



LANDS TRIBUNAL

Upper Tribunal (Lands Chamber)

INTERIM PRACTICE DIRECTIONS AND GUIDANCE

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LANDS TRIBUNAL
Upper Tribunal (Lands Chamber)

INTERIM PRACTICE DIRECTIONS AND GUIDANCE

1. Introduction

- 1.1 The Interim Practice Directions and Guidance supersede all previously issued Lands Tribunal Practice Directions. They apply to all proceedings, including references by consent, during the interim period between the date on which the functions of the Lands Tribunal are transferred to the Upper Tribunal and the date on which fully revised Lands Chamber Rules come into operation, (the “Interim Period”).
- 1.2 The transfer of the Lands Tribunal’s jurisdictions in accordance with the Tribunals, Courts and Enforcement Act 2007, (the “2007 Act”) is effected by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (SI 2009/1307) (the “Transfer Order”). The Transfer Order principally consists of provisions substituting the word “Upper” for the word “Lands” in the many statutes and statutory instruments that conferred jurisdiction on the Lands Tribunal. In addition to the Transfer Order the First-tier Tribunal and Upper Tribunal (Chambers) (Amendment No.2) Order 2009 (SI 2009/1021) amended the First-tier Tribunal and Upper Tribunal (Chambers) Order 2008 (SI 2008/2684) to establish an Upper Tribunal Lands Chamber and assign to it the functions of the Lands Tribunal. The Lands Chamber will be known for the time being as the Lands Tribunal to make clear that the functions have not changed.
- 1.3 Under the new arrangements the legal members are known as Judges and the surveyor members are referred to as Members.
- 1.4 During the Interim Period the Lands Tribunal Rules 1996 continue in force in an amended form, (the “Rules”). The Rules were amended by the Transfer Order as necessary to comply with provisions of the 2007 Act. They operate together with the Interim Practice Directions and Guidance to govern procedure in the Tribunal during the Interim Period. Rules that previously conferred specific functions on the Lands Tribunal President and the Tribunal (President and/or Member) have been amended so that they refer instead to the Upper Tribunal. A Practice Statement sets out the arrangements for determining whether the Chamber President, Judges or Members are to decide matters. The Rules contain new provisions dealing with leave to appeal to the Court of Appeal and review of Tribunal decisions. It is planned to publish more extensively amended rules for consultation during the summer of 2009 with the expectation that these will come into force in January 2010.
- 1.5 The Interim Practice Directions and Guidance correspond in the main to the former Lands Tribunal Practice Directions with amendments made necessary by the 2007 Act and changes to the Rules. They contain

important procedural provisions dealing with the filing of statements of case and other documentation and the giving of evidence in proceedings. New are provisions relating to the mediation services now available to users. Also new are provisions relating to the power of the Tribunal under the 2007 Act to review its own decisions in certain, limited, circumstances. Additional guidance has been given on costs awards in hearings under section 84(3A) of the Law of Property Act 1925. References in the Practice Directions and Guidance to a rule or rules are to rules forming part of the Rules.

2. The overriding objective

2.1 The Civil Procedure Rules, which apply to the ordinary civil courts of law (the Court of Appeal, the High Court and the county courts), have no application in the Tribunal. Nevertheless in following its procedures the Tribunal does so on the basis of the same overriding objective as that in the Civil Procedure Rules. The overriding objective is to follow procedures that enable the Tribunal to deal with cases justly. Dealing with a case justly includes, so far as is practicable –

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate –
 - (i) to the amount of money involved;
 - (ii) to the importance of the case;
 - (iii) to the complexity of the issues; and
 - (iv) to the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the Tribunal's resources, while taking into account the need to allot resources to other cases.

2.2 The Tribunal expects parties to assist it to further the overriding objective.

3. Mediation

3.1 Should they wish to do so, parties in cases before the Tribunal may apply at any time¹ for a short stay in the proceedings to attempt to resolve their differences, in whole or in part, outside the Tribunal process. The Tribunal has made arrangements for the providers of two mediation schemes currently in operation in the courts to make their schemes available for Tribunal users. Parties may also make arrangements directly with any other mediation provider.

¹ Timing can be important to the success of mediation; the parties need to understand each other's cases but not be so far down the path to litigation that they feel committed to continue the legal proceedings.

- 3.2 The Tribunal has arranged to have two different mediation schemes offered by their providers to parties with cases before the Tribunal better to serve the needs of different users. The National Mediation Helpline scheme is well suited for simple cases and those involving relatively small sums of money, because the process, time scale and fees are all moderate as is commensurate with this type of case. A more tailored and (therefore more costly) scheme based on the Court of Appeal scheme and provided by the Centre for Effective Dispute Resolution, CEDR, is well suited for complex cases or those with large sums in issue.
- 3.3 Parties should not dismiss the idea of mediation out of hand. A party's refusal to mediate may be drawn to the attention of the Tribunal hearing the case after the substantive issues have been decided and the issue of costs arises. The Tribunal has discretion when exercising its power to order that any or all of the costs of any proceedings incurred by one party be paid by another party and may consider whether a party has unreasonably refused to take part in mediation when deciding what costs order to make, even when the refusing party is otherwise successful. Since the decision of the Court of Appeal in *Dunnett v Railtrack*² this must be borne in mind particularly where the Tribunal has advised the parties that it considers that mediation should be attempted.
- 3.4 Further information about the mediation schemes is available on the Lands Tribunal website or may be requested from the Registrars. Further information relating to costs orders is set out below at paragraph 23.

