



## Interim and Final Management Orders (MO's) under the Housing Act 2004

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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 Interim and Final Management Orders (MO's).

The types of applications and appeals that can be made in respect of Management Orders 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 Management Orders.

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.

### 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. The tribunal looks at the whole matter afresh. It will look at all of the evidence again and new evidence can be presented before the tribunal. Tribunals are organised by Rent Assessment Panels; part of the Residential Property Tribunal.

### 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 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?

#### Applications

A Local Housing Authority [LHA] may apply to the RPT under:

- a) section 102(4) of the Act for authorisation to make and Interim Management Order in respect of a House in Multiple Occupation (HMO) which is not required to be licensed under the Act. An Order will allow the LHA to take over the management of the HMO;
- b) section 102(7) of the Act for authorisation to make a Special Interim Management Order in respect of a house in an area that has not yet been designated for licensing under Part 3 of the Act;
- c) section 105(10) of the Act for an order that an Interim Management Order should continue in force pending disposal of an appeal in respect of a replacement Final Management Order under paragraph 24 to schedule 6 of the Act;
- d) section 114(7) of the Act for an order that a Final Management Order should continue in force pending disposal of an appeal in respect of a replacement Final Management Order under paragraph 24 to schedule 6 of the Act.

A relevant landlord may apply to the RPT under:

- e) section 110(7) of the Act 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;
- f) section 130(9) (following cessation of a Management Order that is not followed by another Order) where he or she is one of two or more relevant landlords in relation to different parts of a house for a determination as to who is to be the relevant landlord for the purposes of section 130.

'Relevant landlord' means any person who is an immediate landlord of the house or part of it.

An affected person may apply to the RPT under:

- g) section 120(1) of the Act for an order requiring an LHA to manage in accordance with the management scheme in a Final Management Order.

An 'affected person' means a relevant landlord (see above) or a third party to whom compensation is payable as a result of a decision by the LHA under section 128 of the Act.

#### Furnished lettings

- h) Where a house, which is subject to a Management Order, is let furnished and more than one person (other than an occupier) owns that furniture any of those persons may apply to the RPT under section 128(4) of the Act for an adjustment of their rights and liabilities in respect of that furniture.

### Appeals

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

- a) schedule 6, paragraph 24(1)(a) of the Act against a decision of an LHA to make an Interim or Final Management Order, (save in respect of an Interim or Special Interim Management Order made in accordance with the Tribunal's authority or direction);
- b) schedule 6, paragraph 24(1)(b) of the Act against the terms of a Management Order including, in the case of a Final Management Order, the terms of the management scheme contained in the order;
- c) schedule 6, paragraph 24(3) of the Act against the terms of an interim Management Order on the grounds that they do not provide for one or both of the matters mentioned in section 110(5)(a) and (b) of the Act (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 6, paragraph 28 of the Act against a decision of an LHA to vary or revoke an Interim or Final Management Order, or a refusal of an LHA to vary or revoke an Interim or Final Management Order;
- e) schedule 6, paragraph 32 of the Act against a decision under section 128 of the Act by an LHA as to whether and if so how much compensation should be paid to a third party in respect of any interference with his rights in consequence of an Interim or Final Management Order.

Relevant person means any person who to the knowledge of the local housing authority is

- a) a person having an estate or interest in the whole or part of the house (but who is not a tenant with 3 or more years unexpired on his lease) or
- b) any other person who (but for the note) would be a person managing or having control of the whole or part of the house.

### 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.

An appeal under e) above must be made within 28 days of the date on which the LHA notifies the third party of the decision under section 128(2).

In all cases (save for c) above where no appeal period applies) an RPT may allow an appeal to be made to it after the end of the appeal period if 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. It must also include a statement that the applicant believes that the facts stated in it are true 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.

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

### Is a fee payable?

A fee of £155 is payable by

- a person who applies for an order under h) above
- a third party who applies for an order under e) above
- a relevant person who appeals under a), b), c) or d) above.

There is no fee payable for any other application. The fee may be waived in the following cases:

### 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.

### 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 known to the respondent.

For this purpose, an 'interested person' means any person other than the applicant who would have been entitled under the Housing Act 2004 to make the application or appeal.

### 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. As soon as possible after reaching its decision 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.

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

### Will information be shared with other parties?

Yes. Copies of correspondence or documentation [including the original application form] will be sent to the other party/parties. Directions usually require applicants and respondents to send copies of documentation to each other. Such information is often referred to as 'bundles'.

### 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 chairperson 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 chairperson 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 a CMC.

### 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 chairperson, who may sit alone, or in some cases with either 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?

This depends on the type of case. Expert evidence is sometimes needed where the dispute involves very technical matters. Experts are not always required and 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 LHA 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 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 not 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 Chairperson 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

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 indeed 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. However, 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 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 Residential Property 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. In effect, 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 requirement for assistance to the tribunal.

### **Residential Property Tribunal**

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### Disclaimer

The contents of this publication are correct at the time of going to press.