



Upper Tribunal (Lands Chamber)

Explanatory leaflet for:

- **compulsory purchase compensation**
- **land compensation disputes**
- **other references**

A guide for users

January 2016

Addresses

The Lands Chamber is based at:

5th Floor

Rolls Building

7 Rolls Building

Fetter Lane

London EC4A 1NL

Tel: 020 7612 9710

Fax: 0870 761 7751

DX: 160042 Strand 4

Email: lands@hmcts.gsi.gov.uk

The office hours are 9am to 4:30pm

Please contact us if you are unable to find the information you require in this or the other documents on our website. Our administrative staff can answer questions about the procedures relating to Tribunal cases. They are not trained or permitted to give general legal advice or to advise about the law relating to a particular case.

Our website is www.justice.gov.uk/tribunals/lands

On this website you will find information to help you with your case including our procedural flowcharts which show the steps in the different procedures that may apply depending on the type and complexity of your case. Also available on the website are the forms you will need to make or respond to a reference. If you do not have access to the internet you can request a copy of any of the documents from our office. Free assistance in gaining access to the internet may be offered by your local library. You will need to follow our Rules and Practice Directions.

Our recently published decisions are also available via our website.

The Lands Chamber deals with certain matters in respect of land in England and Wales. The equivalent bodies for Scotland and Northern Ireland are:

The Lands Tribunal for Scotland
George House
126 George Street
Edinburgh EH2 4HH

DX ED 259
LP 14 Edinburgh 2

Tel: 0131 271 4350
Fax: 0131 271 4399
mailbox@lands-tribunal-scotland.org.uk

The Lands Tribunal for Northern Ireland
Royal Courts of Justice
Chichester Street
Belfast BT1 3JJ

Tel: 02890 327703
Fax: 02890 546187
lands.tribunal@dfpni.gov.uk

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1. Glossary of terms

Acquiring Authority: a local council, government department, or other organisation against whom a claim for compensation has been made for the compulsory acquisition of land.

Alternative dispute resolution (ADR): ways of resolving or settling a dispute outside the court or tribunal process. ADR includes mediation, adjudication, arbitration, conciliation, early neutral evaluation and ombudsman schemes. (See paragraph 3.3)

Claimant: a person who makes a claim for compensation against an acquiring or compensating authority.

Compensating Authority: a local council, government department or other organisation against whom a claim for compensation has been made for reasons other than the compulsory acquisition of land, such as 'disturbance' or 'injurious affection' to land.

Court of Appeal: the Court of Appeal hears appeals on points of law from final determinations of the Tribunal. (See paragraph 7.1)

Help with fees: the waiving of all or part of a fee normally payable because of financial hardship. (See paragraph 3.1)

Member: one of the specialist chartered surveyors appointed to hear Lands Chamber cases.

Practice Directions: the Lands Chamber's own procedural documents, available on its website, which explain how its rules and procedures will be implemented.

Registrar: a legally-qualified officer of the Lands Chamber exercising certain judicial powers and functions in relation to case management and costs.

Statement of case: a statement setting out the basis of a party's case.

Stay of proceedings: an order made by the Tribunal in a case suspending (creating a pause or break in) a case for a specified period of time to allow negotiations or for another good reason.

2. Introduction

This leaflet provides basic information concerning disputes referred to the Tribunal that it has jurisdiction to determine. It is not a substitute for professional advice or attention when necessary to our Rules and Practice Directions.

2.1. What is the Lands Chamber?

We are a specialist chamber of the Upper Tribunal established to determine disputes concerning land in England and Wales and its valuation, and to hear appeals against decisions of certain other tribunals. Amongst its jurisdictions the Lands Chamber determines disputed compensation for the compulsory acquisition of land and the injurious affection of land; coal mining subsidence compensation disputes; disputed compensation relating to tree preservation orders; the validity of blight and purchase notices; the disputed valuation of land for capital gains and inheritance tax purposes; appeals against certificates of appropriate alternative development; and other land valuation disputes where the parties have agreed to refer the matter to the Lands Chamber where it acts as arbitrator.