4. Stay of proceedings pending negotiation, mediation or other alternative dispute resolution (ADR)

- 4.1 When an appellant files a notice of appeal or a respondent files and serves notice of intention to respond, or at any other time during the proceedings they should state whether they wish the proceedings to be stayed to allow negotiations for a settlement to take place, mediation or other ADR procedure to be followed. Parties to a reference should also state whether they wish the proceedings to be stayed for this purpose. Where both parties indicate such a wish, a stay of 4 weeks will normally be granted. If a longer period is asked for, the parties will need to satisfy the Tribunal that in the circumstances of the particular case this would be appropriate.

5. Case management

5.1 Introduction

As soon as the Tribunal or a Registrar has sufficient information to enable this to be done every case will be assigned to one of the following four procedures:

- (a) the standard procedure;
- (b) the special procedure;

² [2002] 2 All Er 850 see also *Halsey v Keynes* [2004] EWCA Civ 576.

- (c) the simplified procedure;
- (d) the written representations procedure.

Any views expressed by the parties on the procedure to which a case should be assigned will be taken into account.

5.2 Special procedure

A case will be assigned to the **special procedure** if it requires case management by a Judge or Member in view of its complexity, the amount in issue or its wider importance. Once a case has been allocated to a Judge or one or more Members under the special procedure, the Judge, Member or Members will order a pre-trial review to be held under rule 39. The purpose of the pre-trial review is to ensure so far as practicable that all appropriate directions are given for the fair, expeditious and economical conduct of the proceedings. Where appropriate a date for the hearing will be fixed at the pre-trial review and the steps which the parties are required to take, and further pre-trial reviews, will be timetabled by reference to this date. Before the pre-trial review the parties will be asked to the extent that they are able to do so at that stage, to identify the issues in the case, and to state the areas of expertise of each expert witness that they propose to rely on and the general scope of their evidence. Each party should consider whether it is appropriate to make application under rule 43 (determination of a preliminary issue) and rule 42 (leave to call more than the permitted number of expert witnesses) and it should identify, and where necessary make application for, any other order that it wishes the Tribunal to make at the pre-trial review.

5.3 Simplified procedure

Rule 28 provides for the assignment of a case to the **simplified procedure**. The purpose of this procedure is to provide for the speedy and economical determination of cases in which no substantial issue of law or valuation practice, or substantial conflict of fact, is likely to arise. It is often suitable where the amount at stake is small. The procedure is initiated by a direction of a Judge or Member or a Registrar, made with the consent of the claimant, appellant or applicant, that the proceedings should be determined under this rule. There is provision for any other party to object and for determining such objection as an interlocutory matter under rule 38.

- 5.4 The objective is to move to a hearing as quickly as possible and with the minimum of formality and cost. In most cases a date for the hearing, normally about 3 months ahead, will be fixed immediately, and the parties will be required to file a statement of case and a reply. They must, not later than 28 days before the hearing, exchange copies of all documents on which they intend to rely, and experts' reports must be exchanged not later than 14 days before the hearing. The hearing is informal and strict rules of evidence do not apply. It will almost always be completed in a single day. Except in compensation cases, to which particular statutory

provisions on costs apply, an award of costs is made only in exceptional circumstances.

5.5 Written representation procedure

Under rule 27 the Tribunal may, with the consent of the parties to the proceedings, order that the proceedings be determined without an oral hearing. Such an order for the **written representation procedure** to be followed will only be made if the Tribunal, having regard to the issues in the case and the desirability of minimising costs, is of the view that oral evidence and argument can properly be dispensed with. Directions will be given to the parties relating to the filing of representations and documents, and the Judge or Member allocated to the case will if necessary carry out a site inspection before giving a written decision.

5.6 Standard procedure

The **standard procedure** applies in all other cases. Under this procedure case management will be in the hands of the Registrars. A Registrar will look to hold a pre-trial review should it appear appropriate to do so, and will give directions tailored to the requirements of the particular case. These directions may, as appropriate, use elements of the special procedure (for example, timetabling through to the hearing date) or the simplified procedure.

5.7 At any time a Registrar or the Judge or Member to whom the case has been allocated, may direct that it should be assigned to one of the other procedures, provided that any consent from a party that is required under rule 27 or rule 28 has been given.

5.8 At the time an appellant files a notice of appeal or a respondent files and serves a notice of intention to respond they should state to which of the procedures they suggest that the case should be assigned. The same course should be followed in relation to every party to a reference, and to the applicant and objectors in an application under Part V of the Rules.

6. Appeals from Leasehold Valuation Tribunals

6.1 Introduction

In respect of applications to a leasehold valuation tribunal (LVT) a party may appeal to the Upper Tribunal under section 175(1) of the Commonhold and Leasehold Reform Act 2002; but by section 175(2) it is provided that an appeal may only be made with the permission of the LVT or the Upper Tribunal. The First-tier Tribunal and Upper Tribunal (Chambers) Order 2008 (as amended) assigns all functions relating to such appeals to the Lands Chamber of the Upper Tribunal, the Lands Tribunal.

6.2 Procedure in cases where permission to appeal required

Where permission to appeal is required it must first be sought from the LVT concerned: rule 5C(1). If the LVT grants permission, notice of appeal must be given to the Registrars of the Lands Tribunal within 28

days of the grant of permission to appeal: rule 6(1). There is power to extend the time limit (rule 35), but no extension will be granted unless there is justification for it. An urgency direction may be issued, upon application by a party or by the Lands Tribunal acting on its own initiative, to reduce this (and certain other) time limits: rule 35A; see also paragraph 8 below.

