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The law as stated during this webinar is up to date as of **14 July 2015**

The First-tier Tribunal (Property Chamber) - 2 years on



Christopher Last
The Leasehold Advisory Service
14 July 2015

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Basis for the tribunal



- The Tribunals, Courts and Enforcement Act 2007
- A two-tier tribunal system
 - First-tier Tribunal
 - Upper Tribunal
- Existing tribunals transferred or new appeal rights directed
- Both tribunals divided into Chambers
- Tribunal procedural rules
 - Practice and procedure
 - Tribunal Procedure Committee
 - Section 22 of 2007 Act

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The crucial Statutory Instruments



- **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
 - SI No.1169/2013
- First-tier Tribunal and Upper Tribunal (Chambers) Order 2013
 - SI No.1187/2013
- First-tier Tribunal (Property Chamber) Fees Order 2013
 - SI No.1179/2013

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Procedural rules - SI No.1169/2013



- Part 1
 - Interpreting and applying rules
 - Over-riding objective
- Part 2
 - General powers and provisions
- Part 3
 - Provisions relating to starting proceedings and responses
- Part 4
 - Provisions relating to hearings
- Part 5
 - Rules relating to particular jurisdictions
- Part 6
 - Correcting, setting aside, reviewing and appealing decisions

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The over-riding objective - Rule 3



- To deal with cases fairly and justly
- This includes
 - Dealing with case in ways proportionate to
 - Importance of case
 - Complexity of issues
 - Anticipated costs
 - Resources of parties/Tribunal
 - Avoiding unnecessary formality
 - Seeking flexibility
 - Using special expertise of Tribunal effectively
 - Avoiding delay

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The over-riding objective - Rule 3



- Tribunal must seek to give effect to the over-riding objective when
 - Exercising any power under the Rules
 - Interpreting any rule or Practice Direction
- The parties must
 - Help the Tribunal to further the over-riding objective
 - Co-operate with the Tribunal generally

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Alternative dispute resolution and arbitration - Rule 4



- Where appropriate Tribunal should
 - Bring to parties' attention availability of any appropriate ADR and
 - Facilitate use of ADR procedure
 - Provided compatible with overriding objective
 - If parties wish to do so

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Case management powers - Rule 6



- TRIBUNAL MAY REGULATE OWN PROCEDURE
- Shorten time
- Extend time
 - Even if extension application made after time limit expire
- Consolidate proceedings
- Permit/require amendments
- Permit/require production to Tribunal/party
 - Documents
 - Information
 - Submissions
- Direct enquiries be made of any person
- Require party to state whether intends
 - Attend
 - Be represented
 - Call witnesses
- Deal with preliminary issues

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Case management powers - Rule 6



- Hold a hearing
- Decide form of hearing
- Adjourn/postpone hearing
- Require party to produce
 - Hearing bundle
 - Time estimate
- Stay proceedings
- Suspend effect of decision pending appeal
- Transfer to another jurisdiction
 - Court or tribunal
 - Change in circumstances since proceedings started
 - Considered more appropriate forum

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Failure to comply - Rule 8



Tribunal may

- Waive requirement
- Require failure to be remedied
- Strike out party's case (Rule 9)
- Bar/restrict participation in proceedings
 - Refer to Upper Tribunal to exercise powers
 - Attend to give evidence
 - Make themselves available to give evidence
 - Swear on oath
 - Produce document
 - Facilitate inspection

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Striking out - Rule 9



- AUTOMATIC STRIKE OUT WHERE APPLICANT FAILED TO COMPLY WITH DIRECTION STATING FAILURE TO COMPLY BY A STATED DATE *WOULD* LEAD TO STRIKING OUT OF PROCEEDINGS OR APPROPRIATE PART OF THEM
- MUST STRIKE OUT IF DOES NOT HAVE JURISDICTION AND DOES NOT TRANSFER TO ANOTHER JURISDICTION

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Striking out - Rule 9



- Tribunal *may* strike out for
- Failure to comply with a direction stating non-compliance *could* lead to striking out
- Failure to co-operate where Tribunal prevented from dealing fairly and justly
- Tribunal considers case or manner in which it is being conducted to be frivolous, vexatious or otherwise an abuse of process
- Tribunal considers there is no reasonable prospect of the Applicant's case, or part of it, succeeding
- Rules apply to Respondents as well
 - Bar to participation in proceedings

