



## Empty Dwelling Management Orders

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

## **Part One - Introduction**

### What is the purpose of this Guidance?

This guidance explains the procedures that will be followed by a Residential Property Tribunal (“RPT”) in respect of applications or appeals under the Housing Act 2004 in connection with Empty Dwelling Management Orders (“EDMOs”).

The types of applications and appeals that can be made in respect of EDMOs are described in Part 2 of this guidance. (Unless otherwise distinguished, an application or appeal is referred to below as an ‘application’).

The person who makes the application is referred to below as ‘the applicant’ and the person against whom it is made is known as ‘the respondent.’

The guidance does not cover the law relating to EDMOs.

An applicant who is in doubt as to whether an RPT can deal with their case should take independent legal advice from a solicitor or housing advisor or contact a Citizen’s Advice Bureau.

### 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.

### What is a Residential Property Tribunal?

Residential Property Tribunals were set up under the provisions of the Rent Act 1977 and the Housing Act 2004 to deal with certain types of disputes relating to residential property. The membership of these tribunals is explained below.

Each tribunal is an independent decision making body which is completely unconnected to the parties. It will look at all of the evidence again and new evidence can be presented before the tribunal. Tribunals are organised by Rent Assessment Committees, part of the Residential Property Tribunal.

### Who will deal with the matter once an application has been made to a tribunal?

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:

#### Clerks to the Tribunal

Clerks to the Tribunal are the administrative staff who will deal with the correspondence and other paperwork in the case from start to finish. The Clerks are able to speak to parties about the processes and procedures relating to the application. They cannot give general legal advice or advice about the law relating to the matter in question.

### The Tribunal Members

The Chair of the Tribunal, who will usually be a lawyer, is responsible for the smooth running of the proceedings and will write up the reasons for the tribunal's decision.

Other members of a tribunal may be lawyers, surveyors, other professional persons or lay persons. Lawyers are appointed by the Lord Chancellor whilst other members are appointed by the Welsh Ministers.

When a tribunal is set up to consider an application there will usually be three, but occasionally two, members including the Chairperson. Sometimes a chairperson sitting alone will exercise the powers of the tribunal. This will usually be when dealing with procedural and related matters although in limited instances a chairperson sitting alone can hear and determine the application.

### The Residential Property Tribunal President

The Residential Property Tribunal President, assisted by a Vice President, is responsible for the members and in particular decides which member(s) should be appointed to hear and decide a particular case. They will not be involved in the decision in a case unless they are a member of the tribunal dealing with the case.

## Part Two – Applications to the Tribunal

### What types of application can be made to a tribunal?

A Local Housing authority (LHA) may apply to a Residential Property Tribunal under:

- a) section 133 of the Act for authorisation to make an interim EDMO which will allow the LHA to secure occupation and proper management of privately owned houses and flats that have been unoccupied for at least six months (or such longer period as may be provided for in an Order) and where certain other conditions are met;
- b) schedule 7 para 2(3)(d) or para 10(3)(d) to end a lease or a licence while an interim or final EDMO is in force;
- c) schedule 7 para 1(7) or para 9(8) for an order that an interim or final EDMO should continue in force pending disposal of an appeal in respect of a replacement final EDMO.

An affected person may apply to a Residential Property Tribunal under:

- d) schedule 7 para 14(1) for an order requiring an LHA to manage in accordance with the management scheme in a final EDMO;
- e) schedule 7 para 5(7) for an order declaring that an amount shown in the accounts as expenditure does not constitute relevant expenditure and requiring the LHA to make such financial adjustments (in the accounts and otherwise) as are necessary to reflect the tribunal's declaration.

'Affected person' means the relevant proprietor and any third party to whom Compensation is payable by virtue of a tribunal order or LHA decision.

'Relevant proprietor' means the freeholder. However, if the property is held under a lease with 7 years or more remaining on the lease the relevant proprietor is the leaseholder. If the property is let on more than one such lease the relevant proprietor is the leaseholder whose lease has the shortest period unexpired.

A third party may apply to a Residential Property Tribunal under:

- f) section 138(1) for an order that the LHA pay him compensation in respect of interference with his rights as a result of an interim EDMO.

'Third party' means any person who has an estate or interest in the dwelling.