- 6.3 If permission to appeal is granted by the LVT forms for the notice of appeal can be downloaded from the Lands Tribunal website or obtained from the Lands Tribunal. A completed form must be sent or delivered to the Lands Tribunal to arrive before the expiration of the time limit together with a copy of the disputed decision and a copy of the LVT's decision granting permission to appeal. The Lands Tribunal does not have access to LVT documents or files so the appellant must also provide a copy of every document on which reliance is placed.
- 6.4 If permission to appeal is refused by the LVT, application for permission to appeal may be made to the Lands Tribunal within 14 days of the decision of the LVT to refuse permission: rule 5C(2) (as amended). There is power to extend this time limit (rule 35), but no extension will be granted unless there is justification for it. Forms for the application for permission to appeal can be downloaded from the Lands Tribunal website or obtained from the Lands Tribunal. These provide for the applicant to set out, in addition to their grounds of appeal, the reasons for the application for permission. It is for the applicant to satisfy the Lands Tribunal that permission to appeal should be given and their reasons should therefore be set out fully. The application must be accompanied by a copy of the decision against which permission to appeal is being sought and a copy of the decision of the LVT decision refusing permission to appeal. The Lands Tribunal does not have access to LVT documents or files so the appellant must also provide a copy of every document on which reliance is placed.
- 6.5 On receiving an application for permission to appeal, the Tribunal, unless it decides that permission should be refused without further representations, will serve a copy of the application on each respondent and will inform the applicant of the date when this was done. Respondents will be informed of the time limit specified by the Tribunal within which any written representations regarding the application for permission to appeal must be made. The Tribunal will consider any such representations and the applicant's reasons for the application and will decide whether to grant permission. Only in special circumstances will a hearing be held before a decision to grant or to refuse permission to appeal.
- 6.6 If the Tribunal grants permission to appeal, it may do so on such conditions as it thinks fit. In view of the limitation on the Tribunal's power to award costs contained in section 175(6) and (7) of the Commonhold and Leasehold Reform Act 2002, it will not be appropriate to impose conditions relating to costs. It would, however, be open to an appellant to undertake to pay all or part of a respondent's costs.

6.7 Approach of the Tribunal to the grant of permission to appeal

On the application form applicants must specify whether their reasons for making the application fall within one or more of the following categories:

- (a) The decision shows that the LVT wrongly interpreted or wrongly applied the relevant law.
- (b) The decision shows that the LVT wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice.
- (c) The LVT took account of irrelevant considerations, or failed to take account of relevant consideration or evidence, or there was a substantial procedural defect.
- (d) The point or points at issue is or are of potentially wide implication.

6.8 The application must make clear whether the appellant is seeking

- (i) an appeal by way of review, or
- (ii) an appeal by way of review, which if successful will involve a consequential re-hearing, or
- (iii) an appeal by way of re-hearing.

Unless the application otherwise specifies, the application will be treated as an application for an appeal by way of review.

6.9 The Tribunal will grant permission to appeal only where it appears that there are reasonable grounds for concluding that the LVT may have been wrong for one or more of the reasons (a) to (c). In considering whether to grant permission on such grounds the importance of the point both to the decision itself and in terms of its wider implications will be a factor to be taken into consideration, in determining the proportionality and expedience of permitting an appeal to proceed. Where a successful appeal by review will necessitate a re-hearing, the Tribunal will have regard to the scope of such re-hearing in considering the proportionality of granting permission.

6.10 Procedure on appeal

Part III and Part VIII of the Rules contain the procedure relating to appeals. Where an application for permission has been made and permission has been granted the application will be treated as the appellant's notice of appeal for the purposes of rule 6. Except in cases where the simplified procedure is followed under rule 28, the appellant will be required to serve a statement of case and each respondent will be required to serve a reply: see rule 8. Where a successful appeal by way of review will involve a consequential re-hearing of all or part of the evidence, unless the review is dealt with as a preliminary issue (see paragraph 10 below), the review and the re-hearing will take place in the same hearing, and appropriate directions will be given for this purpose.

7. Appeals from Residential Property Tribunals

7.1 Introduction

Section 231(1) of the Housing Act 2004 provides that a party to the proceedings may appeal to the Upper Tribunal from a decision of a residential property tribunal (RPT); but section 23(2) stipulates that an appeal may only be made with the permission of the RPT or the Upper Tribunal. The First-tier Tribunal and Upper Tribunal (Chambers) Order 2008 (as amended) assigns all functions relating to such appeals to the Lands Chamber of the Upper Tribunal, the Lands Tribunal.

7.2 Procedure for seeking permission to appeal

Permission to appeal must first be sought from the RPT concerned: rule 5C(1). If the RPT grants permission, notice of appeal must be given to the Registrars of the Lands Tribunal within 28 days of the grant of permission to appeal (rule 6(1)), except in cases where an urgency direction has been issued to reduce this time limit: rule 35A. An urgency direction may be issued upon application by a party or by the Tribunal acting on its own motion. There is power to extend the time limit for lodging the notice of appeal: rule 35, but no extension will be granted unless there is justification for it.

7.3 Forms for the notice of appeal can be downloaded from the Lands Tribunal website or obtained from the Lands Tribunal. A completed form must be sent or delivered to the Tribunal together with a copy of the disputed decision and a copy of the RPT's decision granting permission to appeal. The Lands Tribunal does not have access to RPT documents or files so an appellant must also provide a copy of every document on which reliance is placed.

7.4 If the RPT refuses permission to appeal, application for permission to appeal may be made to the Lands Tribunal within 14 days of the decision of the RPT to refuse permission: rule 5C(2). There is power to extend this time limit, (rule 35) but no extension will be granted unless there is justification for it.

