PRACTICE DIRECTIONS

UPPER TRIBUNAL (LANDS CHAMBER)

19 October 2020

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Practice Directions

Upper Tribunal (Lands Chamber)

These Practice Directions are made by the Chamber President of the Upper Tribunal, Lands Chamber in the exercise of powers conferred by the Tribunals, Courts and Enforcement Act 2007 and with the approval of the Senior President of Tribunals and the Lord Chancellor given under section 23(5) of the 2007 Act

1.0 Commencement, application and interpretation

1.1. These Practice Directions—

(a) come into force on 19 October 2020 and replace the Tribunal's 2010 Practice Directions

(b) apply to proceedings in the Upper Tribunal, Lands Chamber

(c) supplement the Rules and should be read with them

1.2 In these Practice Directions—

"the Tribunal" means the Upper Tribunal, Lands Chamber

"the Rules" means the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (as amended from time to time) and "rule", followed by a number, is the rule bearing that number in the Rules

a "party" means any person taking an active part in a case in the Tribunal

2.0 Introduction

2.1 These Practice Directions explain the Tribunal's usual approach to managing different types of dispute. They apply to all parties, including anyone representing themselves in the Tribunal.

2.2 The Tribunal's overriding objective is to deal with all cases fairly and justly.

2.3 All parties are required to co-operate with the Tribunal, and with each other, to help the Tribunal achieve its overriding objective.

2.4 All parties are required to comply with these Practice Directions unless the Tribunal gives different directions.

2.5 The Tribunal is aware of the difficulties which unrepresented parties can face, and it takes them into account when it applies the Rules and these Practice Directions.

2.6 All parties are encouraged to communicate with the Tribunal by email (Lands@Justice.gov.uk). Documents such as witness statements and expert's reports should be filed with the Tribunal electronically, and not in hard copy. The Tribunal expects to introduce electronic filing of applications, appeals and references in February 2021 for which separate guidance will be issued.

2.7 Any letter or email sent to the Tribunal by a party must be copied to every other party or their representative at the same time. Communications between the parties should not be copied to the Tribunal, except where a party is applying for a specific direction.

2.8 Decisions of the Tribunal are made by its Judges (who are lawyers) and its Members (who are Chartered Surveyors). Some decisions are also made by the Registrar, who is not a Judge, but is a legally qualified member of the Tribunal's staff. Anyone dissatisfied with a decision of the Registrar can ask for it to be considered again by a Judge. Other members of the Tribunal's staff cannot make decisions.

2.9 All cases in the Tribunal will be one of the following types:

1) an application for permission to appeal a decision of another tribunal, to which Part 3 of the Rules applies (see section 10 below);

2) an appeal from a decision of another tribunal, to which Part 4 of the Rules applies (see section 7 below);

3) the reference of a dispute to the Tribunal under a statute (including a claim for compensation, an appeal against a certificate of appropriate alternative development or an application under the Electronic Communications Code) to which Part 5 of the Rules applies (see sections 13 and 14 below);

4) the reference of a dispute to the Tribunal under an agreement; Part 5 of the Rules also applies to these references (see section 13 below);

5) an application to discharge or modify a restrictive covenant affecting land under section 84 of the Law of Property Act 1925, to which Part 6 of the Rules applies (see section 15 below);

6) proceedings transferred to the Tribunal by another court or tribunal, to which Part 8 of the Rules applies (see paragraph 3.20 below).

3.0 Case management

3.1 The purpose of case management is to enable all disputes to be determined fairly and without unnecessary delay or expense. Case management decisions are made by the Registrar or, in cases assigned to the special procedure or written representations procedure, by a Judge or Member.

3.2 The Tribunal publishes standard forms which should be used to commence proceedings or to reply to them. The Tribunal also publishes standard forms of case management directions which can be adapted to suit any case. Both types of forms can be found on the Tribunal's website at https://www.gov.uk/courts-tribunals/upper-tribunal-lands-chamber. Parties are encouraged to use these forms when agreeing suitable directions for their own case. The Tribunal will take any directions agreed by the parties into account when giving its own directions.

3.3 Every case will be assigned by the Tribunal to one of four case management procedures:

1) the standard procedure (see paragraph 3.5 below);

2) the simplified procedure (see paragraph 3.8 below);

3) the special procedure (see paragraph 3.13 below);

4) the written representations procedure (see paragraph 3.18 below).

The Tribunal may re-assign a case to a different procedure at any time.

3.4 At the start of a case the parties will have the opportunity to state which procedure they would prefer to follow and the Tribunal will take their preferences into account when assigning the case.

The standard procedure

3.5 Most cases are managed under the standard procedure. It is used in cases where a hearing is required and another procedure is not more appropriate.

3.6 Under the standard procedure the Tribunal will give standard case management directions to prepare the case for hearing. If more complicated directions are required the Tribunal may hold a case management hearing or transfer the case to the special procedure (see paragraphs 3.14 to 3.17 for case management hearings). The parties will be asked to provide details of their availability for the final hearing and the Tribunal will set a date for that hearing as early as it can.

3.7 Parties may apply for additional or different directions at any time (see section 4.0 below for information about how to apply for directions).

The simplified procedure

3.8 The simplified procedure is used for cases in which no substantial issue of law or valuation practice or dispute of fact is likely to arise. It is often suitable where the amount at stake is modest, but in small compensation cases the standard procedure may be more appropriate because it enables the successful claimant to recover their costs of the proceedings from the compensating authority. (See sections 23 and 24 below for information about fees and costs in the Tribunal).

3.9 In the simplified procedure the hearing will be relatively informal, evidence will not usually be taken under oath and the hearing will be completed in a single day. This procedure will not normally be appropriate for cases involving more than one expert witness on each side. It is not used for appeals from the First-tier Tribunal or for applications to discharge or modify restrictive covenants.

3.10 When a case has been assigned to the simplified procedure the Tribunal will give standard directions by letter. After each party has provided a statement of case the Tribunal will set a date for the final hearing, normally about three to six months ahead. The parties will be told when they should exchange copies of any documents they want to rely on, provide a written summary of the evidence they or their witnesses want to give, and identify any expert witness they want to give evidence. If an expert witness is to give evidence their written report must be

sent to the Tribunal and to the other party not less than 14 days before the hearing.

3.11 Costs will not normally be awarded in cases under the simplified procedure unless a party has behaved unreasonably, but the successful party may ask for an order for reimbursement of any fees paid to the Tribunal.

3.12 Avoiding the risk of an adverse costs order is not a good reason to request the simplified procedure in a case for which it is not otherwise suitable. Parties may agree not to seek costs from each other in cases assigned to other procedures and the Tribunal has power to limit costs or to give costs protection in appropriate cases.

The special procedure and case management hearings

3.13 The special procedure is used for cases which require closer management because of their complexity, value or wider significance. It can also be suitable where a party has no professional representation, where parties are not cooperating with each other or with the Tribunal, or for categories of case which would otherwise benefit from close supervision. Cases assigned to the special procedure will be managed from an early stage by the Judge or Member expected to preside at the final hearing.

3.14 In all cases assigned to the special procedure the Tribunal will arrange a case management hearing (usually after statements of case have been exchanged). The purpose of this hearing is to identify the issues in the case, to consider how they can best be resolved and to give directions tailored to the requirements of the case. At the case management hearing a fixed date or a hearing window will usually be given for the hearing of any preliminary issues, or for the final hearing.

3.15 Case management hearings are most effective where the parties have already considered between themselves how they would like the case to proceed. At least two weeks before any case management hearing parties should contact each other to agree as many directions as they can. These may include directions for the determination of preliminary issues, if that might enable the case to be resolved more quickly or at significantly less expense. If any directions cannot

be agreed, each party must include the directions they will ask the Tribunal to make in their position statement (see paragraph 3.17 below).

3.16 The Tribunal will often conduct a case management hearing by telephone or video link or may dispense with the hearing entirely if suitable directions have been agreed by the parties. In complex cases it may be helpful for a case management hearing to take place even if all directions have been agreed. The Tribunal is more likely to agree to dispense with a case management hearing if directions are agreed in good time before the hearing.

3.17 Not less than three working days before a case management hearing each professionally represented party must (and an unrepresented party may) send a position statement to the Tribunal and the other parties. This should briefly summarise the subject-matter of the case, and identify the issues, the number and specialisms of any expert witnesses whom the party wishes to give evidence, and any directions which the parties have agreed or proposed. Where both sides are professionally represented a joint position statement may usefully be provided and in such cases the claimant or appellant should provide a draft for discussion at least seven days before the hearing. An agenda of the matters to be considered at the case management hearing should also be provided.

The written representations procedure

3.18 Cases which are capable of being decided without a hearing will usually be allocated to the written representations procedure. These include disputes over the meaning of a document, a simple question of law, or a straightforward valuation issue for which oral evidence and argument are likely to be unnecessary. The wishes of the parties will be considered before the Tribunal allocates a case to the written representations procedure but the Tribunal may opt for it even if the parties request an oral hearing.

3.19 Directions will be given for both parties to explain their case in writing and to respond to the arguments of the other party. The Tribunal will usually direct the claimant or appellant to explain their case first (unless they have already done so sufficiently), and the respondent to reply; the claimant or appellant will then be allowed to answer the respondent's case. The Tribunal may ask either party to add to or clarify their case if it considers this is necessary or would be helpful.

