

Rent Assessment Committees Fair Rents

Guidance on procedure

1

Part One	
Introduction	02
Part Two	
The preliminary procedure	05
Part Three	
The hearing	09
Part Four	
The decision process	11
Part Five	
The decision and after	20
Annex A	23
Annex B	24

Part One

Introduction

What will this Guidance tell me?

The Rent Officer has referred the matter of the fair rent for your property to a Rent Assessment Committee (RAC) run by the Residential Property Tribunal Service (RPTS). Such a referral is made when a landlord or tenant, or both, (“the parties”) object to the rent fixed by the Rent Officer. The purpose of this Guidance is to explain how matters will now proceed to a decision by the RAC. The relevant law governing those regulated and housing association tenancies that are governed by the fair rent scheme is dealt with further in guidance issued by the Department for Communities and Local Government (DCLG) (previously the Office of the Deputy Prime Minister) . An address for obtaining this guidance is included at Annex A to this booklet.

What is a Rent Assessment Committee?

Despite its formal title the RAC is a tribunal of two or three people set up by law under the provisions of the Rent Act 1977. It looks at the matter of the fair rent for a property afresh following an objection by the landlord or tenant (or both) to the Rent Officer’s decision. It is an independent decision making body which is completely unconnected to the Rent Officer and the parties or any other public agency.

RACs are organised by Rent Assessment Panels which are part of the Residential Property Tribunal Service. There are five Panels in England. Their addresses can be found at Annex B to this booklet.

Who will deal with the matter once an objection has been referred?

From the time the matter is referred to the RAC by the Rent Officer, a number of different people will deal with the paperwork and parties involved. These include the following:

The Case Officers

The Case Officers are the administrative staff who will deal with correspondence. When the papers are received from the Rent Officer it is the case officer who will begin to process the appeal. The case officer will continue to deal with the paperwork until you have received a final decision in your case. The case officers are able to speak to you about the processes and procedures relating to the application. They cannot give general legal advice or advise you about the law relating to your case. Each Rent Assessment Panel has a Regional Manager who is responsible for the work of the case officers. Their names are included at Annex B.

The Committee Members

There are two types of member:

1. The Chairman: He or she is appointed to be a Chairman by the Lord Chancellor. A Chairman is usually a lawyer or a valuer (a surveyor who has expertise in valuation). The Chairman is responsible for the smooth running of the proceedings and will write up the reasons for the Committee's decision.
2. Other members: Other members are appointed by the Secretary of State for Communities and Local Government. Again, they may be lawyers or valuers or lay people.

When a Committee is set up to consider the matter of the fair rent for a property there will usually be three but occasionally two members including the Chairman.

The Panel President

Each Panel has a President, who is assisted by one or more Vice-Presidents, who is responsible for the members and in particular, decides which members should be appointed to hear and decide a particular case. They will not be involved in the decision in your case unless they are on the RAC dealing with your case. Their names are given at Annex B.

Part Two

The preliminary procedure

What will happen once a Committee is appointed for my case?

The case officer will write to both parties to inform them that an oral hearing is to be arranged. The parties will also be asked if they would like to make what are called “written representations”. Parties can choose not to have a hearing if they are content for the matter to be dealt with on the basis of the written representations and all other relevant available evidence (see below). Parties are advised not to produce documentation for the first time at a hearing; otherwise the hearing will often need to be adjourned to enable the other party to consider the new evidence.

What is a hearing?

When a hearing is arranged the Committee will convene at a particular time and place for the purpose of enabling both you and the other party or parties to put your cases to the Committee. You can speak yourself or somebody else, whether professionally qualified or not, can speak for you. It could be a relative or friend for example. You will also be able to put questions to the other party or his or her representative if they are present. The Committee may also ask you some questions in order to make sure that it has all the relevant information to enable it to come to a decision as to the fair rent for the property.

What are written representations?

