

## **FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

### **GUIDANCE IN UNOPPOSED BUSINESS LEASE RENEWAL CASES WITH EFFECT FROM 1 DECEMBER 2017**

#### **Introduction**

1. The transfer of unopposed business lease renewal claims to this tribunal forms the basis of a pilot scheme agreed with the County Court at Central London. The pilot started on 1 December 2017 and will continue for one year, after which it will be evaluated.
2. The statutory basis for the pilot comes from the amendments made to the County Courts Act 1984 by the Crime and Courts Act 2013 which now provides that First-tier Tribunal judges are additionally judges of the County Court.
3. The pilot is intended to build on the Civil Justice Council report on the distribution of property cases between the courts and this tribunal and has been endorsed by the Flexible Deployment Group chaired by Mrs Justice Pauffley.
4. HH Judge Marc Dight, in his capacity as Resident and Designated Civil Judge for Central London and Mayors and City of London Courts, has directed that judges of the First-tier Tribunal (Property Chamber) may determine unopposed business lease renewal claims.
5. After the transfer the Civil Procedure Rules will continue to apply to the proceedings. In particular the tribunal will have full cost shifting powers. If the case goes to a hearing the tribunal judge will sit as a county court judge with a tribunal valuer who will be appointed as a court assessor under section 63 of the County Courts Act 1984.
6. There are similarities between unopposed business lease renewals claims and residential new lease applications under the Leasehold Reform, Housing and Urban Development Act 1993. Both types of case involve a valuation and the determination of the terms of a new lease. During the pilot we will apply similar procedures and directions to both types of case.
7. We wish to ensure that all cases proceed to a final determination as smoothly and as quickly as possible. We have to manage a high volume of cases within a fixed budget. We must ensure that each case receives an appropriate share of our resources, whilst taking into account the need to allocate resources to other cases.

8. Please note that tribunal decisions will be published on the Justice website unless a party makes a written request that this should not be done.

### **Deferment for PACT arbitration**

9. The parties will already have been given the opportunity to defer the issue of the enclosed directions for a period of three months to enable them to refer the dispute to Professional Arbitration on Court Terms (“PACT”) or another recognised dispute resolution service. Save in exceptional circumstances we will not grant a deferment after the directions have been issued.

### **Directions**

10. The enclosed standard directions set out the steps to be taken by the parties to enable the case to be determined. It is imperative that you comply with those directions. In particular you should bear in mind the importance of identifying issues at an early stage and of disclosing documents to the other party. Early preparation can save time and avoid problems when the case is determined.
11. In most cases the parties will have instructed professional valuers who will be aware of their obligation to cooperate and to give disclosure of relevant comparables and other market evidence. A specific disclosure direction should be unnecessary. If however formal disclosure is required an appropriate request should be made as soon as possible. It must identify the documents to be disclosed and the reason for the request and must confirm that it has been copied to the other party. Generalised requests for speculative disclosure are unlikely to be granted.
12. In most cases each party will instruct its own valuer. We appreciate however that in some low value cases the parties may prefer to instruct an independent joint valuer and direction 7 allows for that. Where the parties decide to instruct an independent joint valuer they must ensure that the expert report is available at least two weeks before the hearing date and that copies of the report are included in the document bundle in lieu of each parties’ expert report.
13. Your attention is drawn to the notices at the end of the directions. The tribunal may well impose a sanction in the event of non-compliance. All correspondence to the tribunal must confirm that it has been copied to the other party.

### **Listing**

14. You must complete the enclosed listing questionnaire in full and return it during the period specified in direction 8. Within ten days of the end of that period we will list the case for hearing on the basis of the available information. We will always endeavour to list for dates that are convenient for the parties’ expert witnesses. However, we may not always be able to accommodate the parties’ advocates and the parties should be prepared to instruct alternative advocates. We will give priority to listing those cases

where the parties have complied with the directions. As many cases settle and are withdrawn at a late stage we list a large number of cases for hearing at the same time. As soon as your case has been listed we will write to you to confirm the hearing dates.

15. Any dates to avoid **must** be included in the listing questionnaire and in particular **not** be provided on an attachment. If not included in the listing questionnaire they may not be taken into account. Any specific representations relating to the listing of your case **must** also be included in the listing questionnaire.
16. If **all** parties provide their availability outside the hearing window we may list the case on the basis of the information provided.
17. If we are unable to list the case on the basis of the listing questionnaires we will issue a second supplementary listing questionnaire that **must** be completed and returned within one week. If we are still unable to list the case we will give notice of a listing hearing that will usually be on a Wednesday at 10.00 am. If you fail to attend the listing hearing the case will be listed for hearing in your absence and a postponement will only be granted in exceptional circumstances (see below).