3.20 The Tribunal will direct each party to identify any documents they wish the Tribunal to take into consideration and to provide copies to the Tribunal and the other party. The Tribunal may ask either party to provide a copy of any other document it would like to see.

3.21 Costs will not normally be awarded in cases under the written representations procedure unless a party has behaved unreasonably, but the successful party may ask for an order for reimbursement of any fees paid to the Tribunal.

Cases transferred to the Tribunal

3.22 A case or issue may be transferred to the Tribunal by another tribunal or a court (normally because of its complexity, value or importance). A case which is transferred will normally be assigned to the special procedure.

3.23 Where a case has been transferred to the Tribunal by the First-tier Tribunal (Property Chamber) the procedural rules of the Property Chamber will continue to apply to the case unless the Tribunal gives a different direction.

4.0 Applying for case management directions

4.1 Any party may apply to the Tribunal for case management directions e.g. for more time to prepare a document, for permission to rely on an amended statement of case or additional expert evidence, or for the disclosure of documents by another party. A fee is usually payable (see section 23 below for further information about fees).

4.2 Correspondence or emails between parties about proposed directions should not be copied to the Tribunal except when an application is made, and then only those which the Tribunal needs to consider should be provided.

4.3 An application for directions must be made in writing, and must include a concise explanation of why the direction is being requested. There is no prescribed form, and the application may be made by email (or letter). Before an application is made, other parties must be given a proper opportunity to agree to the proposed direction, or to suggest an alternative. A copy of the intended application, including the explanation, should first be sent to all other parties. If an agreement is not reached within a reasonable time, the application may then

be made to the Tribunal which will usually give its decision without a hearing. Where there is a genuine reason for urgency, other parties may be sent a copy of the application for the first time when it is sent to the Tribunal.

4.4 When an application is made to the Tribunal for directions a copy must be sent to every other party, and they must be told they have 10 days to inform the Tribunal of any objection unless the Tribunal directs a shorter period (but see paragraph 14.14 regarding applications in Electronic Communications Code references). The Tribunal must be informed in the application that this has been done.

4.5 If any party objects to the proposed direction, or wishes to suggest an alternative or additional direction, they should explain their objection to the Tribunal in writing as soon as possible and in any event within 10 days of receiving the application (or any shorter period the Tribunal directs).

4.6 If a request for additional directions is urgent, it should be made clear to the Tribunal at the start of the email (or letter) in which the application is made. The Tribunal may then shorten the time allowed for other parties to respond to the application.

4.7 An application for more time to take any procedural step should be made in good time before the expiry of the time already allowed, and must include an explanation why the original time limit cannot be complied with. If an application for more time is made after a time limit has expired, the reasons for the failure to comply with the original time limit must be explained. If the delay is not trivial and no good reason is provided the Tribunal is unlikely to allow additional time and the party may be prevented from taking the procedural step.

5.0 Statements of case

5.1 Every party in proceedings before the Tribunal must explain their case in a document called a statement of case. In a straightforward case a statement of case may be as simple as a letter in which the claimant explains in their own words what the dispute is about and what outcome they are asking for; in a complex case it is likely to be a more formal legal document. The same basic requirements apply to all statements of case.

5.2 The purpose of a statement of case is to identify the relevant facts, the issues to be determined by the Tribunal, and the outcome which the party is asking for. Each statement of case must set out the key facts on which the party relies. Any legal principles on which a party relies may also be briefly identified, but the statement of case is not the place to argue legal issues in detail. Nor need a statement of case in a valuation dispute include full particulars of comparable transactions intended to be relied on in evidence.

5.3 A statement of case must be concise and must contain only those particulars necessary to enable the Tribunal and the other party to identify the issues and to understand the basis of the case that is being advanced. It should be arranged in separate numbered paragraphs and, so far as possible, each paragraph should contain only one point. The document should explain the party's case in a logical sequence to allow a sequential response.

5.4 Statements of case will rarely need to be longer than 25 pages (minimum font size 12, spacing 1.5), and the Tribunal may require an unnecessarily lengthy document to be edited and resubmitted.

5.5 Documents must not be annexed to a statement of case unless they are necessary to identify the issues (such as a plan identifying the land to which a reference relates). Uncontentious documents such as notices or correspondence should not be annexed to a statement of case. In the case of a lengthy document, such as a compulsory purchase order, only the relevant part should be annexed.

5.6 A party who considers that another party has not provided a statement of case complying with this Practice Direction may apply to the Tribunal for a direction that an additional or replacement statement of case be provided.

6.0 **Disclosure of documents**

6.1 Exchanging copies of documents which a party has in their possession or control and which are relevant to the issues in the proceedings is known as "disclosure". The duty of all parties to cooperate with each other and with the Tribunal to ensure that cases are disposed of as quickly and cheaply as possible is particularly important in relation to disclosure.

6.2 It is not the practice of the Tribunal to direct disclosure of documents in every case, and unnecessary or indiscriminate disclosure is always discouraged.

6.3 After statements of case have been exchanged parties should discuss between themselves what documents ought to be disclosed and when disclosure should take place. They should agree whether disclosure should be provided by including relevant documents in a list, by supplying copies, or by exhibiting them to a witness statement. Parties must then cooperate by disclosing to each other those documents in their possession which are relevant to the issues on which they have agreed disclosure is required or which the Tribunal has directed. Documents which may damage a party's own case or which another party may wish to rely on should be disclosed.

6.4 The scope of disclosure should be defined by reference to issues in the proceedings and restricted to what is necessary to enable the issues to be determined fairly and at proportionate expense. Where possible requests for disclosure should be made in respect of specific documents rather than broad categories. Parties should not agree to provide "standard disclosure" without defining the issues to which it is to relate and without considering whether some more limited form of disclosure would be sufficient.

6.5 If a party wishes to see a relevant document a copy should be provided by the other party unless there is a good reason for withholding it. Disproportionate requests for disclosure should not be made, and indiscriminate disclosure of documents of limited relevance must be avoided.

6.6 If agreement cannot be reached on disclosure, if a party seeks disclosure of additional documents which is resisted, or if a party believes that excessive disclosure is being used as a tactic, an application should be made to the Tribunal for directions concerning disclosure.

7.0 Appeals - Introduction

7.1 The Tribunal deals with three types of appeal:

1) Appeals against decisions of the First-tier Tribunal (Property Chamber) in England, or decisions of a leasehold valuation tribunal, residential property

tribunal or agricultural land tribunal in Wales (all of these tribunals will now be referred to as "the First-tier Tribunal") (see section 9 below).

2) Appeals against decisions of the Valuation Tribunal for England or for Wales (which will now be referred to as "the Valuation Tribunal") concerning non-domestic rates (see section 11 below).

3) Appeals against decisions of local planning authorities to grant or refuse a certificate of appropriate alternative development under section 18 of the Land Compensation Act 1961 (see section 12 below).

7.2 Permission to appeal is required for any appeal against a decision of a First-tier Tribunal (see section 10 on permission to appeal). Permission is not required for an appeal against a decision of a Valuation Tribunal or a local planning authority.

7.3 Bringing an appeal (or making an application for permission to appeal) does not automatically suspend the effect of the decision being appealed. When the Tribunal receives a notice of appeal or request for permission to appeal against a decision of a First-tier Tribunal it has power to suspend the effect of the decision until after the conclusion of the appeal; this is called "a stay" of the decision. Any request for a stay of a decision should be made prominently in a covering letter when the notice of appeal or application for permission to appeal is submitted.

Notice of appeal

7.4 Every appeal is commenced by filing a notice of appeal using the form available on the Tribunal's website (unless the Tribunal has directed that a previous application for permission to appeal may take the place of a notice of appeal).

7.5 A copy of the decision of the lower tribunal or local planning authority must be provided with the notice of appeal. Where permission to appeal has been granted by a First-tier Tribunal, a copy of that permission should also be provided.

7.6 The appellant must provide a separate statement of case with the notice of appeal (called the "grounds of appeal") explaining why the appellant considers

the decision being appealed was wrong. The grounds of appeal should comply with section 5 of this Practice Direction.

7.7 If permission to appeal is not required, or if it has already been given by the First-tier Tribunal, a notice of appeal must be filed with the Tribunal within 1 month (28 days in the case of appeals from the Valuation Tribunal) of the date on which the decision appealed against or the decision giving permission to appeal was *sent* to the appellant, which will be taken to be the date on the First-tier Tribunal's covering letter.

7.8 The Tribunal may extend time for filing a notice of appeal, but will not usually do so unless the delay was insignificant or there was a good reason for the failure to file the notice in time. An application to extend time must be made when the notice of appeal is filed. It must explain the reasons for the delay and provide any supporting evidence (such as a medical report explaining why the applicant was unable to comply with the time limit).

7.9 If an extension of time is needed because an appellant wants more time to prepare grounds of appeal, the notice of appeal should be submitted within the time permitted together with an application for more time to provide the grounds. If more time is needed in a case where permission to appeal has been granted by a First-tier Tribunal, a copy of the application for permission to appeal made to that tribunal should be provided with the notice of appeal, and a request should be made for further time to provide additional grounds.

7.10 If an appeal is urgent, the Tribunal may shorten the time limits that would otherwise apply if it is satisfied that it is in the interests of justice to do so. Any request for an appeal to be treated as urgent should be made clearly in a covering letter to the Tribunal when the notice of appeal is filed.

