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**Information Guide on applications about letting agents**

This guidance has been prepared by the Housing and Property Chamberfor the assistance of tenants and landlords wishing to know more about the Housing and Property Chamber application process. It is not, and is not meant to be, a comprehensive description of all aspects of the changes introduced by the Housing (Scotland) Act 2014 (“the 2014 Act”) in relation to providing minimum standards for letting agents. The legislation is contained within the 2014 Act and The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) as amended.

**Where can I get advice?**

Please note that staff in the Scottish Courts and Tribunals Service cannot give you legal advice on your situation, although they can explain and help you to understand the Tribunal procedure that an application will follow.

If you wish legal advice that is available from a solicitor, and a list of solicitors is available on the Law Society of Scotland website. Legal Advice relating to housing issues may also be available from Shelter, Citizens Advice Scotland,  or a University Law Clinic. Citizen’s Advice Scotland also provide advice relating to benefits, debt and money matters. The websites for these and other organisations are available on our website, and some have been copied below:

[Law Society of Scotland: http://www.lawscot.org.uk/](http://www.lawscot.org.uk/)

[Shelter Scotland: http://scotland.shelter.org.uk/](http://scotland.shelter.org.uk/)

[Citizens Advice Scotland: http://www.cas.org.uk/](http://www.cas.org.uk/)

**Who is a Letting Agent?**

Section 62 of the 2014 Act defines a letting agent as “*a person who carries out letting agency work*”.

Letting Agency work is also defined in the 2014 Act, at Section 61(1):

*“letting agency work” means things done by a person in the course of that person's business in response to relevant instructions which are—*

*(a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlord's house as a dwelling, or*

*(b) for the purpose of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a).*

Further clarification of this statement is made at Section 61(2), which is copied below:

*In subsection (1)—*

*(a) “relevant instructions” are instructions received from a person in relation to the house which is, or is to be, subject to a lease or arrangement mentioned in subsection (1)(a), and*

*(b) “occupancy arrangement”, “unconnected person”, “relevant person” and “use as a dwelling” are to be construed in accordance with section 101 of the 2004 Act.*

The “2004 Act” referred to is the Antisocial Behaviour etc. (Scotland) Act 2004.

The Scottish Government has published guidance for letting agent registration, which provides more information on what a person should do if they think they may have to register as a letting agent.

**Who can make an application to the Housing and Property Chamber?**

The 2014 Act provides that a tenant, landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.

Section 48(2) defines a relevant letting agent for the purposes of the different applicant types:

*A relevant letting agent is—*

*(a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,*

*(b) in relation to an application by a landlord, a letting agent appointed by the landlord,*

*(c) in relation to an application by the Scottish Ministers, any letting agent*.

The 2014 Act further defines what landlord and tenant means in relation to an application to the Tribunal. Section 48(9) states:

*References in this section to—*

*(a) a tenant include—*

*(i) a person who has entered into an agreement to let a house, and*

*(ii) a former tenant,*

*(b) a landlord include a former landlord.*

**What can a tenant, landlord or the Scottish Ministers make an application about?**

All letting agents must comply with the Letting Agent Code of Practice (“the Code”). If a tenant, landlord or the Scottish Ministers feel that the letting agent has failed to comply with the Code then they would be entitled to notify the letting agent of their intention to raise an application with the First-tier Tribunal for Scotland Housing and Property Chamber on the basis of this failure to comply with the Code.

**What is the Letting Agent Code of Practice?**

The Letting Agent Code of Practice (Scotland) Regulations 2016 sets out the Letting Agent Code of Practice. The Code sets out minimum standards of practice for letting agents, covering all aspects of letting agency work. The Code is divided by different headed Sections:

1. Overarching Standards of Practice
2. Engaging Landlords
3. Lettings
4. Management and Maintenance
5. Ending the Tenancy
6. Communications and Resolving Complaints
7. Handling Landlords’ and Tenants’ Money, and Insurance Arrangements

under which are listed individual numbered paragraphs that define the standards that have to be met.

**Are there actions that must be taken before an application to the Housing and Property Chamber can be submitted?**

Yes, the applicant **must** first notify their letting agent in writing of the reasons why they consider that the letting agent has failed to comply with the Code. A template letter is available on the Housing and Property Chamber website for this purpose. Notifying the letting agent of the issue may lead to the problem being resolved without having to take the case to the Tribunal.

