specialised responsibility.

- *The narrowness of specialism could be a drawback if wider issues are embraced by disputes.*
- *The presence of legal representation of the parties in dispute could lead to a loss of informality in tribunals, as well as additional expense and complexity. However, it must be accepted that many disputes involve complex legal and other issues that many lay persons would find difficult to understand.*
- *Not all tribunals allow legal representation or grant a right of appeal.*
- *Rights of appeal vary, which, in some cases, may lead to inconsistency of outcomes to appeals, e.g. would the same impartial judgement be shown by a Minister, who is responsible for the legislation that set up the tribunal, as would be shown by the courts?*
- *Many disputes involve several areas of law, which could not be undertaken by a narrowly-based tribunal.*

3.2 Alternative Dispute Resolution: arbitration, conciliation and mediation

(a) Introduction

The new Civil Procedure Rules for the courts remind lawyers of the critical importance of avoiding litigation whenever possible by using alternative dispute resolution. This approach is the result of the adoption of Lord Woolf's *'Access to Justice'* report, which was issued in 1995. During the pre-trial interview, lawyers now have to confirm that they have discussed the benefits of alternative dispute resolution with their clients. If not, and there is no satisfactory reason, the fact will be taken into account when the judge makes the award after hearing the case.

Why has such an approach come about? It is because settling a dispute through the County Court and the High court is expensive, time-consuming, a high risk venture and stressful. It also often excludes those who are most vulnerable. Another factor is that the parties in dispute have no choice over the appointment of judges or timing of the court case. In addition, they will usually have to wait a long time for their dispute to be scheduled for a hearing in the courts. As a result, other options for resolving disputes have developed and you may see references to arbitration, **conciliation** and **mediation.** You will also encounter the term **alternative dispute resolution,** which is only an

'umbrella' description that embraces the other three descriptions. Consequently, alternative dispute resolution mechanisms for housing and neighbour disputes offer innovative responses to some of the real issues, especially those faced by people living in high density, poor quality housing.

It is important that you as housing officers, as well as lawyers, should be aware of all the options available in deciding what is likely to be in the best interests of tenants and their clients. To help you and lawyers consider how best to identify an appropriate alternative dispute resolution you should consider:

- What does the home occupier want to achieve? Remember that there are a range of outcomes from an apology to compensation.
- Consider what is practical and achievable. Here the lawyers specialist knowledge and experience will be invaluable.
- Examine what is important to the client in the way the dispute is resolved. The issue could be privacy, urgency of action, control of the situation, manner of enforcement, costs or fees.

What then do the terms arbitration, conciliation and mediation mean?'

(b) Arbitration

Arbitration is a long established form of resolving disputes by an independent specialist in the subject matter concerned. It became popular because it offered a speedy alternative to the courts, was cheaper, final, and carried out in private rather than in public through the courts. It is usually based on a contract for undertaking work or supplying goods or a service *(for an explanation of a contract see Block HL.102 Section B).* An example of a contract would be where a building contractor enters into a contract to carry out house improvement for a local authority or housing association. Another common contract would be a person booking a holiday with a travel company. In both cases, the contract would include a clause that refers any disputes arising to an arbitrator.

Often, lay people are unaware that they have agreed to arbitration and only find out when they try to take action through the courts. In such a case, the court will refer the matter to the contractually agreed arbitration. The lesson here is to always read the conditions attached to any agreement: in the case of holiday bookings, you sign that you agree the terms and conditions included, usually, on the back of the form.

It is because of the contractual basis of arbitration that parties can choose an appropriately experienced, not necessarily legally qualified, arbitrator to act should there be a dispute. The arbitrator hears representations from both parties in dispute and then announces a binding decision. The costs of resolving a dispute can be very much cheaper if the arbitration is based on submitted documents alone or a restricted form of hearing. However, arbitration has developed to a point where parties have, increasingly, sought legal representation and a formal hearing. This has meant that costs can be higher than a court hearing, because the parties have to pay the costs of the arbitrator, legal advisers, and hire of a room.

(c) Conciliation or mediation

Arguably, **mediation** is more informal than conciliation, where the third party encourages the parties in dispute to identify and settle issues. In **conciliation**, the third party offers an opinion that may lead to a settlement of the dispute. For our studies, it is appropriate to group the two together under mediation.

Mediation originated in America. The process of mediation involves the mediator liaising in turn with each of the parties in dispute and then offering an opinion on a solution that could lead to a settlement. Usually both parties and advisers first meet together with the mediator to put forward their views on the dispute before retiring to separate rooms. The mediator then moves between the parties examining and explaining the strengths and weaknesses of one party's case relative to the other party, the aim being to persuade both parties to reach a compromise solution to the dispute. Even if mediation fails to reach agreement, it does have the benefit of reducing the issues relating to the dispute.

In support of mediation, the Government on 26 April 2001 launched a new mediation quality mark. New mediation services specialising in community and family disputes can apply for a mediation quality mark to show they meet nationally recognised standards of service and expertise. The Legal Services Commission, which replaced the Legal Aid Board, will audit applications for the Mediation Quality Mark.

(d) Housing disputes and alternative dispute resolution

Various housing Acts and other housing-related legislation provide safeguards where landlords and tenants have rights of review, court action and appeals through tribunals and the courts, e.g. *s.202 of the* ***Housing Act 1996*** *provides homelessness applicants with right to request a review of decisions about their cases, and, if still dissatisfied, the right of appeal to the County*

Court. However, in this case, experience has shown that the new Civil Procedure rules for courts have resulted in a fairly speedy process for the s.202 appeals procedure. Nevertheless, there are many situations where undesirable delays will occur if court action is pursued.

In many contractual circumstances, there would be merit in housing organisations pursuing some form of alternative dispute resolution. This would resolve matters more economically and quicker than through court action. When drawing up contracts, the inclusion of an alternative dispute resolution clause could be included. In order to allow flexibility, the clause should be drafted as widely as possible. The final choice of an alternative form to action through the courts will require a clear understanding of the essential elements that are likely to be in dispute.

4. The Scottish Judicial System

4.1 The courts system

(a) Introduction

Although Scotland has its own judicial system, it is similar in many respects to that of England and Wales. Litigation *(where the parties in dispute present their cases to the courts)* in Scotland is, as in England and Wales, contentious and not inquisitorial. That means that the judge presides over the presentation of each party's case and does not carry out an investigation *(as is the situation in mainland European courts)*.As in the English system of law, juries sit in criminal trials and certain civil trials.

(b) The court structure in Scotland

Although the courts in Scotland, which are described below, have different names, the functions are similar to the courts in England and Wales. The civil and criminal court structure is shown below, followed by a brief description of each court. You will see that some courts have both a criminal and civil jurisdiction. Again, this is similar to the system in England and Wales.

CRIMINAL COURTS

The High Court of Judiciary
(Judge sits)

Murder, rape, serious drug offences
No appeal to other courts

Sheriff Court
Criminal cases either with or without a jury

District Court
(Justice of the Peace or stipendiary magistrate sits)
Minor criminal cases

CIVIL COURTS

The Court of Session
The Supreme Civil Court in Scotland
(Judge sits)

Hears cases, and hears appeals from the Sheriff Court
Appeals can be made from the Court of Session
to the House of Lords

Sheriff Court
(Sheriff sits)
Family cases, small money claims, etc.

