



First-tier Tribunal Property Chamber (Residential Property)

# Guidance on Housing Act 2004 and Housing and Planning Act 2016 Cases

## General information about the process

This guidance is intended to help parties understand what happens when taking part in an application to the First-tier Tribunal Property Chamber (Residential Property) in the circumstances provided for by the Housing Act 2004 and the Housing and Planning Act 2016 (the Acts). For advice on how to present your case, or if you need to understand more about the law, you may wish to consult a Citizen's Advice or a solicitor.

The tribunal receives a high volume of applications and has to manage them within a fixed budget. It must ensure that each application is dealt with fairly and as efficiently as possible. It also has to ensure that each case uses an appropriate share of its resources whilst taking into account the need to allocate resources to other cases.

We try to avoid using jargon but if there is anything about our procedures you do not understand please contact the regional tribunal office. Regional office details are at the end of this guidance.

The tribunal's procedures are governed by statutory regulations called the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** which can be found on the internet.

Please note that tribunal decisions will be published on [www.residential-property.judiciary.gov.uk/search/decision\\_search.jsp](http://www.residential-property.judiciary.gov.uk/search/decision_search.jsp) unless a party makes a written request that this should not be done.

## Who does what?

**Tribunal members** are appointed by the Lord Chancellor. There are two types of member:

- (a) the **chairman**, who will usually be a lawyer or surveyor, is responsible for the conduct of the case and writes the reasons for the tribunal's decision;
- (b) other members who may be lawyers, surveyors, other professional people or lay people.

When a tribunal is set up to consider the case, there will usually be two or three members including the chairman.

**Case officers** are the administrative staff who manage the process from start to finish and deal with correspondence. When an application is received, it is the case officer who will register the case and deal with the paperwork and correspondence until the parties have received the final decision. The case officers are able to speak to parties about the procedures relating to the application, but they cannot give legal advice or interpret the tribunal's decision.

## Applications and appeals

An **application form** must be completed by the applicant in almost all cases. (Note that some applications are by way of an appeal against a decision that has been made by the local housing authority). Forms can be obtained from [www.gov.uk/housing-tribunals/apply-to-the-tribunal](http://www.gov.uk/housing-tribunals/apply-to-the-tribunal), or, if you do not have access to a computer, you can ask a case officer to send you a form. Some applications involve the payment of a fee. Fees information is contained in our application forms.

Once an application is received, it will be checked by a case officer for completeness and the applicant will be sent an acknowledgement. A copy will be sent to the other party (the respondent) and any person whose name and address is known to the tribunal, whom the tribunal considers is likely to be significantly affected by the application. In some types of application the tribunal must also send a copy to certain persons specified in the Act. A copy may also be sent to any other person the tribunal considers appropriate.

Upon receipt of an application, the tribunal assesses the urgency and complexity of the case. In urgent cases, such as where the health, safety and welfare of people may be of concern, a hearing can be listed within days.

In certain cases, the local housing authority may seek an urgent **interim management order**, in which case, if the tribunal is satisfied that specified exceptional circumstances exist, the tribunal must order an urgent oral hearing.

In relatively simple cases, the parties may request, or the tribunal may suggest, that the case can be dealt with by considering the written evidence and the parties' written

representations only (without the need for an oral hearing). This is referred to as a **paper determination**. However, any party who so wishes has the right to request a hearing.

## Case preparation

In cases where the issues are not clear, there may be an oral **case management conference** (CMC) which provides an opportunity for the parties to make concessions and narrow the issues between them. If a CMC is arranged, parties are encouraged to attend. The CMC is a good opportunity for parties to have their say about what directions (see below) should be given in the case and to ask questions about the procedure that should be followed by the parties.

In cases where the issues can be readily identified, a tribunal chairman will issue written **procedural directions** requesting particular actions from one or both parties before the hearing. The procedural directions document will sometimes set out what the issues are and say when the parties need to send each other copies of documents. It will say whether there is to be an inspection of the property and may give an estimate of the length of the final hearing. If a party or another person is going to say something to the tribunal, he or she may be required to prepare a witness statement.

Following the directions is important because they ensure that all parties know exactly what documents are available and what the witnesses are going to say so that no one is taken by surprise. The tribunal may well disregard new evidence produced at or just before the hearing.

A **bundle** of the documents and photographs to be considered at the hearing or paper determination will have to be prepared in all but the simplest cases. The directions will say how many copies of the bundle must be sent to the tribunal, and the date by which they must be sent, so that the tribunal members can read the documents and see what the issues are before the inspection, hearing or determination.

