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THE LEASEHOLD ADVISORY SERVICE

ADVICE GUIDE

APPLICATION TO THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER) - ENGLAND

INTRODUCTION

This guide is not meant to describe or give a full interpretation of the law - only the courts can do that. Nor does it cover every case. If you are in any doubt about your rights and duties then seek specific advice.

This guide sets out some of the different applications that can be made to the First-tier Tribunal (Property Chamber) ("the Tribunal") and provides some useful information on each application. It covers the areas formerly dealt with by the Leasehold Valuation Tribunal. There are no prescribed forms for an application but suitable forms for all cases, with explanatory notes, are available from the Tribunal. Some applications to the Tribunal are subject to a fee of up to £630. Full details of the fees payable are set out below.

For the purposes of this booklet we refer to 'the landlord' throughout, although the legislation usually refers to 'any relevant person in control of the premises'. Similarly we refer to 'the leaseholder', but on occasion it can include a tenant.

The relevant procedural rules are set out in the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") (SI 2013 No. 1169).

THE TRIBUNAL

Tribunals are part of the Her Majesty's Courts and Tribunals Service. Each Tribunal usually consists of three members: a lawyer, who is often the chairman, a valuer and a lay person. The Tribunal is entirely independent and impartial in its approach. There are five regionally based Tribunal offices (London, Northern, Midland, Eastern and Southern).

The over-riding objective

The Tribunal's practice and procedure is governed by the over-riding objective which sets out a framework for how it is to conduct itself. Basically the objective is to enable the Tribunal to deal with cases fairly and justly and this includes:

a) dealing with a case in ways proportionate to its importance, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

b) avoiding unnecessary formality and seeking flexibility in the proceedings;

c) ensuring, so far as practicable, that the parties are able to take part fully in the proceedings;

d) using any special expertise of the Tribunal effectively; and

e) avoiding delay, so far as compatible with proper consideration of the issues.

The parties to the proceedings must help the Tribunal to further the overriding objective and co-operate with the Tribunal generally.

Proceedings at the Tribunal are semi-formal. Neither side is required to be represented by a barrister, solicitor or valuer. A representative (whether legally qualified or not) can be appointed by a party to represent them in the proceedings subject to written notice of appointment (that is, the representative's name and address) being given to the Tribunal and the other parties. At a hearing a party may be accompanied by another person whose details need not have been given to the Tribunal but who, with the Tribunal's permission, may act as a representative or otherwise help in preparing the party's case at the hearing.

Indeed, parties appearing before a Tribunal may wish to seek professional advice, and it is sensible to arrange legal representation if the argument relates to the interpretation of the law or the terms of the lease.

If you choose not to be legally represented you must remember that you will be responsible for presenting your own case, including arguments and evidence, and that the evidence should be

presented clearly and concisely and be confined to the matter in dispute. The Tribunal hears both sides of the argument and then determines the issue on the basis of the evidence and the judgment and experience of the Tribunal members. Their decision can be given orally at the hearing and in any event the Tribunal must as soon as reasonably practicable after making its decision provide to each party a notice stating its decision along with written reasons for the decision.

Case management powers

The Tribunal may regulate its own procedure and among other powers may:

- extend or shorten time to comply with a rule or direction even if the application for an extension is not made until the time limit has passed;
- permit or require a party or another person to provide or produce documents or information to the Tribunal and/or a party to the proceedings;
- require a party to state whether they intend to attend, be represented or call witnesses at a hearing;
- hold a hearing, decide its form and adjourn or postpone it;
- stay proceedings;
- transfer to another court or tribunal; and
- suspend the effect of a decision pending an appeal.

EXPERT EVIDENCE

In cases of a technical nature, the Tribunal is usually assisted by expert evidence from a valuer or experienced property manager.

The Rules provide that it is the duty of an expert to help the Tribunal on matters within their expertise and this duty overrides any obligation to whoever instructs or pays the expert.

Expert evidence cannot be introduced without the Tribunal's consent.

Unless the Tribunal otherwise directs, expert evidence must be in the form of a written report which must be provided to the Tribunal and each other party at least seven days before the date of the oral hearing; or the date when the issue dealt with by the expert's report will be decided without a hearing.

The expert's report must contain certain statements and information as laid down by the Rules, be addressed to the Tribunal and signed by the expert.

There is scope in the Rules for the Tribunal to direct that the parties jointly instruct the expert.

Applicants for a determination may be long leaseholders, landlords or, in certain circumstances, renting tenants. The applicant pays an application fee and, where a hearing is held, a hearing fee, but after that each party normally pays their own costs. However, in some cases a landlord may be able to recover his costs under the terms of the lease through the service charges or directly from the leaseholder. If this is the case, advice should be sought.

Finally, the Tribunal has the power to award costs in certain circumstances.

Alternative dispute resolution

Where appropriate the Tribunal should seek to bring to the parties' attention the availability of any appropriate alternative procedure for the resolution of the dispute which may include mediation and if the parties wish the Tribunal should seek to facilitate the use of the procedure.

Tribunal hearings are open to the public and their decisions can be seen at the Tribunal offices. LEASE provides a schedule of decisions with access to the full text of the determination.

Tribunals can determine a wide range of disputes, including:

- disputes about the terms and price of buying the freehold or extending a lease;
- disputes about the liability to pay, and reasonableness of, a service charge, an administration charge, or an estate management scheme charge;
- disputes relating to building insurance;
- whether it would be appropriate to appoint a new manager in a block of flats;
- whether a residential long lease (primarily of flats) should be varied;
- disputes relating to the right to manage;
- alleged breaches of a lease prior to a landlord serving a notice under Section 146 of the Law of Property Act 1925; and
- whether a dispensation should be granted in respect of the consultation requirements under Section 20 of the Landlord and Tenant Act 1985.

ISSUES TO CONSIDER WHEN MAKING AN APPLICATION

Liability to pay service charges (Section 27A, Landlord and Tenant Act 1985).

Either the leaseholder or the landlord may apply for determinations on:

- the person(s) by whom the service charges is payable;
- the person(s) to whom it is payable;
- the amount which is payable;
- the date on or by which it is payable; and/or
- the manner in which it is payable.

The application may be made in respect of charges which have already been levied, or charges which are proposed, whether or not the charge has been paid. However, no application may be made where the issue has been:

- agreed or admitted by the leaseholder;
- determined by a court;
- referred to arbitration. Any reference to arbitration must be with the leaseholder's agreement following the dispute arising; or
- (has been) the subject of determination by arbitration as a result of an agreement after the dispute has arisen.

Also, the right to seek a determination of service charges from a Tribunal does not apply to local authority leaseholders, unless they have been granted a long tenancy or lease. Any clause in a lease or any other agreement which appears to commit the leaseholder to arbitration in advance of a dispute arising is deemed to be void and will not bind the leaseholder nor prevent an application to the Tribunal.

Payment of the service charge or any part of it, on its own does not necessarily amount to an agreement or admission by the leaseholder that the charge is payable or reasonable.

Landlords proposing to carry out works can also ask the Tribunal for a determination that their proposals are reasonable, and that the service charge is payable, before they start spending.

