

Leasehold Enfranchisement

Lease Extensions

New Leases

Rights of First Refusal

Guidance on procedure

4

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Part 1

Introduction

An explanation of some words used in this guidance.

Tenant	means the leaseholder.
Landlord	means the freeholder or someone who is entitled to receive ground rent from the tenant.
Enfranchisement	means the exercise of the tenant's right to acquire the freehold.
Nominee Purchaser	means the person or persons appointed by the qualifying tenants to acquire the freehold of their block of flats on their behalf. The Nominee Purchaser may also be a company which has been set up by the tenants to fulfill the same purpose.

What does this guidance cover?

This guidance is designed to explain the procedures which will be followed in dealing with applications to the Leasehold Valuation Tribunal (LVT), including those under:

1. The Leasehold Reform Act 1967 to determine:
 - the price to be paid by the tenant for the acquisition of the freehold of his/her house, and if required, the terms to be contained in the conveyance;

- the ground rent to be paid by the tenant for a 50 year extension to the lease of his/her house, and if required, the terms to be contained in that lease;
- the amount of the landlord's reasonable costs incurred in dealing with an application to acquire a freehold or extend a lease.

2. The Leasehold Reform Housing and Urban Development Act 1993 to determine:

- the price to be paid by the Nominee Purchaser, on behalf of the qualifying tenants, to acquire collectively the freehold of their block of flats¹;
- any amounts due to the landlord by any tenants under the terms of their leases or collateral agreements, at the time of the conveyance of the freehold to the Nominee Purchaser;
- the premium to be paid by a tenant to acquire a new lease to run for 90 years beyond the expiry of the current lease, in substitution for the existing lease;
- the amount of the landlord's reasonable costs incurred in dealing with an application to acquire a freehold or a new lease.

3. Part 1 of the Landlord and Tenant Act 1987 to determine various matters arising from the disposal of a landlord's interest in a block of flats where the qualifying tenants wish to exercise their right to first refusal.

¹ This is the position pending the introduction of that part of the Commonhold and Leasehold Reform Act 2002 which deals with the right to enfranchise.

This guidance does not deal with the law which affects a particular applicants case. For this parties may wish to refer to guidance issued by the Department for Communities and Local Government (CLG). Details of where this guidance can be obtained from are included at Annex A to this booklet.

What is the Leasehold Valuation Tribunal?

The Leasehold Valuation Tribunal (LVT) is the formal name given to the group of people who are appointed to decide applications relating to freehold enfranchisement and lease extension. The Leasehold Valuation Tribunal is independent of the parties to an application and cannot give legal advice.

Who will deal with an application?

From the time an application is made to the LVT, a number of different people will deal with the paperwork involved and the parties. These include the following.

The Case Officers

The case officers are the administrative staff who will deal with correspondence. When an application is made, it is the case officer who receives the paperwork and checks that there is sufficient information for the application to go forward. The case officer will continue to deal with the paperwork until the parties have received a final decision in the case. The case officers are able to

speak to parties about the procedures relating to the application. They cannot give general legal advice or advise about the law relating to a particular application. Each Rent Assessment Panel has a Regional Manager who is responsible for the work of the case officers. Their names are included at Annex B.

The Tribunal Members

There are two types of member:

1. The Chairman: He or she is appointed to be a Chairman by the Lord Chancellor. A Chairman will usually be a lawyer or a surveyor. The Chairman is responsible for the smooth running of the proceedings and will write the reasons for the tribunal's decision.
2. Other members: Other members are appointed by the Secretary of State for Communities and Local Government. They may be lawyers or valuers or lay people.

The Panel President

Each Panel has a President, assisted by one or more Vice Presidents, who has overall responsibility for the work of the Panel, and is particularly responsible for the members. The President decides which members should be appointed to hear and decide a particular case. They will not be involved in the decision in a case unless they sit as a member of the tribunal. Their names are given at Annex B.

Can the LVT make decisions about all aspects of disputes concerning freehold enfranchisement and lease extension?