8.0 Types of appeal: review and rehearing

8.1 An appeal against a decision of another tribunal may be determined:

1) by a review of the decision; or

2) by a review of the decision, with a view to a re-hearing of the original proceedings by the Tribunal if the appeal is successful; or

3) by a re-hearing of the original proceedings.

8.2 Appeals from a First-tier Tribunal usually involve a review of the decision in which the Tribunal considers oral or written argument but does not hear evidence. In some cases the Tribunal may direct that an appeal will be a re-hearing, for example where the appeal raises an important issue of valuation, or an issue of natural justice which cannot be resolved on the material available, or where the decision of the First-tier Tribunal is obviously wrong. If an appeal is to be determined by a re-hearing the Tribunal will receive evidence and make its own decision, without reviewing the decision of the First-tier Tribunal (see section 9 below).

8.3 Appeals from the Valuation Tribunal are usually dealt with as a re-hearing at which the Tribunal receives evidence and make its own decision, without reviewing the decision of the Valuation Tribunal. An exception is made for appeals against discretionary case management decisions which will usually be dealt with as a review of the Valuation Tribunal's decision (see section 11 below).

8.4 To avoid the cost and delay of sending a successful appeal back to a First-tier Tribunal for further consideration the Tribunal may direct that an appeal will be dealt with by a review "with a view to re-hearing". Where this direction has been given the Tribunal will hear argument on the appeal and, if it decides to allow the appeal, it will proceed (usually at the same hearing) to re-hear all or part of the evidence and make a new decision.

8.5 In deciding which type of appeal to direct the Tribunal will take into consideration any views the parties have expressed.

9.0 Appeals from a First-tier Tribunal

9.1 All appeals from the First-tier Tribunal (Property Chamber) including appeals in relation to land registration, and all appeals from the residential and agricultural property tribunals in Wales, are assigned to the Tribunal. In all appeals the notice of appeal should be in form T601 which is available on the Tribunal's website.

9.2 For most decisions of a First-tier Tribunal any person aggrieved by the decision has a right of appeal, with permission. Such appeals are not restricted only to an appeal on a point of law (where it is said the tribunal has wrongly applied the law) but can be on any grounds. This is the case in most appeals in residential property cases including service charge, leasehold management, enfranchisement and breach of covenant cases, as well as appeals concerning mobile homes, housing standards and land registration.

9.3 Some decisions of a First-tier Tribunal can only be appealed on a point of law by a party to the proceedings. These include decisions concerning rent increases, agricultural land or drainage, tenant fees, and the right to buy. What is a "point of law" is widely interpreted and, as well as covering a mistake in applying the law, it can include:

1) A failure to provide adequate reasons for a decision.
2) A procedural irregularity or obvious unfairness in the proceedings which causes the decision of the First-tier Tribunal to be unjust.
3) A decision based on a finding of fact for which there was no supporting evidence.

9.4 An appeal may be made against any decision of the First-tier Tribunal, including a case management decision, but the Tribunal rarely grants permission to appeal case management decisions and only does so where it is arguable that the First-tier Tribunal has exceeded the limits of its discretion or has otherwise acted unlawfully.

9.5 In an appeal from a decision of a First-tier Tribunal the appellant's grounds of appeal should provide a sufficient statement of case to comply with section 5 of this Practice Direction and no further statement of case need be provided unless the Tribunal specifically requires it.

9.6 In an appeal from a decision of a First-tier Tribunal the respondent's statement of case should briefly state the grounds on which the respondent relies in opposing the appeal or in support of a cross-appeal. If the respondent considers that the decision of the First-tier Tribunal was correct and does not want to rely

on any other arguments, a letter stating that the respondent agrees with the First-tier Tribunal's decision and its reasons will be a sufficient statement of case.

10.0 Applications for permission to appeal from the First-tier Tribunal

When is permission required and who can grant it?

10.1 Permission to appeal is required for any appeal against a decision of a First-tier Tribunal. Permission is not required for an appeal against a decision of the Valuation Tribunal.

10.2 Permission to appeal can be granted by the First-tier Tribunal. An application for permission to appeal must be made to the First-tier Tribunal within 28 days of the date on which the written reasons for its decision were sent to the applicant.

10.3 If permission to appeal is refused by the First-tier Tribunal or is granted on only some of the grounds requested, or if the First-tier Tribunal refuses to admit the application because it is late, a second application for permission to appeal can be made to this Tribunal.

How and when should an application for permission be made?

10.4 An application for permission to appeal should be made on form T602 which is available on the Tribunal's website. It must be received within 14 days of the date on which the First-tier Tribunal sent its refusal of permission to the applicant (but see paragraph 10.5 below).

10.5 If a First-tier Tribunal has granted permission to appeal on only some of the grounds for which permission was requested, a renewed application for permission to appeal on additional grounds may be made to the Tribunal when the notice of appeal is filed (which must be within one month of the First-tier Tribunal's decision to grant permission). It is more convenient for the Tribunal to receive the notice of appeal and the renewed application at the same time, and the time for receipt of the application will be extended beyond the usual 14 days in those circumstances.

10.6 The Tribunal has power to extend the time for making an application for permission to appeal but will not do so unless there is a good reason for the

delay in making the application or the delay is insignificant. A request to extend time should be made when the application for permission to appeal itself is made. The applicant should explain why the application is late and request an extension of time. The applicant should also provide any supporting evidence relied on to explain the delay (such as a medical report explaining why the applicant was unable to comply with the time limit).

10.7 If an applicant wants more time to prepare grounds of appeal, the application for permission to appeal should be submitted within the usual 14-day time limit, together with a copy of the application which was made to the First-tier Tribunal, and a request should be made for further time to provide the grounds of appeal.

10.8 If the First-tier Tribunal refused to consider an application for permission to appeal because it was made late, an explanation must be given why the original application was late, and the Tribunal will only admit the application if it is in the interests of justice for it to do so.

What documents should be provided with an application for permission?

10.9 The applicant must also provide a separate statement of case explaining why they think the decision of the First-tier Tribunal was wrong and complying with section 5 of this Practice Direction (called the "grounds of appeal"). The grounds of appeal may comment on the First-tier Tribunal's reasons for refusing to give permission to appeal but it is not necessary to do so. The grounds of appeal should be concise and should explain any relevant background information which is not apparent from the decision of the First-tier Tribunal.

10.10 When an application for permission to appeal is made a copy of the decision of the First-tier Tribunal must be provided, together with a copy of its refusal of permission to appeal, and its covering letter.

10.11 The Tribunal does not have access to documents which were provided to the First-tier Tribunal. A copy of any document which it is essential for the Tribunal to see in order to understand the grounds of appeal may therefore be provided with the application for permission to appeal, but the applicant should not send a copy of the First-tier Tribunal hearing bundle; if the Tribunal needs to see any additional documents it will ask for them.

10.12 The applicant must provide two copies of the application for permission to appeal and the grounds of appeal and sufficient additional copies for service by the Tribunal on each intended respondent.

How will the application be determined?

10.13 The Tribunal will determine an application for permission to appeal without a hearing unless it thinks that a hearing is necessary or desirable. An applicant who wants their application to be dealt with at a hearing must explain why they think a hearing should be held.

10.14 Permission to appeal will be granted if the Tribunal considers the proposed appeal has a realistic prospect of success, unless the sum or issue involved is so modest or unimportant that an appeal would be disproportionate. Permission to appeal may also be granted if the Tribunal considers there is some other good reason for an appeal.

10.15 When it receives an application for permission to appeal, or when it grants permission to appeal, the Tribunal may suspend the decision of the First-tier Tribunal pending the determination of the application or the appeal; a direction suspending the effect of a decision may be made subject to conditions.

10.16 Unless the Tribunal refuses permission to appeal it will send the application for permission to appeal to the other parties to the proceedings and allow them 14 days to comment on it before it is determined. These comments may explain why permission should not be granted, ask for permission to cross- appeal, or include a request that permission to appeal should be granted only subject to conditions. If the Tribunal grants permission to appeal any representations made by the respondent at this stage may be allowed to stand as the respondent's grounds of opposition to the appeal.

10.17 Once the Tribunal has given permission to appeal the appeal will only proceed if the appellant provides a notice of appeal to the Tribunal within 1 month (see paragraph 7.4 above). When it gives permission to appeal, the Tribunal may dispense with this requirement and allow the application for permission to appeal to stand as the notice of appeal. If an appellant does not wish to proceed with an appeal for which permission has been granted the Tribunal and the other party should be informed.

10.18 The Tribunal may give permission to appeal subject to conditions (including the payment of all or part of any sum found to have been due by the First-tier Tribunal). If the Tribunal gives permission to appeal subject to conditions the appeal will proceed only if the appellant complies with the conditions.

10.19 When it gives permission to appeal the Tribunal will also give case management directions.

If an application for permission to appeal is refused

10.20 There is no right of appeal against a decision of the Tribunal to refuse permission to appeal.

10.21 If the claim raises an important point of principle or practice, or there is some other compelling reason, the High Court has power to conduct a judicial review of the Tribunal's decision. It will not do so unless it is satisfied that there is an arguable case, which has a reasonable prospect of success, that the Tribunal's decision refusing permission to appeal and the decision of the First-tier Tribunal against which permission to appeal was sought were both wrong in law.