7.5 Forms for the application can be downloaded from the Lands Tribunal website or obtained from the Lands Tribunal. These provide for the applicant to set out, in addition to their grounds of appeal, the reasons for the application for permission. It is for the applicant to satisfy the Tribunal that permission to appeal should be given and their reasons should therefore be set out fully. The application must be accompanied by a copy of the decision against which permission to appeal is being sought and a copy of the decision of the RPT refusing permission to appeal. The Lands Tribunal does not have access to RPT documents or files so an appellant must also provide a copy of every document on which reliance is placed.

7.6 If the Lands Tribunal grants permission, it may do so on such conditions as it thinks fit, including imposing conditions relating to costs. It is open to an appellant to undertake to pay all or part of a respondent's costs.

7.7 Approach of the Lands Tribunal to the grant of permission to appeal

On the application form applicants must specify whether their reasons for making the application fall within one or more of the following categories:

- (a) the decision shows that the RPT wrongly interpreted or wrongly applied the relevant law.
- (b) The RPT took account of irrelevant considerations, or failed to take account of relevant consideration or evidence, or there was a substantial procedural defect.
- (c) The point or points at issue is or are of potentially wide implication.

7.8 The application must make clear whether the appellant is seeking

- (i) an appeal by way of review, or
- (ii) an appeal by way of review, which if successful will involve a consequential re-hearing, or
- (iii) an appeal by way of re-hearing.

Unless the application otherwise specifies, the application will be treated as an application for an appeal by way of review.

7.9 The Tribunal will grant permission to appeal only where it appears that there are reasonable grounds for concluding that the RPT may have been wrong for one or more of the reasons (a) and (b). In considering whether to grant permission on such grounds the importance of the point both to the decision itself and in terms of its wider implications will be a factor to be taken into consideration, in determining the proportionality and expedience of permitting an appeal to proceed. Where a successful appeal by review will necessitate a re-hearing, the Tribunal will have regard to the scope of such re-hearing in considering the proportionality of granting permission.

7.10 Procedure on appeal

Part III and Part VIII of the Rules contain the procedure relating to appeals. Where an application for permission has been made and permission has been granted the application will be treated as the appellant's notice of appeal for the purposes of rule 6. Except in cases where the simplified procedure is followed under rule 28, the appellant must serve a statement of case and each respondent must serve a reply: see rule 8. Where a successful appeal by way of review will involve a consequential re-hearing of all or part of the evidence, unless the review is dealt with as a preliminary issue (see paragraph 10 below), the review and the re-hearing will take place in the same hearing, and appropriate directions will be given for this purpose.

8. Urgency directions

8.1 For appeals from the LVT or the RPT an urgency direction may be issued to shorten the time limits that otherwise apply to the following actions:

- (a) giving notice to the Registrars of the Lands Tribunal of an intention to appeal when permission to appeal has been granted by the LVT or the RPT: rule 6(1B);
- (b) filing and serving a notice of intention to respond: rule 7(2B);
- (c) filing and serving a statement of case: rule 8 (4B); or
- (d) filing and serving a reply to a statement of case: rule 8(4B).

Any urgency direction may also permit the application to the LVT or to the RPT for permission to appeal to stand as notice to the Registrars of the Land Tribunal of an intention to appeal: rule 6(1B)(b).

- 8.2 Rule 35A sets out the procedure for urgency directions. An urgency direction may be made by the Tribunal acting on its own initiative or on application by a party: rule 35A(2). Where the Tribunal proposes making an urgency direction, it will give notice in writing to the parties setting out the proposed direction or directions and will invite written representations on the proposal from the parties: rule 35A(9). The Tribunal may set a time period within which any such representations are to be made: rule 35A(10).
- 8.3 Rule 35A(4) to (8) applies to applications made by a party for an urgency direction (in place of rule 38). A written application must be made in which the title of the proceedings and the ground upon which the application is made are set out: rule 35A(4). Consents signed by or on behalf of all parties must accompany any application that is made with the consent of all parties: rule 35A(6). The Tribunal will give written notice to the other parties and invite written representations on the application, (rule 35A (7)) unless the Tribunal, having considered the grounds upon which the application is made, decides to refuse the application: rule 35A (8). The Tribunal may set a time period within which any such representations are to be made: rule 35A(10).
- 8.4 In reaching a decision the Tribunal will take all written representations into account: rule 35A(11). An urgency direction will not be made unless the Tribunal is satisfied that it is in the interests of justice to do so: rules 6(1B), 7(2B) and 8(4B).

9. Statement of case and reply

Under Part III of the Rules, which relates to appeals, appellants must serve a statement of case and respondents must serve a reply. In the case of references there is no such requirement, but a statement of case and a reply will often be the appropriate way of ensuring that the issues are identified as soon as possible. In references, therefore, a Registrar (under the standard procedure) or a Judge or Member (under the special procedure) will normally order these at an early stage.

10. Preliminary issues

- 10.1 Rule 43 enables the Tribunal on the application of any party to proceedings to order any preliminary issue in the proceedings to be disposed of at a preliminary hearing. In appropriate circumstances the

procedure may enable the proceedings to be concluded more expeditiously and expense to be saved, and parties are therefore encouraged to consider whether there are any issues in a case which can with advantage be dealt with in this way. For its part the Tribunal will draw the parties' attention to issues which in its view might usefully be determined under this procedure.