Courts of Special Jurisdiction (which includes)

Lands Valuation Appeals Court

Statutory Tribunals

Scottish Land Court
Relates to valuation and agricultural holdings

Courts of Exchequer
Concerned with appeals from the
Special Commissioners of Income Tax

The Court of the Lord Lyon
Concerned with heraldic matters

(i) District Court

The court has either a stipendiary magistrate *(at present, only the Glasgow District Court has a stipendiary magistrate, however, the power is available to each local authority s.5 District Courts (Scotland) Act 1975)* or lay magistrates.

The court deals with petty **criminal matters** and its powers of punishment are limited. The court is less important than the Magistrates' Courts in England and Wales, as it only deals with the most ordinary cases.

(ii) Sheriff Court

This is the most important **lower criminal court** and can try any case not reserved for the High Court. The Sheriff's power of punishment is limited to three years' imprisonment. However, as in the English magistrates' courts, the Sheriff may remit *(send)* a case to the High Court of Judiciary for sentencing if his or her powers are considered inadequate for the offence. Appeals from the Sheriff Court go to the High Court of Judiciary.

The court also deals with **civil matters** and its jurisdiction is wide, for it extends to actions of debt or damages without any financial limit. However, some kinds of case may be remitted to the Court of Session, especially when an important question of law is involved. Cases on appeal lie with the court from tribunals and other authorities. In addition, the court carries out administrative functions dealing with petitions relating to adopted children and bankruptcy proceedings.

(iii) High Court of Judiciary

The court may try all **cases of crime**, except where excluded by statute. The most serious cases of crime, such as murder, treason, rape and incest, are tried in this court. It is also a court of appeal, and convicted persons may appeal against conviction or sentence on the ground of miscarriage of justice.

(iv) The Court of Session

The Court of Session is the superior civil court and comprises the Outer House and Inner House. The **Outer House (The Lords Ordinary)** is the court of first instance *(hears cases)* and its jurisdiction extends to all kinds of civil claims. Here jury trial may still be used for certain cases involving:

- libel or defamation;
- claims of damages for personal injuries;
- delinquency; and
- reduction on the ground of incapacity, essential error, or fear.

The **Inner House (The Senior Lords)** is a court of first instance in special cases *(written cases seeking a decision of a legal difficulty),* certain petitions, and revenue stated cases. However, it is mainly a court of appeal. Appeals from decisions of the Court of Session are to the House of Lords.

(c) Is equity a source of law in Scotland?

You will remember that equity is a source of law in the English legal system. However, in Scotland, equity is not a source of law, but it can influence the law as a basis for mitigation *(reducing a remedy).* Nevertheless, the Court of Session and the High Court of Justiciary do have a discretionary equitable power called *nobil officium*. In the case of the civil Court of Session, *nobile officium* can be exercised on petition to provide a remedy where one is not provided by legislation or case law. In the criminal High Court of Justiciary, *nobile officium* can be exercised on petition to prevent injustice or to seek redress of injustice.

Summary

1. **The courts systems in England, Scotland and Wales, which embrace both criminal and civil courts, have continued to develop to meet the changing needs of society.**
2. **Equity and the common law are dealt with alongside each other in all English and Welsh civil courts, and equity takes preference. In Scotland, equity is not a source of law, but it can influence the law as a basis for mitigation.**
3. **Lay persons play an important role in the administration of the courts as magistrates, on juries, and as members of tribunals.**
4. **The rights of individuals and organisations are preserved with the losing party, normally, having a right of appeal against the decision to a higher court.**

D. Legal And Other Challenges

1. Overview

1.1 Introduction

(a) Growth of administrative decision-making

You will remember that it is **public law**, alternatively called **administrative law**, *(see Section B1.2 (b))* which governs the relationship of central and local government and other public bodies with each other and with individuals.

In the earlier part of this Block, we considered the growth of the business of government. We saw how governments have delegated discretionary powers *(see B3.3)* to other bodies, including local authorities, tribunals *(see C.3)* and the Housing Corporation. These powers of delegation are contained in Acts of Parliament. They are also administered nationally and locally through both central and local government, and other public bodies and agencies. You will appreciate that this expansion of administrative control has led to many thousands of decisions being made daily. As a result, it is inevitable that some public decision-making, including that of housing organisations, will be challenged. With this in mind, this Section will examine:

- public remedies that have been developed to safeguard against the government or other public bodies abusing or exceeding their powers;
- the decisions and policies of social landlords that may be open to challenge; and
- sources of advice available to landlords and tenants, as well as consideration of court case costing options.

(b) Distinction between public and private remedies

At the beginning of this Block, we distinguished between public and private law. Private law concerns relations between individuals, businesses and organisations. This includes relationships between tenants and housing organisations. You will remember that private law includes the substantive *(independent)* areas of contract law and the law of torts *(see B.1.2 (c))*.

The two main types of private law duties recognised by the English law are contractual and tortious *(arising from the law of torts)* obligations. These areas of law and associated private law remedies are discussed in the accompanying Block HL.102 *Social Landlords' Responsibilities.* As a result, this Section of the Block will only consider public law duties, decisions, and remedies.

1.2 Public remedies for the Redress of Grievances

(a) Introduction

In public law the power to act is conferred by legislation, whether on Ministers, local authorities or other public bodies. However, there are accompanying obligations and duties. These can be enforced through the High Court by using the remedy of judicial review. This judicial procedure ensures that public bodies do not exceed their powers, or if they do there is a corrective remedy.

It should be remembered that there are other options to judicial review as a remedy to a public law grievance. The empowering legislation may contain a right to an appeal against the decision or action, or there may be provision to seek a review of the matter in question. The different remedies have different objectives. **Judicial review** is concerned with the legality of a decision, whereas an **appeal** is concerned with the merits of a decision. A **review**, depending on the enabling legislation, will usually require a reconsideration of the facts and decision of the matter.

Another course of action is that of seeking a remedy for maladministration through either the **Parliamentary Ombudsman** or the **Local Government Ombudsman**. The Parliamentary Ombudsman investigates complaints of maladministration relating to government departments, agencies and certain non-departmental bodies. Complaints of injustice due to maladministration by local authorities and certain other bodies are investigated by the Local Government Ombudsman.

Whichever form of remedy is sought by an aggrieved person or organisation, they all indicate the potential for the actions and decisions of housing organisations to be challenged.

(b) Distinction between local authority and housing association social landlords

Local housing authorities are public bodies who have statutory duties in relation to the provision of housing, and are subject to judicial review and other remedies considered by this Section. However, because housing associations are voluntary bodies without any statutory duties, they are not generally subject to such remedies. This applies even though they may receive public funds through the Housing Corporation, which itself is subject to judicial review. Nevertheless, housing associations are subject to the investigative and monitoring powers of the Housing Corporation. Also, depending on their legal structure, they are subject to the statutory-based monitoring powers of such bodies as: the Registrar of Friendly Societies; the Registrar of Companies; and the Charity Commission. Housing associations are, like local housing authorities, also subject to the general framework of law *(see Block HL.102 B)*.

(c) Confirm the delegated powers before making decisions

Given the breadth of public sector activity, administrative decisions can take many forms. They may also be subject to challenge. Just stop a moment and consider the activities carried out within your own housing organisation.