Service charges in leases can include such things as maintenance, repair or other works to the building, improvements, management, cleaning, porterage or insurance and other costs incurred by the landlord and recharged to the leaseholders, such as legal and other professional fees.

Either the leaseholder or the landlord may apply to the Tribunal for a determination, and the Tribunal can interpret the terms of the lease to resolve disputes or uncertainties as to whether the leaseholder is liable to pay a service charge.

There is, of course, no simple definition of 'reasonable' and it is for the Tribunal to determine the issue according to the evidence before them. However, in determining reasonableness, some of the questions that might be addressed are:

- are (or were) the works or services necessary?

  are the works or services required at all?

  are the works sufficient to remedy the perceived problem?

  are the works or services adequate or over-extensive?

- was, or is, the original specification for the works or service adequate?

  did it include all necessary work or was the job allowed to expand as additional repairs were revealed?

  are there genuine grounds for additional works of an urgent nature?

- what were the landlord's procedures for costing the works or services?

  has the landlord complied with the consultation requirements under Section 20?

  are there arrangements for competitive tendering or obtaining competitive estimates?

  do the works or services arise from a contract already in place?

- what are the landlord's arrangements for controlling costs?

  how adequate is site supervision?

  what controls are there for checking and payment of invoices etc.?

  what arrangements are there for checking the service provided against that specified?

  is the standard of the works or service proposed or completed appropriate and reasonable?

Standards will vary according to the perceptions and viewpoint of the parties. A landlord might wish to carry out works to a higher standard than the leaseholder may consider reasonable in terms of their shorter interest in the property and their liability to pay. Equally, the converse can apply, where the leaseholders expect higher standards in terms of what they are paying or are expected to pay.

- was, or is, the standard of the works or services appropriate?

  is the standard of insurance cover appropriate?

  will the specification deliver the levels of services or standards of work expected?

  are the completed works satisfactory?

  were the works carried out in accordance with the standards specified?

- what are the landlord's arrangements for monitoring service delivery?

  are services maintained to the agreed specification?

- what amount is reasonable for a leaseholder to pay as an interim charge?

Applications should be based on firm grounds, not subjective opinion. In some cases evidence may have to be presented to the Tribunal by an expert witness, normally a property professional.

Application Form - Application for a Determination of Liability to Pay and Reasonableness of Service Charges

ADMINISTRATION CHARGES

(Section 158 and Schedule 11, Commonhold and Leasehold Reform Act 2002)

An administration charge is one payable by a leaseholder as part of or in addition to the rent which is paid directly or indirectly for:

- considering applications or providing approvals, for example, for consent to alterations;
- providing information or documents by or on behalf of the landlord or other party to the lease, for example on the sale of the flat;
- charges arising from a breach of the lease; or
- charges arising from the non-payment of a sum to the landlord or other party to the lease. These may include legal costs of serving notices, correspondence and interest charged on unpaid sums. Some leases can include costs incurred by the landlord in the Tribunal. Hence, before beginning Tribunal proceedings you should examine your leases to establish if such a power arises.

An administration charge can be fixed by the lease or may vary. A 'variable administration charge' is one where neither the sum nor a formula for calculating the sum is specified in the lease.

An application may be made to the Tribunal to determine the leaseholder's liability to pay an administration charge, whether the charge is reasonable, or for the variation of a charge fixed by the lease.

Application Form - Application for a Determination as to Liability to Pay an Administration Charge or for the Variation of a Fixed Administration Charge

Reasonableness

The legislation provides that 'a variable administration charge is payable only to the extent that the amount of the charge is reasonable'. The Tribunal can determine what is reasonable to be paid, if anything, in the circumstances of each case, and that becomes the amount that can be recovered.

For example, where the administration charge is for the recovery of the landlord's legal costs arising from a breach of the lease, the questions to be addressed might be:

- was the landlord's action, in raising legal costs, appropriate and reasonable to the circumstances?
- how is the cost justified, in terms of the hours charged for and the level of fees?

Where the charge is simply a fee for, for example, a consent or provision of information, is the charge reasonable in terms of the work the landlord had to carry out in order to provide it?

Where the amount is fixed in the lease or according to a formula in the lease, the Tribunal can make an order that the lease is varied to amend the sum or to change or delete the formula, or require the parties to the lease to vary it in the manner the Tribunal specifies. The variation will change the lease for the remainder of its term.

Where the charge is based on a formula in the lease, this may relate the charge to a multiple or proportion of the rent or the service charge or to the present market value of the dwelling. In all three cases, the question of reasonableness may centre on the charges or increases in the base figures since the original grant of the lease.

Application Form - Application for a Determination as to Liability to Pay an Administration Charge or for the Variation of a Fixed Administration Charge

LIABILITY TO PAY

As with service charges, the Tribunal may determine:

- the person by whom the charge is payable;
- the person to whom it is payable;
- the amount which is payable;
- the date at or by which it is payable; and/or
- the manner in which it is payable.

Similar rules apply as with service charges. The application may be made whether or not the payment has been made, but not where the matter has been:

- agreed or admitted by the leaseholder concerned;
- determined by a court;
- referred to arbitration. Any reference to arbitration must be with the leaseholder's agreement following the dispute arising; or
- (has been) the subject of determination by arbitration as a result of an agreement after the dispute has arisen.

Any clause in a lease or any other agreement which appears to commit the leaseholder to arbitration in advance of a dispute arising is deemed to be void and will not bind the leaseholder nor prevent an application to the Tribunal.

DISPENSATION FROM REQUIREMENT TO CONSULT SERVICE CHARGE PAYERS

(Section 20ZA, Landlord and Tenant Act 1985)

A landlord must consult all service charge payers in writing before carrying out works costing more than £250 for any individual leaseholder, or before entering into a long-term contract (one for more than twelve months) where the cost to any contributing leaseholder is more than £100 in any of the accounting periods concerned. Where the landlord has good reason, he can apply to the Tribunal for permission to dispense with the consultation requirements.

Further information on the statutory consultation procedure is set out in our leaflets *S.20 Consultation* and *S.20 Consultation for council and other public sector landlords*.

Application Form - Application for the Dispensation of All or Any of the Consultation Requirements Provided for by Section 20 of the Landlord and Tenant Act 1985

ESTATE CHARGES UNDER ESTATE MANAGEMENT SCHEMES

(Section 159, Commonhold and Leasehold Reform Act 2002)

Estate Management Schemes (EMS), approved under the Leasehold Reform Act 1967 or the Leasehold Reform, Housing and Urban Development Act 1993, create obligations on those living within the scheme area (including freeholders) to contribute towards the costs of furthering the objects of the scheme. These will usually be for works to amenity areas, gardens, roads and footpaths and will be generally directed towards the preservation of the particular architectural or historic significance of the area, and to ensure that the appearance and quality of the area as a whole is adequately maintained.

Charges levied under an EMS must be reasonable and a determination of the liability to pay and

reasonableness of the charge may be sought from the Tribunal where this is believed not to be the case.

The provisions and remedies are similar to those in respect of service charges and administration charges. Where the charge is not specified in the scheme or calculated according to a formula in the scheme, the Tribunal can decide what is reasonable in the circumstances. This becomes the maximum the manager of the scheme can recover.