The bundle must have a page index at the front and each subsequent page must be numbered in sequence so that, at the hearing, when a person refers to a document on a certain page, everyone will be able to turn to the document quickly.

The tribunal will expect the parties to agree the bundle. If not, each party will have to prepare its own bundle and submit it separately with the numbering A (for applicant) 1, 2, 3 etc. and R (for respondent) 1, 2, 3 etc. on each page.

The documents to include in the bundle will typically be copies of the application and accompanying papers, any procedural directions, statements of case, any expert reports and witness statements, copies of any relevant lease and any other relevant documents, for example, invoices. Sections with dividers are helpful and most bundles should be in a lever arch file or ring binder. No single bundle of papers should be more than 350 pages so more complex cases will need more than one lever arch file or ring binder.

## The hearing and decision

In London, oral hearings are held at the London office. In other regions, the oral hearing can take place in a hearing room at the regional office but will often take place at a venue as near to the property as is practical.

A party can speak for themselves or through a representative (whether professionally qualified or not). It is usually the responsibility of the applicant to present his or her case first, but the tribunal chairman will provide guidance about the appropriate order of proceedings at the beginning of the hearing. Each party will also be able to put relevant questions to the other party. The members of the tribunal will try to put people at their ease and will also ask some questions. If anything is unclear during the hearing, parties are encouraged to ask the tribunal for clarification.

The tribunal's **decision** will be made after the hearing and sent to the parties in writing as soon as possible and usually within four weeks.

## Tribunal Cases and Criminal proceedings

It is for the criminal courts to decide whether evidence given to the tribunal or any admissions or findings made can be used in ongoing or future criminal proceedings. However, the tribunal will decide particular types of cases proceeding under the Housing and Planning Act 2016 to a criminal standard of proof and parties may wish to take legal advice before commencing or defending an application or appeal in the tribunal.

## Expert witnesses

In some cases, the evidence of an expert is needed either by a party or by the tribunal. If a party intends to instruct an expert to give evidence, the permission of the tribunal will have to be obtained.

Directions will then be given about the service of any expert's report on other parties. If more than one party instructs experts of the same type, the Chairman is likely to order them to discuss the case before the hearing to try to agree as much as they can and then produce a statement setting out what they agree and do not agree, with reasons.

## Inspections

The tribunal may inspect the property if requested by either party or if the tribunal considers it necessary. A visit is considered necessary in most cases, although if the tribunal is dealing with a number of similar properties at the same time, it may inspect a sample only. A visit will only take place on a date and at an approximate time notified to the parties.

In some cases the tribunal might be assisted by inspecting the inside of a property as well as the outside and any common parts. The tribunal will only inspect inside a property if the

occupier's permission has been given. The parties may also inspect the inside of the property with the tribunal, but again, only if the occupier has given permission. An inspection will usually be on the day of the hearing.

At the inspection, either party can draw attention to any physical aspect of the property or its surroundings, but may not say anything further. For example, a damp patch on a wall can be pointed out, but any suggestion as to why it appeared should not be given. 'Representations' (arguments and evidence) will either have been made in writing already or will be made at the oral hearing if one has been requested.

If the members of the tribunal are unable to gain access at the appointed time, they may decide to make another appointment or they may decide that they have sufficient information to go ahead and make a decision.

## **Variation and postponement applications**

Parties may ask the tribunal to vary the directions or to postpone a listed hearing. All such requests must be made in writing to the tribunal with full reasons and must be copied to the other parties. The tribunal is unlikely to postpone a hearing unless there are good reasons which have arisen since the hearing date was fixed. Even good reasons will require some kind of evidence in order to prove that an expensive postponement is justified.

## **Withdrawals**

Most withdrawals are made by parties after a negotiated agreement. An applicant who wishes to withdraw all or part of their case must notify the tribunal and the other party in writing. If the other party has consented in writing, this must be included with the applicant's notice to the tribunal. The applicant's notice of withdrawal will not take effect until the tribunal consents to the withdrawal, and the tribunal may make directions or impose conditions on the withdrawal as it considers appropriate.

## **Consent orders**

If the parties come to an agreement as to the order they require, they may ask the tribunal to make a **consent order**. This would dispose of the proceedings and contain the other provisions which the parties have agreed. The tribunal may make a consent order if it considers it appropriate. The tribunal does not need to hold a hearing before making the order or provide reasons for the order.

## **Payment of fees**

If an application fee is payable the tribunal will not proceed further with the case until the fee is paid. If the case has not been started and the fee is not paid within 14 days of being payable the case will not be started. If a case has started, it will be deemed to be withdrawn 14 days after the applicant is notified that the fee remains unpaid.