Perhaps a duty has to be performed, *such as providing accommodation for qualifying homelessness households.* Possibly, a discretionary power has to be exercised*, such as whether to make a home improvement grant to an applicant.* In addition, there may be conditions or requirements attached to performing such defined duties or discretionary decisions, e.g. *under the provisions of s.82 of the* ***Housing Act 1985*** *a local housing authority cannot end a secure tenancy without serving a notice on the tenant and first obtaining an order from the County Court.*

There may also be requirements to consult others or carry out an inquiry before exercising your organisation's delegated powers, e.g. *before making a compulsory purchase of property a local authority must notify all involved parties, advertise their intentions in the press, consider all objections, and gain the consent of the Office of the Deputy Prime Minister.* Also, a mistake may result in the delegated power being misinterpreted or even the wrong power being used, e.g. *in the case of Attorney-General v Fulham Corporation [1921] the local authority had power under the* ***Baths and Wash Houses Acts 1846-1878*** *to establish baths, wash houses and open bathing places. However, it was held that the power did not permit the operation of a commercial laundry and an injunction was issued to stop the authority exercising its power.*

If a public body's powers are exceeded and individuals suffer a grievance, they can apply to the High Court for a judicial review of the relevant decision. However, there may well be statutory rights of appeal against such decisions, *e.g. a homelessness applicant who is dissatisfied with the outcome of a right to review of his case can, under s.204(1) of the* ***Housing Act 1996*** *appeal to the County Court.* If there are such rights and they have not been followed, the courts will require applicants to pursue them rather than seek the remedy of judicial review. Equally, an applicant should not seek a private remedy for a disputed public law decision, e.g.

> *In a homelessness case, Cocks v Thanet District Council [1983], the House of Lords recognised that a local authority's housing functions could be both private law and public law. The function of determining whether an applicant came within defined statutory categories*

involved public law functions. However, the executive function to house qualifying applicants was a private law function. In the case, the applicant had not been categorised as a person to whom a housing duty was owed. As a result, he sought a private law remedy of damages. However, the House of Lords held that any challenge to the housing authority's decision should be by judicial review and not an ordinary private action.

From the above, you will appreciate the importance of confirming just what powers and associated conditions have been delegated. As housing organisations operate through their staff, there is a need to establish clear guidance arrangements for staff acting on delegated powers. Failure to do so could result in time-consuming and expensive court action against housing or other public bodies.

Self Test 6

Public remedies include a variety of mechanisms for redressing a public law grievance. Consider the following and write down your answers.

1. *Explain the purpose of:*

   (a) Judicial review

   (b) An appeal

   (c) A review

2. *An ombudsman has a responsibility for investigating grievances, but what is the difference between the Parliamentary Ombudsman and the Local Government Ombudsman?*

3. *(a) Local housing authorities are subject to judicial review.*
   TRUE/FALSE

   (b) Housing associations are subject to judicial review.
   TRUE/FALSE

4. *Provide an example of a Housing Act statutory right of appeal.*

Now turn to the Answers at the end of the Block.

(d) Outline of judicial review

The remedy of judicial review is quite different from that of an appeal. **Judicial review** is based on the common law and is concerned with the legality of a decision, whereas an **appeal** relates to statute law and is concerned with the merits of a decision.

The High Court has a supervisory responsibility to ensure a proper use of powers by public bodies. This means that the court can review the decisions of central and local government and other public bodies. This includes decisions by the Housing Corporation, but excludes housing associations because they are only viewed as quasi (partial) -public bodies. The purpose of the review, as held by Lord Diplock in *Council of Civil Service Unions v The Minister for the Civil Service* [HL. 1984] is to ensure that such bodies do not act or take decisions that *'are illegal, irrational or commit procedural impropriety'.*

- **illegality**: the decision maker must correctly understand the law and give effect to it. If not, the act may be illegal;
- **irrationality**: applies to a decision which is so outrageous that no sensible person who had applied his mind to the question to be decided could have arrived at it; and
- **procedural impropriety**: occurs when the decision maker fails to comply with an express provision contained within an Act of Parliament or secondary legislation. It can also occur when there has been a breach of an implied procedural requirement, such as the common law rules of natural justice namely:
  - **No man can be a judge in his own cause** - e.g. the decision maker should have no financial or proprietary interest in the outcome of proceedings, nor should there be any suspicion of bias; and
  - **To hear the other side** - both parties to a dispute should be heard and the hearing should be a fair one.

This means that, even where a local housing authority has not exceeded its powers, discretionary decisions or actions may still be subject to judicial review. Any claim must be filed promptly and not later than three months after the grounds to make the claim arose.

Judicial review has its origins in the doctrine of ***ultra vires***, which means *'going beyond the powers of',* and may be defined as *'No public body may lawfully make a decision and take action on it unless it is authorised to do so or the act is construed as being reasonably incidental to its authorised activity'.* As a result, housing organisations and other public bodies are prevented from doing

anything forbidden by law or carrying out an act not covered by statutory authority. You will recall that in the case of *Attorney-General v Fulham Corporation* [1921] the local authority had no power under the **Baths and Wash Houses Acts 1846-1878** to operate a commercial laundry and the court issued an injunction to stop the authority exercising its power.

(e) Judicial review remedies

The historical basis for the remedies granted by judicial review are the King's prerogative (right of the sovereign) orders intended to ensure that his officers did not abuse their powers. However, they remain public law remedies and are not applicable for controlling private bodies. The remedies, which were renamed on 2 October 2000 to coincide with the implementation of the **Human Rights Act 1998**, are discretionary and include:

- **Mandatory Order** (previously Mandamus): compels the performance of a public duty
- **Quashing Order** (previously Certiori): an order which is used to quash *(declare void)* the decisions of government ministers and departments, inferior courts, tribunals, local authorities and other public bodies; and
- **Prohibiting Order** (previously Prohibition): an order to prevent public bodies from exceeding their jurisdiction, and for preventing them from infringing the principles of natural justice.

In addition there are two other non-prerogative orders which, although applicable to both public and private law, are widely used in public law and in relation to judicial review. They are:

- **Declaration**: this is a flexible remedy which is used to obtain a legal statement of a wide range of situations, including: a statement of the legal relationship between two parties; that natural justice has not been observed; an administrative order is invalid; the construction of a statute or other legal document; or clarification of a body's powers; and
- **Injunction**: this order can take two forms:
  - **prohibitory injunction** that prevent acts that would be *ultra vires* or did not observe the principles of natural justice;
  - **mandatory injunction** that compels the performance of a duty.

Applying for judicial review of a disputed decision

There are two stages to making an application for judicial review. First, an applicant who is seeking a judicial review must apply to the High Court *(Queen's Bench Division)* for permission to proceed. This is called the filter stage. The judge must be satisfied that the applicant has a valid interest in the matter and has an arguable case. Once leave is granted, the applicant can proceed with a judicial review submission which will, usually, be heard by a single judge.

On 4 March 2002 a pre-action procedure protocol was introduced to improve the efficiency of the judicial review process. Essentially, the protocol requires that before making a claim a letter is sent to the defendant identifying the issues in the dispute, to establish whether litigation can be avoided. It also requires a letter of response from the defendant within 14 days stating whether the claim is conceded in part or full. If so, it should contain a new decision, or set out when one will be issued, or, if not, give an explanation for the original decision, as well as such detail as whether the defendant will oppose an application for an interim remedy.

Importantly, the protocol also reminds that judicial review may not be appropriate in every instance. Therefore, claimants are advised to seek appropriate legal advice when considering whether to start proceedings. However, there are circumstances where the use of the Protocol is inappropriate, including where the defendant does not have the legal power to change the decision being challenged, such as decisions by tribunals. Another example would be in urgent cases, such as when directions have been set for a claimant's removal from the country, or where the local authority had failed to secure interim accommodation for a homeless claimant.