Procedure in the Tribunal is governed by the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 and by Practice Directions. You can view these documents online at www.gov.uk/appeal-upper-tribunal-lands

The Lands Chamber has no power to overturn a Compulsory Purchase Order. Such matters are dealt with by the Administrative Court (a division of the High Court) by way of judicial review.

2.2. Who are the members of the Lands Chamber?

The Chamber's President is the Honourable Mr Justice Holgate. Mr Martin Rodger QC is the Deputy President and there are seven part-time judges who are His Honour Judge Behrens, His Honour Judge Bridge, His Honour Judge Gerald, His Honour Judge Hodge QC, His Honour Judge Huskinson, His Honour Judge Millwyn Jarman QC and Her Honour Judge Alice Robinson. There are three full-time specialist members, Mr Paul Francis (FRICS), Mr Andrew Trott (FRICS) and Mr Peter McCrea (FRICS FCI Arb) who are Fellows of the Royal Institution of Chartered Surveyors. Assisting them is the registrar, Donald Scannell who has certain case management and decision making powers.

The administrative staff who support the Tribunal are civil servants and members of HM Courts & Tribunals Service. They are managed by the delivery manager, Sharon Sober.

3. Generally

3.1. What fees will I have to pay?

The Lands Chamber is required by law to charge fees. The fee for lodging a notice of reference is £275. The fee for hearing or determining a reference varies according to the type and size of the case, ranging from £275 to £16,500. Certain other fees will be charged during the proceedings. For example you will need to pay a fee of £110 if you make an application for an extension of time or for complying with any of the Tribunal's directions. Further information is given in the Fees Order with its schedule of fees which may be viewed on our website.

If you think you may be entitled to a reduced fee, the 'EX160 Apply for help with fees' guide will outline how you can submit an application for a fee remission. You can get the guide and application form online,

<http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

You have to send the help with fees form with your notice of reference form.

3.2. Is there an alternative?

Once you have lodged a reference, or you have been served with one, if you are willing to try to settle your dispute without a Tribunal hearing and the other party agrees, the Tribunal will allow a short stay in the proceedings while you try to settle the case by means of alternative dispute resolution.

There are a number of less formal and less expensive methods of resolving disputes, known as alternative dispute resolution (ADR) because they offer an alternative to the courts and tribunals. For more information about ADR you can visit the website of an independent charity that offers an overview of ADR schemes in the UK see www.adrnow.org.uk.

Mediation is a way of resolving or narrowing disputes by agreement. It is voluntary and works outside the Tribunal process. An independent person (the mediator) helps the parties look for a solution they both find acceptable. Together the mediator and parties develop and explore options for settling the dispute.

Mediation is simple, quick and less expensive than legal proceedings. It has a high success rate and parties tend to be satisfied with it. The Court of Appeal has strongly encouraged parties to consider mediation.

Many different organisations provide mediation and other ADR services. To find a mediator we suggest you visit the Ministry of Justice's website's Find a Civil Mediation Provider service at www.civilmediation.justice.gov.uk, or contact the National Mediation Providers' Association at www.nmpa.org.uk, telephone 0845 544 2199, or The Royal Institution of Chartered Surveyors (RICS) www.rics.org/uk dispute resolution service, which offers mediators who are experienced property specialists.

The Tribunal will allow a six week stay of proceedings where the parties agree to ADR. The Tribunal will not charge the £110 fee that a party applying for a stay of proceedings must usually pay. The fees charged by mediation or other ADR providers are in addition to and separate from the fees charged by the Tribunal.

3.3. Will there be a hearing in court?

If the parties do not settle the case, a Tribunal hearing will usually take place to consider the reference. At the hearing each party puts forward their arguments and evidence, usually under oath, and each witness may be cross-examined by the opposing side. Hearings are open to the public. If the simplified procedure is followed, the hearing will be more informal. If both parties agree (or if the reference is unopposed), and the Tribunal considers it appropriate, the case may be decided without a hearing.