10.22 An application for permission to apply for judicial review must be made within 16 days after the date on which the Tribunal's decision refusing permission to appeal was sent to the applicant. The application must be made on a claim form with supporting documents. The claim form must be filed at the Administrative Court Office, The Royal Courts of Justice, Strand, London WC2A 2LL, or at one of the Administrative Court offices in Birmingham, Cardiff, Leeds or Manchester. The addresses of these offices can be found at https://www.gov.uk/courts-tribunals/administrative-court

11.0 Appeals from Valuation Tribunals

11.1 A notice of appeal in an appeal against a decision of a Valuation Tribunal concerning non-domestic rating should be in form T385 which is available on the Tribunal's website. Permission to appeal is not required.

11.2 Appeals from decisions of the Valuation Tribunal are usually dealt with by way of a re-hearing (see paragraph 8.3 above).

11.3 Appeals concerning discretionary case management decisions are usually dealt with by way of review.

11.4 In an appeal from a Valuation Tribunal the appellant must provide a statement of case with its notice of appeal, and the respondent must do so when it files its respondent's notice or within such extended period as the Tribunal may allow. In each case the statement of case must comply with section 5 of this Practice Direction.

11.5 Since each party will already have presented its case to the Valuation Tribunal, it should not normally be necessary to ask for an extension of time to file a statement of case. There may be exceptions where additional evidence is being gathered, but in most cases the better course will be for a statement of case to be filed within time, and for a request to be made to amend it later if necessary.

11.6 A copy of the decision of the Valuation Tribunal must be provided with the appellant's notice of appeal. It is not necessary to provide copies of other documents at this stage.

11.7 Unless the decision appealed against was a discretionary case management decision the appellant's statement of case need not refer in detail to the reasons given by the Valuation Tribunal for its decision. It must explain the outcome which the appellant seeks and must provide details of any valuation relied on, including details of any comparable properties.

11.8 If a respondent to an appeal from the Valuation Tribunal intends to ask for a determination on the appeal which is more favourable to it than the decision of the Valuation Tribunal, it must make that clear at an early stage, either by filing a separate notice of appeal of its own or in its statement of case.

11.9 Where a respondent seeks a different result from that provided by the Valuation Tribunal, the Tribunal will not permit the appeal to be withdrawn by the appellant without the agreement of both parties.

12.0 Appeals under section 18, Land Compensation Act 1961

12.1 An appeal under section 18 of the Land Compensation Act 1961 against a decision of a local planning authority concerning a certificate of appropriate alternative development is an exception to the usual procedure concerning appeals and is made by giving notice of reference using form **T371** which is available on the Tribunal's website. Permission to appeal is not required.

12.2 The time limit for filing a notice of reference in a section 18 appeal is 1 month from the date of the issue of the certificate of appropriate alternative development under section 17 of the 1961 Act. If the proper determination of the claim for compensation for which the certificate was issued makes it appropriate to do so, the Tribunal may exercise its power to extend this time.

12.3 The proper respondent to a section 18 appeal is the authority which will be responsible for paying any compensation awarded. If that authority is not the local planning authority which made the decision which is the subject of the appeal, the local planning authority should be given notice of the appeal so that it may consider whether it wishes to apply to become an additional respondent.

12.4 A section 18 appeal may be consolidated with a compensation claim with which it is associated. Where consolidation is ordered the Tribunal will consider whether the section 18 appeal (and any issues in the compensation claim associated with it) should be heard as a preliminary issue.

12.5 A copy of the local planning authority's decision concerning the application for a certificate of appropriate alternative development should be provided with the notice of reference in a section 18 appeal. Other documents should not be provided at that stage.

12.6 Where a party wishes to introduce planning policies or guidance in evidence in a section 18 appeal, no greater extract from the document should be provided than is relevant to the issue the Tribunal has to decide. An electronic link may also be supplied to enable the Tribunal to access the whole document if required.

12.7 The costs reasonably incurred by the appellant in a section 18 appeal are taken into account in assessing the amount of compensation payable to them in respect of the compulsory acquisition of their land and need not be the subject of a separate application for costs at the conclusion of the appeal.

13.0 References under Part 5 of the Rules

13.1 A dispute may be referred to the Tribunal under Part 5 of the Rules either by a claimant claiming compensation or another remedy on their own behalf, or by an authority or other body wishing to know how much compensation they must

pay. The notice of reference should be in form **T371** which is available on the Tribunal's website.

13.2 Parties should exchange information and seek to resolve as many issues as possible by agreement before making a reference. Parties to references for compensation for compulsory purchase or loss caused by public works are encouraged to follow the pre-reference protocol published by the Compulsory Purchase Association at http://compulsorypurchaseassociation.org/land-compensation-claims-protocol.httml. The Tribunal will take an unreasonable refusal to follow the Protocol into account when deciding what order for costs to make at the conclusion of the reference.

Statements of case

13.3 Where a dispute is referred to the Tribunal under Part 5 of the Rules, the person making the reference is required to provide a statement of case which complies with section 5 of this Practice Direction with their notice of reference.

13.4 If the person making a reference claims compensation or another remedy on their own behalf, their statement of case must provide an explanation of the claim, specify the amount claimed or the remedy sought, and explain how that amount is calculated or estimated.

13.5 If the person making the reference is an authority or other body liable to pay compensation, it need not provide a full statement of its case with its notice of reference, but it must provide a summary which explains the subject of the determination it seeks and the reasons for seeking that determination. An authority's initial summary should be concise and need not anticipate the case of the claimant.

13.6 A response to a notice of reference should be in form **T373** which is available on the Tribunal's website. With its response the respondent should also provide a statement of case which complies with section 5 of this Practice Direction. If the respondent claims to be entitled to compensation the statement of case must also comply with paragraph 13.4 above. If the respondent is an authority or other body liable to pay compensation the statement of case should respond to the statement of case of the claimant, and should specify (so far as they are able

at that stage) the amount they consider to be due to the claimant and how that amount has been calculated or estimated.

13.7 Where the person who made the reference is an authority, after the receipt of the claimant's statement of case the Tribunal may direct it to provide a statement of case which complies with section 5 of this Practice Direction, or (in a simple case) may direct that the case summary provided by the authority with the notice of reference may stand as its statement of case.

14.0 References under the Electronic Communications Code

14.1 The Electronic Communications Code ("the Code") in Schedule 3A of the Communications Act 2003 sets out the basis on which electronic communications operators may exercise rights to deploy and maintain electronic communications apparatus on, over and under land.

14.2 The Electronic Communications Code (Jurisdiction) Regulations 2017 provide for dispute resolution functions conferred by the Code on the court to be exercisable in relation to England and Wales by the Upper Tribunal and by the First-tier Tribunal. The same Regulations provide that certain proceedings under the Code may only be commenced in England and Wales in the Upper Tribunal. These include proceedings for the imposition, termination or modification of agreements to which the Code applies, and proceedings for the removal or alteration of electronic communications apparatus.

14.3 Within the Upper Tribunal, proceedings under the Code are assigned to the Lands Chamber.

14.4 Code disputes should be referred to the Tribunal using form **T371** which is available on the Tribunal's website. The person making the reference should be identified as the claimant (whether they are a land owner or an operator) and every other party should be named as a respondent. If possible an email address for the respondent should be included in the notice of reference.

14.5 The person making the reference should also provide a statement of case which complies with section 5 of this Practice Direction with the notice of reference. Statements of case should be concise and unnecessary documents should not be included.

14.6 A response to a notice of reference should be in form **T373** which is available on the Tribunal's website. The respondent should provide a statement of case which complies with section 5 of this Practice Direction with their response.

14.7 Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 requires that certain Code disputes must be decided within 6 months of being referred. The scope of this requirement is not yet fully established but it includes disputes where new rights are sought over land on which there is currently no electronic communications apparatus.

14.8 Pre-reference engagement between the parties is strongly encouraged in all cases, but it is particularly important in those Code cases where the Tribunal is itself subject to strict time limits and in which it will expect a high degree of cooperation from and between the parties. Parties who are unable to agree on a Code matter should seek to narrow their differences and identify the issues which divide them before the dispute is referred to the Tribunal.

14.9 The Tribunal will serve a new reference on all named respondents as promptly as it can. As a courtesy, the claimant should also send copies of the notice of reference and statement of case to the respondent and any professional adviser known to be acting for them at the time they are sent to the Tribunal.

14.10 On receipt of a notice of reference in a Code dispute which must be determined within 6 months (see paragraph 14.7 above) the Tribunal will fix an appointment for an early case management hearing (and it may do so in other Code cases). The case management hearing will usually be dispensed with or dealt with by telephone or video conferencing if the parties agree appropriate directions. (See paragraphs 3.14 to 3.17 for further information about case management hearings).

14.11 The case management hearing will usually be held within 6 to 8 weeks of receiving the reference. Directions will be given to enable a final hearing to take place within about five months of receiving the reference.

14.12 Applications for interim or temporary rights will usually be determined at the case management hearing (which may be brought forward in cases of extreme urgency) or on paper. It is not necessary for valuation evidence to be provided in support of these applications at this stage (the Tribunal will give directions for

any compensation and consideration issues which cannot be agreed to be determined at a separate hearing).