The protocol may be seen on the Lord Chancellor's Department website. www.lcd.gov.uk

(f) Local Government Ombudsman

Commissioners for Local Administration of England and Wales, known as Local Government Ombudsmen, were established by Part III of the **Local Government Act 1974**. There are three commissioners for England and one for Wales. Their function is to investigate complaints of injustice arising from maladministration by local authorities, Housing Action Trusts, and police authorities. They also offer guidance intended to promote fair and effective administration of local government.

Complainants may go direct to the Ombudsman or through a local councillor. However, before undertaking an investigation, the Ombudsman must be satisfied that the local authority has had an opportunity to examine the complaint. During the investigation, the authority must make available all of its documents. On completion of the investigation, the Ombudsman reports the findings and conclusions to the authority concerned. If injustice has been established, the authority is required to advise the Ombudsman of remedial action to be taken. If the authority fails to take action, the Ombudsman has no power to enforce the recommendations. However, the authority can be required to publish a statement in two editions of the local newspaper. That statement has to contain the details of the recommendations not implemented, and may include the authority's reasons for not acting on the recommendations.

Experience has shown that the threat of adverse press publicity has been effective and authorities carefully consider recommendations made in the Ombudsman's report.

You should be aware that housing matters account for almost 38% of the ombudsman's investigations. In 2001/02, there were 7,549 housing-related cases, which compares with 3,283 planning cases. However, it should be remembered that the remedy concerns alleged maladministration and is not an appeal on the merits of a decision. Nevertheless, it emphasises the importance of avoiding incompetent or faulty procedures when administering housing responsibilities.

Ombudsman for registered social landlords

From the above, you will see that registered social landlords are excluded from the Local Government Ombudsman grievance procedure. However, under the provisions of **s.51(2) of the Housing Act 1996**, complaints against registered social landlords are investigated by a Housing Ombudsman. *(see Section D.3 'Registered Social Landlords').*

Self Test 7

1. *What is the purpose of Judicial Review?*

2. *Explain the doctrine of 'ultra vires' and how it relates to judicial review.*

3. *Can a local housing authority, or other public body, which has not exceeded its powers be subject to judicial review? If so, in what circumstances can it be challenged?*

4. *What are the common law rules of natural justice?*

5. *Which court has supervisory responsibilities to ensure a proper use of powers by public bodies?*

6. *What powers are available to the court if a local housing authority or other public body has abused its powers?*

Now turn to the Answers at the end of the Block.

2. Local Authorities

2.1 Forms of challenge to housing decisions

Challenges to local authority housing policies and decisions are most likely to arise in connection with housing waiting lists, housing allocations, possessions, disrepair, and homelessness decisions. Examples of challenges might be:

- people who have not been accepted on the waiting list;
- people who feel they have received less than fair treatment in terms of the length of time they have been on the waiting list;
- dissatisfaction with the type of property area allocated;
- possessions due to non-payment of rent or breach of a tenancy condition;
- disrepair actions due to failure of landlord to maintain property, e.g. tenant may withhold rent because of the disrepair;
- homelessness challenges frequently relate to matters of eligibility, standards of accommodation, and whether or not someone is intentionally homeless. *(The main homelessness duty is owed to applicants who are homeless through no fault of their own and have a priority need for accommodation).*

These decisions can be challenged in a variety of ways, including:

(a) seeking a **review** of the decision;

(b) through an **appeal** to the County Court;

(c) **Judicial review** by the High Court;

(d) seeking **investigation** of any maladministration by the Local Government Ombudsman;

(e) i**nvestigating complaints** of discrimination; and

(f) through **private law remedies** *(see Block HL.102 Section B).*

Note
Remedies achieved through the Ombudsman are cheaper than the courts and there is no charge to the complainant. Also, the process is informal, flexible and non-confrontational. In addition, the ombudsman can recommend changes to the housing organisation's procedures. However, when compared with the courts, it has the disadvantage of taking too long, does not have enforcement powers, and staff lack specialist knowledge.

(a) Review of decisions relating to allocation and homelessness decisions

The **Housing Act 1996** established a new internal review procedure for local authority decisions about allocations (s.164) and homelessness decisions (s.202). The*Allocation of Housing and Homelessness (Review Procedures and Amendment) Regulations* 1996 SI No.3122 set out the procedure, which is also summarised in the *Code of Guidance* published by the Office of the Deputy Prime Minister.

Now allocation and homelessness decisions must be notified to the person affected, with details of the reasons for the decision. If dissatisfied, the person is entitled to a review of such a decision, and must make the request for a review within 21 days from the date of notification of the decision. The local housing authority review may be undertaken by a panel of councillors, or by an officer, who must be senior to the original decision-maker and not have been involved in the original decision. The final decision on the review must be provided in writing to the person making the appeal, and provide reasons when the decision is unfavourable to the applicant.

(b) Appeal to the County Court

In the case of homelessness applications, **s.204 of the Housing Act 1996** gives dissatisfied applicants a right to apply to the County Court on any point of law arising from the original or review decision, e.g.

- where the law has been mis-stated;
- the decision is not supported by evidence;
- the decision is unreasonable and perverse;
- the decision was made in breach of the requirements of natural justice; or
- the decision fails to give adequate reasons.

In response, the County Court has powers under s.204 to confirm, quash, or vary a local authority's decision. This statutory right of appeal is intended to reduce the number of homelessness Judicial Review applications to the High Court. This contrasts with judicial review where the court can only require the authority to reconsider its decision.

Earlier we noted that, where statutory remedial rights were available, the courts would expect them to be pursued before an application for judicial review would be considered. Similarly, as confirmed in *R v Merton London Borough Council ex.p. Sembi*

[1999], once a local housing authority's decision becomes reviewable, that route should be followed before application for an appeal or judicial review.

(c) Judicial review of decisions

Judicial Review is intended to be a 'last resort' remedy, so applicants will be expected to use the County Court appeal remedy first in homelessness cases. However, allocation decisions and some homelessness decisions can still be the subject of Judicial Review. You will know from previous studies that Judicial Review is the process by which decisions and actions of local and central government, and other public bodies, are investigated by the courts to see if they comply with the principles of administrative law and the *ultra vires* rule *(see Section 1.2 (d))*.

Judicial Review case titles are always in this format:

R v Typical District Council ex. p. Jones.

(Jones is the name of the person requesting the review, on whose behalf the High Court is investigating Typical DC's decision-making process. This is described as being *ex. parte* or more frequently shown as *ex.p*.)

The Judicial Review process does not necessarily give the applicant the outcome they want: often the decision is still left to the local authority after the Court has given its guidance. Applicants for Judicial Review can claim an injunction requiring a local authority to exercise its public law functions.

(d) Investigation by Local Government Ombudsman

As described earlier *(see Section 1.2 (f))*, decisions involving maladministration can be investigated by the Local Government Ombudsman. Housing-related cases account for some 38% of all investigations, and reports of such cases are included in *'Inside Housing'* and other housing and legal publications.

(e) Investing complaints of discrimination

The provisions of the **Sex Discrimination Act 1975** and the **Race Relations Act 1976** make it unlawful for housing authorities and other organisations to discriminate on sex, marital, or racial grounds. If discrimination is involved, the Commission for Racial Equality or the Equal Opportunities Commission could become involved in investigating the complaint. Formal complaints may be taken to an Industrial Tribunal, which can grant remedies. The remedies include notices of compliance with legislation,

injunctions requiring compliance, and damages in compensation. However, we shall be studying anti-discrimination law in some detail in HL.103 Section G.

