

Rent Assessment Committees
Market Rents under assured and
assured shorthold tenancies
under the Housing Act 1988
Guidance on procedure

2

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Part One

Introduction

What will this Guidance tell me?

The purpose of this guidance is to explain the procedures that will be followed once an application has been made under the Housing Act 1988 (“the 1988 Act”) or the Local Government and Housing Act 1989 (“the 1989 Act”) to a Rent Assessment Committee (“the Committee”).

When can an application be made and what are the consequences?

An application to the Committee can come about in one of four ways:

- 1.** Where the landlord under an assured, or assured shorthold periodic tenancy has served a notice on the tenant under section 13 of the 1988 Act proposing a rent increase to take effect at the beginning of a new period of the tenancy specified in the notice. The tenant may refer that notice to the Committee at any time before the proposed date of increase. If a notice is so referred the proposed increase will not take effect on that date, pending a determination by the Committee.

- 2.** Where a tenant under an assured shorthold tenancy is dissatisfied with the rent payable under the tenancy. He or she is permitted to make an application to the Committee under section 22 of the 1988 Act for a determination of the rent, which, in the Committee's opinion, the landlord might reasonably be expected to obtain under the assured shorthold tenancy. There is a time limit within which such an application can be made.

 - If the tenancy is a fixed term tenancy that began before 28 February 1997 the application must be made during that fixed term.
 - If the tenancy – whether fixed term or periodic – began on or after that date the application must be made within the first six months of the tenancy. Virtually all assured shorthold tenancies will now fall into this second category.
- 3.** Where a fixed term assured, or assured shorthold, tenancy has ended and the landlord or tenant has by notice under section 6 of the 1988 Act proposed new terms for the statutory periodic tenancy that has automatically arisen. The recipient can refer the notice to the Committee for a determination as to the new terms and any consequential rent adjustment.
- 4.** Where there has been an application to the Committee under the Local Government and Housing Act 1989. (See Annex B to these Notes).

What is a Rent Assessment Committee?

The Rent Assessment Committee is a tribunal which is completely independent of the Rent Officer and any other Government Agency.

Rent Assessment Committees are part of the Residential Property Tribunal Service. There are five regional offices (known as Rent Assessment Panels) in England. Their addresses can be found in Annex B to this booklet.

Information about procedures is also available on RPTS national helpline on 0845 600 3178 between 10am and 4pm Monday to Friday and a RPTS website on **www.rpts.gov.uk**

Who will deal with the matter once an application has been made to the RAC?

From the time that the application is received 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 the papers are received from the Rent Officer it is the case officer who will begin to process the appeal. 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 case. Each Rent Assessment Panel has a Regional Manager who is responsible for the work of the case officers. Their names are included in Annex B.

The Committee 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 (less frequently) a valuer (a surveyor who has expertise in valuation). The Chairman is responsible for the smooth running of the proceedings and will write up the reasons for the Committee'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.

When a Committee is set up to consider the matter of the fair rent for a property there will usually be three but occasionally two members including the Chairman.

The Panel President

Each Panel has a President, assisted by one or more Vice-Presidents, who is responsible for the members and in particular, 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 Committee dealing with that case. Their names are given at Annex B.

Part Two

The preliminary procedure

What will happen once a Committee is appointed to a case?

The case officer will write to the parties asking them if they would like an oral hearing to be arranged at which parties will have the opportunity to attend and/or be represented to present their case. The parties will also be asked if they would like to make what are called “written representations”.

Unless a party asks for a hearing the matter will be dealt with on the basis of the written representations and all other relevant available evidence (see below).

In some cases there may be uncertainty about whether an application is valid or whether in the circumstances the Committee has jurisdiction in respect of an application. In such a case the parties will be notified and a hearing or meeting of the Committee may be arranged to consider this preliminary issue. If the Committee decides that it does have jurisdiction it will go on to consider the main issue on the same date or at some future date to be arranged.

What is a hearing?

