



Making a reference to the Upper Tribunal (Tax and Chancery Chamber)

- **Decisions of the Financial Conduct Authority**
- **Decisions of the Prudential Regulation Authority**
- **Decisions of the Pensions Regulator**
- **Decisions of the Bank of England or**
- **Decisions of an Independent Valuer appointed under the Banking(Special Provisions) Act 2008 or the Banking Act 2009**

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Introduction

About this leaflet

This leaflet is to help both members of the public and advisors. It describes how to make a reference or appeal to the Upper Tribunal from a decision given by any of the following:

- a) the Financial Conduct Authority;
- b) the Prudential Regulation Authority;
- c) the Pensions Regulator;
- d) the Bank of England; or
- e) an Independent Valuer appointed under the Banking (Special Provisions) Act 2008 or the Banking Act 2009.

We refer to these bodies as the ‘respondent’.

In this leaflet we use the term ‘reference’ to cover both appeals and references. The procedure is the same for both. The leaflet explains what will happen to a reference once it has been made. It also lists the stages that take place before the judge decides a reference. **However, it is only a guide and does not have legal status. It does not cover all aspects of every situation, nor does it provide a full interpretation of the procedural rules.**

This leaflet does not deal with appeals from the First-tier Tribunal in tax and charities cases. A separate leaflet, which may be obtained from our offices or downloaded from our website, describes the procedure to be followed in those cases.

At the end of this leaflet is a section in which the meaning of some words used here, or in documents which you may receive from us, is explained. We recommend that you keep this leaflet for reference throughout your dealings with our office.

About the Upper Tribunal (Tax and Chancery Chamber)

What is the Tax and Chancery Chamber of the Upper Tribunal?

The Upper Tribunal is an appellate tribunal created by the Tribunals, Courts and Enforcement Act 2007. The Tax and Chancery Chamber is the part of the Upper Tribunal, which, among other things, hears references arising from certain decisions and supervisory notices issued by the respondents listed above. When we refer in this leaflet to **‘the tribunal’** we mean the Tax and Chancery Chamber of the Upper Tribunal. The tribunal consists of specialist judges appointed by the Lord Chancellor. Some are also judges in the courts, including the High Court. **All judges are independent of, and in no way connected to, any of the listed respondents.**

The judges sitting in the tribunal decide references from decisions or notices issued by the Financial Conduct Authority and the Prudential Regulation Authority covering a wide range of disciplinary and regulatory matters such as authorisation and permission, penalties for market abuse, disciplinary measures and official listings. In matters relating to pensions, the judiciary hear issues concerning suspension or prohibition of a trustee, imposition of a contributory notice, an order winding up a scheme or an order freezing a scheme. They also hear appeals and references from certain decisions of the Bank of England and the Independent Valuers appointed in accordance with the Banking (Special Provisions) Act 2008 or the Banking Act 2009.

As the judges give judicial decisions neither they, nor any of the staff in the tribunal office, can give legal advice. You may wish to seek professional advice.

Where are the tribunal's offices?

The principal office is in London. The administrative staff prepare case files for judges, arrange oral hearings and deal with correspondence and queries. The address of the office is:

Upper Tribunal (Tax and Chancery Chamber)
Fifth Floor
Rolls Building
Fetter Lane
London
EC4A 1NL
DX: 160042 Strand 4

Telephone (9am to 5pm): 020 7612 9730
Email: uttc@justice.gov.uk

Who can make a reference?

You may make a reference if a decision made by any of the listed respondents is addressed to you and there is a statutory right to make a reference (or bring an appeal) to the Upper Tribunal. The decision notice sent to you will normally explain your right to refer or appeal the decision.

In some cases you will be able to refer a decision which is not addressed to you but which affects you. You will need to satisfy the Upper Tribunal that you are affected to an extent which justifies your making a reference.

How to make reference

In general

A reference may be made by way of a Reference Notice (Form FTC3) which must be signed by or on behalf of the applicant and filed at the address given above. A copy of the notice must also be sent to the respondent which made the decision you wish to refer. The Reference Notice must state the name and address of the applicant and the name and address of the applicant's representative (if any). If the applicant is not represented then the notice must state an address for service in the United Kingdom.

At the time of filing the Reference Notice the applicant must also enclose a copy of the decision which is being challenged.