(f) Other statutory law and private law remedies

Housing organisations and other bodies are also subject to remedies for breach of statutory duty and private law duties. Generally, we are referring to remedies arising out of the law of tort and, possibly, the law of contract. We shall consider these laws and remedies later in HL.102 Section B. However, they include a range of remedies, including injunctions requiring housing organisations to comply with their duties, and compensation.

Self Test 8

You should now have an understanding of the various safeguards that have developed to ensure that local housing authorities operate lawfully by not exceeding their statutory powers. Reflect on what you have learnt and answer the following questions.

1. *Which local housing authority areas of decision-making are more likely to be the subject of challenge?*

2. *What are the various forms of challenge that could be made?*

3. *What are the advantages and disadvantages of seeking redress of grievances through the Local Government Ombudsman rather than the courts?*

4. *If not satisfied with a local housing authority's decisions can a tenant proceed directly to Judicial Review? Is a right of review or appeal provided for, as in the case of allocation and homelessness decisions?*

Now turn to the Answers at the end of the Block.

3. Registered Social Landlords

3.1 Introduction

Registered social landlords are independent landlords, who are mainly housing associations, but also include housing co-operatives, trusts and companies. They do not trade for profit and manage almost 1.5 million dwellings. Unlike local authority landlords, and after the ruling in *Peabody Housing Association v Green* [1978], registered social landlords are not, generally, considered to be subject to Judicial Review. However, an association specially created to take over a local authority's housing stock might be liable: see *R v West Kent Housing Association ex.p. Sevenoaks District Council* [1994]. Only future case law will clarify whether or not such associations will be liable to Judicial Review.

3.2 Regulation of registered social landlords

(a) Differing forms of housing associations and regulating bodies

Housing associations are defined by their functions and not by their legal structure. S.1 of the **Housing Associations Act 1985** defines a housing association as a non-profit making '*society, body of trustees or company'* established for the improvement, construction, management or facilitating of housing accommodation. As a result, you will find that housing associations may take the form of:

- **Societies**, which are incorporated bodies registered under **the Industrial and Provident Societies Act 1965**. Registration is a pre-condition for Housing Corporation funding. Such bodies are supervised by the Registrar of Friendly Societies, who ensures that their objects and rules are in accordance with the Industrial and Provident Societies Act.
- **Trusts**, registered as a charitable trust under the **Charities Act 1993**. This means that the trust must be conducted in accordance with its approved charitable objects, e.g. they may state that any housing shall only be provided for the poor and aged in need; and
- **Limited companies**, limited by guarantee, and registered under the **Companies Acts 1985 & 1989** and supervised by the Registrar of Companies**.**

In addition, some fifty per cent of housing associations are registered with the Housing Corporation under s.3 of the **Housing Associations Act 1985** and receive Housing Association Grant. This means that all registered social landlords

are subject to the Housing Corporation's investigative and monitoring powers under **ss.30 to 50, Housing Act 1996**. This legislation provides supportive sanctions of criminal offences and fines, as well as a right of application for High Court orders of compliance.

(b) Responding to complaints about the performance of social landlords

Although social landlords are not subject to Judicial Review or investigation by the Local Government Ombudsman, they are accountable to tenants in a number of ways. Additionally, they are accountable to various controlling organisations for their management and financial duties and operational arrangements. They, like local housing authorities *(see Section 2.2 (e))*, are subject to the anti-discrimination legislation. We will now look at the various forms of supervision.

(i) Registered social landlord's own procedures

Each social landlord should have its own internal procedure for dealing with complaints, but practices vary. A prudent organisation will put in place provisions for a review of the complaint and a right for a personal hearing. Here, there is a similarity to local housing authorities. Also, adopting some form of mediation procedure will do much to resolve grievances. Importantly, whatever provision is made for dealing with tenants' complaints should be seen to be fair and impartial. Associations should also bear in mind that inadequate internal procedures and inappropriate resultant decisions may be subject to further appeal elsewhere, or even court action.

(ii) Housing Corporation

The Housing Corporation promotes, registers, funds, regulates and monitors registered social landlords. Its objects are to ensure that landlords are accountable and fulfil social policy objectives. This involves ensuring that social landlords manage their affairs effectively, maintain high management standards, and make responsible use of public resources. In support, the Corporation's legislative powers of scrutiny, inquiry, control and penalty, as granted by the **Housing Act 1996**, are extensive. They involve financial and management controls. Also, the Housing Corporation's remedial powers include replacing management, transferring assets, and withdrawing registration. It achieves its objects through regulation, issuing of guidance, and by requiring performance standards to be met, e.g. *in respect of rents, service charges, repairs, and management, as well as tenants' rights and charters*. This also includes the development of 'Best Practice' requirements in accordance with the provisions of the **Local Government Act 1999**.

From the above, you will appreciate that the Housing Corporation's influence is considerable. This is reinforced by **s.50** of the **Housing Act**, which allows an application to the High Court for an order of compliance with agreed proposals.

Who regulates the Housing Corporation?

The Housing Corporation, as a statutory non-departmental body, is publicly accountable, required to publish an Annual Report, and present audited accounts to Parliament. The Corporation is also open to complaints of maladministration and may be subject to court actions in respect of negligent behaviour.

The Treasury, through Exchequer grants, and the Department of Social Security, with responsibility for income support and housing benefit, are concerned with social landlords and their tenants. However, it is the Office of the Deputy Prime Minister that has direct powers over the Corporation's policies, composition, and finances. As such, it closely regulates the Corporation and issues directions regarding the carrying out of its functions.

(iii) Registrar of Friendly Societies, the Charity Commissioners, and the Registrar of companies

As explained earlier, these three supervisory bodies also have a considerable regulatory responsibility for registered social landlords. Generally, their powers are exercised for mismanagement or where the association is not complying with its own objects. This regulatory action overlaps the powers and functions of the Housing Corporation. However, there is close liaison between the different supervisory bodies before remedial action is taken.

(iv) Housing ombudsman

You will recall from earlier studies that complaints about registered social landlords are not subject to investigation by the Local Government Ombudsman. Instead, under the provisions of **s.51(2) Housing Act 1996**, maladministration complaints that have resulted in injustice are investigated by a Housing Ombudsman. Typical of such complaints are:

- delays in taking action, e.g. *grant and benefit application*;
- failure to investigate, e.g. *influencing circumstances relating to rehousing applications;*

- ignoring or overlooking legal or other requirements, e.g. *compensating tenants for loss resulting from landlord's shortcomings;*
- general inefficiency, e.g. *regarding complaints procedures or processing housing applications;* and
- administrative and management inadequacies, e.g. *failing to maintain records or respond to tenants' letters, ignoring own procedures.*

Registered social landlords are under a duty *(enforceable by a High Court order)* to be a member of an approved Housing Ombudsman scheme, which must be notified to tenants.

(For further information, see ombudsman's web address: www.oea.co.uk.)

Self Test 9

From your studies you know that local housing authorities are defined by their legal structure and their duties are imposed by primary and secondary legislation. However, in answering the following questions you will need to remember that housing associations are quite different forms of housing organisations.

1. *How are housing associations defined and what is the legal basis of the definition?*

2. *To whom are housing associations accountable for their operation and decisions?*

3. *In what ways are housing associations accountable to tenants?*

4. *The Housing Corporation regulates registered housing associations, but who regulates the Housing Corporation?*

Now turn to the Answers at the end of the Block.