3.4. How long will it take?

The Tribunal seeks to determine appeals as quickly as possible and aims to deal with 75% of all references within 70 weeks. The Tribunal is able to hear and decide a reference most quickly if the dispute is relatively simple or straightforward, and if the parties have provided all the relevant documents promptly and can attend a hearing at an early date. Some references, especially if they are large, complex or have many parties, may require many months before they are ready for hearing. If you are ready to proceed to hearing you may apply to the Tribunal for the earliest available hearing date.

3.5. Do I need to instruct lawyers and expert witnesses?

You may conduct your own case and appear on your own behalf at the hearing. However, as the law and facts may be complex, you may wish to have professional representation from a lawyer or surveyor. When a professional representative is instructed to act, the Tribunal will correspond directly with them, rather than with the party they represent. Given the nature of our cases, very often surveyors and or other professionals need to be engaged to appear as expert witnesses. The Tribunal considers that experts should not act both as advocate and as expert witness unless the case is dealt with under the simplified procedure.

3.6. Will there be a site inspection?

When necessary the Tribunal will view the land or building in question and may also view other sites. This may be before or after the hearing. Notice is given to the parties who are entitled to be represented at the inspection. For an inspection inside any building and for entry on any land the permission of the occupier is required. An accompanied inspection will not usually take place if the occupier does not consent to the other party or their representative attending the inspection.

At an inspection neither party may make submissions or arguments about the case. However the parties may point out any features of the land or building to which they wish to draw the Tribunal's attention and may answer specific questions raised by the Tribunal.

3.7. Will the Tribunal return my papers to me?

The Tribunal is not able to return documents to you. This applies both during the case and after the end of the case so it is very important for your own records that you keep a copy of every application, notice or document that you send to us.

3.8. Extensions of time

When the Tribunal directs that a step must be taken by a specified date, that direction must be complied with. If you cannot comply with a time limit you can apply to the Registrar for an extension of time but it will only be given if he considers it appropriate to do so. You must explain why you require the extension and for how long. You must also send a cheque for the £110 fee, payable to 'HM Courts & Tribunals Service' with your application.

Before sending in the application you should see if the other party will consent to the extension. If they do agree a joint application signed by both parties may be submitted, or each of you may send a letter to the Tribunal confirming what has been agreed. If the other party does not agree you need to serve a copy of your application for an extension of time on the other party. You also need to explain to them that if they wish to object to your application they must send a letter giving the reasons for their objection to the Tribunal so that it arrives within 10 days of the date you served the application on them.

3.9. How can I apply for a stay of proceedings?

You can also apply for a stay of proceedings (a pause or temporary break in the proceedings) in exactly the same way as applying for an extension of time. The process is the same as that in the paragraph above regarding extensions of time.

3.10. What is a statement of case?

It is a statement setting out the basis of your case. The purpose of a statement of case is to enable the other party and the Tribunal to identify easily the issues to be determined. Your statement of case must therefore set out the facts and the law on which you rely. It must be in summary form and must contain particulars or details that are sufficient to tell the other party the case that you are making. Your attention is drawn to the section 6 of the Practice Directions as it deals with statements of case in more detail.

Regardless of whoever it was that referred the dispute to the Tribunal, the claimant will be required to file a statement of case first; then the acquiring or compensating authority will have to file one in reply.

3.11. Expert witness evidence

An expert witness is a witness instructed by one or by both of the parties who provides a professional opinion on the matters in dispute. You do not have to call an expert witness in support of your case but it may be the only or best way to establish the merits of your case. The type of expert witness most commonly called is a surveyor or valuer. For some large or complex cases, architects, planners, civil engineers, accountants or other experts are called. Only one expert witness may be called by a party unless they have been given permission to call more, except where the claim includes a claim for either business disturbance or minerals, where two experts may be called.

Each expert witness who is to give evidence to the Tribunal is required to file a report setting out that evidence, accompanied by any relevant plans, valuations, lists of comparable properties and other supporting information. Copies of these documents must be sent to the Tribunal and the other party well in advance of the hearing.