These are any comments made in writing to the Committee about what you think the fair rent should be and why. You can also send any other documents in support of your case. Any representations that are made by you or anybody on your behalf will be copied to the other party. Each of you will thus be given an opportunity to comment on any representations that are made by the other. You will also be asked to provide a copy of any written tenancy agreement under which the property is let.

Both parties will also be supplied with a copy of any documents received in the Panel from the Rent Officer except for those that you will already have (such as the relevant rent register entries). Guidance as to what points you might like to consider making in written representations is given in Part 4 below.

Will the Committee visit and inspect the premises?

Yes, if requested by either party or if the Committee considers it necessary. A visit is considered necessary in most cases, although if the Committee is dealing with a number of similar properties at the same time it may inspect a sample property or properties rather than all of them. A visit will only take place on a date and at an approximate time notified to the parties. With the permission of the tenant the Committee will normally want to inspect the inside of the property as well as the outside together with any common parts. The landlord is entitled to be present with the tenant's permission. An inspection will usually be on the day of the hearing or (if there is no hearing) the day when the Committee makes its decision. If the Committee is unable to gain access at the appointed time it may decide to make another appointment and adjourn the matter until then. Alternatively it may decide that it has sufficient information, including that obtained from an external inspection, to be able to go ahead and make a decision in the absence of an internal inspection.

Can a party say anything at the inspection?

Both parties can draw attention to any physical aspect of the property that they wish the RAC to see, but may not make any oral representations (see above). Representations must be kept for the hearing (if any) or have been made in writing (see above). Thus it is quite acceptable for a tenant to point out, for example, a damp patch on the kitchen ceiling that is referred to in the tenant's written representations or in the Rent Officer's survey sheet that has been copied to the parties. By contrast it would, for example, not be permissible for the Committee, at the inspection, to listen to representations about rents of allegedly comparable properties.

Part Three

The hearing

Is the Committee a court and will ordinary court procedures be followed?

No. Tribunals such as Rent Assessment Committees are decision-making bodies set up especially by Parliament to enable certain types of disagreements such as yours to be dealt with speedily and cheaply in a way that avoids the formality and cost that surrounds ordinary court proceedings.

Hearings are usually held in an ordinary committee room. Hearings are open to the public, although usually only the parties and their representatives (including a friend or relative), the Committee and the case officer will be present. The proceedings are orderly but informal. The person who has objected to the rent that was determined by the Rent Officer is usually asked to put their case first. They can be questioned by the other party who can then put their case and be questioned in turn. The sole purpose of the proceedings is to enable you and the other party to put your cases to the Committee in your own words or through somebody else acting on your behalf. The Chairman will seek to ensure that nobody is at a disadvantage by not being represented. He or she will make sure that both landlord and tenant understand what the other party is saying. The Committee may ask questions of a party present to make sure that it has all the necessary facts. A party present can also put questions to the Committee.

What happens if a party does not attend a hearing that has been arranged?

Any party who is present can put their case in the normal way as outlined on the previous page. The Committee will then proceed to make its decision, as it will where neither party attends.

Can a hearing be postponed or adjourned by the Committee?

Yes. You have the right to ask the Committee to postpone or adjourn a hearing and indeed the Committee might decide to do this of its own accord. However, it will be done only if there is good reason and the Committee considers that one or both parties are not unfairly affected.

Can a landlord or tenant withdraw their objection?

The Committee may allow this at any time up to the decision if the other party agrees.

What happens if both parties indicate that they do not wish to attend a hearing?

As indicated above, the proposed hearing will not be arranged. The Committee will normally inspect the property, on a day that has been notified to the parties, and then meet to consider its decision, usually on the same day. It will look at any written representations made by the parties together with any documents received from the Rent Officer and also have regard to its own relevant knowledge and experience.

Part Four

The decision process

What is a fair rent?

The Rent Act 1977, section 70, requires a Rent Officer or Committee to have regard to the following factors when deciding what is a fair rent for your property.

- the age, character, locality and state of repair of the property;
- the quantity, quality and condition of any furniture provided under the tenancy.

