



## Fair Rents Guidance

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

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### Part 1 - Introduction

#### What is the purpose of this Guidance?

This guidance explains the procedures that will be followed by a Rent Assessment Committee (RAC) following the referral of the matter of the fair rent by a Rent Officer. Such a referral is made when the landlord or tenant, or both, object to the rent fixed by the Rent Officer.

#### 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 Rent Assessment Committee?

The RAC is a tribunal of two or three persons set up by law under the provisions of the Rent Act 1977. It looks at the matter of the fair rent for a property afresh following an objection by the landlord or the tenant (or both) to the Rent Officers decision. It is an independent decision making body which is completely unconnected to the Rent Officer and the parties or any other public agency.

## 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 advise 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 the matter of the fair rent there will usually be three, but occasionally two, members including the Chairperson.

### 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 RAC dealing with the case.

## **Part Two – Inspection and Hearings**

### What happens next?

Once a RAC is appointed, the Clerk will write to both parties to explain that an objection has been received to the registered rent and enclose copies of relevant documents received from the Rent Officer.

The parties will also be asked if they wish to make written representations. Written representations are comments made in writing to the RAC explaining what you feel the fair rent should be and why.

Any representations that are made by you or anybody on your behalf will be copied to the other party. Each party will be given an opportunity to comment on any representations that are made by the other.

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

Yes. A visit will take place on a date and at an approximate time previously notified to the parties. An inspection will usually be on the day of the hearing or (if there is no hearing) the day that the Committee makes its decision.

With the permission of the tenant the Committee will normally wish to inspect the inside of the property as well as the outside together with any common parts.

If the Committee is unable to gain access at the appointed time 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 external inspection, to be able to make a decision in the absence of an internal inspection.

The landlord is entitled to be present with the tenant's permission. Both parties can draw attention to any physical aspect of the property that they wish the RAC to see but may only make oral representations at the hearing, or have already made them in writing (written representations).

It is acceptable for a tenant to point out something to which he has already included in his/her written representations or is included in the Rent Officers documents.

However, it would, for example, not be permissible for the Committee at the inspection to listen to representations about rents of allegedly comparable properties.

#### Will a hearing be held?

Parties can choose not to have a hearing if they are content for the matter to be dealt with on the basis of the written representations and all other relevant evidence received by the RAC.

Parties are advised not to produce documentation for the first time at a hearing as this may cause an adjournment to enable the other party to consider the new evidence.

#### What is a hearing?

A hearing is arranged at a particular place and time for the purpose of enabling both you and the other party or parties to put your case to the Committee. It will usually convene shortly after the property inspection.

At the hearing you can speak yourself, or somebody else, whether professionally qualified or not, can speak for you. You will also be able to put questions to the other party or his/her representative if they are present.

The Committee may also ask you some questions in order to make sure that it has all the relevant information to enable it to come to a decision as to the fair rent for the property.

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

No. RAC's 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 or at the Tribunal Office where appropriate.

Hearings are open to the public, although usually only the parties, their representatives and their witnesses, the tribunal and, perhaps, a clerk will be present. The proceedings are orderly but informal.

The person who has objected to the rent that was determined by the Rent Officer is usually asked to put their case first.

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 both the landlord and tenant 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.

Any party present can also put questions to the Committee.

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

Any party present can put his or her case in the normal way. The Committee will then proceed to make its decision, as it will where neither party attends.

#### Can a hearing be postponed or adjourned by the Committee?

Yes. A party has the right to ask the Committee to postpone or adjourn a hearing and indeed the Committee might decide to do this of its own accord. However, it will be done only if there is a compelling reason and the Committee 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?

The Committee may allow this at any time up to the decision if the other party agrees.

In order to withdraw the applicant must write to the Committee 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 Committee must be notified that this has been done.

### **Part Three – Fair rents**

#### What is a fair rent?

The Rent Act 1977, section 70, requires a Rent Officer or Committee to have regard to the following factors when deciding what is a fair rent for your property:

- the age, character, locality and state of repair of the property;
- the quantity, quality and condition of any furniture provided under the tenancy.

Personal circumstances, such as the means of the landlord or the tenant must be ignored.

#### Does the fair rent include council tax?

Council tax is normally payable by the tenant to the local authority and therefore is not included in the registered rent. However, if the tenancy is of part of a house which, for council tax purposes, is a “house in multiple occupation”, the landlord will be responsible for payment of the tax but the tenant can be required to reimburse the landlord.

In these circumstances the registered fair rent will include an amount in respect of council tax in so far as it is attributable to the specific part of the property that is let to the tenant.

#### What if the tenancy includes a charge for services?

If under the terms of the tenancy, or some other agreement, there is provision made for the supply of services to the property and/or any common parts, the fair rent will reflect the value to the tenant of these services.