After the notification has been sent, an application can then be made to the Tribunal. The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.

**How do I make the application to the Tribunal?**

An application form can be downloaded from our website or requested from the Chamber office. The form is simple and straightforward. Common questions relating to completing the form are at the end of this guide. The applicant must include with the application-

* A copy of the notification sent to the letting agent informing them of the breach of the Code in question
* Proof of service of this notification
* copies of any correspondence which they have sent and received from the letting agent regarding the alleged breach of the Code, including the letting agent’s response to the notification of the breach of the Code;
* An inventory listing the documents should be included if numerous documents are being produced
* A statement setting out the reasons for considering that the letting agent has failed to comply with the Code
* Information as to any loss suffered by the applicant as a result of the failure to comply

**Is there a cost for this service?**

Applying to the Tribunal is free of charge.

**Does the Tribunal award expenses at the end of an application?**

The Tribunal has the power to award expenses against a party, but only where that party through unreasonable behaviour in the conduct of the case has put any other party to unnecessary or unreasonable expense. Exercise of this power is not linked to the outcome of the case and is not an automatic award.

Parties should be aware that if they instruct an agent to act on their behalf in a case, the expenses incurred for the duration of the case cannot be recovered from the other party on the basis that they are successful in pursuing or defending the application. Only where the party has incurred unnecessary or unreasonable expense, caused by the unreasonable behaviour of the other party in the conduct of the case, could an application for expenses be submitted.

It is at the tribunal’s discretion whether an award should be made. If they decide to award expenses against the party, the amount of the expenses awarded would be the amount to cover the unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made. If an award of expenses is granted by the Tribunal, it will be assessed by the Auditor of the Court of Session.

**What happens when an application is received?**

Once an application is received, it will be assessed to check that the form is correctly completed and that the required attachments are present. If something is missing the Chamber President, or another member of the First-tier Tribunal under the delegated powers of the Chamber President, will request this from the applicant through the administration and the application will not be accepted until all the required information and attachments are provided.

If the required information is not provided, the application will not be accepted by the Chamber President or the member with delegated powers, and the case will be closed. The applicant will be advised of this by the administration, and informed that they may submit a fresh application when they have all the required information and documents.

Where the further information requested is sent within the timescale, the application is deemed to have been made on the date the last of the required information is received.

Complete applications will be passed to the Chamber President or the member with delegated powers, who will consider the application.

**Can the President reject an application?**

The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must decide whether the application can be referred to a tribunal or whether it should be rejected. They must reject the application if:

* they consider that the applicant has not afforded the letting agent a reasonable opportunity to resolve the dispute; or
* they consider that the application is frivolous or vexatious; or
* the dispute to which the application relates has been resolved; or
* they have good reason to believe that it would not be appropriate to accept the application; or
* they consider that the application is being made for a purpose other than a purpose specified in the application; or
* the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

**Can a dispute be resolved informally through the Housing and Property Chamber?**

There is no in-house mediation service offered by the Chamber. However, in cases identified by the Chamber President as suitable for mediation, the First-tier Tribunal must:

(a) bring to the attention of the parties the availability of mediation at any point in the proceedings as an alternative procedure for the resolution of the dispute;

(b) provide information explaining what mediation involves; and

(c) if the parties consent to mediation, adjourn or postpone the hearing in accordance with rule 28 to enable the parties to access mediation.

In such cases, parties may be invited to consider mediation as a way of resolving the dispute.

It will be for the parties to access mediation and the responsibility on the Tribunal is to bring to the attention of parties the availability of mediation in suitable cases and provide information explaining the mediation process. The section below on “Finding a Mediator” will be helpful if a party wishes to try mediation. The Tribunal cannot offer validation or recommendation of any particular mediator nor refer parties to a mediator.

**What is Mediation?**

Mediation is a flexible process that can be used to settle disputes in a whole range of situations. Mediation involves an independent third party, the mediator, who helps people to agree a solution when there is a disagreement. The mediator helps parties work out what their issues and options are, then use those options to work out an agreement.

With the help of the mediator, the parties with the dispute decide whether they can resolve the issues and what the solution should be. The mediator does not take sides or make judgements. The mediator will ensure that both parties get a chance to state their case, hear the other side, work through the issues that are important to them and make an agreement. Parties in mediation are in control of the solution.