No. The LVT has a limited jurisdiction and some applications, such as disputes over a tenant's entitlement to enfranchise, must be made to the County Court. If you are in doubt as to whether the LVT can deal with your case you should take independent legal advice from a solicitor, a housing advisor or contact the:

Leasehold Advisory Service (LEASE)

2nd Floor, 31 Worship Street, London EC2A 2DX

Tel: 020 7374 5380

0845 345 1993

www.LEASE-advice.org

or a Citizen's Advice Bureau

In London there is also a free legal advice service at the Legal Advice Centre at the College of Law, London WC1 (Tel: 020 7291 1230).

Does a party need to have professional representation?

No. The LVT is able to deal with unrepresented parties. However a party should give careful consideration as to whether they would like someone else to speak for them, especially if the case is complex. If a party decides that they need assistance they may wish to employ a lawyer or a surveyor.

Part 2

Making an application

How is an application made to the LVT?

Application forms are available from the Regional offices. All forms should be completed as fully as possible. When completing the forms, applicants should ensure that any documents that are requested are included or a brief explanation given where they are unable to provide them.

Alternatively, an application may be made by letter, but all the relevant information and documents must be provided or the application may not be valid.

The LVT case officers can assist persons who are unsure which forms they need to complete.

Does an applicant have to pay a fee to make an application?

No. A fee is not payable for the types of application described in this booklet.

Part 3

How the LVT will process an application

What happens after an application form has been received by the LVT?

The application will be acknowledged. If the applicant does not receive an acknowledgement within 14 days of sending it, they should contact the Panel office to make sure that it has arrived. Next, the application will be checked by a case officer to ensure that the applicant has supplied sufficient information to enable the application to proceed. If important information is missing, the case officer may write to request that the applicant send this to the Panel office. A copy of the application will be sent to any person named as a respondent on the application form.

How will the LVT deal with the case?

The LVT can decide cases at a hearing, where applicants, respondents and their witnesses attend to give oral evidence and to explain their case in person. Alternatively, if all the parties and the LVT agree, the case can be decided without a hearing and on the basis of a consideration of documents and written representations alone.

What happens next?

When an application is complete, a Chairman will look at the papers provided and will decide whether a Pre-Trial Review (PTR) is necessary or whether directions can be given immediately. (For an explanation of a Pre-Trial Review and directions see the following sections).

If a PTR is called it is recommended that parties attend. If a PTR is not arranged and a party feels that they would benefit from a PTR hearing, they may write to the case officer and request one.

What is a Pre-Trial Review (PTR)?

This is a short hearing to which all parties are invited to attend. It is conducted by an LVT Chairman, who may sit alone, or in some cases with either one or two other members. The PTR is a relatively informal hearing to try and identify the issues in the case and to see if any part of the dispute can be resolved by agreement at that stage. It is not a hearing of the issues and the LVT will not make any final decision on the case.

What happens at a PTR?

At the PTR the LVT will look at the application and the documents sent with it. All parties will be given an opportunity to speak. The purpose of the PTR is:

- to find out whether the parties are in agreement over some aspects of the case;
- to find out whether either party is able to make admissions about any part of the application. If any admissions are made, they will be recorded in writing for the LVT to use them at the hearing;
- to decide what further steps need to be taken to enable the application to come to a hearing;
- to decide if the application can conveniently be heard in conjunction with any others that deal with the same property/ issues;
- to set out the ground rules to enable the application to be heard in an efficient manner.

After the PTR the LVT will give directions setting out the steps to be taken by the parties to deal with the points mentioned above.

What are directions?

Directions are the orders made by the LVT which require the parties to take specified steps to ensure that all the necessary information about an application is provided.

The most common directions are to:

- indicate what information will be required by the LVT for the full hearing;
- provide a written statement of a party's case: this is a document which sets out what is in dispute and a summary of the arguments in support of that case;
- provide the other parties to the case with copies of documents which are relevant to the dispute;
- try to agree with the other parties which documents will be used at the hearing of the application and collate these into a bundle. If no agreement can be reached each party will be asked to produce their own bundle of documents. The pages on a bundle of documents should be numbered for ease of reference;
- include expert evidence in a report.