Please note where there is to be a hearing, a fee of £200 will become payable when you receive notice of the hearing date.

Some applicants may have difficulty paying a fee. A system of fee waivers and reductions, known as Help with Fees, is available. The application form 'EX160 – Apply for help with fees' and 'EX160A – Guide - How to apply for help with fees' gives more information. They are available online at [www.gov.uk/government/publications/apply-for-help-with-court-and-tribunal-fees](http://www.gov.uk/government/publications/apply-for-help-with-court-and-tribunal-fees) or from the local regional tribunal office. The form must accompany the application. Alternatively, Help with Fees applications can be made online at [www.gov.uk/help-with-court-fees](http://www.gov.uk/help-with-court-fees). The reference number supplied by the online system MUST be written on the tribunal's application form.

An applicant who paid a fee can ask the tribunal to order another party or parties to reimburse the applicant in whole or in part. The tribunal will make an order to that effect at the end of the case if it is fair to do so.

## **Costs**

The tribunal does not usually award costs against the losing side. However, if a party does not comply with the procedural directions or otherwise behaves unreasonably in connection with the proceedings, there could be serious consequences. Firstly, the tribunal may decide to stop the application going ahead. Secondly, if one party has incurred costs as a result of (a) another party's failure to comply with directions or (b) another party's unreasonable actions or behaviour, the tribunal may order the defaulting or unreasonable party to pay costs.

## **Special requirements**

The tribunal seeks to make itself as accessible as possible to all parties. If you have a particular requirement, for example because of a disability or other need, please discuss this with the case officer when you make your application.

## **Use of emails**

The following rules are designed to minimise the impact that emails can have on the efficient running of the tribunal office. Parties who wish to use emails are requested to:

- prepare a letter to the tribunal in Word format and attach it to the email (maximum of five pages - longer documents should be sent by post);
- as case officers are sometimes absent, always send or copy the email to the regional office email address;
- always copy any email to the other parties, either by email or by post, and confirm in the email/ letter that this has been done;
- always quote the reference number or case officer's name in the email.

Email chains, email 'conversations' about the case and bundles attached to emails will not be accepted.

## Appeals and re-hearings

In most cases where a party does not agree with the decision of the tribunal and wants it to be changed, an appeal will have to be made to the Upper Tribunal. In that case, the first thing for that party to do is make an application to the tribunal for **permission to appeal**. The application for permission, which must be made within 28 days after the date when the written reasons for the decision were sent to the parties, must be in writing giving the reasons why the applicant believes the decision was wrong. The tribunal will then decide whether permission should be granted for the appeal to proceed. The parties will be notified of that decision in writing. A dissatisfied party will then be able to re-apply for permission direct to the Upper Tribunal.

If the tribunal realises that a clerical mistake has been made it can issue a correction certificate.

Finally, if for a reason beyond the tribunal's control, there has been a serious procedural error (for example, if the documents provided by one party were not seen by the tribunal) and the tribunal considers it to be in the interests of justice to do so, it can set aside its decision and re-determine the case. Any application to set aside on this basis should be made within 28 days after the reasoned decision was sent to the parties.

## Case closure

Following either a withdrawal or determination of all applications (including any appeal), the tribunal will close its case file, which will be retained for a period of 12 months before being destroyed.

## What types of application can be made in Housing Act 2004 and Housing and Planning Act 2016 cases?

The principal types of application that can be made to the tribunal are in relation to:

- improvement notices, prohibition orders or emergency prohibition orders made by the Local Housing Authority (LHA) or in respect of the LHA's decision to take emergency remedial action;
- a demolition order (made under Housing Act 1985);
- interim or final management or special management orders;
- interim or final empty dwelling management orders;
- licensing of houses in multiple occupation or houses in designated areas of selective licensing;

- applications by occupiers or the LHA for rent repayment orders in respect of payments made under a tenancy of (or licence to occupy);
- appeals against financial penalties imposed under section 249(A) Housing Act 2004 (as amended) and Schedule 1 to the Housing Act 2016;
- applications by LHA's for banning orders;
- applications by persons for the revocation or variation of banning orders;
- appeals against the decision of a LHA to make an entry into the database of rogue landlords and property agents;
- appeals against the decision of a LHA as to the period for which an entry into the database of rogue landlords and property agents is maintained.

The law governing the above appeals and applications is complex and the above list is only a short summary of the types of application which can be made. More detail is contained in the relevant application forms. The tribunal's power to make orders differs according to the type of appeal or application.