A hearing is the term used to describe the occasion when a Committee convenes at a particular time and place for the purpose of enabling the parties to put their cases to the Committee. In the London Panel region hearings are held at the Panel Offices. In other Panels arrangements will be made for the hearing to take place at a venue convenient to the parties. A party can speak themselves or somebody else, whether professionally qualified or not, can speak for them. It could be a relative or friend for example. A party will also be able to put questions to the other party or his or her representative if they are present. The Committee may also ask some questions in order to make sure that it has all the relevant information to enable it to come to a decision as to the fair rent for the property.

Parties are advised not to produce documentation for the first time at a hearing; otherwise the hearing will often need to be adjourned to enable the other party to consider the new evidence.

What are written representations?

These are any comments made in writing to the Committee about what a party thinks the rent and/or the terms of the tenancy should be and why. Parties can also send any other documents in support of their case. Any representations that are made by a party or anybody on their behalf will be copied to the other party. Each party will thus be given an opportunity to comment on any representations that are made by the other. Parties will also be asked to provide a copy of any written tenancy agreement under which the property is let if this has not already been supplied.

Will the Committee visit and inspect the premises?

Yes if requested by either party or if the Committee considers it necessary. A visit is considered necessary in most cases. A visit will only take place on a date and at an approximate time notified to the parties. With the permission of the tenant the Committee will normally want to inspect the inside of the property as well as the outside and any common parts. The landlord is entitled to be present with the tenant's permission. An inspection will usually be on the day of the hearing or (if there is no hearing) the day on which the Committee make their decision. If the Committee are unable to gain access at the appointed time they may decide to make another appointment and adjourn the matter until then. Alternatively they may decide that they have sufficient information, including that obtained from an external inspection, to be able to go ahead and make a decision.

Can a party say anything at the inspection?

Both parties can draw attention to any physical aspect of the property that they wish the Committee to see, but not to make any oral representations (see above). Representations must be kept for the hearing (if any) or have been made in writing (see above). Thus it is quite acceptable for a tenant to point out, for example, a damp patch on the kitchen ceiling that is referred to in the tenant's written representations that have been copied to the parties. By contrast it would, for example, not be permissible for the Committee, at the inspection, to listen to representations about rents of allegedly comparable properties in the locality.

Part Three

The hearing

Is the Committee a court and will ordinary court procedures be followed?

No. Tribunals such as Rent Assessment Committees are decision-making bodies set up especially by Parliament to enable certain types of disagreements to be dealt with speedily and with minimal cost to the parties in a way that avoids the formality and expense that often surrounds ordinary court proceedings.

Hearings are open to the public, although usually only the parties and their representatives (including a friend or relative), the Committee and the case officer will be present. The proceedings are orderly but informal. They are designed to enable both parties to put their cases to the Committee in their own words or through somebody else acting on their behalf.

The person who has referred the matter in dispute to the Committee is asked to put their case. They can be questioned by the other party who can then put their case and be questioned in turn. The Chairman will seek to ensure that nobody is at a disadvantage by not being represented. He or she will make sure that both landlord and tenant understand what the other party is saying. The Committee may ask questions of a party or representative to make sure that they have all the necessary facts. A party or representative can also put questions to the Committee.

What happens if a party does not attend a hearing that has been arranged?

Any other party who is present can put their case in the normal way as outlined on the previous page. The Committee will then proceed to make their decision, as indeed they will where neither party attends.

Can a hearing be postponed or adjourned by the Committee?

Yes. Parties have the right to ask the Committee to postpone or adjourn a hearing and indeed the Committee might decide to do this of their own accord. However, it will be done only if there is good reason and the Committee consider that one or both parties are not unfairly affected.

Can a tenant withdraw their reference or application?

The Act does not provide for this as such. However, the Committee is not required to continue with a determination if both parties give notice in writing that they no longer require a determination or if the tenancy has come to an end.

What happens if both parties indicate that they do not wish to attend a hearing?

As stated above, the proposed hearing will not be arranged. The Committee will normally inspect the property, on a day that has been notified to the parties, and then meet to consider their decision, usually on the same day. They will look at any written representations made by the parties and also have regard to their own relevant knowledge and experience.