Mediation is a confidential process where the terms of discussion are not disclosed to any party outside the mediation hearing. If parties are unable to reach agreement, they can still follow formal procedures such as grievances and complaints or go to a tribunal or court, if appropriate. The details of what went on in the mediation will not usually be disclosed or used at a tribunal or a court hearing.

**If you are willing to engage in mediation, then you need to approach a mediator as soon as possible.** Please see the section below entitled “Finding a Mediator”. Some mediation services are free and Scottish Mediation will be able to provide information.

**The mediation proceeds at the same time as the application proceeds through the Tribunal process. This means that by trying mediation, the parties do not delay the progress of the Tribunal case.**

If consent to mediation is obtained from both parties and mediation is to take place, you will **still need to respond to requests for information or requests for written submissions sent to you by the Tribunal.** **You may have been given a date by the Tribunal for a hearing or case management discussion and the case will still proceed on this date, unless you are notified by the Tribunal of a postponement or that the application has been withdrawn or dismissed.**

It is likely that mediation will be able to take place quickly after there is an agreement to mediate and will take place before the date fixed for the hearing or case management discussion.

Where mediation is due to take place and you feel this requires the deadline to supply information or written representations to the Tribunal to be extended, or requires the hearing or case management discussion to be postponed, you should contact the Tribunal in writing to make this request as soon as you become aware of this.

If the dispute is resolved at mediation, then the applicant should contact the Tribunal in writing to request that the application be withdrawn.

If mediation is successful and results in an agreement which has a timescale for compliance, and the applicant wishes to await compliance with the agreement before withdrawing the application, the applicant should contact the Tribunal in writing to:

1. confirm the position in relation to when the mediation agreement is due to be complied with, and
2. request a postponement of proceedings until after this timescale has expired.

**Finding a Mediator?**

The Tribunal cannot offer validation or recommendation of any particular mediation service or refer parties to a mediator.

Scottish Mediation acts as the professional body for mediators in Scotland and maintains the Scottish Mediation Register of mediators. Parties who want to use mediation to resolve their case can find a relevant mediator by accessing this Register on the Scottish Mediation web site <https://www.scottishmediation.org.uk/find-a-mediator/> and by selecting Housing and Property in the ‘Types of Mediation’ Box on the lower right hand side of the page.

**The application has been referred to a tribunal - what happens next?**

When the President refers an application to a Tribunal both parties will be sent a **Notice of Referral** confirming this andasking whether they wish to deal with the application by written representations or whether they wish to attend a hearing before the Tribunal. Remember that you **must reply to the Tribunal by the date given in the Notice.** If you need more time, you must contact the Tribunal to ask for this, giving a brief explanation as to why you need more time. If you want to change or add to your representations you can do so by writing to the Tribunal and seeking their consent to the amendment. If the Tribunal allow the amendment, then they will arrange for the amended representations to be intimated to the other party.

**Can I amend my application or written representations before the hearing?**

The Tribunal Rules do allow for amendment of applications and written representations in certain circumstances. Any party can amend their written representations up to 7 working days prior to the date fixed for a hearing or case management discussion (**Rule 13** refers).

Where the effect of any amendment to the written representations would be to introduce a new issue, the amendment can only be made with the consent of the Tribunal (**Rule 14** refers). If the amendment is accepted, the other party will be given an opportunity to make written representations within 14 days of intimation of the amendment.

Amendments can also be made where no new issues have been raised. **Rule 14A** allows the applicant to amend the application including the amount claimed by intimating the amendment to the tribunal and any other party at least 14 days prior to a case management discussion or hearing. The Tribunal will then decide whether to consent to the amendment, and under what conditions consent will be given.

**Can the Tribunal hear multiple applications at the same time?**

Yes, the Tribunal has the power to direct that two or more applications should be heard together. The Rules state:

“**12.**—(1) The First-tier Tribunal may direct two or more applications to be heard together where they are under consideration by the First-tier Tribunal at the same time and relate to the same—

(a) property;

(b) required work;

(c) property factor;

(d) letting agent; or

(e) landlord.

(2) The First-tier Tribunal may require the parties to take any steps necessary to enable two or more applications to be heard together.”