14.13 The Tribunal will not grant a stay for ADR in a Code dispute which must be determined within 6 months.

14.14 Normal time limits for procedural steps are modified in Code cases. The period in paragraphs 4.4 and 4.5 within which a response is required to an application for additional directions is reduced from 10 days to 7 days. In paragraph 19.4 the periods of 6 weeks and 4 weeks for agreement of hearing bundles is reduced to 3 weeks and 2 weeks. Hearing bundles should be delivered to the Tribunal 7 days before the hearing, and skeleton arguments should be provided 3 days before the hearing.

14.15 Although the First-tier Tribunal has jurisdiction to determine Code disputes, such disputes may not currently be commenced in the First-tier Tribunal (disputes about Code rights in residential buildings under the proposed Part 4A of the Code may soon become an exception to this rule). The Tribunal may transfer any Code reference to the First-tier Tribunal for hearing. Parties who agree that their dispute should be determined in the First-tier Tribunal may apply for transfer to be considered.

15.0 Applications concerning restrictive covenants under Part 6 of the Rules

15.1 In any application for the discharge or modification of a restrictive covenant under section 84 of the Law of Property Act 1925, the applicant should provide a notice of application in form **T379** which is available on the Tribunal's website and a statement of case complying with section 5 of this Practice Direction.

15.2 A person who objects to the proposed discharge or modification, or who wishes to claim compensation as a result, should explain the basis on which they claim to be entitled to the benefit of the restriction and explain their objection in a notice of objection using form **T381** which is available on the Tribunal's website. The notice of objection must be sent to the Tribunal within one month of the objector receiving notice of the application.

15.3 The Tribunal may require an objector who is, or who claims to be, entitled to the benefit of a restriction to provide a statement of case complying with section 5 of this Practice Direction, especially if compensation is claimed, or it may direct that the notice of objection should stand as the objector's statement of case. The Tribunal may also direct that the applicant should respond to an objector's statement of case.

15.5 If there is a dispute over the entitlement of an objector to the benefit of a restriction the Tribunal may determine that dispute as a preliminary issue. If there are other objectors whose entitlement to the benefit of the restriction is admitted the Tribunal may prefer to determine all issues at a single hearing.

15.6 Where there is more than one objector to an application to discharge or modify a restriction the Tribunal will encourage all objectors who wish to be professionally represented to appoint a single representative (unless there is good reason not to). If more than one objector wishes to rely on evidence from an expert witness the Tribunal will usually give permission for one expert to give evidence on behalf of all objectors.

15.7 If no objection is received to an application to discharge or modify a restriction, or if all objections are withdrawn, the Tribunal may determine the application without a hearing.

Costs in applications under Part 6

15.7 The Tribunal has power to award costs on an application to discharge or modify a restrictive covenant affecting land, but the following principles will be applied to the exercise of that power.

15.8 Where an applicant successfully challenges an objector's entitlement to the benefit of the restriction, the objector will normally be ordered to pay the applicant's costs incurred in dealing with that challenge, but only those costs.

15.9 Where an applicant unsuccessfully challenges an objector's entitlement to the benefit of a restriction, the applicant will normally be ordered to pay the objector's costs incurred in dealing with that challenge.

15.10 Unsuccessful objectors will not normally be ordered to pay any of the applicant's costs, unless they have acted unreasonably. Because the applicant is seeking to remove or diminish the property rights of the objector the Tribunal will not usually regard making an objection and pursuing it to a hearing as unreasonable.

15.11 Successful objectors will usually be awarded their costs unless they have acted unreasonably.

16.0 Stays of proceedings and alternative dispute resolution ("ADR")

16.1 Parties may apply jointly to the Tribunal at any time for a short delay in the proceedings (referred to as a "stay of proceedings") to allow time for them to reach agreement outside the Tribunal process by negotiation or alternative dispute resolution ("ADR"). No fee is payable for such an application.

16.2 If both parties apply jointly the Tribunal will usually grant a stay of the proceedings for up to two months to allow mediation or another form of ADR to be attempted. During the stay the parties will not be required to take any step in the proceedings other than to engage actively in efforts to reach agreement.

16.3 A second or longer stay may be granted if the parties satisfy the Tribunal that it is justified and has a good chance of leading to a settlement. A fee must be paid for such an application. A second or subsequent stay may only be granted by a Judge or Member.

16.4 The Tribunal will not grant lengthy or repeated stays where there is no evidence of progress being made towards a settlement of the dispute. If final agreement has not been reached after a second stay the Tribunal will usually expect the parties to continue negotiations, including ADR, while preparations are made for the final hearing of the case.

16.5 If a party unreasonably refuses to engage in ADR at the request of another party the Tribunal will take that refusal into consideration when deciding what costs order to make at the end of the proceedings, even when the refusing party is otherwise successful. The Tribunal will not treat every refusal of ADR as

unreasonable, for example, where the chances of settlement are reasonably considered to be too low.

17.0 **Preliminary issues**

17.1 The Tribunal may order a preliminary issue in the proceedings to be determined at a hearing or by written representations. Issues which may be suitable for determination as preliminary issues are those which are self-contained and which might dispose of the whole or an important part of the case or significantly reduce the number of issues, thereby saving costs, avoiding delay and facilitating settlement.

17.2 A preliminary issue may be ordered to be determined on the basis of agreed facts, or the Tribunal may hear evidence and determine the facts as part of the issue.

17.3 Before any application is made for the determination of a preliminary issue the parties should seek to agree how the preliminary issue should be formulated and as many of the relevant facts as they can.

17.4 An application for the determination of a preliminary issue should set out the point of law or other issue to be decided. It should be accompanied by a statement of agreed facts, or a description of the facts which the Tribunal will be required to determine and the extent of the evidence which will be required. The application should state why, in the applicant's view, determination of the issue as a preliminary issue would be likely to enable the proceedings to be disposed of more quickly or at less expense.

17.5 If the Tribunal decides to order the determination of a preliminary issue it will give such directions as appear to it to be required.

18.0 Expert evidence

18.1 Expert evidence should only be prepared where it is necessary to enable the Tribunal to determine an issue in the proceedings and the Tribunal will refuse to admit evidence which is not necessary. Where expert evidence is required the parties should seek to agree the issues which the experts will be asked to address before the experts prepare their reports. Where a case management

hearing is to take place, the agenda should include consideration of the issues on which expert evidence will be required.

18.2 Permission is required if a party wishes to call more than one expert witness (two if the case concerns mineral valuation or business disturbance). Expert evidence adds significantly to the cost of proceedings and permission for additional experts will only be given where it is proportionate and necessary to enable the Tribunal fairly to determine the matters in dispute.

18.3 Before the Tribunal will permit additional experts to give evidence it will first require the parties to consider whether evidence on any issue can be given by a single joint expert. When considering whether expert evidence should be provided by a single joint expert the Tribunal will take into account all the circumstances and in particular:

1) The nature and complexity of the issue and its importance in the proceedings,

2) the amount in dispute in the proceedings,

3) the practicality of instructing a single joint expert.

18.4 Where a single joint expert is to provide evidence, both parties may give instructions to the expert, and must send a copy to the other party. Unless the Tribunal gives a different direction, both parties will be liable (jointly and severally) for payment of the expert's fees and expenses.

18.5 A party must allow the expert of another party to have reasonable access to any land or buildings which are the subject of the proceedings, or otherwise relevant to any issue in the proceedings. Access should be allowed on reasonable notice for such reasonable period as the expert may request, and should include the opportunity to take photographs and measurements.

18.6 Except in a case proceeding under the simplified procedure, the Tribunal will not permit an expert witness to act additionally in an advocacy role during the hearing. In any case an expert witness may assist a party before the hearing (for example, by drafting and filing documents and liaising with the Tribunal) and at the hearing in a supportive capacity provided those services are acknowledged in

the expert's report and the expert is not remunerated for them on a contingency basis (see paragraph 18.27).

Communication between experts

18.7 Parties should inform the Tribunal and each other at an early stage (and in any event before a case management hearing) of the area of expertise of each expert witness they wish to rely on and the issues which the proposed expert's evidence is intended to address. Where possible the name of the intended expert should be made known and contact details exchanged.

18.8 Experts should be provided with copies of both parties' statements of case and witness statements before they prepare their report.

18.9 Where more than one party intends to rely on expert evidence in the same field, the experts should meet or communicate with each other before they write their reports to discuss the scope of their evidence and to agree:

1) a list of the issues on which they have each been asked to express their opinion;

2) a list of the key documents (or parts of documents) which both are likely to refer to; these should be contained in a joint bundle of core documents to which the experts should then refer without including further copies as appendices to their reports, and which may be added to by agreement if further key documents are identified;

3) such facts relevant to their evidence as they are able to agree at that stage, including plans, photographs, measurements or other details concerning the property or matter to be valued, or any comparable property or transaction on which either proposes to rely, and any other matters of methodology or presentation;

4) in a case where experts intend to rely on computer-based valuations a common model or software programme (if an expert proposes to use their own model, full access to it must be provided to the other expert, on reasonable terms as to confidentiality if appropriate).

18.10 Experts in the same discipline may seek clarification of each other's opinions on a without prejudice basis at any time and should cooperate with each other to ensure that each has a thorough understanding of the other's views.