The directions will also set out a timetable for the full hearing of the application and often fix a time for the LVT to inspect the property.

Directions may be provisional.

What are provisional directions?

If a PTR is not held, a Chairman may decide to make provisional directions. These are directions which will not take effect for a specified time, usually fourteen days. Whilst the directions are provisional parties have an opportunity to comment on them and, if they wish, to request that different directions be given. If provisional directions set a hearing date for a case and that date is not convenient to a party, they should notify the LVT office as soon as possible.

Will parties need an expert to help them with their case?

This depends on the type and complexity of the case.

Expert evidence is sometimes needed where the dispute involves very technical matters. Expert valuation advice may well be advantageous to a party's case. If expert evidence is to be called on a particular issue, the expert will be asked to produce a report which contains the gist of the evidence in advance of the hearing, in order that all of the parties and the LVT may consider the evidence.

How does the LVT set a timetable for the hearing of a case?

The LVT will give time limits for complying with the directions. It is vital that the timetable is adhered to. Any failure to comply with the directions may prejudice a party's case and in particular the LVT may give less weight to evidence which is late or which takes another party by surprise. In directions, the LVT may also give a date for the final hearing of the case. In order to set a date it is necessary for an estimate to be made of how long the final hearing is likely to last.

This process is assisted if parties are able to give an indication of how many witnesses they might be calling and how long their evidence is likely to last. The LVT may also decide that an inspection of the property is necessary and, if so, will also include this in the directions.

Can the date of the final hearing be changed?

A hearing before the LVT should take priority over other engagements. Once the date has been fixed and the parties notified, the LVT will not permit a postponement unless a very good reason has been shown. This is necessary in the interests of justice to all parties and to ensure the efficient use of resources generally. If a party wishes to apply for a postponement they should send in a written request. They should send a copy of the request to all of the other parties to the application. Parties will be notified in writing whether or not a postponement has been granted.

Are there any further hearings before the full hearing?

The LVT can arrange further PTR hearings. This can follow the request of one or more of the parties or because the LVT considers it necessary. In addition the LVT can arrange for a “preliminary hearing”.

What is a preliminary hearing?

In exceptional cases, the LVT may be concerned that they do not have the power to deal with all or some of the issues raised by the applicant. In such a case, a preliminary hearing will be arranged at which the parties will be given the opportunity to make representations. Following the preliminary hearing, the LVT will give a written decision on whether it has power to proceed and, if so, it will issue directions.

Can an application be withdrawn?

An applicant can withdraw all or part of their application if they no longer wish to proceed. In this case they should notify the LVT in writing and should copy their letter to all other parties.

What happens if the parties reach agreement?

If the parties reach agreement on all of the issues raised in the application and the case is settled, the applicant should notify the LVT in writing as soon as possible. They should also ask the other party to write to the LVT with confirmation that the case has been settled. Where a case is settled in this way, the application file will be closed and it will not be necessary to attend a hearing.

What procedure does the LVT follow to determine cases on consideration of papers alone?

If no party requests a hearing and the LVT considers it to be appropriate, then the case can be determined on consideration of the documents alone without the need for a hearing. Paper considerations will usually be suitable for simple cases. However, there is no reason in principle why they should not also be used for more complicated cases, in particular where, for example, the issues do not involve decisions on contested evidence. Where it has been directed that a case can be determined on consideration of the papers alone, the parties will be asked to provide all of the documentation by a specified date. An LVT will then be asked to consider the case. In some circumstances further information may be requested. Once the LVT has reached its determination, a decision will be sent to the parties and the rights of appeal set out in Part 4 of this booklet will apply to that decision.

Part 4

The hearing and the decision

What happens at the full hearing?