**Tribunal website:** [www.gov.uk/housing-tribunals/overview](http://www.gov.uk/housing-tribunals/overview)

## **Tribunal booklets/leaflets**

### **Code Description**

T540 Guidance on Rent Cases

T541 Guidance on Service Charges, Administration Charges and other Management Issues

T542 Guidance on Enfranchisement

T543 Guidance on Housing Act and Housing and Planning Cases

T544 Guidance on Park Homes Cases

T545 Guidance on Tenants Associations

T546 Guidance on Right to Buy Cases

T609 Guidance on Appeal

## **Tribunal Regional Office details**

### **Northern Region**

**Regional Judge:** Simon Duffy

**Regional Manager:** David Higham

HM Courts & Tribunals Service

First-tier Tribunal (Property Chamber) Residential Property

1st Floor

Piccadilly Exchange

Piccadilly Plaza

Manchester M1 4AH

Tel: 0161 237 9491

Fax: 01264 785 128

**This office covers the following Metropolitan districts:** Barnsley, Bolton, Bradford, Bury, Calderdale, Doncaster, Gateshead, Kirklees, Knowsley, Leeds, Liverpool, Manchester, Newcastle-upon-Tyne, Oldham, Rochdale, Rotherham, St. Helens, Salford, Sefton, Sheffield, Stockport, Sunderland, Tameside, Trafford, Tyneside (North & South), Wakefield, Wigan and Wirral.

**It also covers the following unitary authorities:** Hartlepool, Middlesbrough, Redcar and Cleveland, Darlington, Halton, Blackburn with Darwen, Blackpool, Cheshire East, Cheshire West and Chester, Kingston-upon-Hull, East Riding of Yorkshire, Northeast Lincolnshire, North Lincolnshire, Stockton-on-Tees, Warrington and York.

**It also covers the following counties:** Cumbria, Durham, Lancashire, Lincolnshire, Northumberland and North Yorkshire.

## Midland Region

**Regional Judge:** David Jackson

**Regional Manager:** Claire Jones

HM Courts & Tribunals Service

First-tier Tribunal (Property Chamber) Residential Property

15th Floor

Centre City Tower

5-7 Hill Street

Birmingham B5 4UU

Tel: 0121 600 7888

Fax: 01264 785 122

**This office covers the following Metropolitan districts:** Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton.

**It also covers the following unitary authorities:** Derby, Leicester, Rutland, Nottingham, Herefordshire, Telford and Wrekin and Stoke-on-Trent.

**It also covers the following counties:** Derbyshire, Leicestershire, Nottinghamshire, Shropshire, Staffordshire, Warwickshire and Worcestershire.

## Eastern Region

**Regional Judge:** Bruce Edgington

**Regional Manager:** Mark Allbut

HM Courts & Tribunals Service

First-tier Tribunal (Property Chamber) Residential Property,

Cambridge County Court,

197 East Road

Cambridge, CB1 1BA

Tel: 01223 841 524

Fax: 01264 785 129

DX 97650 Cambridge 3

**This office covers the following unitary authorities:** Bracknell Forest, West Berkshire, Reading, Slough, Windsor and Maidenhead, Wokingham, Luton, Peterborough, Milton Keynes, Southend-on-Sea and Thurrock.

**It also covers the following counties:** Bedfordshire, Berkshire, Buckinghamshire, Cambridgeshire, Essex, Hertfordshire, Norfolk, Northamptonshire, Oxfordshire and Suffolk.

## London Region

**Regional Judge:** Tim Powell

**Regional Manager:** Peter Frost

HM Courts & Tribunals Service

First-tier Tribunal (Property Chamber) Residential Property

1st Floor

10 Alfred Place

London WC1E 7LR

Tel: 020 7446 7700

Fax: 01264 785 060

**This office covers all the London boroughs.**

## Southern Region

**Regional Judge:** Michael Tildesley

**Regional Manager:** Jim May

HM Courts & Tribunals Service

First-tier Tribunal (Property Chamber) Residential Property

Havant Justice Centre

The Court House

Elmleigh Road

Havant

Hants

PO9 2AL

Tel: 01243 779394

Fax: 0870 7395 900

**This office covers the following unitary authorities:** Bath and Northeast Somerset, Bristol, North Somerset, South Gloucestershire, Bournemouth, Plymouth, Torbay, Poole, Swindon, Medway, Brighton and Hove, Portsmouth, Southampton and the Isle of Wight.

**It also covers the following counties:** Cornwall and the Isles of Scilly, Devon, Dorset, East Sussex, Gloucestershire, Hampshire, Kent, Somerset, Surrey, West Sussex, Wiltshire.