18.11 It is the duty of expert witnesses to assist the Tribunal by identifying the differences between them and explaining the reasons for those differences, which should be recorded in a concise statement identifying the issues between the experts which the Tribunal will have to determine. The Tribunal will therefore direct experts to communicate with each other after they have exchanged reports to agree further facts and to produce a joint statement identifying the issues on which they agree and do not agree, and providing a brief explanation of the reasons for their disagreement.

18.12 The experts' joint statement will be an important document for use during the hearing, but the discussions between experts which led to it are confidential and without prejudice to the case of the parties by whom they are instructed. The content of those discussions may not be referred to at the hearing unless the parties agree.

18.13 While the parties or their legal representatives may provide experts with guidance on the matters which they should discuss, the agenda and procedure to be adopted at a meeting of experts or in discussions between them are matters for the experts themselves, not for the parties or their legal representatives. The experts' joint statement should be prepared jointly by the experts, not negotiated by legal representatives.

The expert's report

18.14 In all cases involving expert witnesses the parties should consider the sequence in which evidence is to be exchanged. Expert evidence should usually be exchanged after the exchange of evidence of fact. Where the opinion of one expert depends on inputs from another expert, evidence in different disciplines may be exchanged sequentially (for example, planning or quantity surveying evidence may conveniently be exchanged before valuation evidence). In appropriate cases the parties may agree or the Tribunal may direct that the reports of expert witnesses in the same discipline be exchanged sequentially rather than simultaneously.

18.15 An expert's report should be addressed to the Tribunal and must include in all cases (including those under the simplified procedure):

1) details of the expert's qualifications and experience;

2) a statement of the substance of the instructions received by the expert (whether written or oral);

3) the name and qualifications of any person who has undertaken any inspection, investigation or calculation for the purpose of the report and on which the expert has relied and a statement whether such work has been carried out under the expert's supervision;

4) a summary of the expert's conclusions;

5) confirmation that the basis of the expert's remuneration (or that of the expert's firm) is not related to the outcome of the proceedings;

6) confirmation that the expert has complied with the requirements of any relevant professional body of which the expert is a member;

7) confirmation that the expert understands their duty to the Tribunal and has complied with that duty, and a statement of truth in the following terms:

> "*I believe that the facts stated in this report are true and the opinions expressed are correct. I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer*."

18.16 An expert's report should be as concise as the subject matter will allow. It should be arranged in numbered paragraphs, and any tables and appendices must be legible and clearly presented. Experts in the same discipline should make use of the joint bundle of core documents agreed at their initial meeting which should then be referred to without duplication in their reports.

18.17 Where the facts which an expert has assumed to be correct are reasonably capable of giving rise to a range of informed opinion on the matters dealt with in the report the expert should summarise the range of opinion, explain where the expert's opinion sits within that range and give reasons for the expert's view.

18.18 An expert should explain whether and how the opinions expressed would change if facts alleged by a party other than one by whom the expert is instructed were assumed to be correct.

18.19 If the Tribunal gives permission, an expert may provide a further report responding to the evidence served by another party. The purpose of such a supplemental report is to provide any further relevant information, to identify the respects in which the views of the experts differ and to assist the Tribunal to understand the reasons for those differences.

18.20 Instructions given to an expert are not privileged from disclosure but the Tribunal will not order disclosure or permit questions concerning such instructions, other than by the party who instructed the expert, unless it is satisfied that there are reasonable grounds to consider the statement of instructions given in the expert's report may be inaccurate or incomplete.

18.21 When an expert's report has been filed with the Tribunal, any party may rely on the report as evidence in the proceedings.

Written questions to experts

18.22 A party may put written questions to the expert instructed by another party for the purpose of obtaining clarification of the views expressed in the expert's report. Any such questions must be copied to the party instructing the expert or its professional representative.

18.23 If an expert considers that questions which have been asked are oppressive in number or content, or have been put for any purpose other than to obtain clarification of the expert's report, the expert may decline to answer them. The party which asked the questions may then ask the Tribunal to direct that they be answered.

18.24 Questions may not be put to an expert about a report more than once, unless the Tribunal gives prior permission. Questions should be put promptly, and may not be put more than 14 days after service of the report unless the Tribunal gives permission.

18.25 An expert's answers to written questions will be treated as part of the expert's evidence.

18.26 Any failure by an expert to answer reasonable and proportionate questions within a reasonable time may be taken into account by the Tribunal in considering what weight to give to the expert's evidence.

Experts' remuneration

18.27 An expert who is to be paid on a contingency basis may not give evidence. (Payment on a contingency basis means any arrangement that leads to the expert having a financial interest in the outcome of the case. It includes any agreement that all or part of the fee paid to the expert or the expert's firm is related to the degree of success achieved in the proceedings by the party instructing the expert).

19.0 Preparing for a hearing

19.1 Parties must cooperate with each other to ensure that the case is prepared for hearing without unnecessary delay or expense.

Hearing bundles

19.2 It is the responsibility of the claimant, applicant or appellant to prepare a bundle of documents for the use of the Tribunal at the final hearing. Where that party is not professionally represented it may be convenient for another party to be responsible for preparing the bundle, but only if both parties agree or the Tribunal so directs.

19.3 The content and organisation of the hearing bundle should be agreed between the parties in good time before the hearing. Unless the parties agree a different time-table the claimant should submit proposals to all other parties at least 6 weeks before the date fixed for the hearing. The other parties must submit details of additions they require and any suggestions for revision of the claimant's proposals to the claimant at least 4 weeks before the hearing.

19.4 Unless the parties agree or the Tribunal gives a different direction, the party preparing a hearing bundle must provide all other parties who are to take part in the hearing with one copy of the bundle, at the cost of the receiving party.

19.5 Preparation of the hearing bundle must be completed and copies of the bundle supplied not later than 2 weeks before the date for service of skeleton arguments unless the Tribunal orders otherwise.

19.6 Hearing bundles should include only necessary documents, and the parties must consider carefully what documents are and are not necessary. Costs wasted by the inclusion or copying of unnecessary documents may be disallowed by the Tribunal.

19.7 In more complex cases it is likely to be helpful for a core bundle of the most important documents to be prepared.

19.8 All bundles prepared by professional representatives (and, so far as possible, by unrepresented parties) should be prepared as follows, unless there is a good reason for adopting a different approach:

1) No more than one copy of any document should be included.

2) Correspondence with the Tribunal should not be included.

3) Documents and correspondence should be included in chronological order, but a contract, lease or similar document which is central to the case may be included separately.

4) Bundles should be printed/copied single-sided, and no file should contain more than 300 (single-sided) pages.

5) Bundles should be contained in an appropriate file which should not be overfilled; the size of file used should not be larger than necessary for the contents.

6) Bundles should be paginated clearly, in the bottom right hand corner, to enable easy referencing. Ideally the pagination should begin afresh at the beginning of each bundle, but this is not required where bundles used at a previous tribunal are reused for an appeal provided the pagination is clear.

7) Bundles should be indexed, but the index need not list every item (e.g. a chronological bundle of correspondence need not list each letter separately).

8) Bundles should be numbered and labelled on the spine with a brief title of the case, the number of the bundle (in a large font) and a short description of

the contents; the number of the bundle should also be on the inside front cover.

9) Dividers or tabs within bundles assist in the organisation and use of a bundle, but they should not be overused (e.g. individual pieces of correspondence should not ordinarily be divided).

10) Large documents, such as plans, should be placed together in an easily accessible file.

11) Plans should be in A3 size and to scale, where appropriate, and should be colour copied where that is necessary for them to be understood. Photographs must be clear.

19.9 In cases under the simplified procedure, and in appeals to be determined by way of review, the Tribunal will usually require only one copy of the hearing bundle. In other cases, two copies will usually be required but the Tribunal will be able to provide confirmation if requested.

19.10 Hearing bundles should be delivered to the Tribunal in hard copy two weeks before the date fixed for the hearing, unless the Tribunal gives different directions.

19.11 In any case in which witnesses will be called to give evidence, the party who has prepared the hearing bundle must bring an additional copy to the hearing for the use of witnesses.

Electronic hearing bundles

19.12 If the Tribunal directs that an electronic hearing bundle be prepared, the following rules should be complied with:

1) The bundle must be in PDF format suitable for use with Adobe software or similar.

2) The document must be a single PDF file with bookmarks to assist navigation to the main documents.

3) It must be numbered in ascending order regardless of whether multiple documents have been combined together (original page numbers of documents will be ignored and only the bundle page number will be referred to).

4) It should contain only documents and authorities that are essential to the hearing. Large electronic files can be slow to transmit and unwieldy to use.

5) Index pages and authorities must be numbered as part of the single PDF document.

6) The default display view size of all pages must always be 100%.

7) Text on all pages must be selectable to facilitate comments and highlights.

8) The bookmarks must be labelled indicating what document they are referring to (using the same name or title as the document itself) and should also display the relevant page numbers.

9) The resolution on the electronic bundle must be reduced to about 200 to 300 dpi to prevent delays whilst scrolling from one page to another.

10) The index page must be hyperlinked to the pages or documents they refer to.

Skeleton arguments

19.13 Unless the Tribunal gives different directions, parties with professional representation are required to provide the Tribunal and the other parties with a concise written summary of their case (referred to as a "skeleton argument") seven days before the date of the hearing. The document should include a list of essential reading identifying those documents which the Tribunal should read before the hearing and providing an estimate of the time required to do so. The Tribunal may direct that skeleton arguments be exchanged sequentially. A skeleton argument is not required in a case under the simplified procedure, but parties may provide one.