### Appeals

A relevant person (or in the case of e) below a third party) may appeal to an RPT under:

- a) under schedule 7 para 26(1)(a) a decision of an LHA to make a final EDMO, **or**
- b) under schedule 7 para 26(1)(b) against the terms of a final EDMO (including the terms of the management scheme contained in it), **or**

- c) schedule 7 para 26(1)(c) against the terms of an interim EDMO on the grounds that they do not provide for one or both of the matters mentioned in paragraph 5(5)(a) and (b) of schedule 7 to the Housing Act 2004 (which relate to payments of surplus rent etc).

The RPT will be limited to determining whether the order should be varied so as to include a term providing for the matter or matters in question and (if so) what provisions should be made by the term.

- d) schedule 7 para 30 against a decision of an LHA to vary or revoke an interim or final EDMO, or a refusal of an LHA to vary or revoke an interim or final EDMO.
- e) schedule 7 para 34(2) against a decision under section 136(4) or 138(3) of the Housing Act 2004 by an LHA as to whether compensation should be paid to a third party in respect of any interference with his rights in consequence of a final EDMO.

A 'relevant person' means any person who has an estate or interest in the dwelling other than a person who has a lease or licence granted by the LHA whilst an EDMO is in force.

#### Are there time limits for appeals?

An appeal under a) or b) above must be made within 28 days of the date specified by notice from the LHA as being the date of making of the order.

An appeal under c) above may be made at any time while the order is in force.

An appeal under d) must be made within 28 days of the date specified by notice from the LHA as being the date of the decision.

If a decision within e) above is made before the final EDMO is made an appeal must be made within 28 days of the date specified by notice from the LHA as being the date of making of the order. In any other case in e) an appeal must be made within 28 days of the date when the LHA notifies the third party of its decision under s.138(4).

#### Can appeal be made out of time?

In all cases (save for c) where no appeal period applies) RPT may allow an appeal to be made if after the end of the appeal period the RPT is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

Any such request must be in writing, giving reasons for the delay, and be accompanied by a completed application form.

## Part Three – How to apply

### How can an application be made to the Residential Property Tribunal?

An application must be made on the appropriate form to the Residential Property Tribunal. Forms can be obtained from the Residential Property Tribunal.

### **The Residential Property Tribunal will not accept applications by Fax or Email.**

### Is a fee payable?

Yes. A fee of £155 is payable by:

A person who applies for an order that the LHA pay him compensation in respect of interference with his rights as a result of an interim EDMO;

A third party who appeals against a decision under section 136(4) or 138(3) of the Housing Act 2004 by the LHA as to whether compensation should be paid to that person in respect of any interference with his or her rights in consequence of a final EDMO;

A person who appeals against:

- a) a decision of an LHA to make a final EDMO
- b) the terms of a final EDMO (including the terms of the management scheme contained in it)
- c) a decision of an LHA to vary or revoke an interim or final EDMO, or
- d) a refusal of an LHA to vary or revoke an interim or final EDMO.

There is no fee payable for any other application. Fees will also be waived in certain cases see below.

### Waiver of fees

A fee will not be payable in any of the above cases where the applicant or his or her partner is in receipt of any of the following benefits or assistance.

- Income Support
- Housing Benefit
- Income-based Job Seeker's Allowance
- Income related Employment and Support Allowance
- Working Tax Credit where:
  - a) either that credit includes a disability element or severe disability element (or both) or it is combined with child tax credit **and**
  - b) the gross annual income used to calculate the Working Tax Credit is £16,190 or less
- A Guarantee Credit under the State Pensions Credit Act 2002
- An income-related employment and support allowance payable under
- Part 1 of the Welfare Reform Act 2007.

To claim a waiver of fees an applicant must complete another form available from the Residential Property Tribunal office. The waiver form will not be copied to other parties in the proceedings.

Any person in doubt about fees should contact the Residential Property Tribunal office.

At what point must a fee be paid?

The fee must be paid with the application. Fees must be paid by a crossed cheque or by postal order drawn in favour of The Welsh Ministers. The tribunal will not accept cash.

Is the tribunal empowered to order reimbursement of a fee that has been paid?

Yes. The tribunal may order any party to an application or appeal to reimburse any other party to the extent of the whole or part of any fee paid by that other party.

However, this power is not available if, at the time the tribunal is considering this matter, it is satisfied that the party or his partner is in receipt of assistance under any of the benefits or assistance referred to above.

## **Part Four – Procedure following application**

### What will happen after the tribunal has received an application?

The clerk will write to the applicant acknowledging receipt and send a copy of the application to the respondent together with the accompanying documents. The clerk will also send to the respondent a notice specifying the date by which they must send the reply mentioned below.