Personal circumstances, such as the means of the landlord or tenant, must be ignored.

Does the fair rent include council tax?

Council tax is normally payable by the tenant to the local authority and therefore is not included in the registered rent. However, if the tenancy is of part of a house which, for council tax purposes, is a "house in multiple occupation", the landlord will be responsible for payment of the tax but the tenant can be required to reimburse the landlord. In these circumstances the registered fair rent will include an amount in respect of council tax in so far as it is attributable to the specific part of the property that is let to the tenant.

What if the tenancy includes a charge for services?

If under the terms of the tenancy, or some other agreement, there is provision made for the supply of services to the property and/or any common parts the fair rent will reflect the value to the tenant of these services. If, for example, the subject property is a flat in a development, the landlord might provide items such as a lift, cleaning services to the entrance hall stairs and landing, window cleaning, heating to the subject flat and/or the common parts and gardening in respect of common garden areas. The “common parts” are those parts of the development the use and enjoyment of which is shared with other tenants.

What if the tenancy says that the landlord can from time to time vary the amount payable in respect of services?

Some tenancy agreements will permit the landlord, by notice, to alter from time to time (usually once a year) the amount payable in respect of services (the “service charge”). This will usually be as a result of changes in the cost to the landlord of providing the services. If the Rent Officer or the Committee accepts that the terms of variation contained in the tenancy agreement are reasonable the rent can be entered on the register as variable. This means that the amount in the fair rent that the Rent Officer or Committee considers to be attributable to services will be separately specified in the register. However, that element of the fair rent can still be altered from time to time in accordance with the terms of the tenancy agreement (e.g. by notice from the landlord once a year).

Does the registered rent include 'Supporting People' charges?

Some tenancies provide for payment of 'supporting people' charges in respect of certain personal services provided to the tenant. Such support charges are normally payable in addition to the rent and any service charge. However, when a rent assessment committee determines a fair rent it may decide that some or all of the support charge provided for by the tenancy agreement is in law a payment for services that more properly fall within the service charge. If that is the case the amount payable for that service or services, after the effective date of registration, will be included in the service charge determined by the Committee.

How will the RAC apply section 70?

The Court of Appeal has held that section 70 provides that a fair rent is the notional market rent for the subject property less what is often referred to as the "scarcity element" (if any). This "element" is dealt with below. The notional market rent is the rent that the landlord would be likely to obtain for the property, if it were let, at the date of the decision, on the same terms and conditions as at present.

This figure is usually derived from evidence of market rental levels in the area for similar properties ("comparables") that are let on tenancies not governed by the fair rent regime of the Rent Act 1977. Those tenancies will usually be assured or assured shorthold tenancies that are governed instead by the Housing Act 1988.

That figure will be adjusted to reflect any relevant differences between those properties and the subject property. For example, the comparable lettings might be fully or partly furnished and the properties might have been modernised by the landlord. It follows that if the subject property is unmodernised by the landlord and let unfurnished, it is likely that the hypothetical market rent starting point will therefore be lower than that derived from the “comparable” properties. Another possible difference is the terms of the tenancy.

The Committee will also consider whether the notional market rent is to be adjusted to reflect any tenant’s improvements that have been made to the subject property (other than those required by the tenancy agreement). These are to be disregarded. In other words the Committee must ignore any effect that the improvements would otherwise have on the rental value of the property. This is to prevent the landlord from benefiting from the improvements by way of a higher rent where those improvements have increased the rental value of the property. By contrast any disrepair or defect that is attributable to a failure by the tenant (or a previous tenant under the tenancy) to comply with the terms of the tenancy is to be disregarded. That is the property will be valued as if such disrepair or defect did not exist and the landlord will not be penalised by any consequent decrease in the rental value of the property.