**Who will the members of the tribunal be?**

Under [The First-tier Tribunal for Scotland Housing and Property Chamber and Upper Tribunal for Scotland (Composition) Regulations 2016](http://www.legislation.gov.uk/ssi/2016/340/made) a tribunal may be composed of:

            a legal member;

            a legal member and one ordinary member; or

            a legal member and two ordinary members

The legal member will always be the chairing member of the tribunal. All legal members appointed to the Chamber are qualified as solicitors or advocates. Ordinary members are either qualified as chartered surveyors, or have other experience of or practical involvement in housing and land related issues.

An exception to the above composition is in applications by a landlord for assistance in exercising a right under section 181(4) of the Housing (Scotland) Act 2006(1). These applications may be decided by the First-tier Tribunal consisting of an ordinary member sitting alone.

**What procedure does the Tribunal follow if parties agree the matter should be decided on written representations**?

If both parties agree to have the application dealt with by written representations only, then the parties will be given an opportunity to comment on each others’ representations, and after that the Tribunal will consider the evidence. If, having looked at the written representations and responses the Tribunal consider that they require further information from the parties, then the Tribunal may issue a Direction to the parties, specifying the further information which they require before they can make a decision. Once the Tribunal are in receipt of all the required written evidence, they will consider the application and issue a decision with their reasons for it.

**What action can the tribunal take before a hearing takes place?**

The tribunal has the power to make inquiries, and can require the parties to attend a hearing or produce documents or information. If a party is served with a Direction from the tribunal requiring attendance or further information then they must complywith that, otherwise they may be guilty of a criminal offence and could be fined. It is also an offence to knowingly give false information to the tribunal.

The tribunal may also hold a case management discussion to determine how an application should proceed, and this can be held in a hearing venue, or over telephone/video conference.

**What is a case management discussion?**

A case management discussion is a discussion between the Tribunal and the parties about aspects of the case that may require to be dealt with in order to efficiently resolve the dispute. Case management discussions will normally take place at hearing venues, and parties will be required to attend. If this is not possible, contact with the Tribunal to explain this should be made in advance and at as early a stage as possible..

At the case management discussion, the Tribunal may wish to:

identify the issues to be resolved;

identify what facts are agreed between the parties;

raise with parties any issues it requires to be addressed;

discuss what witnesses, documents and other evidence will be required; and

discuss whether or not a hearing is required;

As well as the above matters, the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making an eviction order or payment order. It is important therefore that you attend the case management discussion if one is arranged. If you do not attend the case management discussion, this will not stop a decision or order being made by the Tribunal if the Tribunal consider that it has sufficient information before it to do so and the procedure has been fair.

**What is a Direction?**

Directions either orally or in writing are a method by which tribunals regulate the conduct or progress of the proceedings in a case before them. The provisions in Rule 16 set out some circumstances in which a tribunal may wish to issue a Direction. Tribunals may issue directions to instruct parties on such matters as:

 documents that need to be given to the other side and lodged (filed with the Tribunal) prior to the Hearing; and

 witnesses and documents the parties should bring to the hearing.

Please refer to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 in full for further information. If Directions are issued they may require one party to do something but the Direction must be intimated on all parties.

**Do I have to comply with the Direction?**

The Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 provide that it is an offence to fail to comply with a Direction. If the tribunal considers that such an offence has taken place during the proceedings, they will refer the matter to the police for investigation.

**Do I have to attend the case management discussion or the hearing?**

Think carefully before you decide not to attend a case management discussion or hearing. Remember that if you choose not to attend, you will not be able to respond to any of the points the other parties make on the day and the Tribunal will not have the chance to ask you any questions. If you do not attend, then the Tribunal can decide to proceed and make a decision in your absence if the Tribunal consider that it has sufficient information before it to do so and the procedure has been fair.

All subsequent questions which refer to a hearing apply equally to a case management discussion.

**Does the Housing and Property Chamber take account of specific requirements a party has for enabling them to attend at and participate in a case management discussion or Hearing?**

We will do our best to ensure that any hearing venues we use are accessible to all parties.

When you are first contacted by the Tribunal, there will be an accompanying form which asks you to let us know of any requirements the hearing venue should have to enable you to attend at and participate in the proceedings. If you wish confirmation of this or if there are other requirements which you have not told us about, then please let us know as soon as possible. If a party or a witness needs an interpreter for the hearing, we can arrange this if we are told about this in advance.