## Hearing

18. Your case will be listed for hearing together with a number of other cases over a two day period: usually a Tuesday and Wednesday. The first hearing will start at 10.00 a.m. on the first of the two scheduled days. Other cases will be started as soon as there is a tribunal available to hear them. Priority may be given to parties that have complied with directions and have delivered their hearing bundles on time. We will endeavour to hear your case as soon as possible. If your case is not taken at 10.00 a.m. on the first of the two scheduled days, we will endeavour to provide you with a forecast later that morning of the estimated start time of your hearing.

## Postponement applications

19. In terms of our resources the cost of dealing with postponement applications has been wholly disproportionate. By the time that a case is transferred to the tribunal the parties will already have had a considerable period of time to agree terms. They will also have had the opportunity, by consent, to defer the issue of directions for a period of three months. The hearing is the final stage in a process that commenced with the issue of the section 25 notice or section 26 request. In such circumstances and having given the parties the opportunity to make representations on the listing of the case for hearing we are only likely to grant a postponement in exceptional circumstances.
20. All postponement applications **must** be made in writing to the case officer and copied to the other party. The application must include full supporting reasons for the postponement together with dates to avoid during the six weeks following the listed hearing dates. Applications will only be considered if this information is provided. The other party **must** respond in writing to both the

case officer and the applicant and must also provide its dates to avoid during the six weeks following the listed hearing dates.

21. All postponement applications are considered either at a postponement hearing or at the start of the listed hearing. Postponement hearings are held on Wednesdays from 10.00 a.m. at the tribunal offices.
22. If the case officer receives a postponement application at least nine days before the first day of the listed hearing it will be listed for a postponement hearing. The case officer will notify the parties of the date and time of the postponement hearing.
23. If made within eight days of the first day of the listed hearing the postponement application will be considered at the start of the listed hearing.
24. If not already supplied each party **must** send to both the case worker and the other party, in advance of either the postponement hearing or the listed hearing, their dates to avoid during the six weeks following the listed hearing.
25. If any of the parties fail to attend a postponement hearing the tribunal will consider the postponement application in their absence provided that all parties have provided their dates to avoid during the six weeks following the listed hearing.
26. If your postponement application is heard at the start of the listed hearing you must nevertheless be prepared to proceed with the hearing in the event of a postponement being refused.
27. If a postponement application is made on the grounds of ill health, it should be supported by a medical certificate, which will not be disclosed to the other parties without the patient's consent.
28. Postponements will rarely be granted simply because terms have almost been agreed or because the parties are still in negotiation. We retain discretion to refuse a postponement even when requested by both parties. By the listed hearing the parties will have had ample opportunity to negotiate a settlement. If any issues remain in dispute the hearing will usually proceed and the parties must be prepared to present their cases.
29. If a postponement is granted the case will be re-listed for hearing during the six weeks following the original listed hearing dates.

### **Terms agreed**

30. Generally listed hearings will only be vacated if a case is withdrawn. However we appreciate that there will be cases when terms are agreed at a late stage but there has been insufficient time to complete the grant of the new lease. We will vacate a listed hearing upon receipt from both parties of written confirmation that the rent and the terms of the new lease have been agreed and that the case will be withdrawn upon completion of the new lease.

## **File closure and destruction**

31. Our case files are closed after either a case is withdrawn or a decision is issued. We retain case files and a copy of any hearing bundle for six months after which time they are destroyed. Any subsequent enquiry relating to the case must be accompanied by copies of all relevant documents and if appropriate a hearing bundle.

## **Use of emails**

32. The following rules are designed to minimise the impact that emails can have on the efficient running of the tribunal office. If you wish to use emails please:
- Prepare a letter to the tribunal in Word format and attach it to the email (maximum of 5 pages - longer documents should be send by post);
  - As case officers are sometimes absent, always send or copy the email to the generic office address: [rplondon@hmcts.gsi.gov.uk](mailto:rplondon@hmcts.gsi.gov.uk),
  - Always copy any email to the other parties, either by email or by post, and confirm in your email/ letter that you have done this;
  - Always quote the reference number or case officer's name in the email;
  - Email chains, email 'conversations' about the case and bundles attached to emails will not be accepted.

First-tier Tribunal (Property Chamber)  
December 2017