19.14 A chronology should also be prepared in any case where it is likely to be of assistance; wherever possible it should be agreed between the parties and cross-referenced to the hearing bundle.

19.15 Parties without professional representation are also encouraged (but not required) to provide a concise written summary of their case to assist the Tribunal and the other party.

19.16 Skeleton arguments should not be more than 25 pages and a much shorter document will often be more effective.

19.17 A joint bundle of any court or tribunal decisions, extracts from legal textbooks or relevant statutory material referred to in the skeleton argument of either party and likely to be cited at the hearing should be agreed and provided to the Tribunal two working days before the hearing. Copies need not be provided of well- known decisions which establish uncontroversial principles.

20.0 Procedure at the hearing

20.1 The procedure to be followed at a hearing will be determined by the Tribunal. It will be designed to enable the dispute to be determined in a way which is proportionate and fair, and which avoids unnecessary delay, formality and expense.

20.2 In cases under the simplified procedure, the Tribunal will discuss and agree the procedure to be followed at the start of the hearing. A less formal procedure will generally be adopted, witnesses will not usually give evidence under oath, and the formal rules of evidence will not apply. Cases under the simplified procedure will normally be heard by a single Judge or Member.

20.3 In other cases the Tribunal will usually follow the practice of the High Court:

1) The claimant, applicant or appellant will present their case first, followed by the respondent, and the claimant etc will have a right of reply.

2) In a case in which oral evidence will be given the claimant or applicant may make a short opening statement, but it may be assumed that the Tribunal has read the parties' skeleton arguments and is familiar with the outline of the dispute.

3) Witnesses will give evidence under oath or affirmation.

4) Unless the Tribunal orders otherwise, a witness statement will stand as the evidence in chief of any witness called to give oral evidence. With the Tribunal's permission, a witness may briefly amplify their witness statement or give evidence in relation to new matters which have arisen since the witness statement was served.

5) Any substantial addition to the evidence contained in a witness statement or expert report should be included in a supplemental statement provided to the Tribunal and other party as soon as possible after the need for it is identified. The permission of the Tribunal will be required before any supplemental witness statement can be relied on but service of the supplemental statement should not be delayed until permission has been given.

6) Expert witnesses will usually give evidence after witnesses of fact. In a case involving more than one expert witness on each side, the Tribunal will usually wish to hear experts in the same discipline one after another (rather than hearing all of the experts called by the claimant, then all of those called by the respondent).

7) For hearings expected to last more than one day parties should agree in advance what will be the most convenient order for witnesses to give evidence and should prepare a draft timetable for the Tribunal to consider.

8) After all evidence has been given both parties may make closing submissions, with the respondent going first. In more complex cases the Tribunal may require the claimant to summarise its case first, before the respondent replies, with the claimant then having a right of reply on issues of law.

20.4 After the hearing has been completed the Tribunal will usually take time to consider its decision, which will be published in writing. A copy of the draft decision will usually be provided to the parties' representatives a few days before the final decision is published to enable them to suggest any typographical corrections. Where this is done, legal representatives may supply a copy of the draft decision to parties in confidence. If the party is a company, local authority or other organisation, the draft may be circulated confidentially within the organisation. Both the draft decision and its substance must be kept confidential until the final decision is published.

21.0 Site inspections

21.1 It will often be necessary for the Tribunal to inspect land or buildings which are the subject of the proceedings, and, where practicable, any other relevant land or

buildings referred to by the parties or their experts. Parties are encouraged to consider whether a site inspection would be of assistance and to inform the Tribunal. An inspection may be undertaken before or after the hearing.

21.2 The purpose of the Tribunal's inspection is to assist it to understand the evidence. Unless the Tribunal decides to make an unaccompanied inspection, it will usually wish to be accompanied by not more than two representatives from each side.

21.3 The Tribunal will not receive new evidence during an inspection, and comments from the parties or their representatives will be limited to pointing out, at the request of the Tribunal, features of significance which have been referred to in the evidence.

21.4 The Tribunal will not enter private land without the permission of the occupier, and any party who wishes the Tribunal to make an inspection of such land must obtain the occupier's prior permission.

21.5 Matters observed by the Tribunal during its inspection are part of the evidence in the case and must be accessible to all parties. If the occupier of land which the Tribunal wishes to inspect is a party to the proceedings the Tribunal will expect access to be allowed to it and to the representatives of the other party. If a party refuses to permit access to its own land the Tribunal may take such refusal into account when deciding what weight to give to the evidence of that party and when deciding what order to make in relation to costs.

22.0 Appealing against a decision of the Tribunal

22.1 A party dissatisfied with a decision of the Tribunal can apply for permission to appeal to the Court of Appeal. They must first apply to the Tribunal for permission, but if the Tribunal refuses they may then make a further application to the Court of Appeal.

22.2 In most cases an application for permission to appeal must be received by the Tribunal within 1 month after the date the Tribunal sent its decision to the parties. If the Tribunal gave a separate decision to award or refuse costs, the period of 1 month runs from the date of that decision. So if the Tribunal sends out its written reasons on 1 January, and a costs decision on 1 February, an

application for permission to appeal must be received by the Tribunal by close of business on 1 March.

22.3 If the application is being made after the end of the time allowed, the applicant must request an extension of time and must explain why the application is late.

22.4 If the Tribunal's decision is about a preliminary issue the Tribunal may direct that time for applying for permission to appeal is not to begin until it has made a decision that disposes of all the issues in the proceedings.

22.5 An application for permission to appeal must identify the decision which the applicant wants to appeal and say what errors of law the applicant thinks the Tribunal has made. The application should also say what result the applicant seeks to achieve (e.g. does the applicant want the Court of Appeal to set aside the whole or only part of the decision, to make a different decision of its own, and if so what, or send the decision back to the original tribunal for it to reconsider).

22.6 The application for permission to appeal will be considered and determined by the same Judge or Member who made the Tribunal's original decision. They will ask themselves whether they think there is a realistic prospect of the Court of Appeal deciding the Tribunal was wrong, or some other good reason to grant permission to appeal. If the decision was made on an appeal against a decision of the First-tier Tribunal the Tribunal must also be satisfied that the proposed appeal to the Court of Appeal would raise some important point of principle or practice, or that there is some other compelling reason for an appeal.

22.7 If the Tribunal finds that it has overlooked a legislative provision or a binding authority, or if a decision binding on the Tribunal has been made since the relevant decision, the Tribunal may decide to review its original decision and issue a new decision taking account of it. If the Tribunal does issue a new decision both parties have the right to apply for permission to appeal against it within a period of 1 month running from the date of the new decision.

22.8 If the Tribunal refuses permission to appeal the same party can ask the Court of Appeal to grant permission to appeal. An application to the Court of Appeal must be made within 28 days of the date on which the Tribunal sent its refusal of permission to appeal to the party.

23.0 Tribunal Fees

23.1 Fees payable to the Tribunal at different stages of the proceedings are specified in the Upper Tribunal (Lands Chamber) Fees (Amendment) Order 2010 (as amended) and are published on the Tribunal's website.

23.2 No fees are payable in appeals from the First-tier Tribunal concerning land registration.

23.3 Unless the Tribunal directs otherwise, a hearing fee is payable by the party who commenced the proceedings. Where that party is successful in the proceedings the Tribunal may direct that the hearing fee be reimbursed by the other party.

23.4 Fees may be dispensed with in certain cases where an individual has limited resources. Details are available on the Tribunal's website.

24.0 Costs

24.1 The Tribunal has power to order that one party pay costs incurred by another party in the following cases:

1) references for compensation for the compulsory purchase of land (including claims for temporary possession of land);
2) references for compensation for injurious affection of land as a result of public works;
3) applications to discharge or modify restrictive covenants under section 84, Law of Property Act 1925;
4) appeals from a Valuation Tribunal;
5) appeals from the First-tier Tribunal concerning land registration;
6) references under the Electronic Communications Code;
7) references under the Riot Compensation Act 2016; and
8) in judicial review proceedings transferred to the Tribunal.

24.2 In any of the cases listed above (except judicial review proceedings) the Tribunal may direct that no order for costs will be made against one or more of the parties in respect of costs incurred after the direction. This is known as

"costs protection" and protects a party from having to pay the costs of the other party if they are unsuccessful in the proceedings.

24.3 The Tribunal may also direct that a limit will apply to the amount payable by one or more parties in respect of costs incurred after the making of the direction. Where parties are of unequal means, different limits may be applied to each of them.

24.4 A party who wishes to apply for a direction imposing such a limit or for a costs protection order should do so at an early stage in the proceedings and must provide details of their own resources and an explanation why it would be in the interests of justice for a direction to be made.

24.5 The Tribunal has no general power to order that one party pay another party's costs of an appeal from the First-tier Tribunal. In such cases the Tribunal may, with the consent of the parties or where there is a disparity of interest or resources between the parties, direct that an order for costs may be made in the proceedings against one or more of the parties in respect of costs incurred following such a direction.