A respondent who receives the notice must send the tribunal a written reply acknowledging receipt of the copy documents and stating whether or not they intend to oppose the application.

They must return the notice by the date specified and must give the names and addresses of any interested persons. For this purpose, 'interested person' means any person other than the applicant who would have been entitled to make the application or the Local Housing Association where it is not a party to the application.

### Joining an appeal or application

A person may make a request to the tribunal to be joined as an applicant or respondent to the proceedings. Such a request must be made as soon as possible. The tribunal may grant or refuse such a request.

The tribunal must notify the potential party of the decision and the reasons for it and send a copy of the notification to the existing parties as soon as possible after reaching its decision

Any potential party whose request is granted will be treated as an applicant or respondent.

### Next steps

The clerk will send all parties and interested persons, of whom it has been notified, a copy of the application and directions for a hearing together with a date for the hearing and inspection of the property.

Interested persons will be given instructions on how they can apply to be joined as a party. Any such application should then be made within the next 14 days.

### What are Directions?

Directions are the orders made by the tribunal which require the parties to take specified steps to ensure that all the necessary information about an application is provided for the tribunal and all parties. They also set out a timetable for further progress of the case.

Where a party fails to comply with certain directions the tribunal may make an order dismissing or allowing the whole or part of the application.

### Paper Determinations and Hearings



Unless a party or parties have stated that they require a hearing, a chairman may decide that the case is suitable for determination on the basis of the written evidence (a “paper determination”) without an oral hearing. He or she may then issue further directions.

If a paper determination is not appropriate, the chairman may direct that there should be a Case Management Conference (CMC). If a CMC is not arranged and a party feels that they would benefit from one, they should write to the clerk to request one.

#### What is a Case Management Conference?

This is a short hearing which all parties and/or their representatives should attend. It is conducted by a tribunal chairman, who may sit alone, or with one or two other members.

A Case Management Conference is NOT a hearing of the issues and the tribunal will not make any final decision on the case.

The CMC is a relatively informal hearing to try to identify the issues in the case and to see if any part of the dispute can be resolved by agreement at that stage. If not, the tribunal will decide what further steps need to be taken to enable the application to come to a full hearing.

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

#### What is a preliminary hearing?

A preliminary hearing is different from a CMC. In some cases there may be doubt about the validity of an application or an issue as to whether the tribunal has jurisdiction to deal with an application.

For example it may be necessary to decide if an application has been received by the tribunal in time. In such cases the tribunal may arrange and notify the parties of a preliminary hearing to consider this matter alone.

If the tribunal decides that the application is valid or that it does have jurisdiction it may go on to consider the main issue on the same date (if this has been pre-arranged with the parties). If not, the case will progress thereafter in the normal way.

#### Is an expert necessary?

Experts are not always required, but may sometimes be needed where the dispute involves very technical matters; this is something a party may wish to discuss at a CMC.

If expert evidence is required then the expert will be asked to produce a report which sets out the evidence that they will give at the hearing of the application. If both parties intend to call expert evidence on a particular issue, the experts may be asked to exchange their reports and may also be asked to meet before the hearing to find out if any aspects of the matter can be agreed.

It may be possible to agree jointly to instruct one single independent expert.

## **Part Five – Inspection and hearings**

### Will the tribunal visit and inspect the premises?

Yes, the tribunal will usually require an inspection.

An inspection will only take place on a date and at an approximate time notified to the parties. With the permission of any owner or occupier the tribunal will normally want to inspect the inside of the property as well as the outside and any common parts.

The Local Housing Authority is entitled to be present with the permission of any owner or occupier.

An inspection will usually be on the day of the hearing. If the tribunal is unable to gain access it may decide to make another appointment and adjourn the matter until then.

Alternatively it may decide that it has sufficient information, including that obtained from an external inspection, to be able to go ahead and make a decision in the absence of an internal inspection.

### Can the parties say anything at the inspection?

Both parties can draw attention to any physical aspect of the property or the site that they wish the tribunal to see, but cannot to make any representations. Representations must be kept for the oral hearing (if any) or have been made in writing.

### What is a hearing?

A 'hearing' is where the tribunal convenes at a particular time and place for the purpose of enabling the parties to put their respective cases to the tribunal. 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. Parties should produce documentation in advance of any hearing.

### If a hearing is held will ordinary court procedures be followed?

No. Tribunals such as Residential Property Tribunals are decision making bodies, set up by Parliament, to enable certain types of disagreements to be dealt with speedily in a way that avoids the formality and cost that surrounds ordinary court proceedings.