The full hearing is when the issues are heard and decided. In regions outside London, arrangements will be made for the hearing to take place at a local venue. In London hearings are usually held at the Panel office. The proceedings are orderly but informal.

Each party is given an adequate opportunity to explain their case. Usually the applicant will present the case first and the other party will follow afterwards. The LVT will include a Chairman and one or two other members. At least one member of the LVT will be a surveyor who is an expert in matters of valuation. The LVT will be careful to make sure that both parties have a fair hearing and put the points they want to make. The LVT is not there, however, to make either party's case for them.

Will a party be allowed to ask questions at the hearing?

Yes. After each party has presented their case, the other party will be able to ask questions about the points made. The LVT members may also ask questions. After all the parties have given their evidence and answered any questions, they will be invited to summarise their cases. What happens when the tribunal carries out an inspection?

The LVT may want to inspect the property to familiarise itself with it. The directions often will tell the parties at approximately what time. Usually, the inspection is held on the morning of the hearing. In some cases, the LVT will arrange for an inspection during or at the end of the hearing. The parties are entitled to attend the inspection and to draw the attention of the LVT to any physical aspect of the property that they wish them to see, but not to make any representations; those must be kept for the hearing.

Any internal inspection of the property will only be carried out with the consent of the occupier.

When will parties know the LVT's decision?

Occasionally an LVT will let the parties know the decision at the end of the hearing. Usually, however, the LVT will issue a document containing their decision and the reasons for it after the hearing and usually within six weeks.

Can the LVT order one party to pay the other party's costs?

No. Save in exceptional, limited, circumstances each party has to pay its own costs of the LVT proceedings.

Those circumstances are where:

- (a) an application has been dismissed on ground that it is frivolous or vexatious or otherwise an abuse of process or
- (b) a party has in the opinion of the LVT acted frivolously, vexatiously, abusively or disruptively or otherwise unreasonably in connection with the proceedings.

Furthermore, even in such a case the LVT may not award an amount in excess of £500.

There are specific rules which allow a landlord to recover some of the costs involved in preparing for enfranchisement. Parties can ask the LVT to decide how much those costs should be, where there is a dispute or uncertainty over the amount of such costs.

If a party is unhappy with the LVT's decision, how do they appeal?

Any party can appeal against an LVT's decision to the Lands Tribunal. Permission to appeal must be given by either the LVT concerned or the Lands Tribunal. Any application for permission (leave) to appeal must be made to the LVT within 21 days of the date the decision was issued to the parties, although the LVT has power to extend that time in exceptional cases although it is only compelled to consider an extension where a request for an extension is made within that 21 day period. The application should set out the grounds for appeal. The Lands Tribunal will not accept any application for permission to appeal unless permission has first been refused by the LVT. Following a refusal of permission by the LVT, parties have 14 days to seek permission from the Lands Tribunal. The LVT cannot reconsider their own decision.

Does the Human Rights Act apply to the LVT's proceedings?

Yes. Parties to an application are entitled to the benefit of the provisions of the Human Rights Act 1998. In effect, this entitles them to have their case determined in accordance with the European Convention on Human Rights. Of particular relevance is Article 6 of the Convention, which provides that parties have the right to a fair hearing within a reasonable time and before an impartial tribunal. This includes their right to put their case and to question the case brought by the other party and to be given reasons for the decision of the LVT. Article 8 is also relevant. This provides that everyone has the right to respect for his private life, his home and his correspondence – so that, for instance, any internal inspection of the property will only be undertaken with the consent of the occupier. In making their decisions, LVTs are obliged to have regard to the rights embodied in the Convention and where possible to interpret legislation consistently with those rights.