Where the charge is specified or calculated according to a formula in the EMS, the Tribunal can vary the scheme to amend the sum or to change or delete the formula.

The Tribunal may also determine:

- the person by whom it is payable;
- the person to whom it is payable;
- the amount which is payable;
- the date at or by which it is payable; and/or
- the manner in which it is payable.

As with service charges, the application may be made whether or not the payment has been made, but not where the matter has been:

- agreed or admitted by the person concerned;
- determined by a court;
- referred to arbitration. Any reference to arbitration must be with the persons agreement following the dispute arising; or
- (has been) the subject of determination by arbitration as a result of an agreement after the dispute has arisen.

Any clause in a lease or any other agreement which appears to commit the person to arbitration in advance of a dispute arising is deemed to be void and will not bind the leaseholder, nor prevent an application to the Tribunal.

INSURANCE THROUGH THE LANDLORD'S NOMINATED INSURER

(Section 164 of the Commonhold and Leasehold Reform Act 2002 and Paragraph 8 of the Schedule to the Landlord and Tenant Act 1985)

In some cases, the lease requires that the leaseholder insures the property, usually a house, through an insurer nominated or approved by the landlord. The tenant may consider that he can get cheaper insurance from different companies and may be concerned as to the cover provided.

The provisions of Section 164, Commonhold and Leasehold Reform Act 2002 provide a right for the leaseholder of a house to arrange his own insurance, provided he notifies the landlord and complies with the requirement of the Section concerning the insurance cover provided. This right is set out in more detail our booklet Service Charges and Other Issues.

That is one approach to problems arising from 'nominated insurer' clauses, but there is an alternative right. The Schedule to the 1985 Act provides a means for the leaseholder or the landlord of either a house or a flat to seek a determination from the Tribunal as to:

- whether the insurance which is provided by the landlord's nominated or approved insurer is unsatisfactory in any respect; or
- whether the premiums payable are excessive.

No application can be made in respect of a matter which has been:

- agreed or admitted by the leaseholder;
- the subject of a determination by a court or Arbitral Tribunal; or
- which is to be referred to arbitration under an arbitration agreement to which the leaseholder is a party.

The sort of issues that might be raised include:

- is the cover adequate or excessive?
- is the cover defective in any respect?
- is the insurer a competent and reputable company?
- is the premium reasonable value?
- can similar cover be obtained at a lower premium?

Unless the Tribunal finds the insurance arrangements satisfactory, it may make an order:

- requiring the landlord to nominate the insurer specified in the order; or
- requiring the landlord to nominate another insurer which satisfies specific requirements set out in the order.

LIMITATION OF SERVICE CHARGES: LANDLORD'S COSTS

(Section 20C Landlord and Tenant Act 1985)

It is common in residential leases for the landlord's legal costs in managing the property to be rechargeable to the service charge. These costs can include the costs of court or Tribunal actions, whether started by the landlord or the leaseholder.

Section 20C of the Landlord and Tenant Act 1985 Act enables a leaseholder to make an application for an order that all or part of the costs incurred by the landlord arising from proceedings before the Tribunal are not to be included in the service charges.

Therefore, leaseholders seeking a determination of reasonableness can also apply to the Tribunal to ensure that any reduction achieved in their service charges will not be cancelled out by the landlord recharging the legal costs of an unsuccessful defence to the service charges. Leaseholders, who are respondents in cases where the landlord seeks a determination of reasonableness, can also make an application under Section 20C.

The Tribunal will review the evidence presented before making whatever order it considers just and appropriate in the circumstances.

Where an application under Section 20C is made at the same time as the principal application, the 20C application will be dealt with by the Tribunal hearing the principal matter. If the application is made after proceedings are concluded, then it may be dealt with by a differently constituted Tribunal at a separate hearing.

Application Form - Application for an Order Under Section 20C of the Landlord and Tenant Act 1985

THE APPOINTMENT OF A MANAGER

(Section 24 Landlord and Tenant Act 1987)

Where the management of a property by the landlord is considered unsatisfactory by the leaseholders, they may apply to the Tribunal for the appointment of a manager.

Where the right to manage under the Commonhold and Leasehold Reform Act 2002 has already been exercised but the management is unsatisfactory, application may also be made for appointment of a manager, effectively terminating the right to manage.

Provided the Tribunal is satisfied that the case warrants such action, it may make an order to displace the landlord's control and management arrangements with a manager named by the Tribunal. This manager need not be a managing agent, but could be a lessee or other responsible person. The manager could delegate tasks to a managing agent, but ultimate responsibility remains with the manager appointed by the Tribunal.

An application must cover the whole, or part of, a building containing two or more flats. The application may be made by any one leaseholder or by a group of leaseholders acting together.

However, the right to seek the appointment of a manager from the Tribunal is not available where the landlord is a local authority, a registered provider (formerly known as housing associations) a fully mutual housing association or a charitable housing trust. It is also not available where the landlord is resident on the premises and it is a converted (not purpose-built) property and less than half the flats are let on long leases.

The Tribunal will make the order if it is just and convenient in all the circumstances and at least one of the following applies:

- Any relevant person is in breach of an obligation to the leaseholder, under the terms of the lease, in relation to the management of the building.
- Unreasonable service charges have been, are proposed or are likely to be made, or unreasonable variable administration charges have been made, are proposed or are likely to be made.

  It is not necessary for the service charges or administration charges to have been determined as unreasonable through separate 1985 or 2002 Act applications, (although such a determination would provide useful evidence).
- The landlord has failed to comply with any relevant provision of an approved code of management practice.

  The reference to approved codes of practice relates to approvals under Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993. Two codes of practice have been approved, one produced by the Association of Retirement Housing Managers relating, primarily, to purpose-built retirement housing, and one by the Royal Institution of Chartered Surveyors which is relevant to all residential leasehold property where variable service charges are paid.

  Copies of the codes are available direct from the relevant bodies.
- Other circumstances where it is just and convenient.

The right to seek the appointment of a manager applies equally where the lease includes a third-party manager. In this case all notices must also be served on the manager under the lease.

Application Form - Application by a Tenant for the Appointment of a Manager or for the Variation or Discharge of an Order Appointing a Manager

Preliminary Notice to the landlord

Before any application is made to the Tribunal for the appointment of a manager, the leaseholder must serve a Preliminary Notice (under S22 of the Landlord and Tenant Act 1987) on the landlord and any other person who is under a duty in respect of management. The notice must state:

- the name and address of the applying leaseholder (and an address for the service of notices if different);
- that the leaseholder intends to seek an order, but may not do so if the requirements set out below are complied with;
- the grounds on which the order will be sought, and the matters which will be relied on in establishing those grounds; and
- those matters that are capable of being remedied, and that they should be remedied within a reasonable time limit which is specified in the notice.

If the landlord fails to remedy the matters set out in the notice, or if there are other grounds, then the leaseholder may proceed with the application to the Tribunal.

Dispensation from service of the Preliminary Notice

Leaseholders may apply to the Tribunal for an order to dispense with the Preliminary Notice where the Tribunal is satisfied that it would not be reasonably practicable to serve it. The Tribunal may direct the leaseholders to take some other appropriate steps, prior to considering the application for the appointment of a manager.