Hearings are usually held in a convenient local building which may be the tribunal office. Hearings are open to the public, although usually only the parties, their representatives and their witnesses, the tribunal and the clerk will be present. The proceedings are orderly but informal.

The applicant 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 purpose of the proceedings is to enable both parties to put their case to the tribunal in their own words or through somebody else acting on their behalf.

The Chairman will seek to ensure that nobody is at disadvantage by not being represented. He or she will make sure that both parties understand what the other party is

saying. The tribunal may ask questions of a party present to make sure that it has all the necessary facts.

What happens if one or both parties do not attend the hearing?

The tribunal can go ahead and make a decision even if one or both parties do not attend if it is satisfied that proper notice of the hearing has been given.

Can a hearing be postponed or adjourned by the tribunal?

Yes. A party has the right to ask the tribunal to postpone or adjourn a hearing and the tribunal might decide to do this of its own accord. However, it will be done only if there is a compelling reason and the tribunal considers that no party is unfairly affected.

If you wish to apply for a postponement you should write to the tribunal giving full reasons. You should copy your letter to the other party/parties and they will be invited to comment.

Can an applicant withdraw his or her application?

An applicant may withdraw the whole or part of his or her application at any time before determination of the application. In order to withdraw the applicant must write to the tribunal stating whether the whole or part of the application is withdrawn. A copy of this notice must be sent to all other parties and the tribunal must be notified that this has been done. In some cases the tribunal may not allow the case to be withdrawn immediately if there are outstanding issues.

## **Part Six – The decision and after**

### When will the tribunal make its decision?

The tribunal will make its decision as soon as possible after the conclusion of the proceedings including any hearing.

### How will the tribunal give its decision?

In some cases the tribunal will give its decision orally following a hearing.

In all cases the clerk will write to the parties and enclose the written decision.

### Can the tribunal order one party to pay another party's costs?

Yes, but only in exceptional cases. The Housing Act 2004 gives the tribunal a limited power to order that a party shall pay another party's costs. This power can only be exercised when a party has failed to comply with an order made by the tribunal, or where an application has been dismissed or a party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

Such costs are limited to a maximum of £500 per person. Such an order cannot be made unless the party has been given an opportunity of making representations on the matter to the tribunal.

In all other cases each party must bear their own costs.

### Can the Residential Property Tribunal's decision be challenged?

The tribunal cannot reconsider its own decision. However, any party can appeal the decision to the Upper Tribunal (Lands Chamber). Any application for permission to appeal must be made to the Residential Property Tribunal within 21 days of the date the decision was sent to the parties, although the tribunal has the power to extend that time in exceptional circumstances even if the 21 days has expired.

The Upper Tribunal (Lands Chamber) will not accept any application for permission to appeal unless permission has first been refused by the Residential Property Tribunal. Following a refusal by the Residential Property Tribunal the parties have 14 days to seek permission to appeal from the Upper Tribunal (Lands Chamber).

### Are tribunal decisions publicly available?

All decisions made by Residential Property Tribunals 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.

### Does the Human Rights Act 1998 apply to tribunal proceedings?

Yes. Parties to an application are entitled to the benefit of the provisions of the Human Rights Act 1998. This entitles them to have their case determined in accordance with the European Convention on Human Rights.

Article 6 of the Convention 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 tribunal.

Article 8 provides that everyone has the right to respect for their private life, their home and their correspondence and that any internal inspection of the property will only be undertaken with the consent of the owner or occupier.

In making their decisions, tribunals are obliged to have regard to the rights embodied in the Convention and where possible to interpret legislation consistently with those rights.

### Assistance to Parties

In this instance the term “participant” means an applicant or a party or witness or other person taking part in proceedings relating to an application or to whom an order of the tribunal is addressed.

To enable participants to effectively participate in the proceedings assistance will be provided (free of charge) if, for example, they are:

- unable to read or speak or understand the English language or the Welsh language;
- unable to read English or Welsh as a consequence of being temporarily or permanently blind or partially sighted;
- able to speak in English or Welsh, but is unable to read or write in English or Welsh;
- without hearing or speech.

The requirement for a tribunal to provide a participant with the services of a person to read, write, or explain the nature and content of documents does not include a requirement for a tribunal to give any legal advice, but includes a requirement to explain the procedural steps in the proceedings.

A participant is entitled to assistance whether or not the participant is represented by someone else.

A participant requiring assistance but not receiving it must at the earliest opportunity notify the tribunal.

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