- 10.2 Issues which may appropriately be the subject of a preliminary determination may be of law or of fact. Determination of a preliminary issue may effectively dispose of the whole case. Where it would not do so, however, it may nevertheless reduce the issues in the case and thereby avoid the cost and delay associated with the disclosure and inspection of documents, the preparation and exchange of experts' reports and valuations, and the pre-trial preparation on the part of solicitors and counsel, which the issues eliminated would otherwise have involved. On the other hand to attempt to deal as a preliminary issue with a matter which is not in reality severable from other issues in the case can lead to delay and increased cost.
- 10.3 An application under rule 43 should set out with precision the point of law or other issue or issues to be decided. It should where appropriate be accompanied by a statement of agreed facts, and it should state whether in the view of the party making the application the issue can be decided on the basis of the statement of agreed facts or whether evidence will be required. If evidence is said to be needed the application should state what matters that evidence would cover. The application should state why, in the applicant's view, determination of the issue as a preliminary issue would be likely to enable the proceedings to be disposed of more expeditiously and/or at less expense.
- 10.4 In order to consider an application that there should be a determination under rule 43 the Tribunal may require that witness statements and documentary evidence should be filed. If it decides to order that the issue should be determined as a preliminary issue it will give directions as to the filing in advance of the hearing of any experts' reports, witness statements, documentary evidence and statement of agreed facts that appear to it to be required.
- 10.5 An application under rule 43 is not appropriate for the determination of matters of title to the benefit of restrictive covenants for the purpose of applications to the Tribunal to discharge or modify restrictions under section 84 of the Law of Property Act 1925. That section makes specific provision for the giving of directions by the Tribunal as to who may be admitted to oppose such an application to discharge or modify restrictions and for reference to the Court of questions relating to the land affected by the restriction, the construction and effect of the restriction, and who, if anyone, can enforce it. The Tribunal has a separate procedure for the exercise of this statutory jurisdiction.

11. Extensions of time

- 11.1 Under rule 38 any time limit within which, either as prescribed by the Rules or as laid down in any order or direction, a party is required to do

anything may be extended on application to the Registrars. In general, justification for any such extension will be required, and a Registrar, or the Judge or Member to whom the case has been allocated, will consider any such application having regard to the overriding objective. In certain types of case, notably section 84 applications and leasehold enfranchisement appeals, delay may have substantial adverse consequences for one of the parties and the Tribunal will seek to enforce strictly any time limits laid down if such consequences are likely to occur.

12. Arranging the hearing

12.1 Where a hearing date has not already been fixed, the parties will be consulted as soon as the case is considered ready (either for a full hearing or for the determination of a preliminary issue). The views of the parties will be sought as to the estimated length of the hearing, the appropriate venue and suitable dates. Whilst every effort will be made to accommodate the parties' choice of counsel, there can be no absolute right to be represented by a particular member of the Bar. If, due to chosen counsel's unavailability, unacceptable listing delays would occur, the appointment of alternative counsel may be necessary. Once the parties have been consulted, and suitable dates determined, the case will be formally set down for the hearing and the parties officially notified. After the hearing has been fixed in this way the Tribunal will not order a postponement, even though the parties are agreed that there should be one, unless very good reasons are made out.

13. Venue

13.1 All parties are offered the option of a hearing at the Tribunal's own courts in London, and it is often possible to arrange earlier dates there than in a provincial court and to accommodate larger cases more easily than elsewhere. Where, for reasons of cost, accessibility, or the convenience of the parties and their representatives, it is desirable for a case to be heard outside London, the preferences of the parties will be met as far as it is practicable to do so. However, due to pressure on court accommodation it may be necessary for the parties to travel to the nearest major city, and there may be a smaller choice of dates.

14. Negotiations, settlements and withdrawals

14.1 The Tribunal encourages continued negotiations between the parties prior to the hearing with the objective of settling some or all of the issues, but the fact that such negotiations may be in progress will not constitute the sort of exceptional circumstances that would justify a postponement of the hearing. The parties should let the Tribunal know if, as the result of negotiations or other circumstances, time estimates for the hearing change. Where settlement of the case is reached before the hearing, the parties' representatives should advise the Tribunal immediately so that the hearing arrangements may be cancelled. Similarly, where an appeal, reference or application is to be withdrawn (rule 45(1)) or application is made to dismiss the proceedings (rule 45(2)) after the hearing date has been fixed, the Tribunal should be advised at the earliest opportunity.

15. Documentation

- 15.1 In cases assigned to the special or standard procedures, unless the Tribunal directs otherwise, the parties should file with the Tribunal not less than 14 days prior to the hearing sufficient copies (for the number of Judges and or Members sitting) of a fully paginated agreed trial bundle containing the following:
- (a) expert witness reports, including all appendices, photographs and plans referred to;
 - (b) witness statements;
 - (c) all other documents to be relied upon;
 - (d) a statement of agreed facts and issues.
- 15.2 The advocates' skeleton arguments should be filed not less than 7 days before the hearing. Photocopies of any cases relied on should be provided for the Tribunal.
- 15.3 Plans and photographs should be appropriately annotated and indexed. Plans should be in A4 or A3 format unless there is good reason to use some other size.

16 Evidence

- 16.1 Those giving evidence at a hearing, whether of fact or as expert witnesses, should provide a written statement verified by a statement of truth. The form of the statement of truth is as follows:
- “I believe that the facts stated in this witness statement are true.”
- The form of the statement of truth by an expert witness is as follows:
- “I believe that the facts stated in this witness statement are true and that the opinions expressed are correct.”
- 16.2 Evidence is given on oath or affirmation. Expert witnesses should comply with the provisions of the following paragraphs of these Directions. An expert's report will stand as the expert's witness statement unless the Tribunal directs otherwise. A witness statement will stand as the witness's evidence in chief, but a witness giving oral evidence may, with the consent of the Tribunal, (a) amplify their witness statement, and (b) give evidence on new matters which have arisen since the witness statement was served. Notice of any such additional evidence should where possible be given to the other party, and any failure to do so will be taken into account by the Tribunal in deciding whether to give consent to such evidence being given. Paragraph 17.7 refers to supplementary experts' reports.