24.6 The Tribunal will not normally award costs in a case assigned to the simplified procedure, or to the written representations procedure. The parties are free to agree that, exceptionally, this practice should not apply in their case. If the parties do not agree, but one party nevertheless wishes the Tribunal to direct that the practice should not apply, that party should make an application for such a direction at an early stage of the proceedings.

24.7 In any case, including in appeals from the First-tier Tribunal or cases under the simplified or written representations procedures, the Tribunal may order that one party reimburse any fees paid to the Tribunal by another party (including any fees paid to the First-tier Tribunal in the proceedings).

24.8 In those cases where the Tribunal has power to award costs, it also has power to direct that one party must provide security for the costs of the other party where there is reason to believe that they will be unable to pay the other party's costs if ordered to do so at the end of the case. The circumstances in which this power would be exercised by the Tribunal are likely to be rare.

24.9 If, in any case, the Tribunal considers that a party (or a party's representative) has behaved unreasonably in bringing, defending or conducting the proceedings, it may order the party to pay costs incurred by another party in the appeal, or it may order the representative to pay any wasted costs incurred by another party. An application for such an order should usually not be made until the outcome of the proceedings is known, and should identify the conduct which is relied on as being unreasonable. The Tribunal will consider whether to ask the other party to respond to the application and may summarily dismiss the application without requesting a response.

How the power to award costs is exercised

24.10 The Tribunal's power to award costs is discretionary, and it will usually be exercised in accordance with the principles applied in the High Court. The general rule is that the successful party ought to receive their costs from the unsuccessful party. (A different general rule applies to applications to discharge or modify a restrictive covenant – see paragraph 15.10 above). The Tribunal will have regard to all the circumstances of the case, including the conduct of the parties; whether a party has succeeded on part of their case, even if they have not been wholly successful; and admissible offers to settle. The conduct which may be taken into account will include conduct during and before the proceedings; whether a party has acted reasonably in pursuing or contesting an issue; the manner in which they have conducted their case; whether or not they have exaggerated their claim; and whether they have unreasonably refused to engage in ADR or comply with a relevant pre-reference protocol.

24.11 The Tribunal will normally award costs on the standard basis. Costs will only be allowed to the extent that they are reasonable and proportionate to the matters in issue, and any doubt as to whether costs were reasonably incurred or reasonable and proportionate will be resolved in favour of the paying party.

24.12 Exceptionally the Tribunal may award costs on the indemnity basis. On this basis, the receiving party will receive all their costs, except for those which have been unreasonably incurred or which are unreasonable in amount, and any doubt as to whether the costs were reasonably incurred or are reasonable in amount will be resolved in favour of the receiving party.

Costs in compulsory purchase compensation cases

24.13 The costs incurred by a claimant in establishing the amount of compensation to which they are entitled following the compulsory acquisition of their land are part of the expense that has been imposed on the claimant by the acquisition. For that reason, the Tribunal will normally make an order that the costs incurred by a claimant who is awarded compensation should be paid by the acquiring authority.

24.14 There are two periods for which, by statute (section 4, Compulsory Purchase Act 1961) a claimant who is awarded compensation will not normally receive their own costs, and unless there are special reasons will normally have to pay the costs of the acquiring authority. They are:

1) for any period before a notice of claim was given to the acquiring authority which contained sufficient details to enable the authority to make an offer of compensation; and

2) for any period after the reasonable time for acceptance of an offer made by the authority of an amount of compensation which was more than the compensation eventually determined by the Tribunal.

Offers to settle

24.15 Any party may make an offer to another party to settle all or part of the proceedings on terms specified in the offer. An offer to settle part of proceedings or a particular issue must clearly identify which part of the proceedings or issue it relates to.

24.16 Every offer should state for how long it will remain open for acceptance. An offer which does not state how long it is open for will be assumed to be open for acceptance until the commencement of the hearing to which the offer relates. An offer should state whether or not it includes interest (if it has been claimed), at what rate and for what period it covers. It should also state whether or not it includes agreement to pay the other party's costs and either the amount or the basis of those costs.

24.17 Unless it is specified in an offer that it is intended to be an open offer, it will be assumed that any offer of settlement is intended to be without prejudice to the

case of the party making the offer and neither the offer nor the fact that it has been made may be referred to at the hearing by any party.

24.18 An open offer may be referred to in the proceedings. An offer marked 'without prejudice save as to costs' or similar wording, may be referred to only after the Tribunal has made its decision in the proceedings and is considering what order to make in respect of costs.

24.19 The party making an offer on the basis that it is "without prejudice save as to costs" should not send a copy to the Tribunal. The Tribunal should not be informed of the existence of the offer until after the proceedings have been determined. If requested by a party to do so, the Tribunal will then consider the offer when determining the question of the costs of the proceedings.

Submissions on costs

24.20 Where the Tribunal has given its final decision in writing the parties may make written submissions on costs. Any application for costs should be received by the Tribunal within 14 days after the date on which the final decision was sent to the parties. The other party may make submissions in response within 14 days of receiving the application for costs. Where the issue of costs is particularly complicated the Tribunal may hold a hearing before making an award.

24.21 Where the Tribunal makes an order for the payment of costs, the costs to be paid will either be an amount agreed between the parties, or an amount determined by the Tribunal usually following assessment by the Registrar. A party who is dissatisfied with the Registrar's assessment of costs may apply to the Registrar for a review and, if still dissatisfied, may apply for the assessment to be carried out again by a Judge.

24.22 For a hearing which has lasted one day or less, the Tribunal will usually expect to carry out a summary assessment of costs in order to avoid the expense and delay of a detailed assessment. For an interim application any party who wants a summary assessment of their costs should prepare a summary of their costs and serve it on the other party and the Tribunal not less than 24 hours before the hearing. For a final hearing of one day or less where the Tribunal has power to award costs, a summary of the costs claimed should be provided with the written submissions on costs.

24.23 Where a summary assessment is to take place the receiving party's professional representative must sign the statement of costs submitted and confirm that the sum claimed is no more than the sum payable by their client.

24.24 In longer cases costs which cannot be agreed by the parties must be referred by the receiving person to the Registrar to be the subject of a detailed assessment.

25 Applications under section 2, Rights of Light Act 1959

25.1 Under section 2, Rights of Light Act 1959, the owner of land and certain others with an interest in it may register a light obstruction notice with either the local authority or the Land Registry to prevent a right to light from being acquired over their land for the benefit of neighbouring buildings.

25.2 An application for a light obstruction notice must be accompanied by a certificate issued by the Tribunal confirming it is satisfied that adequate notice of the intended application has been given to all those who may be affected by the registration of the notice.

25.3 An application to the Tribunal for a certificate should be in form T383 and should be accompanied by an up-to-date good-quality plan, or plans, on which the applicant's land is clearly identified by outlining or colouring in red, and the building against which the notice is to take effect is clearly outlined or coloured in blue. Care should be taken to ensure that only the building against which the light obstruction notice is to take effect is outlined in blue. Neighbouring land around the building which doesn't have any part of a building on it should not be included within the blue outlining.

25.4 On receipt of an application for a certificate the Tribunal will give directions to the applicant as to whom and how notice of the application should be given. Once an applicant has complied with the service directions and has provided evidence proving service the Tribunal will issue the certificate. This is usually referred to as a 'full certificate'. The applicant may then lodge the certificate together with their application for a light obstruction notice with the appropriate registration authority, which will be either the local authority where the land is situated or the Land Registry. The Land Registry publishes guidance notes at https://www.gov.uk/government/publications/hm-land-registry-local-land-

charges-programme/local-land-charges-programme. The Tribunal has no jurisdiction to determine disputes as to rights to light or the registration of a light obstruction notice; such disputes must be resolved by issuing proceedings in the County Court.

25.5 Where it is believed that a building is just about to acquire a prescriptive right to light, an application to the Tribunal for a certificate may include an application for a 'temporary certificate' enabling the applicant to register the light obstruction notice before notice of the application is given to those who might be affected by the registration. In such cases the applicant must explain why they believe the building is just about to acquire a prescriptive right to light, and provide such evidence as is reasonably possible to obtain showing why that view is formed. If the Tribunal is satisfied that circumstances of exceptional urgency are present it will issue a temporary certificate, and at the same time give directions as to whom and how notice of the application should be given. The applicant may then proceed to register the light obstruction notice (with the temporary certificate) and effect service of notice of the application in accordance with the service directions.

25.6 A light obstruction notice registered pursuant to a temporary certificate will last for four months only.

26 Valuation for the purpose of tax appeals

26.1 Where an appeal concerning Inheritance Tax or Capital Gains Tax payable in respect of land in England and Wales is proceeding before the First-tier Tribunal (Tax Chamber) that tribunal may transfer the determination of questions concerning the value of the land to the Tribunal.

26.2 The Tribunal will usually manage such cases under the standard procedure, but will not usually require the parties to provide further statements of case unless the issues are not clear from the material filed in the first-tier tribunal.

26.3 The Tribunal has no jurisdiction to award costs in such proceedings, except where a party or a representative has behaved unreasonably. The first-tier tribunal retains general jurisdiction over the costs of the appeal and will have

regard to costs incurred in the Tribunal when deciding what costs order it will make at the conclusion of the appeal.

THE HONOURABLE MR JUSTICE FANCOURT

CHAMBER PRESIDENT, UPPER TRIBUNAL, LANDS CHAMBER

19 OCTOBER 2020