**When will the Hearing be held?**

Hearings are held on weekdays within normal working hours. You should always receive at least 14 days’ notice of the date for a hearing - unless all parties consent to a shorter period, or there are urgent or exceptional circumstances. In most cases, you will be given at least 28 days’ notice, since the Tribunal will notify parties of a hearing date and request any written submissions at the same time.

**Tribunal hearings are held in public – what does this mean?**

It is a requirement of the Rules that tribunal hearings are held in public. This means that details of the hearing are published on the Tribunal website in advance, and members of the public can attend to view proceedings.

If you have a special reason for wishing the hearing to be held in private then you must write to the Tribunal in advance explaining what the reason is and asking them to hold the hearing in private. The Tribunal will then decide whether or not to agree to your request, but will only agree to hold the hearing in private if they decide it is necessary in the interests of justice to do so.

We will tell you in advance about the hearing time and the hearing venue. We will do our best to make sure the hearing starts on time. This time may be changed to suit individual circumstances.

It’s important you arrive on time. Please let us know if you or your witnesses are delayed. If you decide not to attend, then please let us know. You and the people you are bringing should arrive 10 minutes before the hearing is due to start.

**What happens at the Hearing?**

The Tribunal will decide what procedure is to be followed at the hearing, and the chairing member must take reasonable steps to:

introduce to the parties the members of the First-tier Tribunal conducting the hearing;

explain the purpose of the hearing; and

ensure that the parties to the hearing understand and can participate in the proceedings.

At the hearing you will be able to tell the Tribunal your view on the issues and you can also bring witnesses if you wish but you will have to arrange this and notify the tribunal in in advance. You will be able to ask the other party questions and also question any witnesses he or she has brought to the hearing. The Tribunal have the right to record Hearings and you will be notified at the outset of the Hearing if it is to be recorded. The Chairperson and member(s) will keep a note of the evidence submitted at the Hearing. The Tribunal will want to establish from the evidence:

What they think the relevant facts are,

What conclusions should be drawn from these facts, and

what should be the outcome of the application.

**Can I attend personally or do I have to be represented?**

You can conduct your case yourself or you can have your representative conduct the case for you. Do not be put off attending a hearing – the procedure is fairly informal and the chairperson will ensure that you know what is happening. There are rules that govern representatives and supporters of parties at proceedings. The rule regarding representation is Rule 10:

***10*** *(1) A party may be represented in any proceedings by a representative whose details must be notified to the First-tier Tribunal prior to any hearing.*

*(2) A party may disclose any document or communicate any information about the proceedings to that party’s lay representative or legal representative without contravening any prohibition or restriction on disclosure of the document or information.*

*(3) Where a document or information is disclosed under paragraph (2), the representative is subject to any prohibition or restriction on disclosure in the same way that the party is.*

*(4) A practice direction, an order, or anything permitted or required to be done by a party under these Rules, may be done by a lay representative, except the signing of an affidavit or precognition.*

*(5) The First-tier Tribunal may order that a lay representative is not to represent a party if—*

*(a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned); or*

*(b) it is satisfied that to do so would be in the interests of the efficient administration of justice.*

*(6) Where a representative begins to act for a party after the application is made, the representative must immediately notify the First-tier Tribunal and any other party of that fact.*

*(7) Where a representative ceases to act for a party, the representative or the party must immediately notify the First-tier Tribunal and any other party of that fact, and give details of any new representative (if known).*

The rule regarding supporters is Rule 11:

***11.****(1) A party who is an individual may be accompanied by another individual to act as a supporter.*

*(2) A supporter may assist the party by—*

*(a) providing moral support;*

*(b) helping to manage tribunal documents and other papers;*

*(c) taking notes of the proceedings;*

*(d) quietly advising on—*

*(i) points of law and procedure;*

*(ii) issues which the party might wish to raise with the First-tier Tribunal.*

*(3) A party may show any document or communicate any information about the proceedings to that party’s supporter without contravening any prohibition or restriction on disclosure of the document or information.*

*(4) Where a document or information is disclosed under paragraph (3), the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.*

*(5) A supporter may not represent the party.*

*(6) The First-tier Tribunal may order that a person is not to act as a supporter of a party if—*

*(a)it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned); or*

*(b)it is satisfied that to do so would be in the interests of the efficient administration of justice.*

**How long will the hearing last?**

Most hearings will take a few hours, and will generally be dealt with in one day, but this depends on the individual circumstances, and some more complicated cases may take longer than this.