17. Expert evidence

17.1 Introduction

Rule 42 applies to expert witnesses and their evidence. The nature of the jurisdictions exercised by the Tribunal means that the Tribunal will be called upon to hear and evaluate the evidence of experts in most cases. Expert witnesses are defined as those qualified by training and experience in a particular subject or subjects to express an opinion. Most frequently the expert witness before the Tribunal will be a surveyor or valuer, but this Part applies equally to any witness whom it is proposed to call to give expert evidence.

17.2 Duty of the expert witness

It is the duty of an expert to help the Tribunal on matters within his or her expertise. This duty overrides any obligation to the person from whom they have received instructions or by whom they are paid. The evidence should be accurate and complete as to relevant fact, and should represent the honest and objective opinion of the witness. If a professional body has adopted a code of practice and professional conduct dealing with the giving of evidence, then the Tribunal will expect a member of that body to comply with the provisions of the code in the preparation and presentation of their evidence.

17.3 Where more than one party intends to call expert evidence

Where more than one party is intending to call expert evidence in the same field, the experts should take steps before preparing or exchanging their reports to agree all matters of fact relevant to their reports, including the facts relating to any comparable transaction on which they propose to rely, any differences of fact, and any plans, documents or photographs on which they intend to rely in their reports.

17.4 Form and content of expert's report

An expert's report should be addressed to the Tribunal and not to the party from whom the expert has received instructions. It should:

- (a) give details of the expert's qualifications;
- (b) give details of any literature or other material on which the expert has relied in making the report;
- (c) say who carried out any inspection or investigations which the expert has used for the report and whether or not the investigations have been carried out under the expert's supervision;
- (d) give the qualifications of the person who carried out any such inspection or investigations, and
- (e) where there is a range of opinion on the matters dealt with in the report
 - (i) summarise the range of opinion, and
 - (ii) give reasons for his own opinion;

- (f) contain a summary of the conclusions reached;
- (g) contain a statement that the expert understands his or her duty to the Tribunal and has complied with that duty; and
- (h) contain a statement setting out the substance of all material instructions (whether written or oral). The statement should summarise the facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based.

17.5 The instructions referred to in sub-paragraph (h) above will not be privileged against disclosure but the Tribunal will not, in relation to those instructions –

- (i) order disclosure of any specific document; or
- (ii) permit any questioning in the Tribunal, other than by the party who instructed the expert,

unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under sub-paragraph (h) to be inaccurate or incomplete.

17.6 An expert's report should be verified by a statement of truth as well as the statements required by 17.4(g) and (h). Members of the Royal Institution of Chartered Surveyors should comply with the form of declaration contained in "Surveyors Acting as Expert Witnesses – Practice Statement" issued by the RICS. The form of the statement of truth is set out in paragraph 16.1 above.

17.7 Lodging reports

The procedures of the Tribunal are designed to ensure that all cases are disposed of speedily, efficiently and fairly. The role of the expert witness in these procedures is of fundamental importance. The directions given by the Tribunal will normally require the lodging and exchange of experts' reports and valuations at an early stage prior to the hearing. It is incumbent on the expert witness to prepare and submit such a report together with any valuation and details of comparable properties or transactions relied upon, fully and promptly for the purpose of lodging and exchange. Subject to paragraph 16.2 expert evidence given at the hearing will be confined to those matters disclosed in the expert's report. An expert who wishes to respond to the report of another expert should do so in a supplementary report, which will be treated as notice of additional evidence for the purposes of paragraph 16.2. Experts' reports must not contain any reference to or details of negotiations "without prejudice" or offers of settlement.

17.8 Written questions to experts

The Tribunal encourages parties to adopt the following procedure. Where they think it necessary to do so, a party should put written questions about their report to an expert instructed by another party. Normally such questions should be put once only; should be put within 28 days of service

of the expert's report; and should be only for the purposes of clarification of the report. Where a party sends a written question or questions direct to an expert and the other party is represented by solicitors, a copy of the questions should, at the same time, be sent to those solicitors. It is for the party or parties instructing the expert to pay any fees charged by that expert for answering questions put under this procedure. This does not affect any decision of the Tribunal as to which party is ultimately to bear the expert's costs. An expert's answers to questions put in accordance with this paragraph will be treated as part of the expert's report.

- 17.9 Where a party has put a written question to an expert instructed by another party in accordance with the above paragraph, the Tribunal or a Registrar may order that the question must be answered; and the Tribunal may also make such an order in relation to a question that has not been put in this way. If the question is not answered the Tribunal or a Registrar may make one or both of the following orders in relation to the party who instructed the expert -

that the party may not rely on the evidence of that expert; or

that the party may not recover the fees and expenses of that expert from any other party.

- 17.10 Where a party has disclosed an expert's report, any party may use that expert's report as evidence at the hearing.

17.11 Discussions between experts

After the exchange of the experts' reports the Tribunal will normally require experts of like discipline to meet in order to reach agreement as to facts, to agree any relevant plans, photographs, etc, to identify the issues in the proceedings and, where possible, to reach agreement on an issue. The Tribunal may specify the issues which the experts must discuss. The Tribunal may also direct that following a discussion between the experts the parties must prepare a statement for the Tribunal showing those facts and issues on which the experts agree and those facts and issues on which they disagree and a summary of their reasons for disagreeing. The Tribunal will usually regard failure to co-operate in reaching agreement as to the facts and issues as incompatible with the expert's duty to the Tribunal and may reflect this in any order on costs that it may make.

- 17.12 The contents of the discussions between the experts are not to be referred to at the hearing unless the parties agree. Where experts reach agreement on an issue during their discussions, the agreement will not bind the parties unless the parties expressly agree to be bound by the agreement.