4. Legal Advice for Tenants

4.1 Introduction

We now know that social housing bodies have responsibilities and duties to tenants and others that, if disregarded, can be challenged in a variety of ways. This raises the questions of:

How do tenants know of their rights?

How can they obtain advice to help follow up complaints?

What of tenants on low wages who are behind with rent payments and threatened with eviction?

Where can they go for help?

As a result of Government policies and legislation, tenants of social landlords are now better informed than they used to be. Tenants' charters have required local authority and registered social landlords to advise tenants of their rights. For example, the Housing Corporation publication *Housing Applicant's Charter 1988* advises tenants of their legal rights and what can be expected from a social landlord. It also advises, in general terms, on what actions can be taken to enforce a tenant's rights, namely:

- **For a complaint about an incident** - *use the landlord's complaints procedure or the Housing Ombudsman;*
- **Failure to put tenants' rights policies and practice into place** - *go to the Housing Corporation;* and
- **If the landlord is thought to have broken the law** - *go to the courts. Here, the recommendation is to consult a solicitor or an advice centre.*

The need for legal advice for people of limited means has long been recognised. In response, local authorities and other organisations, individually and jointly, have set up local advice centres. The inability of many people to be able to afford legal advice was also recognised by the provision of Legal Aid, where support for legal costs is given by the State. However, until recently, the system for providing legal advice relating to housing, welfare support, debt and employment problems was uncoordinated. As a result, many people could not get help when they needed it. This was acknowledged and the Government, in their 1998 publication *'Modernising Justice',* set a number of aims, including providing better access to information and promoting affordable legal services. It was to lead to the **Community Legal Service** which was launched on 1 April 2000.

We will now consider some of these sources of legal advice that are available to tenants, together with arrangements for helping fund court actions and legal advice *(contact addresses are provided).*

4.2 Available forms of legal advice for tenants

(a) Community Legal Service

An important new co-ordinated initiative for tenants and others was launched in April 2000. It is the Community Legal Service which was established by the **Access to Justice Act 1999**. The Service is aimed at giving access to legal help for people in need of advice, assistance and representation. It means that everyone, regardless of personal circumstances, will be able to get the right help for their problems when they need it.

The Community Legal Service has established a framework of Community Legal Service Partnerships of people giving legal help and advice. As a result, lawyers are working with advice professionals, volunteers, and sources of funding within a referral network. This involves approved solicitors and organisations such as the Citizens Advice Bureaux, Law Centres, and local councils. *(These bodies are considered separately in 'b' below.)* The partnerships consider the sort of help local people need so that the right sort of services can be provided. The government's objective to have approved legal advice partnerships in most areas of England and Wales by March 2002 was, in the main, achieved.

The intention is that there should be a comprehensive and specialised advisory service that exceeds the routine service usually provided by private solicitors. Initial consultation about a problem will be free and people will be told about any cost that will be involved in resolving their complaints. However, many people will be eligible for financial support from the Community Legal Service Fund. People on low income and with little capital may qualify for free funding. Others that are better off may be asked to pay towards the costs. The Fund replaced the previous civil Legal Aid system and is managed by the independent Legal Services Commission.

Eligibility for financial aid

- **Initial legal help**: Tenants whose disposable income, after deductions for income tax, national insurance, and providing for dependants, is less than £84 and whose disposable capital is £1,000 or less, will qualify for help.
- **Higher levels of funding**: where higher levels of funding are required, such as to bring a court case, then a tenant's disposal income must be below £8,067 a year and disposable capital after allowances for dependants below £6,750.

***Contact**: see local telephone directory for details of your local Legal Services Commission office (until new directories are issued, look up and contact the Legal Aid Board) or obtain address from Legal Services Commission, 85 Gray's Inn Road, London WC1X 8TX. Telephone: 0845 608 1122. Web address: www.justask.org.uk.*

(b) Housing advice centres and Citizens Advice Bureaux

Fortunately, for tenants and others in the community, there now exists a range of housing advice centres housing law centres, including:

(i) The Citizens Advice Bureaux

The Citizens Advice Bureau was set up as an emergency service during the Second World War and has developed into an organisation of some 700 bureaux. It provides a free service which helps to resolve housing, benefits, employment, consumer, money advice, and other problems central to people's lives. Each year it deals with over 700,000 housing problems, such as families struggling with mortgage arrears, and tenants trying to get landlords to carry out essential repairs. It also publishes guidance leaflets providing advice on commonly experienced problems. It will also advise on help with legal aid advice and costs for court actions. This may include help with selecting a solicitor to take up your complaint or problem. Importantly, the Citizens Advice Bureaux maintain good working links with other community organisations. To obtain advice on housing or other matters, all a person needs to do is to telephone or just call in to the nearest Citizens Advice Bureaux.

***Contact:** see local telephone directory or obtain the address of the nearest Bureaux from The National Association of Citizens Advice Bureau, 115-123 Pentonville Road, London N1 9LZ. Telephone: (020) 7833 4370. Web address: www.nacab.org.uk.*

(ii) Law Centres

The first Law Centres opened in Brent and Cardiff in 1970 and are, variously, grant-aided from central and local government, lottery and other sources. There are now 52 Law Centres. They provide a free legal service and mainly practice in what is loosely described as Social Welfare Law. As a result, their work deals with priority areas of work most in demand and where needs are the greatest. These areas include housing, welfare rights, immigration, employment and discrimination. Other areas vary depending on local needs. However, they generally work with groups of people, rather than just helping one person at a time. Nevertheless, they do deal with individual cases in the form of test cases and judicial review.

The Law Centres were set up with the intention of providing a more complete and responsive service than the individual service provided by private solicitors. As a result, they employ solicitors, barristers, legal advisers and community workers. Their range of activities includes:

- providing training and information about people's rights;
- identifying community legal problems at an early stage;
- providing legal advice and services for community organisations;
- taking on cases that clarify and extend rights for the public; and
- considering and proposing improvements to the law.

***Contact**: See local telephone directory or obtain address of the nearest centre from: The Law Centres Federation, Duchess House, 18-19 Warren Street, London W1P 5DB. Telephone: 020 7387 8570. Web address: www.lawcentre.org.uk*

(iii) Other sources of advice

You need to be aware that there are a number of **independent housing advice centres** throughout the country. Apart from looking in the local telephone directory, it would be advisable to check with the local housing authority whether there is such a local centre.

***Contact:** Independent Advice Centre, 4 Dean's Court, St. Paul's Churchyard, London EC4V 5AA. Telephone: (020) 7489 1804. Web address: www.fiac.org.uk.*

Another source of advice may exist within **University Law Departments**, where law centres have been set up to provide free legal advice. Apart from benefitting the public, law students gain practical experience under the direction of qualified lawyers.

Shelter provides help for anyone with a housing problem.
88 Old Street, London EC1V 9HU. Telephone: (020) 7505 2000. Web address: www.shelter.org.uk.

Tenants should also be aware that trade unions and motoring organisations frequently offer a free legal service to members. Household insurance policies sometimes include such services, but it is normally offered as an insurable extra.

(c) Local authority duty to provide homelessness advice

The **Housing Act 1996** provides an example of where local housing authorities have a statutory duty to provide a free advisory service in relation to all aspects of homelessness (s.179). However, the provision of an advocacy service *(to mediate or negotiate on behalf of the tenant)* is discretionary. The advisory service does not have to be provided directly by the authority. Instead, it could be provided jointly with others, or by another body with a grant or loan from the authority.