Finally, the Committee will consider the “scarcity element” (see above). This is applicable where the Committee considers that the following conditions are satisfied:

- A. that the number of people seeking to become tenants of similar dwelling-houses in the locality, on the same terms – other than the rent – as that of the tenancy of the subject property, substantially exceeds the number of such dwelling-houses available for letting and
- B. that the shortage has pushed the comparable market rental values above what they would otherwise have been.

If these conditions are satisfied the notional market rental figure for the subject property will therefore be further adjusted to remove that “scarcity element”.

The final figure obtained at the end of the exercise described above will be the fair rent subject to the rent capping rules, where applicable, as explained below.

What if the tenant has acquired a share in the ownership of the property?

In a case where the tenant has acquired a share in the ownership of the property the fair rent will be discounted to reflect the fact that the tenant has paid a capital sum for part of the equity in the property. The tenant will therefore only pay rent in respect of the landlord's share. The calculation of the fair rent will also allow for the fact that the tenant will have a full repairing liability for the property.

Is there a limit on the figure that can be registered as the fair rent?

There is no limit if there was no existing registered rent on the date when the application was made to the Rent Officer. In these circumstances therefore the rent determined by the Committee, as outlined above, will be the fair rent. This could be the same as that determined by the Rent Officer or it could be higher or lower than that amount. The Rent Officer will therefore record in the register either that the rent has been confirmed by the RAC or, as the case may be, register the new rent determined by the RAC.

But what if there was an existing registered fair rent before the application to the Rent Officer was made?

If this is the case it is important to note that, where a fair rent is already registered and an application for a new fair rent to be determined by the Rent Officer is made on or after 1 February 1999, there is a limit on the amount that can be registered as the fair rent by the Rent Officer or Committee. This limit is sometimes referred to as the rent cap or the capped rent. It follows that if the fair rent that the Committee would otherwise have determined (in accordance with the law outlined above) is above the capped rent only the lower capped figure can be registered as the fair rent.

How is the capped rent calculated?

The capped rent is calculated in accordance with a formula set out in the Rent Acts (Maximum Fair Rent) Order 1999. It is arrived at by increasing the amount of the existing registered rent by the percentage change in the retail price index since the date of that earlier registration and then adding a further 7.5% or 5%. The 7.5% addition will apply in respect of the first application for re-registration of a fair rent since 1 February 1999 and the 5% addition will apply in the case of all subsequent applications.

For the purpose of this exercise, where there is a variable service charge, the existing registered rent starting point will be that rent less the service charge. When the rent capping formula has been applied to that sum, as described above, the variable service charge determined by the Committee will be added to the resulting figure to produce the capped rent.

It follows that in all cases where the capping rule applies the Committee will first decide what the fair rent would be irrespective of the statutory limit. It will then calculate the capped rent. If the former figure is above the latter, the capped rent will be registered as the fair rent. The same will obviously apply if the former figure is the same as the capped rent. If it is below the capped rent the lower figure will be registered and the cap will not apply.

Is there any exception to the rent-capping rule?

Yes, where there has been a change in the condition of the property as a result of landlord's repairs or improvement to the property and/or any common parts whereby the rent determined exceeds the previous registered rent by at least 15%. Thus the Committee will work out what the new fair rent would be (a) with and (b) without the benefit of the repairs and/or improvements.

If the difference between these two figures is at least 15% more than the previous registered rent the statutory rent cap will not apply and the uncapped amount will be registered.

If it is lower than 15% the capping rules will apply and provide an upper limit to the amount that can be registered as the fair rent.

What points should I make in my written representations or at a hearing?

You should point out anything that you consider would have a bearing on the rent that can be fixed by the Committee according to the law outlined above. You can of course comment on anything that the other party has written or has said at any hearing. If you are the tenant and have made improvements to the property that you were not obliged to make by the terms of your tenancy it will help if you have receipts demonstrating the cost, although this not essential. If you are the landlord and have made repairs and/or improvements to the property it would also be helpful if you are able to produce receipts relating to the costs incurred.