17.13 Computer-based valuations

Where valuers propose to rely on computer-based valuations it is of the utmost importance that they should agree to employ a common model which can be made available for use by the Tribunal in the preparation of its decision. Directions should be sought from the Tribunal at an early stage if there is difficulty in reaching agreement.

18. Representation

18.1 At the hearing a party may appear and be heard in person (although a valuation officer may only do so with permission of the Tribunal), or may be represented by a barrister or a solicitor or, on obtaining permission from the Tribunal, by any other person (rule 37). A legal executive who is a Fellow of the Institute of Legal Executives and has a certificate covering the Lands Tribunal will be granted permission to represent his or her client, on application made at or prior to the hearing. An application for permission for a friend to represent a party who is an individual, or for one spouse to represent the other, will readily be granted and may be made at the hearing. Otherwise applications for permission to represent a party should be made in good time prior to the hearing, but the Tribunal may grant permission at the hearing as a matter of discretion. In simple cases, permission will usually be granted for a surveyor or valuer to represent a party in order to avoid the additional costs of separate representation. In those cases allocated to the simplified procedure under rule 28, such representation may well be the norm. In general, however, it is difficult and undesirable for the same person to act both as advocate and expert witness. Accordingly, permission will not be granted for a non-lawyer to represent a party in any case where the Tribunal considers that the responsibilities of advocate and of expert witness are likely to conflict.

19. Procedure at the hearing

19.1 The procedure at a hearing of the Tribunal is within the discretion of the presiding Judge or Member. The procedure adopted will generally accord with the practice in the High Court and the county courts. In particular, the claimant, applicant or appellant will begin and will have a right of reply; evidence will be taken on oath, and the rules of evidence will be applied. The Tribunal will throughout seek to adopt a procedure that is proportionate, expeditious and fair in accordance with the overriding objective.

19.2 All cases assigned to the simplified procedure list will be heard by a single Judge or Member acting as if he were an arbitrator under rule 28. That rule and paragraphs 5.3 and 5.4 of these Practice Directions and Guidance should be referred to for further guidance to procedure in these cases.

19.3 The effect of rule 5 is that hearings by the Tribunal take place in public save in certain rare cases, principally where the Tribunal is sitting as an arbitrator under a reference by consent.

20. Site inspections

20.1 Where appropriate, the Tribunal may enter and inspect the land or property that is the subject of the proceedings, and, where practicable, any other land or properties referred to by the parties or their experts (rule 29). At such inspection, the Tribunal will (unless otherwise agreed) be accompanied by one representative from each side and will not accept any oral or written evidence tendered in the course of the inspection. The

21 Delivery of decisions

21.1 The Tribunal's decision will in most cases be reserved and will be in writing. Rule 50(2) enables the Tribunal to give an oral decision at the end of the hearing, but this course is not normally appropriate.

22. Fees

22.1 The fees to be paid in respect of proceedings in the Tribunal are specified in the Upper Tribunal (Lands Chamber) Fees Order 2009 which correspond in the main to the Lands Tribunal (Fees) Rules 1996 which has been repealed. Under the Upper Tribunal (Lands Chamber) Fees Order 2009 the Lord Chancellor has power to reduce or remit fees in the case of hardship. Unless the Tribunal directs otherwise, the appropriate hearing fee is payable by the party initiating proceedings, but without prejudice to any right to recover the fee under an order for costs. A solicitor acting for a party must be on the record, and he will be responsible for the fees payable by that party while he is on the record (rule 53).

23 Costs

23.1 Under section 29 of the Tribunals, Courts and Enforcement Act 2007 the Upper Tribunal has power to order that the costs of any proceedings incurred by one party shall be paid by any other party. This power is limited by section 175(6) and (7) of the Commonhold and Leasehold Reform Act 2002 in the case of appeals from the LVT (see paragraph 23.5 below). In awarding costs the Tribunal may settle the amount summarily or direct that they be the subject of detailed assessment by a Registrar on a specified basis.

23.2 Costs are in the discretion of the Tribunal, although this discretion is qualified by particular provisions in section 4 of the Land Compensation Act 1961 (see below paragraph 23.3) and where the case is heard under the simplified procedure (see paragraph 23.9 below). Subject to what is said below the discretion will usually be exercised in accordance with the principles applied in the High Court and county courts. Accordingly, the Tribunal will have regard to all the circumstances, including the conduct of the parties; whether a party has succeeded on part of their case, even if they have not been wholly successful; and admissible offers to settle (see paragraphs 23.3 and 23.6 below). The conduct of a party will include conduct during and before the proceedings; whether a party has acted reasonably in pursuing or contesting an issue; the manner in which a party has conducted their case; and whether or not they have exaggerated their claim.

23.3 The general rule is that the successful party ought to receive their costs. On a claim for compensation for compulsory acquisition of land, the costs incurred by a claimant in establishing the amount of disputed compensation are properly to be seen as part of the expense that is imposed on the claimant by the acquisition. The Tribunal will, therefore,

normally make an order for costs in favour of a claimant who receives an award of compensation unless there are special reasons for not doing so. Particular rules, however, apply by virtue of section 4 of the Land Compensation Act 1961. Under this provision, where an acquiring authority has made an unconditional offer in writing of compensation and the sum awarded does not exceed the sum offered, the Tribunal must, in the absence of special reasons, order the claimant to bear their own costs thereafter and to pay the post-offer costs of the acquiring authority. However, claimants will not be entitled to their costs if they have failed to deliver to the authority, in time to enable the authority to make a proper offer, a notice of claim containing the particulars set out in section 4(2). Where claimants have delivered a claim containing the required details and have made an unconditional offer in writing to accept a particular sum, if the Tribunal's award is equal to or exceeds that sum the Tribunal must, in the absence of special reasons, order the authority to bear their costs and to pay the claimants' post-offer costs.