Annex A

DCLG guidance

Further reading

Among the Government booklets available from the Department for Communities and Local Government (previously the Office of the Deputy Prime Minister), you may want to consult:

Applying to a Leasehold Valuation Tribunal (97 HC 200)

A full list of DCLG booklets and copies of each are available from:

DCLG Free Literature

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Tel: 0870 1226236

Fax: 0870 1226237

Text phone: 0870 1207405

E-mail: odpm@twoten.press.net

Annex B

Panel information

Northern Rent Assessment Panel

President: Martin Davey

Regional Manager: Beatrice Whipp

1st Floor, 5 New York Street

Manchester M1 4JB

Tel: 0845 1002614

0161 237 9491

Fax: 0161 237 3656

Midland Rent Assessment Panel

President: Simon Duffy

Regional Manager: Sara Whale

2nd Floor, Louisa House

92-93 Edward Street

Birmingham B1 2RA

Tel: 0845 1002615

0121 236 7837

Fax: 0121 236 9337

Eastern Rent Assessment Panel

President: Bruce Edgington

Regional Manager: Mark Allbut

Unit 4C, Quern House

Mill Court, Great Shelford

Cambridge CB22 5LD

Tel: 0845 1002616

01223 841 524

Fax: 01223 843 224

London Rent Assessment Panel

President: Siobhan McGrath

Regional Manager: Donald Brown

1st Floor, 10 Alfred Place

London WC1E 7LR

Tel: 020 7446 7700

Fax: 020 7637 1250

Southern Rent Assessment Panel

President: John Tarling

Regional Manager: Jim May

1st Floor, 1 Market Avenue

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Disclaimer

The contents of this publication are correct at the time of going to press.

Tribunal Decisions and the RPTS Website

All decision and reasons documents made by Rent Assessment Committees and Leasehold Valuation Tribunals from 01 January 2003 are published on the RPTS website.

Decisions made by Leasehold Valuation Tribunals up to 31 December 2002 are available online on the Leasehold Advisory Service website at www.lease-advice.org/.

A request to remove a particular decision from the RPTS website must be made in writing to the RPTS Corporate Unit (see annex for address) The request should set out the reasons for wanting the decision removed. All requests will be considered on a case by case basis.

RPTS Booklets/Leaflets

Code	Description
FR/1	Booklet 1 – Rent Assessment Committees; Fair Rents; Guidance on procedure
MR/2	Booklet 2 – Rent Assessment Committees; Market Rents; Guidance on procedure
LVTB/3	Booklet 3 – Leasehold Valuation Tribunal (LVT): Service Charges dispensation with charge consultation. Administration charges, Variation of Leases, Right to manage, Appointment of Manager, Landlord’s choice of insurer
LE/4	Booklet 4 – Leasehold Enfranchisement
TA/5	Booklet 5 – Tenants Association Application of Recognition, Guidance on procedure
UWS/6	Booklet 6 – Unhappy with our service? Here’s what we’ll do
RTB/7	Booklet 7 – Right to Buy: Determinations by Residential Property Tribunals as to whether a dwelling-house is particularly suitable for occupation by elderly persons
EDMO/8	Booklet 8 – Housing Act 2004: Applications and Appeals in Respect of Empty Dwelling Management Orders under the Housing Act 2004
HHSRS/9	Booklet 9 – Housing Act 2004: Housing Health & Safety Rating System Application and Appeals relating to Improvement Notices, Prohibition Orders, Demolition Orders, Emergency Measures (Unfit Properties)
GNL/10	Booklet 10 – Are you a Landlord, Tenant or Leaseholder? Can the Residential Property Tribunal Service help you? It helps thousands every year.
HMOs/11	Booklet 11 – Housing Act 2004: Application and appeals relating to Licensing of houses in multiple occupation (HMOs) Selective licensing of other residential accommodation
MOs/12	Booklet 12 – Housing Act 2004: Application and Appeals relating to Licensing Interim and Final Management Orders (MOs) under the Housing Act 2004
LVTL	Are you a Landlord, Tenant or Lessee? Can the Leasehold Valuation Tribunal help you to resolve disputes?
EOP	Equal Opportunities Policy
AR	Annual Report
DW	Document Wallet
CP	Corporate Plan
RPTS DVD	Property Matters: An introduction to RPTS. What to expect at a Rent Assessment Committee or Leasehold Valuation Tribunal

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LE/4-08/09