It would be very helpful if you are able to produce evidence of recent lettings of similar properties in the area at market rents. These will usually be assured or assured shorthold tenancies. As much relevant detail as possible should be provided, if available. For example, the rent payable, the nature of the accommodation, its state of repair or improvement, whether it is furnished in whole or in part. If you are relying in particular on a specific property the Committee might make an external inspection of that property. Any evidence that you might be able to provide with regard to an abundance or shortage of similar properties available to let in the locality would also be helpful.

Part Five

The decision and after

When will the Committee make its decision?

Once the Committee is satisfied that it has all the necessary information it will decide whether the rent that was fixed by the Rent Officer should be confirmed or whether the registered fair rent should be lower or higher than that figure. This will often be on the day of the inspection/hearing. It is usual for the Committee to deal with several cases on the same day.

How will I find out the Committee's decision?

The case officer will write to you and enclose the decision notice that tells you the fair rent determined by the Committee and explains any capping calculation. You will also be sent a copy of the written reasons for the Committee's decision. These reasons will be summary unless you have already asked for full reasons or the Committee considers it appropriate to issue full reasons. If summary you can within 21 days of receipt ask for full reasons. The Committee should issue these within 28 days of receipt of your request.

From what date will the amount fixed by the Committee be payable?

The rent determined by the Committee will normally be effective from the date of the Committee's decision. Applications for a fresh registration by landlord or tenant can only be made subsequently at two yearly intervals, save in exceptional circumstances.

(An example would be where in the meantime there has been a material change in the condition of the property as a result of improvements by the landlord).

Is there any appeal against the Committee's decision?

You can appeal to the High Court, under the Tribunals and Inquiries Act 1992, if you consider that the Committee has made a mistake of law. You must do so within 28 days of the receipt of full reasons for the decision or within such longer period as the High Court might permit. Alternatively, if you consider that there has been a breach of the rules of natural justice you could seek leave from the High Court to challenge the decision by way of a process known as "judicial review". Such leave should ordinarily be sought as soon as possible and not later than three months from the above date. You should take legal advice if you consider that there might be grounds for High Court proceedings.

If I am unhappy with the handling of my case, to whom should I complain?

If you have a complaint about a committee member or members you should write to the Panel President. If you are unhappy with his or her response you can write to the Senior President, at the RPTS Corporate Unit, 3rd Floor, 10 Alfred Place, London WC1E 7LR. (Telephone 020 7446 7750). You will receive an acknowledgement within 2 working days of receipt of your complaint. A full reply will follow within 28 working days, or you will be advised of any delay. You are also entitled to ask your M.P. to ask the Parliamentary Ombudsman to investigate a complaint about maladministration.

Does the Human Rights Act apply to the RAC's proceedings?

Yes. Parties to an application are entitled to the benefit of the provisions of the Human Rights Act 1998. In effect, this entitles them to have their case determined in accordance with the European Convention on Human Rights. Of particular relevance is Article 6 of the Convention which provides that parties have the right to a fair hearing within a reasonable time and before an impartial tribunal. This includes their right to put their case and to question the case brought by the other party and to be given reasons for the decision of the RAC. Also relevant is Article 8, which provides that everyone has the right to respect for his private life, his home and his correspondence – any internal inspection of the property will only be undertaken with the consent of the occupier. In making their decisions, RACs are obliged to have regard to the rights embodied in the Convention and where possible to interpret legislation consistently with those rights.

Annex A

Further reading

Among the Government booklets available from the Department for Communities and Local Government (previously the Office of the Deputy Prime Minister), you may want to consult Regulated Tenancies (99 HC 0989)

A full list of DCLG booklets and copies of each are available from:

DCLG Free Literature

PO Box No 236

Wetherby LS23 7NB

Tel: 0870 1226236

Fax: 0870 1226237

Text phone: 0870 1207405

E-mail: odpm@twoten.press.net

Annex B

RPTS addresses

Northern Rent Assessment Panel

President: Martin Davey

Regional Manager: Beatrice Whipp

1st Floor, 5 New York Street

Manchester M1 4JB

Tel: 0845 1002614

0161 237 9491

Fax: 0161 237 3656

Midland Rent Assessment Panel

President: Simon Duffy

Regional Manager: Maureen McCabe

2nd floor Louisa House

92-93 Edward Street

Birmingham B1 2RA

Tel: 0845 1002615

0121 236 7837

Fax: 0121 236 9337

Eastern Rent Assessment Panel

President: Bruce Edgington

Acting Regional Manager: Mark Allbut

Great Eastern House

Tenison Road

Cambridge CB1 2TR

Tel: 0845 1002616

01223 505112

Fax: 01223 505116

London Rent Assessment Panel

President: Siobhan McGrath

Regional Manager: Donald Brown

1st Floor, 10 Alfred Place

London WC1E 7LR

Tel: 020 7446 7700

Fax: 020 7637 1250

Southern Rent Assessment Panel

President: Robert Long

Acting Regional Manager: Jim May

1st Floor, 1 Market Avenue

Chichester PO19 1JU

Tel: 0845 1002617

01243 779394

Fax: 01243 779389

Corporate Unit

Senior President: Siobhan McGrath

Chief Executive: Michael Ross

3rd Floor, 10 Alfred Place

London WC1E 7LR

Tel: 020 7446 7750

Fax: 020 7580 5684

RPTS national helpline: 0845 600 3178

RPTS website: www.rpts.gov.uk

Disclaimer

The contents of this publication are correct at the time of going to press. Please refer to the RPTS website for the current version.

RPTS Booklets/Leaflets

Code	Description
LVTL	Are you a Landlord, Tenant or Lessee? Can the Leasehold Valuation Tribunal help you to resolve problems?
GNL/10	Are you a Landlord, Tenant or Leaseholder? Can the Residential Property Tribunal Service help you? It helps thousands every year.
LE/4	Leasehold Enfranchisement
LVTB/3	Leasehold Valuation Tribunal (LVT): Service Charges, Dispensation with Charge Consultation, Administration Charges, Variation of Leases, Right to Manage, Appointment of Manager, Landlord's choice of insurer, Forfeiture.
FR/1	Rent Assessment Committees: Fair Rents Guidance on procedure
MR/2	Rent Assessment Committees: Market Rents Guidance on procedure
TA/5	Tenants Associations
HHSRS/9	Housing Act 2004: Housing Health & Safety Rating System Application and Appeals relating to Improvement Notices, Prohibition Orders, Demolition Orders, Emergency Measures (Unfit Properties)
EDMO/8	Housing Act 2004: Applications and Appeals in Respect of Empty Dwelling Management Orders under the Housing Act 2004
UWS/6	Unhappy with our service? Here's what we'll do
EOP	Equal Opportunities Policy
AR	Annual Report
DW	Document Wallet
RTB/7	Residential Property Tribunals: Determinations by Residential Property Tribunals as to whether a dwelling-house is particularly suitable for occupation by elderly persons.
CP	Corporate Plan
RPTS	Property Matters: An introduction to RPTS. What to expect at a Rent Assessment Committee or Leasehold Valuation Tribunal (Video/DVD)
HMOs/11	Housing Act 2004: Application and appeals relating to Licensing of houses in multiple occupation (HMOs) Selective licensing of other residential accommodation
MOs/12	Application and appeals relating to interim and final Management Orders (MOs) under the Housing Act 2004
Order From	Yoro Edmond RPTS, 10 Alfred Place, London WC1E 7LR Tel: 020 7446 7757 Fax: 020 7580 5684 or 020 7637 1250 Email: yoro.edmond@odpm.gsi.gov.uk

**Residential Property
Tribunal Service**

10 Alfred Place
London
WC1E 7LR

Telephone: 020 7446 7700
Facsimile: 020 7580 5684

National Helpline

0845 600 3178

Website

www.rpts.gov.uk

© Crown copyright 2008

FR1-06/08