Before and again after the exchange of the experts' reports the Tribunal requires experts to meet in order to identify the issues to be resolved, to reach agreement as to facts, to agree any relevant plans and photographs, and to settle as many issues as possible. The experts will normally be required to prepare a statement for the Tribunal showing the facts and issues on which they agree and disagree and a summary of their reasons for disagreeing.

Witnesses of fact may also be called to give relevant evidence of facts known to them but such witnesses do not give professional opinions.

3.12. Costs

The Tribunal has the power to order a party to pay all or part of another party's costs of a reference where land has been compulsorily acquired or injuriously affected. It may not make costs orders in relation to other types of reference. The general rule is that claimants whose land is compulsorily acquired are awarded their costs as long as they have delivered a notice of claim to the acquiring authority. This general rule will not apply if the authority has made an admissible offer of compensation that is more than the Tribunal's determination, in which case the claimant will normally be ordered to pay the authority's costs incurred after the date of the offer. The general rule will also not apply if the claimant's conduct has unnecessarily increased the costs incurred by the authority. In an appropriate case the Tribunal may also make an order limiting a party's liability in respect of costs subsequently incurred.

The Tribunal may also order that a representative personally pay the whole or part of costs it considers to have been wasted as a result of any improper, unreasonable or negligent act (or failure to act) by that representative.

The Tribunal may also order a party to reimburse fees paid by another party to the Tribunal.

4. Procedure

4.1. How a case is started: notice of reference and statement of case

You must file two copies of notice of reference using the correct reference form, available on our website. If you are a claimant you must also include two copies of your statement of case with it. The reference form you should use depends on whether you are a claimant or an acquiring or compensating authority, and on the type of reference. For blight/purchase notice cases, tax appeals and absent owner cases, see paragraph 4.4 below.

For references made by a claimant, use Form Ref (Claimant); for references made by an authority, use Form Ref (Authority); for references relating to the validity of a purchase order or a blight counter-notice use Form BNORef; and for references relating to absent owners, use Form AO unless the property was acquired by general vesting order, in which case use Form Ref (Authority). Use either Form Ref (Authority) or Form Ref (Claimant) for references made by consent. For appeals against certificates of appropriate alternative development use Form Ref (Claimant).

4.2. Response to a notice of reference, statement of case

The response to a reference forms are also available on our website or may be requested from our office. Which of our reference response forms you should use depends on whether you are a claimant or an authority and on the type of reference.

If you are an acquiring or compensating authority and you receive a notice of reference made by a claimant, you must complete a response form (Form R Response (authority) or Form R BNO Response). It must be sent to the Tribunal and a copy also sent directly to the claimant within one month. You must also include your statement of case in reply to the claimant's statement of case.

If you are claimant and you receive a notice of reference made by an authority, you must complete a response form (Form R Response (claimant)). It must be sent to the Tribunal and a copy must also be sent directly to the authority within one month.

You must also include your statement of case. The authority will be directed to file a statement of case in reply to yours.

4.3. The standard, special, simplified and written representations procedures

The Tribunal will decide which procedure to adopt for the reference.

The **standard procedure** is used for the majority of references. The compulsory purchase and land compensation procedure flowchart on our website will show you the steps that are followed under this, and the other procedures.

Cases that are complex, of high value, or of wider importance are dealt with under the **special procedure**. Such cases are case-managed by a judge or member of the Tribunal from the beginning. An early case-management hearing is usually fixed to ensure that appropriate directions are given and that a timetable is set.

In limited value, simple or straightforward cases, time and costs may be saved by use of the **simplified procedure**. Under this procedure a date for the hearing (usually about three months ahead) will be fixed early in the proceedings. Under the simplified procedure:

- all necessary documents must be sent to the Tribunal and other parties one month, or for some types of document, 14 days prior to the hearing;
- a chartered surveyor may act both as advocate and as expert witness;
- the hearing will be less formal;
- usually no costs order will be made;
- the usual tribunal fees, such as the hearing fee, are payable.

The **written representations procedure** is available in cases in which the parties do not need to test each other's evidence with cross-examination and the Tribunal considers it possible to deal with the reference fairly without a hearing. Instead the

Tribunal makes a determination based on the written representations and evidence submitted by the parties.