**Can I bring written evidence which has not been sent before to the Tribunal?**

This is covered by Rules 21 and 22:

***21.****(1) The First-tier Tribunal may require any person—*

*(a)to attend a hearing of the First-tier Tribunal at such time and place as the First-tier Tribunal may specify for the purposes of giving evidence; and*

*(b)to give the First-tier Tribunal, by such day as it may specify, such documents or information as it may reasonably require.*

*(2) Paragraph (1) does not authorise the First-tier Tribunal to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose on grounds of confidentiality in civil proceedings in a court in Scotland.*

*(3) Where the First-tier Tribunal has set time limits for the lodging and serving of written evidence under rule 22(1), it must not consider any written evidence which is not lodged or served in accordance with those time limits unless satisfied that there is good reason to do so.*

*(4) Where a party seeks to rely upon a copy of a document as evidence, the First-tier Tribunal may require the original document to be produced.*

***22.****(1) Except as otherwise provided in these Rules, or as otherwise specified by the First-tier Tribunal, a party must send to the First-tier Tribunal no later than 7 days prior to any hearing notified under rule 24(1)—*

*(a)a list of any documents and copies of the documents that the party wishes to rely upon; and*

*(b)a list of any witnesses that the party wishes to call to give evidence.*

*(2) Before allowing a document to be lodged late, the First-tier Tribunal must be satisfied that the party has a reasonable excuse.*

If there are documents that a party wishes the tribunal to consider at the hearing (other than the documents which comprise the application and/or any written representations submitted), they **must be sent in advance**. When submitting productions a party must send to the Chamber a list of documents, together with copies of the documents that they wish to rely on, no later than 7 days before the hearing. If a party wishes to rely on a document which has not been sent to the Chamber at least 7 days before the hearing, the tribunal may decide that this cannot be considered as part of the evidence in the case, or the hearing may need to be adjourned until a later date. The tribunal may allow the document to be included with the evidence only if it is satisfied that there is good reason to do so, and considers this to be fair in the circumstances.

**What documentation constitutes a production as opposed to written representations?**

Productions comprise paperwork which did not form part of the application and written representations/ answers received following the issue of the notice of referral. The application is circulated to the parties at the time of notice of referral and the written representations/ answers are received by the Chamber within a designated timescale after the notice of referral is issued, and the Housing and Property Chamber administration will ensure that copies of paperwork submitted at this stage are crossed over and both parties see the others’ written representations/ answers.

Productions can be documents, photographs, statements forming the evidence, skeleton arguments on issues parties wish to advance in some detail at the hearing, etc

**Can parties bring witnesses to the Hearing?**

If you wish to bring a witness/ witnesses with you on the day of the hearing to give evidence on your behalf, you must send to the Chamber no later than 7 days before the hearing a list of these witnesses. If you do not send a list of witnesses at least 7 days before the hearing, the tribunal may decide that evidence from this witness/ these witnesses cannot be heard, or the hearing may need to be adjourned until a later date.

**Can parties bring children to the Hearing?**

Please be advised that children under the age of 14 are not permitted to accompany any individual or be present in the hearing room during Tribunal proceedings. Children under 14 may be permitted to wait in designated waiting areas of the venue but **only in circumstances where the party can provide adequate supervision in the form of another adult**.

SCTS staff and those of third party companies working for SCTS on the day of the hearing are not permitted to provide childcare and are not responsible for the supervision of children attending the venue. It is the tribunal’s discretion to take any actions they deem appropriate should a party (or witness) bring a child to a tribunal hearing and that party (or witness) cannot provide adequate supervision for that child in the form of another supervising adult. This may include the tribunal continuing to hear and determine the case in the absence of a party or a witness.

**What happens if someone is disruptive at the Hearing?**

Everyone attending the hearing is expected to behave in a polite and appropriate manner. The Tribunal has the power to exclude any person from the hearing if that person is being disruptive – this includes any party, representative, or supporter.

