



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

HMOs and the Role of the Tribunal

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The Discussion

- Why is a right of appeal important?
- Why should appeals be heard by a Tribunal?
- Getting the best from the Tribunal

Why is right of Appeal Important

- Human Rights Act 1998 incorporate the European Convention on Human Rights into UK law.
- Tribunals are under a direct duty to act in a way which is compatible with convention rights.
- Of the 19 rights and freedoms – three most likely to be of concern:
 - Article 6 – The Right to a Fair Hearing
 - Article 8 – The Right to respect for private and family life and the home
 - Article 1 of the First Protocol – The Right to Property.

Article Six

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

- *Fair and public hearing*
- *Within a reasonable time*
- *Independent and impartial tribunal*
- *Established by law*

R (on the application of Unison) v Lord Chancellor

Lord Reed:

- The constitutional right of access to the courts is inherent in the rule of law
- There is a mistaken assumption that the administration of justice is merely a public service like any other, that courts and tribunals are providers of services to the "users" who appear before them, and that the provision of those services is of value only to the users themselves and to those who are remunerated for their participation in the proceedings.

Unison

- The value to society of the right of access to the courts is not confined to cases in which the courts decide questions of general importance. People and businesses need to know, on the one hand, that they will be able to enforce their rights if they have to do so, and, on the other hand, that if they fail to meet their obligations, there is likely to be a remedy against them. It is that knowledge which underpins everyday economic and social relations.

Why Should Appeals Be Heard by the Tribunal?

Lord Chief Justice speech 2016:

It seems now that there is a greater appetite for specialist determination. For complex claims it is imperative that a judge understands the increasingly specialised law and in dealing with sophisticated expert evidence it must be beneficial if the Court or Tribunals includes a specialist in the discipline, not to give evidence but to effectively test it. For simple claims, it remains the case that a judge should understand the law (which will still be complex) but also that expertise is applied to provide proportional dispute resolution.

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

- Overriding Objective (Rule 3) is to enable the Tribunal to deal with cases fairly and justly
- This includes:
 - Proportionality
 - Avoiding formality and seeking flexibility
 - Helping parties to participate
 - Using special expertise
 - Avoiding delay
- Parties **must** help the Tribunal to further the overriding objective and co-operate with the Tribunal generally.

Getting the Best from the Tribunal

Case Preparation:

- Identify areas of dispute
- Identify what can be agreed
- List remaining issues
- Decide what needs proof

Helping the Tribunal

- Clarity
- Concessions
- Courtesy
- Summary
- Listening and explaining
- Partnership

Engaging the Process

- Investment and engagement in proceedings
- Not simply passive
- Appropriate communication with Tribunal
- Effective communication with other party
- Focus:
 - on issues
 - evidence required to prove case

Housing and Planning Act 2016

- Jurisdictions from April 2017
 - Financial Penalties
 - Rent Repayment Orders
- Jurisdictions from April 2017
 - Banning Orders
 - Rogue Landlord Database

Housing and Planning Act 2016

Challenges:

- Standard and Burden of Proof
- Frivolous appeals
- Building a body of case law
- Tenants and RROs

QUESTIONS