- 23.4 On an application to discharge or modify a restrictive covenant the general costs rule (that costs follow the event) applies only to the costs of resolving entitlement when an applicant disputes an objector's claimed entitlement to the benefit of the restriction. While the applicant generally will be liable for the costs incurred by objectors who are admitted by the Tribunal as having the benefit of the covenant, objectors who fail to gain admittance will usually be liable for the applicant's costs of this issue. The general rule as to costs does not however apply to the rest of the proceedings because under section 84 of the Law of Property Act 1925 the applicant is seeking to have removed from the objector particular property rights that the objector has. In view of this (and subject to any offer to settle that either party may have made) unless they have acted unreasonably, unsuccessful objectors will not normally have to pay any of the applicant's costs and successful objectors will normally get their costs unless they have in some respect acted unreasonably.
- 23.5 On an appeal from the LVT the Tribunal may not order a party to the appeal to pay costs incurred by another party unless he or she has, in the opinion of the Tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the appeal; and where, in view of such conduct, it does order a party to pay costs it may not award more than the LVT could order in such circumstances (currently £500).
- 23.6 In any proceedings a party may make an offer marked "without prejudice save as to costs" or similar wording (usually referred to as a *Calderbank* offer) in respect of the subject-matter of the appeal, application or reference. It may state a period within which it will remain open for acceptance but in order to protect the offeror fully it must be unconditional in point of time. Where an offer is accepted, the Tribunal retains jurisdiction over the costs of the proceedings except to the extent that these are covered by the agreed terms.

- 23.7 Where an offer has been made, the party making it may send a copy of it in a sealed cover to the Registrars or may deliver it at the hearing (see rule 44). The Tribunal will open the sealed offer after it has given its decision in the proceedings.
- 23.8 In a simple case or on an interlocutory hearing the Tribunal may make a summary assessment of costs. A party who proposes to apply for a summary assessment should prepare a summary of the costs and should serve it in advance on the other party. Costs which are to be the subject of a detailed assessment are referred to a Registrar under rule 52. The Tribunal will normally award costs on the standard basis. On this basis, costs will only be allowed to the extent that they are reasonable and proportionate to the matters in issue, and any doubt as to whether costs were reasonably incurred or reasonable and proportionate in amount will be resolved in favour of the paying party. Exceptionally the Tribunal may award costs on the indemnity basis. On this basis, the receiving party will receive all his costs except for those which have been unreasonably incurred or which are unreasonable in amount; and any doubt as to whether the costs were reasonably incurred or are reasonable in amount will be resolved in favour of the receiving party. A party who is dissatisfied with a Registrar's assessment of costs may apply to him or her for a review and, if still dissatisfied, may apply to the Chamber President for a further review.
- 23.9 Where proceedings are determined in accordance with the simplified procedure under rule 28, costs will only be awarded where an offer to settle has been made and the Tribunal considers it appropriate to have regard to this offer, or the circumstances are exceptional. Where a case is determined in accordance with the written representations procedure under rule 27 costs are awarded in the usual way and not on the restricted basis of rule 28.
- 23.10 Where, as is almost invariably the case, the Tribunal issues a written decision determining the substantive issues in the proceedings, this will be sent to the parties with an invitation to make written submissions as to costs. Following consideration of these submissions the Tribunal will issue an addendum to the decision determining the liability for costs. It may be possible, particularly where there are only two possible outcomes of the proceedings, for the Tribunal to invite submissions as to costs at the conclusion of the hearing. This procedure will be followed wherever possible. Where the issue of costs is particularly complicated the Tribunal may hold a costs hearing before making an award.

24. Appeals to the Court of Appeal and review of decisions by the Tribunal

- 24.1 Under section 13 of the Tribunals, Courts and Enforcement Act 2007 appeal lies to the Court of Appeal from a decision of the Tribunal. Appeal may be made on a point of law only. Permission to appeal must first be sought from the Tribunal. A written application for permission to appeal must be received by the Tribunal within 28 days after the date that the decision of the Tribunal has taken effect and was sent to the parties. The

decision takes effect for this purpose on the day on which it is given unless the decision states otherwise; and usually the decision will state that it will take effect when, and not before, the issue of costs has been determined.

- 24.2 On receiving an application for permission to appeal the Tribunal may itself review the decision in two circumstances. The first is if the Tribunal overlooked a legislative provision or binding authority when making the decision that could have had a material effect on it. The second is if a court has subsequently made a decision binding upon the Tribunal that could have had a material effect on the decision. Should the Tribunal be minded to vary a decision all other parties to the proceeding will be given an opportunity to make representations prior to a decision being made.
- 24.3 If the Tribunal decides not to review the decision or upon reviewing it decides not to vary it, it will consider whether to grant permission to appeal the decision or a part of it. If permission is refused in whole or in part the Tribunal will send a decision to the parties setting out the reasons for its refusal. An applicant may then apply in writing to the Court of Appeal for permission to appeal but must do so within 28 days of the date that the Tribunal's decision to refuse permission in whole or in part was sent to the parties.

These Practice Directions and guidance are made and issued by the Senior President of Tribunals in exercise of powers conferred by the Tribunals, Courts and Enforcement Act 2007 and with the agreement of the Lord Chancellor as required under section 23(4) of the 2007 Act.

LORD JUSTICE CARNWATH
SENIOR PRESIDENT OF TRIBUNALS
13 May 2009