(d) Affording solicitors' fees, including 'no win no fee' arrangements

Tenants need to be aware that, as a result of the competitive market conditions that have developed since the 1980s, solicitors are providing more affordable advice through a variety of schemes. Many solicitors offer a **free initial interview** and others offer an **interview for a fixed fee**. Some firms of solicitors offer some services free of charge as a contribution to society, and it is called '*pro bono*' work. In March 2001, Lord Irvine, the Lord Chancellor, introduced a £700,000 government initiative to encourage more lawyers to develop *pro bono* working, the object being to help the public to obtain help and advice from lawyers.

Another way of reducing some or all of a solicitor's fees would be to enter into a conditional agreement. This is sometimes known as a **'no win no fee'** arrangement. This means that if a tenant's case is lost they will not have to pay their solicitor's fees. However, if the case were won, the tenant would have to pay a 'success fee' in addition to the normal fee. The 'success fee' is based on a percentage, up to 100%, of the normal fee. In all cases, the tenant would have to pay the solicitor's expenses, such as a surveyor's report, and any court fees.

It is possible to take out insurance to cover all or most of the costs that might be involved in pursuing or defending a legal case. Legal insurance comes in many forms. Usually it covers the legal costs that would have to be paid on losing a case. Although some are linked to a Conditional Fee arrangement, others would allow tenants to pay their solicitors' fees as a case proceeds, being repaid if the other party loses.

When considering the appointment of a solicitor, tenants should always ask about the various funding arrangements and available insurance options. Also, comparisons of services provided and fees from different solicitors should also be made before making a final decision. Finally, tenants should also check that they are not already entitled to free legal advice under a trade union or some other organisational membership *(see (b) (iii) above)*.

The development of 'no win no fee' or conditional agreements may appear appealing. However, you should be aware that such arrangements may not always be in the interests of tenants, for, arguably, it is inappropriate that solicitors should have a financial interest in 'success' but no interest in the degree of that success, with the result that some solicitors may not always have the incentive to exercise their professional endeavours fully to seek the maximum benefit for tenants. You may also be aware that conditional fees, where a tenant only pays if some damages are awarded, has led to many firms of solicitors distributing 'cold-calling' leaflets or advertising in the local media to encourage tenants to seek compensation for what, often, had previously been normally-accepted inconveniences associated with repair or improvement work. Undoubtedly, there are deserving cases as well as spurious or doubtful cases. Nevertheless, such approaches to tenants has resulted in an increase of claims against local authority and housing association landlords, and the consequent use of scarce resources to pay compensation.

Self Test 10

Much of sub-section D has concerned legal and other challenges to the actions and decisions of social housing organisations. However, we have ended with consideration of how tenants, often with inadequate means, can obtain legal advice. We would like you to think back on such provisions and answer the following questions.

1. *What sources of legal advice are available to tenants?*

2. *Many of the housing problems experienced by tenants, such as rent arrears and threats of eviction, arise because their incomes are low. As a result, they are unable to afford the legal advice necessary when seeking legal remedies. Explain what forms of help are available.*

3. *In April 2000 a new co-ordinated initiative was launched giving access to legal help for people in need of advice, assistance and representation. What is the name of the scheme, how does it operate, and how much does it cost?*

Now turn to the Answers at the end of the Block.

Summary

1. **Legislation imposes obligations and duties on local housing authorities and social housing bodies. These are accompanied by remedies for use where social landlords, when making decisions, exceed their powers or are guilty of maladministration.**
2. **Statute law and the common law provide public law remedies to grievances arising from the activities of social landlords. The remedies include a right to a review or appeal, court orders, judicial review, and investigation by the Local Government Ombudsman. Additionally, the private law remedies of contract and tort are available.**
3. **Registered social landlords are not subject to judicial review or the jurisdiction of the Local Government Ombudsman, but they are subject to investigation by the Housing Ombudsman.**
4. **Housing associations, as voluntary organisations, have various legal structures which makes them liable to regulation by one of the supervisory bodies: the Charity Commissioners, the Registrar of Friendly Societies, or the Registrar of Companies.**
5. **The Housing Act 1996 empowers the Housing Corporation to regulate and supervise all registered social landlords, a term which includes housing societies, housing trusts, housing companies, and housing associations. The Housing Corporation is itself regulated and supervised by the Government.**
6. **Tenants' Charters require social landlords to advise tenants of their legal rights and what can be expected from the landlord. Legal advice for tenants is available from several sources. The Government introduced a new Community Legal Service in April 2000, which provides access to legal advice to tenants and others.**
7. **There are various funding and insurance arrangements that help tenants' to pay their legal fees.**

Answers

Self Test 1

1. False. The legal system in this country is a common lay system.
2. Equity is part of the civil law system.
3. Equity takes preference. Equity and the common law are dealt with alongside each other in all civil courts.
4. (a) Law of contract - Private law
   (b) International law - Public law
   (c) Criminal law - Public law
   (d) Law of tort - Private law

Self Test 2

1. Britain has an unwritten constitution. It comprises a mixture of statutes, case law and conventions. As a result, it is flexible and can, over time, accommodate change resulting from social, economic, political and other influences. Countries such as the United States of America, who have a written constitution, are more rigidly bound.
2. A **public bill** is usually introduced by the government, but may be by a private member *(Member of Parliament)*, and creates or amends the law for the country at large. A **private bill** introduces measures that, if passed, become law for the benefit of public bodies *(such as local authorities)* or, occasionally, groups of people who wish to widen the law beyond those granted by the general law of the land.
3. **Primary legislation** consists of Acts of Parliament, which have been approved by the House of Commons, the House of Lords and have received the Monarch's consent. **Secondary legislation** is legislation made by some persons *(e.g. a government Minister)* or body *(e.g. a local authority)* under powers delegated to that person or body by the provisions of an Act of Parliament *(statute)*. Such delegated legislation is controlled by Parliament as the regulations or rules are printed and laid before Parliament for consideration and, as required, debated.

4. Delegated legislation has the advantages of:
   - permitting flexibility to meet changing circumstances that might not have been foreseen at the time when the primary legislation was passed by Parliament;
   - being achieved more quickly than going through the time-consuming process of introducing a new Act of Parliament or amending one; and
   - permitting more careful consideration to be given to the likely purpose and impact of regulations, orders or by-laws *(Parliament does not have the time or expertise to consider the detailed requirements that are often necessary to meet a defined need).*
5. An example would be the Right to Buy Regulations that were introduced by the Secretary of State for the Environment to determine and, subsequently, amend the levels of discount provided to tenants who decided to buy their rented accommodation.

Self Test 3

1. By applying established principles of and rules of law to different fact situations.
2. The precedent system.
3. The 3rd volume of the 1960 collection of the All England Reports, at page 327.
4. In a criminal case, the name of the case would appear as *R v Ali*. Breach of contract is a civil case matter, so the name would be *Drake v Ali.*

Self Test 4

1. Britain gave effect to European Community (now European Union) law when it passed the European Community Act 1972.
2. The Treaties of Paris (1951) and Rome (1957), as amended by the Merger Treaty (1965) and the Single European Act 1986.
3. **Regulations**, which are directly applicable and have immediate effect in Member States.

   Directions, which are binding on Member States, but each country may decide the method of implementation.

   Decisions, which are made by the Council and Commission as a formal way of initiating action or stating policies. They can be made to a Member State or to a business organisation.

4. **Council of Ministers**, which is the main political and decision-making body.