Part Four

The decision process

How will the Committee make a market rent determination?

Following a section 13 application the Committee will first decide whether they have jurisdiction (see Part 2 above). This may take the form of a preliminary hearing. If they decide that they do have jurisdiction the Committee will then proceed, under section 14, to decide what rent the landlord could reasonably expect to obtain in the open market if he were letting it on a new tenancy on the same terms as the present tenancy. The Committee will thus have regard to rental values in the area for similar properties let on similar terms to those in the tenancy of the subject property. It is important to note that the rent determined by the Committee could be higher or lower than, or the same as, that proposed in the landlord's section 13 notice. The effect of the Committee's determination is dealt with in Part 5 below.

In the case of a section 22 application the Committee may only determine a rent if they consider

- A. that there is a sufficient number of similar dwelling-houses in the locality let on assured tenancies (whether shorthold or not) and
- B. that the rent payable under the assured shorthold tenancy in question is significantly higher than the rent which the landlord might reasonably expect to achieve having regard to the level of rents payable under those other tenancies.

If both of these conditions are satisfied the Committee will proceed to determine what rent they consider the landlord might reasonably be expected to obtain under the tenancy. The rent will necessarily be lower than that currently payable under the tenancy. The effect of the Committee's determination is dealt with in Part 5.

What if the tenant has made improvements to the property?

The Committee must ignore any effect that certain qualifying tenant's improvements would otherwise have on the rental value of the property. This is to prevent the landlord from benefiting from the improvements by way of a higher rent. By contrast any disrepair or defect that is attributable to a failure by the tenant (or a predecessor under the tenancy) to comply with the terms of the tenancy is to be disregarded. That is the property will be valued as if such disrepair or defect did not exist. Thus the landlord will not be penalised by any decrease in rental value brought about by the disrepair or defect.

It is important to note that an assured statutory periodic tenancy will sometimes have arisen automatically by law following the death of a Rent Act 1977 regulated tenant. In such a case tenant improvements carried out whilst the property was regulated by the Rent Act will not fall to be disregarded when the Committee determine a rent under section 14. Thus the rent will reflect the benefit of any such improvements.

What if the tenancy includes a charge for services?

If under the terms of the tenancy, or some other agreement, there is provision made for the supply of services to the property and/or any common parts the market rent will reflect the value to the tenant of these services. If, for example, the subject property is a flat in a development, the landlord might provide items such as a lift, cleaning services to the entrance hall stairs and landing, window cleaning, heating to the subject flat and/or the common parts and gardening in respect of common garden areas. The common

parts are those parts of the development the use and enjoyment of which is shared with other tenants. A tenancy agreement sometimes separately identifies the amount payable in respect of services and refers to it as the service charge.

What if the tenancy says that the landlord can vary the amount payable in respect of services?

Some tenancy agreements will permit the landlord to alter the service charge from time to time (usually once a year) by notice. This will usually be related to changes in the cost to the landlord of providing the services. Such a provision is usually referred to as a “variable service charge”. For the purposes of sections 14 and 22 of the Act “rent” does not include any charge for services, repairs, maintenance, or insurance or the landlord’s costs of management the whole or part of which varies or may vary according to the relevant costs. (i.e. a “variable service charge”). This means that the liability for such charges will remain governed by the terms of the agreement between the landlord and tenant and they will be recoverable from the tenant in addition to the rent determined by the Committee. Applications relating to the payability and reasonableness of variable service charges can be made to a Leasehold Valuation Tribunal. This may involve payment of fees by the applicant unless he or she is exempt by being in receipt of certain benefits. For more details, please see the RPTS booklet *Leasehold Valuation Tribunals: Guidance on Procedure*.

What if a tenancy includes ‘Supporting People’ charges?

Some tenancies provide for payment of ‘supporting people’ charges in respect of certain personal services provided to the tenant. Such support charges are normally payable in addition to the rent and any service charge determined by the Committee. However, when a Committee determines a market rent, it may decide that some or all of the support charge provided for by the tenancy agreement is in law a payment for that service. If that is the case the amount payable for that service or services after the effective date of the Committee’s decision, will be included in the service charge as determined by the Committee.