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Striking out - Rule 9



- Tribunal may not strike out whole/part of proceedings for failure to co-operate etc. Without first giving parties an opportunity to make representations
- If proceedings struck out for non-compliance with direction applicant may apply for proceedings to be re-instated
 - Written application to the Tribunal
 - 28 days after date Tribunal notifies of strike out
- Equivalent rights to Respondent barred from participation due to non-compliance with direction
- Barred from participation
 - Tribunal may summarily decide any/all issues against Respondent

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Fees - Rule 11



- Where required fee not paid Tribunal must not proceed with case until it is paid
- If unpaid 14 days from date payable the case must not be started
- If already started case deemed withdrawn 14 days after date on which Tribunal sends/delivers to liable party written notice that fee not been paid

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Costs - Rule 13



- When can an order for costs be made by the Tribunal?
- Wasted costs
 - Section 29(4) of the 2007 Act
- If a person has acted unreasonably in
 - bringing
 - defending
 - or conducting proceedings
- Application at any time during proceedings but not later than 28 days after date on which Tribunal sends
 - Decision notice disposing of all issues
 - Notice of consent to withdrawal (Rule 22)

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Costs - Rule 13



- What is unreasonable conduct?
- *Ridehalgh v Horsfield [1994] 3 All ER 848*
 - "The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgement, but it is not unreasonable"
- *Re a Barrister (wasted costs order) (No 1 of 1991) [1992] 3 All ER 429*
 - 1) Has there been an improper, unreasonable or negligent act or omission?
 - 2) As a result, had any costs been incurred by a party?
 - 3) Should the court exercise its discretion to order the lawyer to meet the whole or any part of the relevant costs?

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Costs - Rule 13



- *Calabar Estates Ltd v Benjamin Hakman*
LON/00AC/OC9/2014/0119
 - Non-attendance results in wasted costs order for applicant requesting unusual hearing
- *Mr Z Virani v Chelsea Harbour Limited*
LON/00AN/LSC/2013/0467
 - Non-attendance results in wasted costs order for applicant in standard hearing
 - Note: limitations on recovery
 - "The leaseholder was not acting unreasonably in making the application and pursuing it... However, by failing to withdraw their application in a timely manner he acted unreasonably"

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Costs - Rule 13



- Summary assessment by Tribunal
- Agreement of specified sum
- Detailed assessment (including costs of the assessment)
 - By the Tribunal
 - By the County court (if Tribunal directs)
 - Standard or indemnity basis
- No order for costs may be made without giving paying person an opportunity to make representations
- Tribunal may order payment on account before costs/expenses assessed
- Reimbursement of Tribunal fees

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Disclosure, evidence and submissions - Rule 18



The Tribunal may provide for

- Exchange of relevant documents and inspection of same
- Statements of agreed matters
- Expert evidence
- Single joint expert
- Limiting the number of witnesses
- Admission or exclusion of evidence
- Giving evidence on oath
- Disclosure limited to what party could be compelled to produce in a court of law

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Expert evidence - Rule 19



- Expert's over-riding obligation to help Tribunal on matters within their expertise
- Cannot use expert evidence without Tribunal's consent
- Written report which must
 - Contain a statement expert understands duty and complied
 - Contain words: " I believe that the facts stated in this report are true and that the opinions expressed are correct"
 - Be addressed to the Tribunal
 - Include details of the expert's qualifications and relevant experience
 - Contain a summary of instructions
 - Be signed by the expert

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Expert evidence - Rule 19



- Expert's report to be provided to Tribunal and to the other party at least seven days before
 - Date of hearing
 - Or date notified upon which issue to which expert evidence relates will be decided without an oral hearing
- Tribunal may direct that
 - Expert's evidence limited
 - Expert to attend hearing to give oral evidence
 - Parties must instruct single joint expert

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Tribunal as an expert



- History of criticism
 - *Birmingham City Council v Keddle & Hill* [2012] UKUT 323 (LC)
 - "...A developing practice within some leasehold valuation tribunals to take it upon itself to identify issues which are of no concern to the parties and then reach a decision on issues they have not been asked to which results in an appeal and all the waste of time and money and attendant general aggravation"
- But the tribunal is an expert in and of itself
- So... if they choose to raise a point, they must give the parties concerned a fair opportunity to address it