Reasons (grounds) for referring the decision

Within the Reference Notice you must state the issues you wish the tribunal to consider and to explain why you are referring the decision to the Upper Tribunal. This will include the reasons why you believe the decision to be wrong. Examples of such reasons include the following.

- The respondent did not apply the correct law or wrongly interpreted the law.
- The decision is factually incorrect.
- The respondent had no evidence, or not enough evidence, to support its decision.
- The respondent made a procedural error.

This list is not exhaustive and you may say the decision is wrong for some other reason not mentioned here. If you are unsure whether the decision was wrong you may wish to seek professional advice.

You should give full details of your reasons for making the reference.

You may also include with the Reference Notice an application for directions.

If you are late in bringing your reference to the Upper Tribunal you must ask for an extension of time and explain why your application was not made in time. Unless the Upper Tribunal judge considers you should be granted an extension of time your reference will not be admitted and **you will not be able to continue with your reference.**

How references will proceed

When your reference has been accepted, you and the respondent will receive a notification from the tribunal office telling you the date of acceptance and the tribunal's reference number (which you should always quote when contacting us). The respondent then has 28 days to send to you and to the tribunal a statement of case, explaining the reasons for the decision. The respondent is also required to send you a list of the documents on which it relied, and of any other relevant documents it has. You may ask the respondent for copies.

You have 28 days from the date you receive the statement of case to send a written reply to the respondent and the tribunal. Your reply should identify everything in the statement of case you disagree with, and say why. You must also send a list of all the documents you intend to rely on.

At this stage the tribunal's file will be considered by a judge, who will decide whether there should be a preliminary hearing to decide on the further steps to be taken before the reference is heard or (in the more straightforward cases) the reference should proceed straight away to a final hearing. If you think there should be a preliminary hearing you should say so when sending your reply to the tribunal.

Will there be an oral hearing of the reference?

References are normally decided following an oral hearing, which you and the respondent have the right to attend.

Oral hearings are usually held in London, Manchester and Edinburgh. They are exceptionally held in other court centres if people are unable to travel.

You may ask for your reference to be decided without a hearing (that is, by the judge considering only the documents the parties have provided). A judge will decide whether the reference should be disposed of without a hearing after taking account of the respondent's views and the interests of justice.

What will happen if there is an oral hearing?

The tribunal office will try to fix a hearing date convenient to you and the respondent. Once the date for an oral hearing has been set, you will be sent a letter with details of the date, time and place.

You must normally be given at least 14 days notice of the date of a hearing unless both you and the respondent have agreed to shorter notice. However you will usually be given more notice.

Oral hearings are normally in public unless the judge directs a private hearing. If you would like your hearing to be private, you should say why and the judge will decide this. You will have to show a good reason – the fact that your personal affairs are to be discussed is not normally enough.

Your representative (if you have one) and the respondent will also be entitled to attend the hearing.

Hearings are usually before a judge and either one or two non-legal members of the Upper Tribunal, but in some cases a judge may sit without a non-legal member, and where a case raises a particularly important or difficult point of law, it may be heard by two, or even three, judges. However, this is very rare.

The judge will not usually give a decision at the end of the hearing. It will be sent to you and all other parties after the hearing has taken place. Even if you have been told the decision at the end of the hearing, a written decision will be sent to you (see below).

What should I do if I find I cannot attend an oral hearing?

If you find that you will not be able to attend a hearing which has been fixed you should tell the tribunal office as soon as possible. **You should write unless the time is very short in which case you may telephone.** You should also be prepared to agree an alternative hearing date.

If you would like the hearing postponed you should say why and the judge will decide what should happen. **You should not assume a hearing will be cancelled because you have asked; a hearing once appointed remains on unless the tribunal states that it has been cancelled.** The judge may decide to go ahead with the hearing without you.

If you do not turn up at the hearing, the judge will decide whether to go ahead without you. **If you are delayed on your journey to the hearing, you should make every effort to ring the office to let them know immediately.**

What should I do if I wish to withdraw my reference?

You need the agreement of the Upper Tribunal to withdraw, so you should explain your reasons. **If you withdraw your reference you may not ask for it to be reinstated.**

If a third party has made the reference you cannot withdraw from the case. You do not need to take any part if you do not wish to do so but a decision will be made whether or not you do take part.

