



**Appeals and Reviews from decisions of the
First-tier Tribunal for Scotland (Housing and Property Chamber)**

What if a party wishes to appeal?

- An application for permission to appeal must be made in writing to the First-tier Tribunal
- The application must
 - Identify the decision to which the application for permission relates
 - Identify the point or points of law on which the applicant wishes to appeal
 - State the result the applicant is seeking
- Permission must be sought within 30 days - ie the application for permission must be received within 30 days of:
 - the decision being appealed against being sent to the appellant OR
 - if later, a statement of reasons being sent to the appellant OR
 - the date of the hearing at which the decision was given orally - unless written reasons were requested (within 14 days of the hearing), and the Tribunal undertook to provide them, in which case within 30 days of the date they were sent.
- The First-tier Tribunal for Scotland has power to extend the time for requesting permission to appeal “on cause shown”.

What is a “Point of Law”?

“The Inner House of the Court of Session in the case of *Advocate General for Scotland v Murray Group Holdings Limited* (2015) CSIH 77 identified four different categories of case covered by the concept of an appeal upon a point of law: these are (i) an error of general law, the content of its rules; (ii) an error in the application of the law to the facts; (iii) making findings in fact without a basis in the evidence; and (iv) taking a wrong approach to the case by, for example, asking the wrong questions

or taking account of manifestly irrelevant considerations, or by arriving at a decision that no reasonable tribunal can properly reach.”

Per DECISION NOTICE OF SHERIFF I FLEMING in the case of ABDUL MAJID and ADELE GAFFNEY AND ANDREW ROBERT BRITTON [2019] UT 59

Which decisions may be appealed?

- Any decision that is not an excluded decision in terms of the Tribunals (Scotland) Act 2014 (see Section 46(5)), or in terms of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (see Rule 37(3)).
- A refusal of permission to appeal is not reviewable OR appealable (Section 55(2) of the Tribunals (Scotland) Act 2014).
- A decision in a review (being the decision to set aside, take no action, or correct a minor or accidental error) is not reviewable OR appealable (Section 52 of the Tribunals (Scotland) Act 2014)

What decision can the First-tier Tribunal for Scotland make?

- Permission to appeal may be granted by the First-tier Tribunal for Scotland (Housing and Property Chamber), or
- Permission may be granted in part, or
- Permission may be refused

What if Permission to Appeal is granted by the First-tier Tribunal for Scotland?

- The appellant may then submit an appeal to the Upper Tribunal for Scotland

What if Permission to Appeal is refused by the First-tier Tribunal for Scotland?

- The decision is not reviewable or appealable
- If permission is refused, the appellant may then seek permission to appeal from the Upper Tribunal for Scotland

What if Permission to Appeal is granted in part by the First-tier Tribunal for Scotland?

- The decision is not reviewable or appealable
- The appellant must decide whether to
 - apply to the Upper Tribunal for Scotland for permission to appeal the points that were not granted by the First-tier Tribunal for Scotland, or
 - submit an appeal to the Upper Tribunal for Scotland to determine only the points that were granted by the First-tier Tribunal for Scotland

What is the timescale for applying to the Upper Tribunal?

- The application must be made within 30 days of the date on which the grant or refusal of permission was sent to the appellant
- The 30 day period can be extended by the Upper Tribunal “on cause shown”.

What is “Review”?

- This is where both the First-tier Tribunal for Scotland (Housing and Property Chamber) and the Upper Tribunal for Scotland have the power to review their own decisions.

How is a Review triggered?

- The relevant tribunal may decide at its own instance, to review a decision or a party to the case can ask it to do so.

On what basis can the tribunal review its decision?

- If, in the interests of justice, it considers it is necessary to do so.

Which decisions may be reviewed?

- Any decision that is not an excluded decision in terms of the Tribunals (Scotland) Act 2014 (see Section 43(3)), or in terms of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (see Rule 39(1)).
- A refusal of permission to appeal is not reviewable OR appealable (Section 55(2) of the Tribunals (Scotland) Act 2014).

- A decision in a review (being the decision to set aside, take no action, or correct a minor or accidental error) is not reviewable OR appealable (Section 52 of the Tribunals (Scotland) Act 2014)

What time limits apply to reviews?

- An application for review by a party must be sought within 14 days - i.e. the application for review must be received by the First-tier Tribunal for Scotland within 14 days of:
 - the decision being made OR
 - if later, the written statement of reasons being sent to the parties.

What is the procedure for a review?

- The application for review must be in writing and must state why a review is necessary. The party seeking a review must send a copy of the application for review to all other parties.
- If the tribunal revise the decision and statement of reasons following review, either at the request of a party or on its own initiative, the revised decision is treated as a fresh decision and there is a period of 14 days from the issue of the revised decision for seeking a review, and a period of 30 days from the issue of the revised decision for seeking permission to appeal.
- If the decision and statement of reasons are not revised, the 30 days for seeking permission to appeal runs from the date of issue of the original decision, and the decision cannot be reviewed again.