The intention of the Preliminary Notice is to allow the landlord fair warning of the leaseholders' wish to replace his management and give him an opportunity to make good his deficiencies. Leaseholders applying for a dispensation will need to satisfy the Tribunal, through evidence, of the impracticability of serving the Preliminary Notice.

Application Form - Application for the Dispensation of All or Any of the Consultation Requirements Provided for by Section 20 of the Landlord and Tenant Act 1985

Applicant's nominated manager

The applicant is required to nominate the person of their choice to be appointed as manager, although the appointment will be entirely within the discretion of the Tribunal. This may be a professional manager but could be a management company formed by the leaseholders. If an appointment is made, that person or company will manage the premises in accordance with the order of the Tribunal.

The form and regulations require the qualifications of the nominated manager to be given. This should not be taken to mean that the nominee must be a qualified property manager. If the nominated manager has qualifications they should be shown, but the absence of qualifications is not necessarily an obstacle to appointment, although each case will depend on its own circumstances.

The Order of Appointment

The Tribunal has wide discretion in the making of the Order, the matters to be included and the conditions to be imposed. The Order may make specific directions in certain matters or provide procedures for subsequent applications by the new manager to seek directions.

The Order may include provision for:

- the appointment to be temporary or without a time limit;

- the manager's costs and fees to be paid by the landlord, the leaseholders, by any relevant person, or a combination of these parties;
- the manager to be entitled to pursue claims relating to actions prior to his appointment; and
- the manager to assume rights and liabilities relating to contracts even though he is not party to them.

In effect, the Order will provide the manager with the level of authority that the Tribunal considers appropriate to enable him take control of the management of the building. The manager is responsible to the Tribunal and is not required to seek or accept instructions from the landlord or from the leaseholders.

Once the new manager is appointed, the landlord ceases to have management control over the building to the extent set out in the Order. The Tribunal can require the landlord to provide all necessary documentation, accounts and other information to the new manager as is necessary for the management of the building.

Variation or discharge of the Order

The Tribunal may, on the application of any interested party (including the landlord or the leaseholders, and including those leaseholders who were not party to the original application) vary or discharge an Order of Appointment. If the Order is discharged, the management will revert to the landlord. In varying or discharging an Order, the Tribunal will need to be satisfied that by doing so it will not lead to a recurrence of the circumstances that led to the original Order and that it is just and convenient in all the circumstances to do so.

Compulsory Acquisition Order

Where a landlord is in breach of an obligation under the terms of the lease and it is likely to continue, or where a building has been subject to the appointment of a manager pursuant to Section 24 of the Landlord and Tenant Act 1987, the qualifying leaseholders may make application to the High Court or county court for an Acquisition Order to acquire the landlord's interest. Where the application is based on a manager having been appointed under Section 24, the manager must have been appointed for no less than two years on the date of application to the court. A Preliminary Notice must be served on the landlord by the leaseholders before an application can be made to the court, unless the court agrees to dispense with the notice. The court's Order for Acquisition is subject to conditions that, amongst other things, there are two or more flats, that at least two-thirds of the flats in the building are held by qualifying leaseholders, and that the requisite majority of qualifying leaseholders make the application. Further advice should be sought before this option is pursued, as there are exceptions.

If the Order is made by the court, the Tribunal will determine the terms on which the landlord's interest may be acquired (including the purchase price) unless they have been agreed between the parties involved.

VARIATION OF LEASES

(Sections 35-40, Landlord and Tenant Act 1987)

A lease is a contract between the landlord and a leaseholder. No matter how unsatisfactory the terms may seem, none of the parties to the lease may vary the terms unilaterally. The consent of every party to the lease is required to vary it. Otherwise, the terms of a lease may only be varied by order of the Tribunal.

In some cases, unsatisfactory provisions in the lease may affect all other leaseholders in a building, or the variation of one lease may have an effect on the others. In these cases it is often difficult to

get every leaseholder to consent to vary the lease, so the law provides that the Tribunal can make an order to vary all the leases in the same way.

Application Form - Application for the Variation of a Lease or Leases

Variation of single leases (flats)

Any party to a long lease of a flat may make an application for it to be varied. The grounds for the application to the Tribunal to vary a single lease are that the terms of the lease fail to make satisfactory provision in certain areas. These are:

- the repair and maintenance of the flat, or the building, or land or buildings let to the leaseholders or over which they have rights;
- the insurance of the building containing the flat or the land or building;
- the repair and maintenance of installations (whether in the building or not) which are necessary to ensure a reasonable standard of accommodation;
- the provision or maintenance of services to ensure a reasonable standard of accommodation, for example, lighting, cleaning, caretaking, insurance;
- the computation of the service charges in terms of the proportion of the charge payable by each flat in relation to the whole building, , if the individual proportions add up to more or less than 100%;
- the payment of interest on arrears of service charges; and
- the recovery of expenditure from one party where it has been incurred on his behalf by another or for his benefit or the benefit of others including him.

Where an application is made by an individual leaseholder in respect of one flat, any other party to the lease may apply to the Tribunal seeking that the variation ordered should also apply to one or more other leases.

Variation of two or more leases (flats)

An application may also be made for an order to vary two or more leases in the building in the same way, in order to correct the same defect. An application can be made by the leaseholder or the landlord. Where the application concerns less than nine leases, then all (or all but one) of the parties concerned must consent to it. Where the application concerns more than eight leases, it must not be opposed by more than 10% of the parties concerned and at least 75% of them must consent to it. For these purposes the landlord shall constitute one of the parties concerned.

The ground for the variation of two or more leases is that the object sought to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.

The Tribunal may make an order to vary the leases according to the application or as it considers appropriate. It may also make an order instructing the parties to vary the leases in accordance with that instruction, and the Tribunal can order any party to pay compensation to anyone considered likely to be disadvantaged by the variation of the leases. However, it cannot order the variation if it would cause a disadvantage to another leaseholder which could not be remedied by payment of compensation.

Anyone seeking to make an application for a variation must serve advance notice of the application on anyone likely to be affected by the proposed variation. This will include the landlord (where he is not the applicant), the other leaseholders if the change will affect them and the mortgagee to the flat or flats. Failure to serve the notices will allow the affected parties to apply to the Tribunal for cancellation or modification of the variation or, in some cases, to bring action for damages.

Application Form - Application for the Variation of a Lease or Leases

Variation of leases (houses)

The above provisions relate solely to flats, but there is one ground on which the lease of a house can be varied: that the lease fails to make satisfactory provisions for the insurance of the building or for the recovery of the costs of the insurance.

In summary, therefore, the range of applications that can be made to vary a lease are:

- **for variation of a lease of a flat (Section 35);**
- **for a corresponding variation to other flat leases (Section 36);**
- **for variation of two or more flat leases (Section 37);**
- **in limited circumstances, for cancellation or modification of a variation to a flat lease ordered by the Tribunal (Section 39 (3b)); and**
- **for the variation of the lease of a dwelling other than a flat in respect of the insurance (Section 40).**

THE RIGHT TO MANAGE (RTM)

(Chapter 1, Part 2, Commonhold and Leasehold Reform Act 2002)

The RTM is not subject to any requirement for consent or order of a court or Tribunal. It is exercisable as a right which is begun simply by the service of a notice. However, there are some areas where disputes, costs or other issues are able to be referred to the Tribunal by the RTM company for determination.