4.4. Blight notices, purchase notices, tax appeals and absent owner cases

For blight and purchase notice cases please use the appropriate form downloaded from our website. Specific directions will be issued in respect of your case.

For tax appeals there is no standard form for making an appeal. To commence an appeal you must write to the Tribunal stating that you wish to appeal and enclose a copy of the Notice of Determination made by Her Majesty's Revenue and Customs ('HMRC'). In the letter you must state your name and contact details and those of your representative, if you have one. If you do not have a representative you must also give your address for service of documents by us and HMRC. We will send a copy of your letter to HMRC. The Tribunal may order that statements of case be filed and served by you and by HMRC. This will only be done if the case concerns a complex hereditament (building or other property). The parties are however almost always directed to file and exchange expert's reports on the valuation of the property.

When land of an owner who is absent, unknown or untraceable has been acquired under a compulsory purchase order the acquiring authority is obliged to pay compensation into court. The Tribunal has jurisdiction to determine the amount that should be paid. Form AO should be completed and two copies of it and all the required plans and other documents filed with the Tribunal. If the land was acquired by a general vesting declaration then, due to legislative constraint, the absent owner procedure is not available. In such a case the authority needs to make a standard reference using Form Ref (Authority) accompanied by a witness statement setting out details of its attempts to trace the missing owner, and an application to waive service on the owner (see rule 14).

5. Hearings

5.1. Venues

The Tribunal hears most cases at its courts in London and holds hearings in other local courts if necessary. If the parties request a hearing to take place locally, and the Tribunal agrees, the Tribunal will try to arrange suitable courtroom accommodation.

5.2. Length of hearing

Parties are required to tell the Tribunal how long the hearing is expected to take, whether several hours, or one or more days. Parties should consult with each other about this and try to agree time estimates. If the time estimate is too short, there may have to be an inconvenient and possibly expensive adjournment part-way through the case until more available days can be found. On the other hand if parties over-estimate the time, the scheduling of other hearings is delayed. It is in the interests of all litigants that the resources of parties and of the Tribunal are not wasted either by unnecessary adjournments or by over-estimates of the hearing time required.

5.3. If lawyers are instructed

A party is not obliged to instruct lawyers, and individuals are always entitled to appear on their own behalf. However, as the law or facts can be complex, lawyers are often instructed. If you instruct a lawyer or surveyor to represent you, they must inform the Tribunal which will then communicate with you through your representative.

5.4. Special needs

Please let us know when we are arranging the hearing date if you, your representative or any of your witnesses have any special needs that need to be taken into consideration, for instance if one of you is disabled and requires a court with suitable access and facilities.

5.5. Arranging a hearing date

Under the simplified procedure a hearing date is set as soon as possible and before the parties have filed and exchanged all their documents. In all other cases the hearing date is not normally set until after the parties have filed their statements of case, witness statements and any experts' reports.

5.6. Preparing for the hearing

Neither party may take their opponents by surprise at the hearing by withholding material until the last minute. So, well before the hearing takes place you must provide to the Tribunal and the other party a witness statement for each witness you are planning to call to give evidence, and copies of all documents, plans, valuations and reports which you wish to refer to during the hearing

5.7. Procedure at the hearing

Participants are advised to arrive a little before the appointed time on the day of the hearing so that they can make themselves known to the court clerk, familiarise themselves with the courtroom layout, meet their witnesses, get the documentation in order and perhaps discuss the case with their opponents.

When the hearing begins, the claimant usually starts first by setting out their case, then calling evidence and presenting documents. Each witness gives evidence on oath or affirmation (unless the simplified procedure is used), and is liable to be asked questions by the Tribunal and cross-examined by the other party. The other party then introduces its case and calls evidence. Each party has an opportunity to set out any legal arguments it relies on in support of its case.

Proceedings will be less formal if the simplified procedure is used.

Wigs and gowns are not worn in tribunal proceedings. Judges and surveyor members are addressed as 'Sir' or 'Madam'.