This will not apply where the tenancy provides for a variable service charge. In such a case the Committee’s decision is confined to the net occupational rent and any service charge or support charge is recoverable by the landlord in addition to the rent determined by the Committee.

Will the rent include council tax?

Council tax is normally payable by the tenant to the local authority and therefore is not included in the rent. However, if the tenancy is of part of a house which, for council tax purposes, is a “house in multiple occupation”, the landlord will be responsible for payment of the tax but the tenant can be required to reimburse the landlord. In these circumstances the rent determined by the Committee will include an amount in respect of council tax in so far as it is attributable to the specific part of the property that is let to the tenant.

What points should a party make in their written representations or at a hearing?

Parties should point out anything that they consider would have a bearing on the rent that can be determined by the Committee according to the law outlined above. They can of course comment on anything that the other party has written or has said at any hearing. If a tenant has made improvements to the property that they were not obliged to make by the terms of the tenancy it will help if that person can produce receipts demonstrating the cost, although this is not essential.

It would be very helpful if parties are able to produce evidence of recent assured or assured shorthold tenancies of similar properties in the area. As much relevant detail as possible should be provided, if available – for example, the rent payable, the nature of the accommodation, its state of repair or improvement, whether it is furnished in whole or in part. If parties are relying in particular on a specific property or properties the Committee might make an external inspection of the property.

Parties might also wish to draw attention to any recently registered Committee decisions for comparable assured or assured shorthold tenancies of properties in the area. (Registers of section 14 and section 22 rents determined by Committees are available for inspection in the Panel Office).

An applicant should also consider the possibility that, in the case of a section 13 application, the Committee will decide to endorse a rent increase. As will be seen below, that increase will take effect from the date of increase specified in the landlord's notice. A tenant who considers that this would cause them undue hardship can

seek to persuade the Committee that this is indeed the case and that the Committee should fix a later date for the increase to take effect. This date cannot be later than the date of the Committee's decision. Parties should also note that nothing in the Act prevents the landlord and tenant from agreeing a rent at any time.

What if the application is made under section 6?

As noted above this applies where, within one year of a fixed term assured tenancy coming to an end, the landlord or tenant has served notice on the other proposing new terms in respect of the statutory periodic tenancy that has automatically arisen. The notice can also propose an appropriate adjustment in the rent. If such a notice is served it is open to the recipient within 3 months to refer the notice to a Committee. If not the proposed terms, and any proposed rent increase will become operative from the date specified in the notice. If the notice is referred, the Committee will then determine whether the proposed terms, or some other terms, are such as might reasonably be expected to be found in an assured periodic tenancy of the dwelling-house. The Committee can also specify an adjustment in the rent whether or not this was proposed in the notice. It follows therefore that the parties can make representations to the Committee on the issues of both the proposed terms and rent for the property.

Part Five

The decision and after

When will the Committee make their decision?

Once the Committee is satisfied that they have all the necessary information it will make a decision.

How will the parties find out the Committee's decision?

The case officer will write to the parties and enclose the decision notice that tells them the rent determined by the Committee. Parties will also be sent a copy of the written reasons for the Committee's decision. These reasons will be summary form unless a party has already asked for full reasons or the Committee consider it appropriate to issue full reasons. If summary a party can, within 21 days of receipt, ask for full reasons. The Committee should issue these within 28 days of receipt of such a request.

From what date will the amount fixed by the Committee be payable?

- In the case of a section 13 reference to the Committee, unless the landlord and tenant agree to the contrary, the rent determined by the Committee will be the rent payable under the tenancy from the beginning of the new period specified in the landlord's notice. But if the Committee consider that that would cause undue hardship to the tenant the Committee can substitute another date, which must not be later than that of the decision. The date from which the rent determined by the Committee will be effective will be stated in the decision document.

- In the case of a section 22 application the rent determined by the Committee will have effect from a date determined by the Committee which must not be earlier than the date of the application.

