



## Tenants' Associations Guidance

***This guidance document is also available in Welsh. Please contact the tribunal for a Welsh version of this document***

### Application for Recognition

#### What is a Tenants' Association?

A Tenants' Association is a group of tenants (lessees) who hold houses or flats on tenancies/ leases from the same landlord with similar terms containing provisions for the payment of variable service charges.

To be wholly effective an Association needs to be formally recognised.

#### Why form a Tenants' Association?

A landlord can be required to consult a recognised Association regarding matters such as service charges and management, which would not be so in the case of individual tenants. It should also be helpful to a landlord to consult with an Association rather than to have to go to the greater trouble and expense of dealing with individual tenants.

#### What is the role of a recognised Association?

The Members will have come together to represent their common interest so that the Association can with their consent and on their behalf:

- ask for a summary of costs incurred by their landlord in connection with matters for which they are being required to pay a service charge;
- inspect the relevant accounts and receipts;
- be sent a copy of estimates obtained by the landlord for intended work to their properties;
- propose names of contractors for inclusion in any tender list when the landlord wishes to carry out major works;
- ask for a written summary of the insurance cover and inspect the policy;
- be consulted about the appointment or re-appointment of the agent managing the services.

#### How does an Association become recognised?

There are two ways of seeking recognition. The first of these is for an Association to ask the landlord for written notice of recognition. If this is given, then no further steps to establish recognition need be taken. The landlord cannot withdraw such recognition without first giving at least six months notice to the Association. If however the landlord refuses or withdraws recognition, then the Association can apply for recognition to the Tribunal.

### Who will be eligible for Membership of the Association?

There is no precise definition of tenants' qualifications and each case must be considered on its merits.

Basically a member must be contributing to the payment of a service charge levied by a landlord and which the landlord can, under the terms of similar leases/ tenancies vary from time to time to meet expenditure incurred or to be incurred in the maintenance, repair or insurance of a block or estate of dwellings in the landlord's ownership.

Tenants paying fixed rents, which incorporate a non-variable service charge, will not qualify for full Membership and, although they can become Members, they will have no voting rights.

Membership will not be open to landlords personally or, in the case of company landlords, their employees or directors.

A management company (including its directors, employees, members or shareholders) which has purchased the freehold on behalf of the tenants (lessees) cannot be a member(s) of a Tenant's Association. This is because on enfranchisement, the company effectively becomes the landlord of the building(s).

Tenants of shops, offices, restaurants or similar business premises (unless their tenancies incorporate residential accommodation) would not usually qualify.

Membership of an Association may be extended to other individuals with a common interest (for example sub tenants) but they will not have voting rights and cannot be party to the proceedings of the Association in its role as a Recognised Association.

### Can an estate have more than one recognised association?

In certain circumstances, more than one Association will be recognised where there is no duplication and the interests of tenants can be seen to differ – for example separate blocks of flats (but not separate Associations representing tenants in the same block).

### What if there is a change of landlord?

The Association with a current Certificate of Recognition should serve a Notice on the new landlord if it still wishes to be consulted indicating the existence of a Certificate.

### What will it cost to make the application?

The Tribunal makes no charge but each party must meet their own costs.

### How is application for recognition made to the Tribunal?

An application form can be obtained from the Residential Property Tribunal. The Association will need to supply with its application a copy of its rules and constitution and any relevant correspondence.

What form should the Association's rules take?

You may draft your own rules but you should consider taking legal advice on their content. However, you must ensure that they are fair and democratic and that they meet the essential criteria set out in the paragraph below.

What is meant by fair and democratic?

The Tribunal will need to be satisfied that the rules cover the following matters, among others:

- openness of Membership;
- election of a Secretary, Chairman and any other Officers;
- payment and the amount of the subscription;
- obligatory annual meetings;
- notices of meetings;
- voting arrangements and quorum;
- only one vote per flat or house will be permitted;
- Independence from the landlord.

Language Preference

The LVT welcomes receiving correspondence in Welsh or English. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding. The Tribunal also welcomes phone calls in Welsh or English.

You may submit forms, documents and make written representations to the LVT in Welsh or English

Who will deal with the matter?

In the first instance, the Clerks who comprise the administrative staff of the Tribunal will deal with the application. They will deal with all correspondence and will continue to deal with the paperwork until the final decision is reached.

Clerks are able to speak to an applicant about the processes and procedures relating to the application.

They cannot however give legal advice or advise parties about the law relating to an application.

It should be noted that it is the practice of the Tribunal to pass copies of documentation received from a party to any other interested party, correspondence written 'without prejudice' or 'in confidence' cannot be accepted.

When the Panel receives the application what procedure will be followed?

On receipt of the application it will be copied to the landlord and any other interested parties for their comments. Once these comments have been received the Clerks will then place the application and any comments from the landlord and any other interested parties before a Tribunal Chairperson for consideration.

Who will decide whether or not recognition will be granted?

The Chairperson, who will have been nominated by the President or by a Vice-President, will consider the application and decide whether or not recognition should be granted. The Chairperson will usually be a qualified lawyer.

Will recognition be granted automatically?

No. The Tribunal has a discretion as to whether recognition should be granted and will need to be satisfied that the rules of the association are fair and democratic, also that the actual membership of the association will represent a significant proportion of the potential membership.

As a general rule, the Tribunal would expect the membership to be not less than 60% of those qualifying to join the association.

In very exceptional circumstances, if a dispute of fact cannot be resolved by correspondence, the Chairperson may arrange an oral hearing.

How is recognition by a Tribunal given and for how long will it last?

If the Chairperson is satisfied that rules are fair and democratic and that there is no reason why recognition should be refused, he or she will issue a Certificate of Recognition. The length of validity of the Certificate is at the Tribunal's discretion but will usually be for four years. When the Certificate expires, the association can apply for renewal.

It is open to the Tribunal to cancel a Certificate at any time if it is considered that for some reason the Association no longer merits recognition.

Are Tribunal decisions publicly available?

All decisions made by the Tribunal are open to the public. Any request to withhold a decision or personal details contained within that decision must be made in writing to the Residential Property Tribunal. The request should set out the reasons for wanting the decision withheld. All requests will be considered on a case by case basis.

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