An application to the Tribunal to deal with a challenge to RTM may deal with such issues as:

- Is the building not eligible for RTM? For example, because more than 25% of the building is non-residential or less than two-thirds of the flats are owned by qualifying leaseholders.
- Is the RTM company not eligible? For example because the membership is less than half of the qualifying flats, or the Company has not been set up in accordance with the regulations.
- Has the RTM company fulfilled all necessary procedures and requirements of the application process?

The landlord does not have a valid challenge on grounds of simply objecting to losing the management (because his consent is not required), or from any misgivings about the management experience or competence of the RTM company.

Where the RTM company has received a counter-notice containing a statement of challenge by the landlord, it may apply to the Tribunal for a determination that it was, on the relevant date, entitled to acquire the right to manage the premises. The application must be made within two months of the landlord's counter-notice. The Tribunal's jurisdiction and consideration of the application relate simply to whether, on the date of service of the claim notice, the RTM company was entitled to acquire the right to manage.

If the Tribunal determines that the RTM company was not entitled to acquire the right, then the claim notice ceases to have any effect and the RTM company will be liable for the landlord's reasonable costs arising from the notice and the Tribunal hearing. A determination becomes final at the end of the period allowed for appeal (if not appealed against), or at the time when any appeal is finally disposed of.

Application Form - Application Relating to (No Fault) Right to Manage

Where the landlord or other party to be served with the claim notice is not traceable (Section 85)

If the RTM company cannot serve the claim notice on the landlord (or other relevant parties to the lease) because he is untraceable, the RTM company may apply to the Tribunal for an order that it is entitled to acquire the right to manage.

The RTM company will be expected to have made all reasonable enquiries into the identity or the whereabouts of the landlord, for example, by writing to the last known address or writing to the solicitor who drew up the original lease. If this is unsuccessful and an application to the Tribunal is necessary, a notice must first be served on all the qualifying leaseholders of the building advising them of the intention to seek the order from the Tribunal. There is no prescribed form for such a notice.

The Tribunal will consider the steps taken by the RTM company and may require it to take further action, including advertising its intentions, if appropriate. If the landlord (or a landlord of any part of the premises) is traced by this means, the Tribunal will take no further action on the application and the RTM company will be able to proceed with service of the claim notice.

If the landlord is not traced then the Tribunal may make an order which will, effectively, confer the right to manage on the RTM company. The Tribunal can also make directions as to the steps to be taken for giving effect to the right.

Should the landlord be found after the application is made but before the Tribunal makes the order, no further steps can be taken with a view to obtaining the order. Instead, it will be treated as though the claim notice was given at the date of application, and all the rights and obligations will be determined thereafter as though a claim notice had been served. However, if the order has been made, the application may not be withdrawn without the specific consent of the newly traced landlord or by permission of the Tribunal.

Determination of the landlord's costs (Section 88 (4))

The RTM Company is liable for the reasonable costs of the landlord, a manager appointed under S24 of the Landlord and Tenant Act 1987 and any third party to the lease arising from the take-up of the right to manage. The costs must be reasonable and application can be made to the Tribunal for a determination as to what is reasonable.

The costs may include those 'in respect of professional services' for which the landlord is 'personally liable'. The costs to be determined by the Tribunal will, typically, be legal and other professional costs arising from the receipt and response to the claim notice, provision of information or other assistance to the RTM company and the transfer of the management function.

The Tribunal's approach to the application is likely to be similar to that applied to the determination of landlord's costs arising from applications for collective enfranchisement or new leases under the Leasehold Reform, Housing and Urban Development Act 1993. They are likely to consider the work done by the professional advisers, the chargeable time spent and the individual charging rate of the adviser.

Determination of accrued uncommitted service charges (Section 94 (3))

On the day the RTM company takes over the management, or as soon as practicable afterwards, the landlord, manager appointed under S24 of the Landlord and Tenant Act 1987 and any third party to the lease must pay over to the RTM company all 'accrued uncommitted service charges'. These are the total of:

- all the service charges collected from the leaseholders; plus

- any investments which represent such sums together with any interest accruing; less
- any amount required to meet the service charge expenditure incurred before the RTM company acquired the right to manage.

Either the landlord, a manager appointed under s24 of the Landlord and Tenant Act 1987 and any third party to the lease or the RTM company, may seek a determination from the Tribunal of the amount of the payment.

If a landlord arranges an external audit of the amount, the reasonable fee payable for this audit will be chargeable to the RTM company as part of the costs. The RTM company could then challenge the audit by application to the Tribunal if there was reason to question its accuracy. However, the audit is not a legislative requirement and it is entirely within the remit of the Tribunal to determine the amount to be paid to the leaseholders, based on the information available. Clearly both parties to such an application will need to provide substantial evidence of:

- the amounts of service charges demanded during the charging period;
- the amount actually paid by the leaseholders;
- the outstanding arrears;
- the monies paid by the landlord for works and services; and
- the amounts of service charge monies in any investment account and the interest on these amounts.

Approvals under the lease (Section 99 (1))

One of the RTM company's functions after acquisition of the management is in the granting of approvals under the terms of the lease. Leases often require the leaseholder to seek an approval from the landlord for matters specified in the lease, for example, for the assignment of the lease, or for consent to subletting the flat or making alterations to it. This function passes to the RTM company on acquisition of the management of the building.

The RTM company may not grant an approval relating to assignment, underletting, charging or parting with possession, the making of structural alterations or improvements, or alterations of use without having given the landlord (or landlords) thirty days' notice. In any other case for approval the time period is fourteen days. If the landlord (or landlords) objects to the approval, or seeks to impose conditions, he must notify this to the RTM company and the leaseholder. The matter may then be referred to the Tribunal. The application may be made by the landlord, the RTM company, the leaseholder in question or, if the issue concerns the approval of an act of a sub-leaseholder, that sub-leaseholder.

Exercise of the right to manage within four years of a previous application (Schedule 6, para 5)

Where the right to manage has been exercised in a building but has, for some reason, ceased to operate, then the right may not be exercised again for a period of four years from the time when the previous right ended. (This does not apply where the right ceased due to the freehold being conveyed to the RTM company.) However, an application may be made to the Tribunal for determination that a new application for the right to manage can be made before the expiry of the four-year period. The Tribunal would require to be satisfied that it would be reasonable to allow the application.

FORFEITURE

(Sections 168-170, Commonhold and Leasehold Reform Act 2002)

Forfeiture or re-entry is the final sanction for a landlord whose leaseholder is in breach of the lease, including for non-payment of service charges. The procedure, except in the case of unpaid rent, is generally started by the service of a notice under Section 146 of the Law of Property Act 1925.

Breach of a covenant or condition in the lease

Since the coming into effect of Section 168 of the Commonhold and Leasehold Reform Act 2002, the landlord may not serve a Section 146 notice unless the leaseholder has agreed or admitted the breach or there has been a determination by a court or the Tribunal that a breach has occurred.