   European Commission, which formulates and co-ordinates policy.

   European Parliament, which supervises the Commission and Council.

   European Court of Justice, which is responsible for ensuring that Member States and European Institutions act lawfully.

Self Test 5

1. The courts of normal jurisdiction are:
   - The Magistrates Court
   - The County Court
   - The Crown Court
   - The High Court
   - The Court of Appeal
   - The House of Lords
2. The present courts system is largely based on the:
   - Judicature Acts 1873-75
   - Courts Act 1971
   - Supreme Courts Act 1981
3. Lay people participate in the administration of justice in the roles of magistrates and by serving on juries, mainly in the criminal courts. There are also lay juries in a limited number of civil cases, mainly fraud and defamation *(libel and slander)* cases.
4. The jury's role is to decide the facts of the case. At the end of the case the judge will summarise what has taken place and carefully explain the relevant legal issues before the jury retire to make their decision.
5. A **lay magistrate** is a lay person who sits in the magistrate's court, usually with two other lay magistrates, and decides both the law and the facts. However, they may call for the advice of the legally qualified magistrates' clerk. The difference between a lay magistrate and a stipendiary magistrate is that a **stipendiary magistrate** is a legally qualified magistrate who sits and decides cases on his own.

Self Test 6

This Self Test should reconfirm the differences between some of the remedies which are available to tenants who may be aggrieved over decisions made by social housing organisations.

1. (a) A **judicial review** is concerned with the legality of a public law decision.

   (b) An **appeal** is concerned with the merits of a decision.

   (c) A **review** usually requires a reconsideration of the facts and decision.

2. Both ombudsmen investigate complaints of maladministration. The difference is that:

   - the **Parliamentary Ombudsman** investigates alleged maladministration relating to government departments and certain non-departmental bodies; and
   - the **Local Government Ombudsman** investigates alleged maladministration by local authorities.

3. (a) TRUE

   (b) FALSE

4. **s.204(1)** of the **Housing Act 1996** provides a statutory right of appeal to the County Court for homelessness applicants who are dissatisfied with a local authority's review.

Self Test 7

1. Judicial Review reviews the decisions of central and local government and other public bodies, including the Housing Corporation, in order to ensure that they make proper use of their statutory powers.

2. Judicial Review has its origins in the doctrine of *ultra vires*. 'Ultra Vires' means beyond the power. It is an act in excess of the authority granted by law. It has been defined as:

   'No public body may lawfully make a decision and take action on it unless it is authorised to do so or the act is construed as being reasonably incidental to its authorised activity'.

3. Yes, even when a local housing authority has not exceeded its powers, it can be subject to judicial review. It can occur when its discretionary decisions or actions are considered to be illegal, irrational or commit procedural impropriety, as held in *Council of Civil Service Unions v The Minister for the Civil Service* [1984], e.g.

- **Illegality** occurs when the decision maker does not understand the law or fails to give effect to it.
- **Irrationality** occurs when a decision is so outrageous that no sensible person who had applied his or her mind to the question to be decided could have reached such a decision.
- **Procedural impropriety** occurs when the decision maker fails to comply with an express provision contained within an Act of Parliament or secondary legislation.

4. The common law rules of natural justice are:

   No man can be a judge in his own cause, which means that the decision-maker should have no financial or proprietary interest in the outcome of the proceedings, nor should there be any suspicion of bias.

   To hear the other side, which requires both parties to a dispute should be heard and that the hearing should be a fair one.

5. The High Court has supervisory responsibilities to ensure a proper use of powers by public bodies.

6. The Judicial Review remedies are:

   - **Mandamus**, which compels performance of a public duty.
   - **Certiori**, which is an order to quash (declare void) the decisions of government ministers, inferior courts, tribunals, local authorities and other public bodies.
   - **Prohibition**, which is an order preventing public bodies from exceeding their powers.
   - **Declaration**, which is a statement of legal relationship between two parties. It is helpful for helping early resolution of disputes, or for clarification of powers.
   - **Prohibitory injunction**, prevents acts that would be *ultra vires* or did not observe the principles of natural justice.
   - **Mandatory injunction**, which compels performance of a duty.

Self Test 8

1. The majority of challenges occur in connection with housing waiting lists, housing allocations, possessions, disrepair and homelessness decisions.
2. Remedies take several forms, including:
   - a review of a decision;
   - appeal to the County Court;
   - Judicial review by the High Court;
   - investigation of maladministration by the Local Government Ombudsman;
   - investigating complaints of discrimination; and
   - use of private law remedies.
3. The **advantages** of using the Local Government Ombudsman remedy is its informality, flexibility, the fact it is non-confrontational. Also, being free of any charge to the complainant, it is cheaper than the courts. The **disadvantages** are that it is a lengthy process, and Ombudsman staff lack housing and other specialist knowledge. Also, the Ombudsman has no enforcement powers to compel local housing authorities to act on findings and recommendations. However, the Ombudsman can require the local authority to publicise in the local press his report and findings. This publicity is normally sufficient to ensure action is taken by the local authority.
4. The High Court considers judicial review to be a 'last resort' remedy, so applicants will be expected to use review and appeal remedies first.

Self Test 9

1. Housing associations are defined by their functions and not their legal structure. Section 1 of the Housing Associations Act 1985 defines a housing association as a non-profit making 'society, body of trustees or company' established for the improvement, construction, management or facilitating of housing accommodation.

2. Some fifty per cent of housing associations are registered with the Housing Corporation. As a result they are accountable to the Corporation's investigative and monitoring powers, which can be enforced by a High Court order of compliance (ss.30-50 Housing Act 1996). For non-registered housing associations they, depending on whether they are a trust, charity or company, are accountable to:
   - the Registrar of Friendly Societies
   - Charity Commissioners
   - Registrar of Companies
3. Housing associations are expected by their supervisory or regulating bodies to have effective internal procedures for dealing with tenants' complaints, but practices vary. Nevertheless, such procedures should be fair and impartial. Dissatisfaction over the failure of a housing association to put tenants' rights policies into place can be taken to the Housing Corporation. Tenants may also take maladministration complaints to the Housing Ombudsman.
4. The Housing Corporation is a statutory non- departmental body. It is directly regulated by the Office of the Deputy Prime Minister, who issues policy and practice directions regarding the carrying out of the Corporation's functions.

Self Test 10

1. Over the years, several forms of organisation have been established to provide legal and other advice to tenants on low incomes. They include:
   - the newly-established government-sponsored Community Legal Service;
   - Housing Advice Centres, run by local authorities and other organisations;
   - Citizens Advice Bureaux;
   - Law Centres, funded by central and local government, the National Lottery and from other funding sources;
   - Student Law Centres, linked to University law departments and where law students gain advice under the direction of qualified lawyers;
   - Local authorities homelessness advisory services; and
   - Some solicitors' offices.

2. Many solicitors now offer a range of supportive low-cost services, which include:
   - Free initial interview;
   - An interview for a fixed fee;
   - *Pro bono* services, where the advice is free of charge and given as a contribution to society;
   - 'No win no fee' arrangements, where no fee is charged if the case is lost, but an increased fee is charged if the case is won;
   - Also, there are forms of legal insurance available.
3. The Community Legal Service was launched in April 2000 by the Lord Chancellor's Department. The aim being to provide access to legal help regardless of people's circumstances through partnerships of solicitors, Citizens Advice Centre and other similar bodies. People on low incomes and with little capital may qualify for free funding. Others may have to pay towards legal costs.