



First-tier Tribunal Property Chamber (Residential Property)

# Guidance on applications for a certificate of recognition of a tenants' association and orders relating to the provision of information.

## General information about the process

This guidance is intended to help parties understand what happens when taking part in an application for a certificate of recognition of a tenants' association and applications for orders requiring a landlord to perform a duty in connection with the provision of information to a secretary of a tenant's association (see section 29 of the Landlord and Tenant Act 1985 to the First-tier Tribunal (Property Chamber) and the Tenant's Association (Provisions Relating to Recognition and Provision of Information) (England) 2018.)

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, a solicitor or the Leasehold Advisory Service at [www.lease.advice.org](http://www.lease.advice.org)

We try to avoid using jargon but if there is anything about our procedures you do not understand please contact the regional office. 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.

## 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 application, there may be two or three members including the chairman, although non-complex cases will usually be decided by a chairman sitting alone.

**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.

## Recognition of a Tenants' association

A recognised tenants' association is an association of 'qualifying tenants' of dwellings (whether with or without other tenants) which is recognised for the purposes of the service charge provisions of the Landlord and Tenant Act 1985. Recognition is either by a notice in writing given by the landlord to the secretary of the association or by a certificate granted by the tribunal.

A number of tenants are 'qualifying tenants' if each of them may be required, under the terms of his or her lease, to contribute to the same costs by way of a service charge. The service charge must be one which varies or may vary in whole or in part according to changes in the costs.

There is a statutory specification of the matters to which the tribunal is to give regard in giving a certificate and these are as follows:

- the composition of the membership of the tenants' association;
- the tenants' association's rules regarding membership, including whether tenants who are not qualifying tenants are entitled to become members;
- the tenants' association's rules regarding decision making;
- the tenants' association's rules regarding voting;
- the extent to which any fees or charges payable in connection with membership of the tenants' association apply equally to all members;

- the extent to which the constitution of the tenants' association takes account of the interests of all members;
- the extent to which the tenants' association is independent of the landlord of the dwellings to which the association relates;
- whether the tenants' association has a chairperson, secretary and treasurer;
- whether the constitution of the tenants' association may be amended by resolution of the members and the rules regarding amendment;
- whether the tenants' association's constitution, accounts and list of members are kept up to date and available for public inspection;
- the extent to which the association operates in an open and transparent way.

A certificate will usually be granted for a fixed period (to be determined by the tribunal) and an application can be made for its renewal. A certificate may be cancelled if the tribunal considers that for some reason the Association no longer merits recognition.

### **Refusal of the Tribunal to grant a certificate**

The tribunal may, and in certain cases is compelled, not to give a certificate of recognition to a tenant's association.

A certificate may not be given if one is already in force or if the tenants' association represents fewer than 50% of the qualifying tenants of dwellings situated in the premises. However, these prohibitions do not apply where the landlord has failed to comply with a tribunal order requiring a landlord to provide specified information (see further below) and the association represents a substantial number of qualifying tenants in the premises or related premises.

"Related premises" are two or more sets of premises with the same landlord. Where a tenants' association represents qualifying tenants in related premises and the qualifying tenants contribute to the same costs through a service charge, the tribunal must not give a certificate if the tenants' association represents an aggregate of fewer than 50% of the qualifying tenants in the related premises.

The Tribunal also may not give a certificate if it considers that the constitution and rules of the tenants' association are not fair and democratic.

Finally, the Tribunal has a discretion not to give a certificate in all the circumstances of the application.

## **Cancellation of a certificate by the tribunal**

In deciding whether to cancel an existing certificate the Tribunal must in particular have regard to the following matters:-

- whether the certificate was obtained by deception or fraud;
- whether the tenants' association to which the certificate relates represents fewer than 50% of the qualifying tenants of dwellings situated in the premises to which the association relates;
- whether the tenants' association relates to related premises and the qualifying tenants in dwellings situated in the related premises contribute to the same costs by the payment of a service charge, the tenants' association to which the certificate relates represents an aggregate of fewer than 50% of the qualifying tenants of dwellings situated in the related premises;
- whether the office of chairperson, treasurer or secretary of the tenants' association is vacant and, if so, the length of time for which the position has remained vacant;
- whether any provision of the constitution of the tenants' association has been breached;
- whether an amendment to the constitution, as passed by a resolution of its members, has not been implemented and, if so, the nature of the amendment and the length of time for which it has not been implemented;
- whether there are any irregularities in the association's voting process, decision making, implementation or recording of decisions.

## **Request for information by the secretary of a tenant's association and tribunal orders**

In certain cases a secretary of a relevant tenants' association may not have contact information for all of the qualifying tenants. Accordingly, a secretary of a relevant tenant's association may serve notice ('a request notice') on the landlord requesting that the landlord provides information about relevant qualifying tenants who are not already members of the association. A landlord must acknowledge receipt of the request in writing within 7 days of receipt.

If the landlord considers the 'request notice' to be invalid they are required to provide reasons to the secretary of the association as to why it is invalid. The tenants' association may apply to the tribunal for an order on the validity of the notice if they disagree with the reasons provided by the landlord.

If the landlord accepts the validity of the request notice or the tribunal have made an order that the request notice is valid, the landlord must first seek consent from any qualifying tenants by sending them an 'information form'. It is only once that consent has been given that information can be provided to the tenant's association. The landlord must then provide a 'substantive response' to the secretary within four months of the request notice being received.

A substantive response is a written document which states:

- all known information requested in the request notice which the landlord has consent to disclose. If there is no such known information this must be included.
- the number of relevant qualifying tenants to whom the landlord sent an information form in connection with the request notice;
- the number of relevant qualifying tenants to whom known information was requested who did not give written consent for information to be disclosed.

The substantive response must be accompanied by a statement that the information contained in a substantive response is true to the best of the landlord's knowledge and belief. Both the substantive response and the statement must be signed and dated by the landlord.

If a landlord has failed in any of these duties then the secretary of the relevant tenant's association may apply to the tribunal for an order requiring the landlord to perform that particular duty.

## Applications

An **application form** must be completed by the applicant in almost all cases. 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.

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 the tribunal thinks might be affected by the application.

## Paper determinations

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 (see below for hearings). Most applications for a certificate are dealt with without a hearing unless there is a dispute as to the facts which cannot be resolved by correspondence. Once the tribunal's decision is made it will be sent to the parties in writing with reasons for the decision.

## Case preparation

In cases where the issues are clearly identified, a tribunal chairman may 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. If a party or another person is going to say something to the tribunal at a hearing, he or she may be required to prepare a **witness statement**.

## 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 applicant's responsibility 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 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 the decision and certificate or order will be sent to the parties in writing as soon as possible and usually within six weeks of the hearing.

## Inspections

The tribunal may exceptionally inspect the property if requested by either party or if the tribunal considers it necessary. A visit is not usually considered necessary in this type of case.

## 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.

## Withdrawal

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.

## 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 behaviour, the tribunal may order the defaulting or unreasonable party to pay costs.

Parties should also check their lease for any liability to pay costs separately. Some leases allow a landlord to include costs incurred in connection with proceedings before a tribunal as part of a service charge. Section 20C of the Landlord and Tenant Act 1985 gives the tribunal power, on application by a tenant, to make an order to the effect that such costs are **not** to be treated as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person(s) specified in the application. Following such an application, the tribunal will either refuse the request or make such order as it considers reasonable.

## 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 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.



**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 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.