An application can be made to the Tribunal for determination that the breach has occurred.

A landlord may not make such an application to the Tribunal in respect of a matter which

- has been, or is to be referred to, arbitration with the other party's agreement following the dispute arising (post-dispute arbitration agreement);
- has been the subject of a court ruling;
- has been the subject of a decision by an Arbitral Tribunal under a post-dispute arbitration agreement.

The landlord may not serve the Section 146 notice until fourteen days after the final determination of the Tribunal, to enable the leaseholder to remedy the breach.

Application Form - Application for an Order That a Breach of Covenant or a Condition in the Lease has Occurred

Arrears of service charges

If a landlord wishes to take forfeiture action because of the leaseholder's failure to pay service charges then, again, he may not serve the Section 146 notice unless the leaseholder has admitted or agreed the breach or the matter has been finally determined by (or on appeal from) the Tribunal. 'Finally determined' means determined by the Tribunal and not appealed against within fourteen days, or where the Tribunal 's decision is appealed and is not set aside as a consequence of that appeal.

Again, the landlord may not exercise his right of re-entry or forfeiture until fourteen days after final determination.

For further information on forfeiture see our booklet Service Charges and Other Issues.

Application Form - Application for an Order That a Breach of Covenant or a Condition in the Lease has Occurred

APPLICATION TO THE TRIBUNAL: THE PROCEDURE

Any application to the Tribunal will require the preparation of a proper case. The Tribunal has to consider the argument and evidence from both sides and it is essential that applicants present their case properly.

The Tribunal considers the evidence put before it. Where there is a hearing, members of the Tribunal panel may ask questions, but their function is to make a decision on what is before them, not to find the evidence for themselves.

A party can request the Tribunal to issue directions requiring among other matters the production of information relevant to the issues, and a witness summons may be issued by the Tribunal.

Notice of Application forms

The notice of application may be made on the correct form where one is provided. The Tribunal produces model notice of application forms and these are available in printed form from the local Tribunal building or can be downloaded from the Ministry of Justice website

Where a notice of application form is not available from the Tribunal, a written notice of application may be made instead. The Rules state that a notice of application should be signed and dated and contain the following information:

- the name and address of the person applying (''the applicant") and of their representative (if applicable);
- an address where documents can be sent or delivered to the applicant (usually a home or business address);
- the name and address of each person against whom the claim is made ("the respondent");
- the address of the property to which the application relates and the applicant's connection with that property;
- the name and address of any landlord or leaseholder of the property to which the application relates;
- the result the applicant is seeking and their reasons for making the application;
- a statement that the applicant believes that the facts stated in the application are true; and
- any other information that is required by a relevant practice direction.

The notice of application must be accompanied by any documents required by a practice direction as well as payment for the required fee.

Notices

Some applications require prior notice to be given to other parties, and will not be accepted until notice has been given. The Tribunal may require evidence that any necessary notice has been given, with the application. If you are in any doubt about whether a notice must be served on other parties, you can seek advice from your own legal adviser if you have one, or from LEASE.

Receipt of applications

On receiving a notice of application, the Tribunal must provide a copy of it and any accompanying documents to whoever is named as the respondent.

The Rules require that on receipt of an application dealing with service charges, administration charges or estate charges the Tribunal **must** provide notice of the application to the secretary of any recognised tenants' association identified in the application; and to any person such as other

leaseholders whose details are known to the Tribunal and it considers is likely to be significantly affected by the application.

The Tribunal **may** give notice of the application to any other person it considers appropriate.

Any notice of application served on those other than the Respondent must state that they may apply to the Tribunal to be joined as a party to the proceedings.

Directions

The Tribunal may of its own initiative issue directions to the parties governing the exchange of evidence and the general conduct of the case (at a pre-trial review, if appropriate).

Alternatively one or more of the parties may apply for a direction either by written application to the Tribunal or orally during the course of a hearing.

Any application for a direction must include the reason for making that application.

Save where the application is made by consent a copy of the proposed application should be sent to every other party before it is made and they in turn have a chance to object to the application.

The Rules set out the procedure for lodging any objection to the application and challenging any direction made to the Tribunal.

Non-compliance

There are powers available to the Tribunal to deal with non-compliance with any directions or the Rules including waiving the requirement, requiring the failure to be remedied, striking out a party's case, or barring or restricting a party's participation in the proceedings.

Where a party has failed to comply with certain Tribunal directions including the giving of evidence or production of a document, the Tribunal may refer this non-compliance to the Upper Tribunal (Lands Chamber) and ask them to exercise certain punitive powers available to them such as finding the person concerned in contempt of court.

Witness summons and orders to answer questions or produce documents

The Tribunal can be asked to issue a summons to witnesses to attend a hearing.

The Tribunal can also issue a summons of its own initiative.

A summons should allow at least 14 days' notice of the hearing, but the Tribunal has the power to shorten this time where they deem it necessary.

Where the person is not a party to the proceedings the summons should provide for that person's necessary expenses of attending the hearing, and state who is to pay them.

At the Tribunal's own initiative or on application of a party the Tribunal may order any person to answer any questions or produce any documents relevant to any issue in the proceedings.

The summons or order must state that any person on whom the requirement is imposed by the summons or order may apply to the Tribunal to vary or set aside the summons or order if they have not had the chance to object to it.

Failure to comply with such a summons or order might be treated as contempt of court.

Striking out an application

The Tribunal has the power to strike out applications or parts of them in a number of circumstances.

The Tribunal must strike out if it has no jurisdiction in relation to the proceedings, or if there has

been failure to comply with a direction stating that non-compliance by the applicant by a stated date would lead to the application or part of it being struck out.

The Tribunal may choose to strike out in the following circumstances:

(a) the applicant has failed to comply with a direction given by the Tribunal stating that failure to comply with the direction could lead to the striking out of proceedings;

(b) the applicant has failed to co-operate with the Tribunal to such an extent the matter cannot be dealt with by the Tribunal in a fair and just way;

(c) the proceedings are between the same parties and arise out of the facts similar or substantially the same as those contained in proceedings already decided by the Tribunal;

(d) the Tribunal considers the proceedings, or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or

(e) the Tribunal considers there is no reasonable prospect of the Applicant's case succeeding.

Except when the striking out arises from a party's failure to comply with a direction, a decision to strike out cannot be made unless the parties to the case have been given an opportunity to make representations in relation to the proposed striking out.

The applicant may make a written application to the Tribunal to have the matter reinstated following an order to strike out. Such an application must be received by the Tribunal within 28 days after the date the notification of striking out is sent out by the Tribunal to the applicant.

Please note, the rules on striking out apply equally to both applicant and respondent, except that a respondent will be stated to have been 'barred from taking further part in the proceedings' or part of them. Furthermore, a reference to an application for reinstatement is taken as meaning an application to lift the bar on proceedings.

Withdrawal

A party may give notice of withdrawal from proceedings but this does not take effect unless the Tribunal consents. The Tribunal may in turn make such directions or impose such conditions on withdrawal as it considers appropriate.

Notice of withdrawal may be given orally at a hearing or sent or delivered to the Tribunal.

The contents of the notice are laid down by the Rules and the notice must be signed and dated.

The party withdrawing may apply to reinstate.