If, for example, the subject property is a flat in a development, the landlord might provide items such as a lift, cleaning services to the entrance hall stairs and landing, window cleaning, heating to the subject flat and/or the common parts and gardening in respect of common garden areas.

The “common parts” are those parts of the development, the use and enjoyment of which is shared with other tenants.

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

Some tenancy agreements will permit the landlord, by notice, to alter from time to time (usually once a year) the amount payable in respect of services (the “service charge”). This will usually be related to changes in the cost to the landlord of providing the services.

If the Rent Officer or the Committee accepts that the terms of variation contained in the tenancy agreement are reasonable the rent can be entered on the register as variable.

This means that the amount in the fair rent that the Rent Officer or Committee considers to be attributable to services will be separately specified in the register.

However, that element of the fair rent can still be altered from time to time in accordance with the terms of the tenancy agreement (e.g. by notice from the landlord once a year).

#### Does the rent include ‘Supporting People’ charges?

Some tenancies provide for payment of ‘supporting people’ charges in respect of certain personal services provided to the tenant. Such support charges are normally payable in addition to the rent and any service charge.

However, when a Committee determines a fair rent it may decide that some or all of the support charge provided for by the tenancy agreement is in law a payment for services that more properly fall within the service charge.

If that is the case the amount payable for that service or services, after the effective date of registration, will be included in the service charge determined by the Committee.

#### How will the Committee apply section 70?

The Court of Appeal has held that section 70 provides that a fair rent is the notional market rent for the subject property less what is often referred to as the “scarcity element”(if any).

This “element” is dealt with below.

The notional market rent is the rent that the landlord would be likely to obtain for the property, if it were let, at the date of the decision, on the same terms and conditions as at present.

This figure is usually derived from evidence of market rental levels in the area for similar properties (“comparables”) that are let on tenancies not governed by the fair rent regime of the Rent Act 1977.

Those tenancies will usually be assured or assured shorthold tenancies that are governed instead by the Housing Act 1988.

That figure will be adjusted to reflect any relevant differences between those properties and the subject property.

For example, the comparable lettings might be fully or partly furnished and the properties might have been modernised by the landlord.

It follows that if the subject property is unmodernised by the landlord and let unfurnished, it is likely that the hypothetical market rent starting point will therefore be lower than that derived from the “comparable” properties. Another possible difference is the terms of the tenancy.

The Committee will also consider whether the notional market rent is to be adjusted to reflect any tenant’s improvements that have been made to the subject property (other than those required by the tenancy agreement). These are to be disregarded.

In other words the Committee must ignore any effect that the improvements would otherwise have on the rental value of the property. This is to prevent the landlord from benefiting from the improvements by way of a higher rent where those improvements have increased the rental value of the property.

By contrast any disrepair or defect that is attributable to a failure by the tenant (or a previous tenant under the tenancy) to comply with the terms of the tenancy (for example as to internal decoration) is to be disregarded. That is, the property will be valued as if such disrepair or defect did not exist and the landlord will not be penalised by any consequent decrease in the rental value of the property.

Finally, the Committee will consider the “scarcity element” (see above). This is applicable where the Committee consider that the following conditions are satisfied:

- a) that the number of people seeking to become tenants of similar dwelling-houses in the locality, on the same terms – other than the rent – as that of the tenancy of the subject property, substantially exceeds the number of such dwellinghouses available for letting;
- and
- b) that the shortage has pushed the comparable market rental values above what they would otherwise have been.

If these conditions are satisfied the notional market rental figure for the subject property will therefore be further adjusted to remove that “scarcity element”. The final figure obtained at the end of the exercise described above will be the fair rent subject to the rent capping rules, where applicable, as explained below.

#### What if the tenant has acquired a share in the ownership of the property?

In a case where the tenant has acquired a share in the ownership of the property the fair rent will be discounted to reflect the fact that the tenant has paid a capital sum for that share. The tenant will therefore only pay rent in respect of the landlord’s share. The calculation of the fair rent will also allow for the fact that the tenant will have a full repairing liability for the property.

#### Is there a limit on the figure that can be registered as the fair rent?

There is no limit if there was no existing registered rent on the date when the application was made to the Rent Officer.

In these circumstances therefore the rent determined by the Committee, as outlined above, will be the fair rent.

This could be the same as that determined by the Rent Officer or it could be higher or lower than that amount.

The Rent Officer will therefore record in the register either that the rent has been confirmed by the Committee or, as the case may be, register the new rent determined by the Committee.

#### But what if there was an existing registered rent before the application to the Rent Officer was made?

If this is the case it is important to note that, where a fair rent is already registered and an application for a new fair rent to be determined by the Rent Officer is made on or after 1 February 1999, there is a limit on the amount that can be registered as the fair rent by the Rent Officer or Committee.