The decision of the tribunal on the reference

Whether or not you were told the result of your reference at the end of the hearing, the judge will always give a decision in writing. The tribunal office will send a copy of the decision to you, or your representative if you have one, and to the other parties to the reference.

The judge must give reasons for the reference being allowed or dismissed unless all the parties have agreed otherwise.

If the tribunal dismisses your reference, or the result is not wholly favourable to you, you have the right to appeal, with permission, to the Court of Appeal, or the Court of Session if your appeal was heard in Scotland. The office will send to you, with the decision, a letter telling you about your right to appeal. There is more detail about this in the section '**What to do if you are dissatisfied with the decision of the tribunal**'.

If the tribunal allows your reference or dismisses another party's case, that other party may wish to appeal to those courts.

Particular issues which may arise on references

How much will it cost to make a reference?

There is no fee payable for making a reference.

The tribunal may order one party to pay another party's costs, but only if it considers that the party concerned has acted unreasonably. You will have to pay the fees of your representative, if you have one.

Representatives

You may appoint a representative to help you fill in the Reference Notice, deal with letters from the tribunal office, make and respond to submissions and appear in front of the judge for you if there is an oral hearing.

If you have a representative you must send to the tribunal office written notice of your representative's name and address either in the Reference Notice or (if you have already filed your Reference Notice) by letter. If the person stops representing you, you must notify the tribunal office otherwise they are entitled to assume that you are still represented and will send documents to the representative and not to you.

You may instruct a solicitor, an accountant, or any other person (qualified or not) to act as your representative.

Even if you do not have a representative to help you with the initial stages of your case you can bring another person to any oral hearing and, with the judge's permission, that person can act as your representative or assist you to present your case.

Is legal aid available?

A legal assistance scheme has been established for references by individuals **in respect of market abuse penalties imposed by the Financial Conduct Authority.**

If you are making such a reference and think you may be eligible for legal assistance, tick the relevant box and the tribunal office will send you further information. In any other case you should seek advice from a solicitor.

What to do if you are dissatisfied with the decision of the tribunal

In general

You may apply to the tribunal for a decision on a reference to be set aside on certain limited procedural grounds.

You may appeal to the Court of Appeal (or Court of Session in Scotland) against the decision of Upper Tribunal. **You need permission first.**

Any other party to the proceedings before the tribunal has the same rights to apply to have the decision set aside or to appeal to the Court of Appeal or Court of Session as you do.

How to apply for the decision of the tribunal to be set aside

Tribunal judges may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision or the relevant parts of it, if there has been a procedural irregularity in the proceedings **and** the judge considers that it is in the interests of justice to do so. For example, if a document relating to the proceedings has gone astray or a party or his representative was not present at a hearing. An application to set aside must be made in writing with reasons **within one month after you received the decision.**

How to appeal to the Court of Appeal or Court of Session against a tribunal decision

Appeals from the tribunal may be made on a point of law only. There is no right of appeal against findings of fact. The respondent has a similar right of appeal if the tribunal finds in your favour.

To appeal to the Court of Appeal (Court of Session in Scotland) **you must have permission** from the Upper Tribunal, or if the Upper Tribunal refuses permission, from the court.

An application for permission to appeal to the Court of Appeal or Court of Session must be received by the tribunal within **14 days of the latest of:**

- written notice of the decision being sent to you;
- your being notified of amended reasons for, or a correction of, the decision following review (see below); or
- your being notified that an application to set aside (made in time or with an extension of time) has not been successful.

The time limit may be extended by the tribunal judge if he is satisfied there is a good reason for an extension.

You must make your application in writing, identifying the alleged error or errors of law and stating the result you ask for.

How the tribunal considers your application for permission to appeal

When an application for permission to appeal is received it is considered by a judge, who may review the decision and may set it aside, amend the reasons for it or correct it if:

- when making the decision the judge overlooked a legislative provision or binding authority which could have had a material effect on the decision; or
- since the decision a higher court has made another decision binding on the tribunal which, if made before the decision, could have had a material effect on it.

The tribunal must notify the parties in writing of the outcome of any review.