Such an application must be received by the Tribunal within 28 days after

(a) the date of the hearing at which the withdrawal took place; or

(b) the date on which the Tribunal received the notice of withdrawal.

The Tribunal must notify each party in writing of a withdrawal and that party may apply for the case to be reinstated so long as they do so within 28 days of receiving notification.

Lead cases

Where there are two or more cases with common or related issues, one case may be nominated as the lead case and the related cases stayed pending determination of the lead case.

Decisions in lead cases may be applied in subsequent cases with common or related issues.

Transfer to the Upper Tribunal (Lands Chamber)

Cases that are complex or involve an important principle of law or large financial sum may be transferred to the Upper Tribunal (Lands Chamber) by the Tribunal in the first instance where appropriate.

Determination without a hearing

The Tribunal is only entitled to reach a decision once an oral hearing has taken place, unless all parties to the application and other concerned parties have agreed that a decision can be reached without a hearing.

A party or concerned person is taken to have consented if the Tribunal has given them not less than 28 days' notice of its intention to deal with the proceedings without a hearing and no objection has been received within that time.

The Rules provide for a shorter notice period in urgent or exceptional circumstances.

The hearing

Where there is to be a hearing that will bring the case to an end, the Tribunal must give the parties not less than 14 days' notice, unless:

a) the parties consent to a shorter notice period; or

b) there are urgent or exceptional circumstances.

For all other hearings, the Tribunal must provide reasonable notice of the time and place of the hearing.

The hearing may be preceded by, or followed by, an inspection of the property by the Tribunal panel members, accompanied by the parties.

Hearings are presumed to be held in public, but the Tribunal has the power to restrict this. The hearing is relatively informal, but will follow a procedure set-out by the Tribunal which will be similar to that seen in courts. Members of the Tribunal panel may choose to ask questions of any of the parties in attendance. There is no requirement that parties to the application are represented by a lawyer, but this can be useful in complex cases.

Consent orders

Where the parties to the application reach agreement on how their dispute can be resolved, and where it considers it appropriate, the Tribunal can issue a consent order that will bring proceedings to an end without having to make a decision.

Decisions and enforcement

The Tribunal may give a decision orally at a hearing and must provide to each party as soon as reasonably practicable after making a final decision:

- a decision notice stating the Tribunal's decision;
- written reasons for the decision; and
- notification of any right of appeal against the decision and the time within which, and manner in which, such appeal rights may be exercised.

Any order made by the Tribunal may be enforced, with the permission of the county court, in the same way as a county court order.

Appeals

Before considering an appeal, a number of options are available to unsuccessful parties:

- Corrections

  The Tribunal may at any time correct any clerical mistake, accidental slip or omission in a decision.

- Setting aside the decision

  Where the Tribunal has reached a decision which brought the case to an end, they have the power to set aside the decision and re-make it. This is possible where:

  (i) it is in the interests of justice to do so; and

  (ii) one or more of the following conditions are satisfied:

  a) a relevant document was not sent to a party or received by them at an appropriate time;

  b) a relevant document was not sent to or received by the Tribunal at an appropriate time;

  c) where a party, or their representative, was not present at the hearing; or

  d) there was some other procedural irregularity.

  An application to set aside a decision must be received by the Tribunal either:

  a) within 28 days after the date on which the Tribunal sent notice of the decision to the party applying; or

  b) if later, within 28 days after the date on which the Tribunal sent notice of the reasons for their decision to the party applying.

- Appealing the decision

  Where a party decides to appeal to the Upper Tribunal (Lands Chamber), an application for permission to do so must be made to the Tribunal in the first instance.

  The application for permission is to be received by the Tribunal within 28 days after the latest of the following dates that the Tribunal sends to the person pursuing the appeal:

  (i) written reasons for the decision;

  (ii) notification of amended reasons for, or correction of, the decision following a review; or

  (iii) notification that an application for the decision to be set aside has been unsuccessful.

  In considering an application for permission to appeal to the Upper Tribunal (Lands Chamber) the Tribunal will first consider if it is suitable for review.

  Basically on considering the application for permission to appeal, if satisfied the appeal is likely to succeed, the Tribunal may review its own decision, rather than grant permission to appeal.

  A party must be given the opportunity to make representations before a decision is reviewed.

  Basically a review involves the Tribunal re-visiting its decision and ultimately may lead to the setting aside of the decision.

  The Tribunal will only go on to consider an application for permission to appeal if:

  (i) it decides not to review the decision; or

  (ii) it decides to review the decision but its decision on that review does not deal with all aspects of the application for permission to appeal.

  If permission is not granted by the Tribunal the party may seek permission to appeal from the Upper Tribunal (Lands Chamber).

  The application to the Upper Tribunal for permission must be made within 14 days of the refusal of permission.

An application may be made for a stay pending the appeal. Such an application should be made with the application for permission to appeal.

You are strongly advised to seek independent advice if considering an appeal.

APPLICATION FEES

Most applications to the Tribunal are subject to payment of a fee, presently set at a maximum of £630. The fee is payable in two instalments: upon making the application and, where a hearing is to be held, prior to that hearing taking place; there are arrangements for the fee to be waived in respect of certain applicants.

The application fee is based on a sliding scale dependent upon the circumstances, and is payable with the application. For applications relating to the challenge of charges, the initial fee is based on the amount in question; for other applications it is based on the number of dwellings to which the application relates.

Full details of the fees are set out in the First-tier Tribunal (Property Chamber) Fees Order 2013 (SI 2013 No 1179).

For applications concerning service charges, premium of nominated insurer and administration charges, costs are as follows:

Disputed charge	Application fee
not more than £500	£65
more than £500 but not more than £1,000	£90
more than £1,000 but not more than £5,000	£125
more than £5,000 but not more than £15,000	£250
more than £15,000	£440

For applications concerning dispensation with consultation requirements, determination as to suitability of nominated insurer, appointment of managers and variation of leases, costs are as follows:

Number of dwellings	Application fee
up to five	£190
between six and ten	£315
more than ten	£440

There is no fee payable in respect of the following provisions:

- applications to determine the terms or price in respect of enfranchisement (Leasehold Reform Act 1967 (houses) and Leasehold Reform Housing and Urban Development Act 1993 (flats));
- applications to determine the terms or price in respect of lease extensions under the same legislation as for enfranchisement above;
- application for an order for the limitation of service charges arising from the landlord's costs of proceedings (S20(c) Landlord and Tenant Act 1985);
- application for an order to dispense with service of a Preliminary Notice prior to an action for the appointment of a manager (S22(3) Landlord and Tenant Act 1987);

- determination of liability to pay an estate management charge (S159(6) Commonhold Leasehold Reform Act 2002);
- variation of an estate management charge (S159(3) Commonhold and Leasehold Reform Act 2002);
- all applications arising from the right to manage (Ch 1, Pt 2, Commonhold and Leasehold Reform Act 2002); or
- applications for a determination that a breach of a covenant or condition in the lease has occurred (S168(4) of the Commonhold and Leasehold Reform Act 2002).

Where a court transfers proceedings to the Tribunal, the application fee will be the fee that would have been payable to the Tribunal (as above), less the total amount of any court fees paid by the applicant to date. Where the fee paid to the court is equal to or more than the fee payable to the Tribunal, no fee is payable.