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Tribunal as an expert



- The tribunal may avail itself of its own expertise
- *Jones (by Caldwell) v First-tier Tribunal and CICA* [2013] UKSC 19
 - "...The expertise of tribunals at the First-tier, and that of the Upper Tribunal, [should] be used to best effect"
- *Red Kite Community Housing Ltd v Robertson* [2014] UKUT 0134 (LC)
 - "The LVT, and now the First-tier Tribunal (Property Chamber), is an expert tribunal. The knowledge and experience of an expert tribunal informs its decision making. It is wholly appropriate that an expert tribunal measure the evidence and submissions before it when reaching its determinations. The fact that it is an expert tribunal that is considering a case of itself enhances that decision making"

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Witness evidence – rule 20



- On application to Tribunal or on its own initiative
- Tribunal may
- By summons require any person to attend as a witness
 - Time and place specified in summons
 - 14 days notice or such shorter period as Tribunal may direct
 - Cover their necessary attendance expenses
 - Summons to state who will pay these (non-party)
- Order any person to produce relevant documents in their possession/control
- Order any person to answer any relevant questions
- Limited to what evidence or documents could be required in a court of law

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Witness evidence – Rule 20



- Any summons/order must
 - State that recipient may apply to Tribunal to vary or set aside the summons/order, if they have not had an opportunity to object to it and
 - State the consequences of failure to comply with the summons/order

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Transfer of case to the Upper Tribunal - Rule 25



- Tribunal may refer case to President of the Property Chamber
- Request case be considered for transfer to the Upper Tribunal (Lands Chamber)
- The President may, with the concurrence of the President of the Upper Tribunal (Lands Chamber), direct that case be transferred to and determined by the Upper Tribunal

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Transfer of case to the Upper Tribunal - Rule 25



- The Chamber President may only direct transfer if they consider issues in dispute are likely to be further appealed to the Upper Tribunal and
 - a) Will require lengthy or complex evidence or a lengthy hearing, or
 - b) Involve a complex/important principle/issue, or
 - c) Involve a large financial sum
- *Ninety Broomfield Road RTM Co Ltd v Triplerose Ltd* [2013] UKUT 606 (LC)

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Withdrawal - Rule 22



- A PARTY MAY GIVE NOTICE OF WITHDRAWAL
- Can give orally at a hearing; or
- Sending/delivering to Tribunal a written notice of withdrawal which must be
 - Signed and dated
 - Identify case or part thereof being withdrawn
 - State whether any part of case, and if so what remains to be decided
 - Confirm copy of notice has been supplied to all other parties and state date when this was done
 - Include the written consent of any of the other parties who have consented to the withdrawal

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Withdrawal - Rule 22



- NOTICE OF WITHDRAWAL
- Will not take effect unless Tribunal consents to withdrawal
- Tribunal may make such directions or impose such conditions on withdrawal as considers appropriate
- Party who has withdrawn may apply to the Tribunal for its case to be reinstated
 - Written application received by Tribunal within 28 days after
 - Date of hearing if orally withdrawn or
 - Date the Tribunal received the notice of withdrawal

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Other important rules



- Delegation to staff
 - Rule 5
 - May carry out functions of a judicial nature
 - Party can ask for judge to consider decision afresh
- Addition, substitution and removal of parties
 - Rule 10
- Representatives
 - Rule 14
 - Whether legally qualified or not
- Calculating time
 - Rule 15

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Other important rules



- Provision of documents
 - Rule 16
- Prevention of disclosure or publication of documents and information
 - Rule 17
- Site inspections
 - Rule 21
 - Tribunal must obtain all appropriate consents to its request for entry
- Lead cases
 - Rules 23 and 24

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Questions?

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Upcoming LEASE courses

21 July 2015 – London	10 September 2015
Classroom training – Section 20 Consultation	Webinar - Right to Buy – The Nuts & Bolts (updated 2015)
<p>This intermediate course will concentrate on the 5 different procedures outlined under the S20 consultation process including</p> <ul style="list-style-type: none">• When to consult• How to consult• Comparing the different versions of the consultation models• Common problem areas with consultation• Seeking dispensation from the tribunal	<p>This webinar will take you through the tribunal procedure rules including</p> <ul style="list-style-type: none">• Who is and is not eligible• What to do if the application is turned down• What should be in the offer from the landlord• The terms of the RTB lease• What rights do RTB leaseholders have