**When does the Tribunal make a decision on the case?**

The Tribunal makes its decision by considering all the evidence, including the documents sent to the Chamber before the notice of referral and hearing and also what is said at the hearing.

The Tribunal will not normally give its decision on the day. It will usually be sent out about 4 weeks after the hearing, along with a statement of reasons for the decision. If it is a complex decision, a Tribunal may require a longer timescale to produce the written decision.

**What happens after the decision has been issued?**

If the Tribunal decides that the letting agent has failed to comply with the Code, then the Tribunal may make a letting agent enforcement order (LAEO) requiring the letting agent to take such action as the tribunal considers necessary to rectify the failure, and where appropriate, make such payment to the applicant as the Tribunal considers reasonable. The LAEO must state the period within which any action must be taken or any payment required must be made.

**It is a criminal offence not to comply with an LAEO without reasonable excuse.**

It is for the Tribunal to decide whether the letting agent has failed to comply with the LAEO. Where the Tribunal decides that a letting agent has failed to comply with a LAEO, it must serve notice of the failure to Scottish Ministers. The law about LAEOs is contained in sections 48-51 of the 2014 Act, which can be accessed on the Housing and Property Chamber website.

**Can parties appeal against a decision by a tribunal or the President?**

Yes, you can apply to the Tribunal for permission to appeal within 30 days of the date the decision is issued. An appeal can only be raised on a point of law, as opposed to a finding of the Tribunal about the facts in the case.

**OTHER COMMON QUESTIONS**

This section answers some common questions that are not covered in the main guide.

**Are Housing and Property Chamber decisions publically available?**

Yes, they can be accessed from our website.

**Does the Letting Agent Registration team know of these decisions**?

Yes, copies of tribunal decisions are intimated to the letting agent registration team.

**I don’t think my letting agent is registered – how can I check?**

You should go to the letting agent pages on the Scottish Government website here:

<https://www.mygov.scot/letting-agent-registration/>

for more information on letting agent registration.

**Can a Tribunal dismiss or change an applicant’s letting agent?**

No, the Tribunal have no powers to do so.

**In what format can I send written information?**

You can send information by post, email or fax. Typed submissions are preferable, though handwritten evidence is also acceptable. Any handwritten submissions should be clearly legible, and this may mean it should be written in block letters to aid the Tribunal Members and other parties in understanding your submissions. If we receive a submission that is difficult to read, we may ask if you are able to supply the information in another way, so that your submissions can be considered in full.

**I have documents to attach to an email, is there a size limit for emails sent to the Tribunal?**

We are only able to receive attachments that total 10MB in size. If your documentation is larger than this, then if possible separate the document to be attached over multiple emails. If your file is too large you may have to consider sending the documentation by other means.

For system security reasons we cannot open zipped files sent to us, or follow links to online document storage sites.

**Can I send video or audio evidence?**

Case management discussions and hearings are being conducted by teleconference for the time being. Audio and video evidence can be accepted, a request can be made to the tribunal who will send instructions.

For evidence contained within video recordings, parties should produce still photographs which can be circulated in advance to the tribunal members and other party.

**Written Submissions and Requests to the Tribunal**

 In general terms, when a party wishes to make a request for consideration by the tribunal, an example would be a **request for a postponement or adjournment** of a case management discussion or hearing,this request with the reasons for it **should be highlighted at the beginning of the written submission or communication sent**to the tribunal. This makes it easier for the tribunal administration to identify the request and it avoids delay and the risk that such a request is missed.

 When submitting written representations to the tribunal, in accordance with legislation, we are required to cross all correspondence over to the tribunal members and the other party involved in the case. If any party wishes to submit confidential information and request this is not crossed over to the other party, then such a **request, with the reason for non-disclosure,** **must be made clear at the beginning of the written submission**. Requests for non-disclosure of information may not be granted for reasons of fairness and transparency. In the event that the request for non-disclosure is not granted, the whole written submission will not be crossed over to the other party and will be disregarded for the purposes of the tribunal proceedings. As a consequence, to avoid delay in circulation of submissions, which include a request for non-disclosure of information, parties may wish to consider whether it is appropriate to lodge two documents with the tribunal. One document containing their submissions which contain no confidential information, which will automatically be crossed over to the other party and the tribunal members and will form part of the case papers, with another document containing the confidential information with the request at the start of the document for non-disclosure of this document with the reasons for the request.