If the tribunal does not review, or on review decides not to alter, the decision it must decide whether to grant permission to appeal to the Court of Appeal. It must record the decision in writing and, if permission is refused or refused in part it must give reasons for the refusal.

If you are refused permission to appeal by the tribunal you may renew your application in the Court of Appeal or Court of Session.

If the tribunal grants you permission you will then need to appeal to the Court of Appeal or Court of Session.

The Court of Appeal and Court of Session time limits are short so if you wish to renew your application for permission or, having obtained permission, to appeal you should contact them as soon as possible.

The address for the Court of Appeal (England and Wales) is:

The Civil Appeals Office
Room E307
The Royal Courts of Justice
Strand
London WC2A 2LL

Email: civilappeals.registry@hmcourts-service.gsi.gov.uk

Further information about appealing to the Court of Appeal (Northern Ireland) can be found on their website, under 'legislation'. The address is: www.courtsni.gov.uk

Information about appealing to the Court of Session in Scotland is available under the Rules of the Court of Session, which can be found at: www.scotcourts.gov.uk

If you wish to appeal to the Court of Appeal or Court of Session, you are advised to take legal advice, as you may become liable for costs.

The meaning of words

The following words are either used in this leaflet or may be used in documents you receive from the office of the Upper Tribunal (Tax and Chancery Chamber).

- An **applicant** is the person, or other body, who is making the reference.
- The **Court of Appeal** in **London** is a higher court (for cases in England and Wales) to which you may be able to appeal against an Upper Tribunal decision.
- The **Court of Appeal** in **Belfast** is a higher court (for cases in Northern Ireland) to which you may be able to appeal against an Upper Tribunal decision.
- The **Court of Session** in **Edinburgh** is a higher court (for cases in Scotland) to which you may be able to appeal against an Upper Tribunal decision.
- **A decision is**
 - **the decision of the respondent which has been referred to the tribunal;**
or
 - **the decision of the tribunal made when it has determined the reference.**
- A **direction** is a written instruction by the tribunal judge on the procedure that must be followed. The judge may make a direction at any stage of the reference as to various matters such as the order in which the parties are to make their written submissions and the time limits for doing so.
- A **procedural error** is something that has gone wrong with the procedure in a reference. The procedural rules in relation to appeals and references to the Upper Tribunal are set out in the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended. However, only certain limited errors give you the right to have a decision **set aside**. These are set out in rule 43 of the Rules.
- A **reference (which includes an appeal) is the means by which a decision of a respondent is challenged before the tribunal.**
- A **reply is the document an applicant serves on the tribunal and the respondent, after the statement of case has been served.**
- A **respondent** is a body or person that made the decision which is being challenged in the reference, the respondent has a right to take part in or oppose the **reference**. The respondent may be the Financial Services Authority (FSA), the Pensions Regulator, the Bank of England or an Independent Valuer.
- A **Statement of Case** is the document served by the respondent, setting out the facts and matters relied on to support its decision.
- The **tribunal** means, in this leaflet, the Tax and Chancery Chamber of the Upper Tribunal.

General notes

For further information about the Upper Tribunal (Tax and Chancery) Chamber or for forms or additional leaflets please visit HM Courts & Tribunals Service website www.justice.gov.uk/tribunals/tax-and-chancery-upper-tribunal

The law governing the procedure on references to the Upper Tribunal is set out in the following documents:

Tribunal Procedure (Upper Tribunal) Rules 2008

- (SI number 2698, 2008)
- www.opsi.gov.uk/si/si2008/uksi_20082698_en_1

The Tribunal Procedure (Amendment) Rules 2009

- (SI number 274, 2009)
- www.opsi.gov.uk/si/si2009/uksi_20090274_en_1

The Tribunal Procedure (Amendment No 2) Rules 2009

- (SI number 1975, 2009)

The Tribunal Procedure (Amendment) Rules 2010 No. 43

The Tribunal Procedure (Amendment No. 2) Rules 2010 No. 44

The Tribunal Procedure (Amendment No. 3) Rules 2010 No. 45

Tribunal Procedure (Upper Tribunal (Amendment) Rules 2010

- (SI number 747/2010 (L5))
- www.opsi.gov.uk/si/si2010/uksi_20100747_en_1

Tribunal Procedure (Amendment No. 2) Rules 2013 (SI number 606, 2013)