What if it is a section 6 application?

In the case of a section 6 application the substituted terms, and any rent alteration, determined by the Committee will, unless the landlord and tenant agree otherwise, become operative from the date specified by the Committee which must not be earlier than the date specified in the section 6 notice.

Is there any appeal against the Committee's decision?

A party can appeal to the High Court, under the Tribunals and Inquiries Act 1992, if they consider that the Committee has made a mistake of law. They must do so within 28 days of the receipt of full reasons for the decision or within such longer period as the High Court might permit. Alternatively, if they consider that there has been a breach of the rules of natural justice they can seek leave from the High Court to challenge the decision by way of a process known as "judicial review". Such leave should ordinarily be sought as soon as possible and not later than three months from the above date. Parties should take legal advice if they consider that there might be grounds for High Court proceedings.

Does the Human Rights Act apply to the RAC'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 Committee. Also relevant is Article 8, which provides that everyone has the right to respect for his private life, his home and his correspondence – any internal inspection of the property will only be undertaken with the consent of the occupier. In making their decisions, Committees are obliged to have regard to the rights embodied in the Convention and where possible to interpret legislation consistently with those rights.

Annex A

Further reading

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

Assured and assured shorthold tenancies (00 HC 0786)

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

DCLG Free Literature

PO Box No 236

Wetherby LS23 7NB

Tel: 0870 1226236

Fax: 0870 1226237

Text phone: 0870 1207405

E-mail: odpm@twoten.press.net

Annex B

Local Government and Housing Act 1989

This annex deals with the role of the Rent Assessment Committee where a long lease at a low rent, that is governed by the above Act, has expired.

How does the Committee become involved?

The Act gives the landlord the option to serve a notice on the tenant terminating the long lease and proposing that the tenant who has remained in possession should have a monthly assured periodic tenancy at a proposed new rent. The proposed new tenancy will be on the same terms as the expired long term unless the landlord's notice proposes different terms. The tenancy proposed by the landlord will take effect unless the tenant within two months serves a counter notice on the landlord proposing a different rent and/or terms.

If the tenant does serve such a counter notice the tenancy will take effect instead on the rent and terms (if any) proposed by the tenant unless within two months the landlord refers the tenant's notice to the Committee.

What is the function of the Committee on referral by the landlord of a tenant's counter notice?

The Committee will first determine whether there is a dispute as to the terms and whether there is a dispute as to the rent.

Terms

If the parties are in dispute as to the terms of the proposed tenancy the Committee must resolve that dispute first. In so doing the Committee must determine whether the terms proposed in the landlord's notice, the terms proposed in the tenant's notice or some other terms are such as might reasonably be expected to be found in an assured monthly periodic tenancy of the dwelling-house.

Rent

The Committee must determine a monthly rent, which it considers might reasonably be obtained for the property in the open market under an assured tenancy on the terms which have been determined or agreed.

When will the Committee's determination take effect?

The Committee's decision takes effect three months after the date on which the reference is finally determined.

What rent is payable in the meantime following the termination of the long tenancy by the landlord's notice?

On the date of service of the landlord's notice, or at any time between that date and the date of termination of the tenancy, the landlord may serve a notice on the tenant in the prescribed form proposing an interim monthly rent. This will be the rent payable until the initial rent for the new tenancy has finally been agreed or determined as outlined above. However, within two months of service of the landlord's interim rent notice the tenant may refer it to the Committee.

The Committee must then determine the rent at which the premises may reasonably be let in the open market by a willing landlord under a monthly periodic tenancy which (a) begins on the day following the date of termination of the long tenancy and (b) under which the other terms are the same as those of that tenancy and (c) which affords the tenant security of tenure equivalent to that afforded to an assured tenant by the Housing Act 1988.

What procedure will the Committee follow following a reference under the 1989 Act?

The procedure will be as outlined in this booklet with regard to section 13 applications (as to rent) and section 6 applications (as to terms) to which reference should be made.

Annex C

RPTS addresses

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

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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

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01243 779394

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RPTS website: www.rpts.gov.uk

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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