The hearing fee

Where the application fee is paid and the matter proceeds to a hearing, this will be subject to the payment of the hearing fee of £190 for all applications.

The fee is payable within 14 days of an applicant receiving notice of the hearing date.

Failure to pay the fee within 14 days after the date on which the Tribunal sends to the liable party a written notification that the fee has not been paid will result in the case being deemed to have been withdrawn.

Where a determination by the Tribunal is made without the need for a full hearing, an application fee is payable in the normal manner as described above. However, there is no hearing fee payable.

No hearing will take place until all the fees have been paid.

Waiver and reduction of fees

No fee is payable if the applicant is granted a waiver.

An applicant is eligible for a fee waiver where he, or his partner, at a time when a fee would otherwise be payable, is in receipt of:

- Income Support;
- Housing Benefit;
- Income-based Jobseekers Allowance;
- a Working Tax Credit where the gross annual income used to calculate the tax credit is £16,190 or less;
- a Working Tax Credit with a disability element or severe disability element (or both) ,or where the applicant or partner is also in receipt of child tax credit, and the gross annual income taken into account for the calculation of the Working Tax Credit is £16,190 or less;
- a guarantee credit under the State Pensions Credit Act 2002;
- an income-related employment and support allowance; or
- a certificate issued under the Funding Code or under the Civil Legal Aid (Procedure) Regulations 2012 which has not been revoked or discharged and which is in respect of the proceedings before the Tribunal the whole or part of which have been transferred from the county court for determination by a Tribunal.

The applicant must apply to the Lord Chancellor for a waiver of the fee at the time when it would otherwise be payable.

Where the Lord Chancellor refuses a waiver, the fee must be paid within such period as may be notified in writing by the Lord Chancellor to the applicant or applicants as the case may be.

There are provisions for apportionment of liability for fees in cases involving more than one applicant.

Application Form - Application for Reduction or Waiver of Fees

Reimbursement of fees paid to the Tribunal

In certain circumstances, the Tribunal may order the reimbursement of all or part of the application and hearing fees paid. This is entirely at the discretion of the Tribunal. During the hearing or after the hearing, an applicant may ask the Tribunal for an order requiring the reimbursement of his application and/or hearing fee by the other party.

Other costs of appearing before the Tribunal

The Tribunal may award costs in the following circumstances:

- Wasted costs: a legal or other representative may have their costs disallowed or be ordered to pay the whole or part of any wasted costs.

  'Wasted costs' includes any costs incurred by a party owing to improper, unreasonable or negligent acts or omission on the part of any legal or other representative or any employee of such a representative.

- Where a person has acted unreasonably in bringing, defending or conducting proceedings, for example, producing documents late without good reason and causing a hearing to be adjourned.

There are two circumstances in which the Tribunal may make a costs order: namely on its own initiative and an application being made orally at a hearing or by written application to the Tribunal and the proposed payer.

The application may be accompanied by a schedule of costs claimed giving enough detail for a summary assessment.

The application for such a costs order may be made at any time during proceedings but must be made within 28 days after the date the Tribunal sends a notice of the decision finally disposing of the issues or notice of consent to withdrawal ending the proceedings.

Costs may be assessed in three ways: summary assessment, agreement between the paying party and the person receiving the costs or detailed assessment of all or part of the costs by the Tribunal or, if it directs, on an application to the county court.

The paying party must be given an opportunity to make representations and payment on account can be ordered before assessment.

Interest is payable on costs due following a detailed assessment.

Otherwise, each party will be responsible for bearing their own costs, though regard must be had to the lease, which might make provision for the landlord to recover his professional costs through the service charge or directly against the leaseholder.

TYPES OF APPLICATION

A variety of applications can be made to the Tribunal.

1. Under the Leasehold Reform Act 1967 an application may be made for:

- a determination as to the terms of purchase or the price payable when a leaseholder is buying the freehold of a leasehold house (known as enfranchising);
- a determination as to the terms on which a lease of a leasehold house is extended; or
- a determination as to the reasonableness of the landlord's costs which are payable by the leaseholder.

2. Under the Landlord and Tenant Act 1985 an application may be made:

- for a determination as to the liability to pay and the reasonableness of any service charges;
- for a determination as to whether the insurance available through the landlord's nominated or approved insurer is unsatisfactory in any respect, or the premiums payable for such insurance are excessive (where the lease requires the leaseholder to insure with the landlord's nominated or approved insurer);
- to limit the amount of costs incurred by the landlord during the proceedings before the Tribunal which can be charged to the leaseholder as a service charge; or
- for dispensation from complying with consultation procedures in respect of certain works or qualifying long-term agreements.

3. Under the Landlord and Tenant Act 1987 an application may be made for:

- the appointment of a manager;
- the variation of leases, primarily of flats;
- the determination of the purchase price following an Acquisition Order; or
- in limited circumstances, for determination of the price under the Right of First Refusal.

4. Under the Leasehold Reform Housing and Urban Development Act 1993 an application may be made for:

- a determination of the terms of purchase or the price payable when leaseholders collectively buy the freehold of a block of flats with other leaseholders in the block (known as enfranchising);
- a determination of the terms of purchase or price payable when extending the lease of a flat; or
- a determination as to the reasonableness of the landlord's costs which are payable by the leaseholder.

5. Under the Commonhold and Leasehold Reform Act 2002 an application may be made for:

- a determination as to the liability to pay and the reasonableness of any administration charges;
- a determination as to the liability to pay and the reasonableness of any charges under Estate Management Schemes;

- a range of determinations under the right to manage (including where the landlord is untraceable);
  - (i) reasonableness of charges arising from the application for the right to manage;
  - (ii) the amount of accrued uncommitted service charges to be paid to the right to manage company;
  - (iii) whether approvals under the lease may be granted by a right to manage company; or
  - (iv) reasonableness of upholding the four-year rule before another right to manage company can take effect in the block;
- a determination in relation to an alleged breach of a lease covenant (in connection with forfeiture).

July 2013

FIRST-TIER TRIBUNAL (PROPERTY CHAMBER):

Website: www.justice.gov.uk
For Tribunal contact details, please see:
www.justice.gov.uk/contacts/hmcts/tribunals/residential-property

OTHER USEFUL ADDRESSES

Copies of all legislation regulations and other official publications can be downloaded from www.legislation.gov.uk.

Alternatively printed copies can be purchased from:
The Stationery Office Ltd (TSO), PO Box 29, Norwich, NR3 1GN)
Tel: 0870 600 5522 Online ordering: www.tsoshop.co.uk

The Royal Institution of Chartered Surveyors (RICS)
12 Great George Street, Parliament Square, London SW1P 3AD
Tel: 0870 333 1600 Email: contactrics@rics.org Website: www.rics.org

The Federation of Private Residents' Associations
PO Box 10271, Epping CM16 9DB
Tel: 0871 200 3324 Email: info@fpra.org.uk Website: www.fpra.org.uk

Follow LEASE on:

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The Leasehold Advisory Service (LEASE), Maple House, 149 Tottenham Court Road, London W1T 7BN
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