6. Decisions

6.1. Written decisions

The Tribunal usually reserves its decision rather than giving a decision immediately at the end of the hearing. Decisions are given in writing and sent to the parties. The Tribunal will also invite the parties' submissions on costs at this stage, where appropriate.

7. Challenging decisions of the Lands Chamber

7.1. Appealing Lands Chamber decisions

The Tribunal's decision on all matters of fact is final. There is a limited right of appeal to the Court of Appeal on points of law for which permission to appeal is required. An application for permission to appeal must be received by the Tribunal within one month of the date that the decision was sent to the parties.

If the Tribunal refuses permission to appeal it will send the decision to the parties setting out the reasons for its refusal. The applicant may then apply in writing to the Court of Appeal for permission to appeal within 21 days of the date that the Tribunal's decision refusing permission was sent to the parties. Three copies of an Appellant's Notice and a copy of the decision of the Tribunal refusing permission to appeal must be filed at the Court of Appeal.

If you are given permission to appeal by the Tribunal, you will need to file three copies of an Appellant's Notice together with the decision giving permission to appeal with the Court of Appeal within 21 days of the date of the Tribunal's decision giving permission to appeal.

Further information on applications for permission to appeal to the Court of Appeal is available from the Court of Appeal's website, www.justice.gov.uk/courts/rcj-rolls-building/court-of-appeal or you can contact the Civil Appeals Office at the Royal Courts of Justice, Strand, London WC2A 2LL on 020 7947 6916/7121.

7.2. Review of a Lands Chamber decision

The Tribunal may only review or reconsider its own decision in two circumstances. First if it overlooked a legislative provision or binding authority which could have made a difference to the decision, or second, if since the Tribunal's decision, a court has made a decision which is binding on the Tribunal and which, had it been made before the tribunal's decision, could have had made a difference to the decision.

If you believe the Tribunal should review its decision, you must apply to the Tribunal for permission to appeal to the Court of Appeal and also at the same time ask the Tribunal to review its decision. If the Tribunal decides not to review the decision or not to vary it, it will consider whether to give permission to appeal.

8. Standards and complaints

8.1. Standards

The Tribunal has certain standards of service and performance which it is committed to reaching. We aim to:

- respond to respond to any requests via email or letter within five working days
- answer phone calls within five rings
- register and acknowledge new cases within five working days (if all necessary documents and fees are sent with the case)
- complete 75% of all references within 70 weeks of the date of registration.

8.2. Comments and complaints

If you have any comments or complaints about the service you have received from the Lands Chamber contact:

The Upper Tribunal (Lands Chamber)

5th Floor

Rolls Building

7 Rolls Buildings

Fetter Lane

London

EC4A 1NL

Tel: 020 7612 9710

Fax: 0870 761 7751

Email: lands@hmcts.gsi.gov.uk

If upon receiving a response you wish to take the matter further please contact the Operations Manager, Keeley Martin, at the above address and ask her to review your complaint.

Neither the administrative team nor the Tribunal manager can deal with complaints about judicial decisions.

9. Obtaining legal advice and finding a solicitor

For assistance in finding a solicitor with expertise relevant to your case contact the Law Society of England and Wales. Its website address is www.lawsociety.org.uk and their general enquiries telephone number is 020 7242 1222. The Law Society does not provide legal advice to members of the public but does provide guides on common legal problems written in plain English, including one on using a solicitor. It may also help you in finding a solicitor who deals with your type of case. The guides are available on their website and may be requested in hard copy from the Law Society by calling 0191 428 7439.

If your case relates to compulsory purchase compensation or other land compensation you may also contact the Compulsory Purchase Association who will help you to find a solicitor, surveyor or barrister that deals with these types of cases. Their website is www.compulsorypurchaseassociation.org

To obtain free legal information, advice or assistance you may wish to contact the Citizens' Advice Bureau. Their website www.adviceguide.org.uk contains information sheets and also has a search facility to assist you in finding your local office. If you are not able to access the internet you may find details on your local Citizens' Advice Bureau from your local library.