This limit is sometimes referred to as the rent cap or the capped rent. It follows that if the fair rent that the Committee would otherwise have determined (in accordance with

the law outlined above) is above the capped rent only the lower capped figure can be registered as the fair rent.

#### How is the capped rent calculated?

The capped rent is calculated in accordance with a formula set out in the Rent Acts (Maximum Fair Rent) Order 1999. It is arrived at by increasing the amount of the existing registered rent by the percentage change in the retail price index since the date of that earlier registration and then adding a further 7.5% or 5%.

The 7.5% addition will apply in respect of the first application for re-registration of a fair rent since 1 February 1999 and the 5% addition will apply in the case of all subsequent applications.

For the purpose of this exercise, where there is a variable service charge, the existing registered rent starting point will be that rent less the service charge.

When the rent capping formula has been applied to that sum, as described above, the variable service charge determined by the Committee will be added to the resulting figure to produce the capped rent.

It follows that in all cases where the capping rule applies the Committee will first decide what the fair rent would be irrespective of the statutory limit. It will then calculate the capped rent.

If the former figure is above the latter, the capped rent will be registered as the fair rent.

The same will obviously apply if the former figure is the same as the capped rent. If it is below the capped rent the lower figure will be registered and the cap will not apply.

#### Is there any exception to the rent capping rule?

Yes, where there has been a change in the condition of the property as a result of landlord's repairs or improvement to the property and/or any common parts whereby the rent determined exceeds the previous registered rent by at least 15%.

The Committee will work out what the new fair rent would be (a) with and (b) without the benefit of the repairs and/or improvements.

If the difference between these two figures is at least 15% more than the previous registered rent the statutory rent cap will not apply and the uncapped amount will be registered.

If it is lower than 15% the capping rules will apply and provide an upper limit to the amount that can be registered as the fair rent.

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

Parties should point out anything that they consider would have a bearing on the rent that can be fixed by the Committee according to the law outlined above.



They can of course comment on anything that the other party has written or has said at any hearing.

If a tenant has made improvements to the property that they were not obliged to make by the terms of the tenancy it will help if that person can produce receipts demonstrating the cost, although this is not essential.

If the landlord had made repairs and/or improvements to the property it would also be helpful if they are able to produce receipts relating to the costs incurred.

It would be very helpful if parties are able to produce evidence of recent lettings of similar properties in the area at market rents.

These will usually be assured or assured shorthold tenancies.

As much relevant detail as possible, if available, should be provided. For example, the rent payable, the nature of the accommodation, its state of repair or improvement, whether it is furnished in whole or in part.

If parties are relying in particular on a specific property or properties the Committee might make an external inspection of the property.

Any evidence that parties might be able to provide with regard to an abundance or shortage of similar properties available to let in the locality would also be helpful.

#### **Part Four – the decision and after**

##### When will the Committee make their decision?

Once the Committee is satisfied that they have all the necessary information they will decide whether the rent that was fixed by the Rent Officer should be confirmed or whether the registered fair rent should be lower or higher than that figure.

This will often be on the day of the inspection/hearing.

It is usual for the Committee to deal with several cases on the same day.

##### How will parties be informed about the Committee's decision?

The Clerk will write to the parties and enclose the decision notice that tells them the fair rent determined by the Committee and explains any capping calculation.

Parties will also be sent a copy of the written reasons for the Committee's decision. The Committee should issue these within 28 days.

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

The rent determined by the Committee will normally be effective from the date of the Committee's decision.

Applications for a fresh registration by landlord or tenant can only be made subsequently at two yearly intervals, save in exceptional circumstances.

(An example would be where in the meantime there has been a material change in the condition of the property as a result of improvements by the landlord).

Is there any appeal against the Committee's decision?

A party can appeal to the Upper Tribunal (Lands Chamber) under section 65A of the Rent Act 1977 but only if that party considers that the Committee has made a mistake of law. Notice of appeal must be received by the Upper Tribunal (Lands Chamber) within 1 month after the date on which the notice of the decision being appealed was sent to that party. Parties should take legal advice if they consider that there might be grounds for Upper Tribunal (Lands Chamber) proceedings.

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 apply to the RAC's proceedings?

Yes. Parties to an application are entitled to the benefit of the provisions of the Human Rights Act 1998.

In effect, this entitles them to have their case determined in accordance with the European Convention on Human Rights.

Of particular relevance is Article 6 of the Convention which provides that parties have the right to a fair hearing within a reasonable time and before an impartial tribunal. This includes their right to put their case and to question the case brought by the other party and to be given reasons for the decision of the Committee.

Also relevant is Article 8, which provides that everyone has the right to respect for his private life, his home and his correspondence – any internal inspection of the property will only be undertaken with the consent of the occupier.

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

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 requirement for assistance to the tribunal.

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Disclaimer

The content of this guidance was correct when published.