



## Quick Guide

# Challenging Service Charges at the First Tier Property Tribunal

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## Introduction

**This guide does not offer legal advice.** It gives an overview of taking a case to the First Tier Tribunal (Residential Property Chamber) from a lay perspective. It focuses on service charge cases, but may also contain useful information for other types of claim, for example disrepairs or discrimination.

The guide has been developed by those who have been through the process with the aim of offering their top tips and insight, and guiding expectations.

It is relevant to tenants (renters) and residents (shared owners or leaseholders).

## About the FTT

- **Locations** The FTT for England is split into regions: Northern, Eastern, Midlands, Southern and London. Your application will be heard at the court nearest to your home, but this could still entail a long journey should your application proceed to a full hearing.
- **Attendance** The court may allow you to attend virtually (by Zoom or other online platform), or just through submitting your documents without a hearing.

On the whole however, requesting a hearing and attending in-person gives you the best opportunity to put your case to the judge. You can most easily assess and respond to the arguments presented by the respondent (your landlord).



## Quick Guide

### Challenging Service Charges at the First Tier Property Tribunal

---

- **Formality** The first tier tribunal is the lowest rank of court and tends to more relaxed in its approach to hearing cases, although you will still need to comply with any directions (instructions) issued by the judge, and they expect everyone to behave in a respectful manner at all times.
- **Behaviour** No matter how strongly you feel about your case, or how angry you are about inaccuracies from the landlord, the judge will be more favourable to you if you can keep calm, stay in control, and be civil when speaking. If you feel overwhelmed with your feelings, it is best to say that you need a break and leave the courtroom for a short while rather than jeopardise your case by being uncivil.

**Applicants and Application Costs** The main applicant is known as the lead applicant. Other people can be included in application and will be known as second or more applicants.

There is a cost to making an application and for a hearing. Check the current rates before you apply. In certain circumstances you can get help with the fees if you are on universal credit or pension credit.

The cost of submitting the form will be divided between all applicants; the more people involved in a joint claim, the lower the cost to each individual.

## Who Can Apply

Any person named on a lease or tenancy agreement can make an application to the FTT and you don't have to have been through your landlord's formal complaints process before you launch an application.

Having said that, it will not hurt your case if you can show that you did everything possible to try and reach an agreement with your landlord before approaching the court.



## Quick Guide

### Challenging Service Charges at the First Tier Property Tribunal

---

#### Before Applying

- **Check Your Case Fits** There are three agencies involved in regulating the behaviour of housing associations and councils that you can approach with a complaint. If you want to check that the FTT is the right process for your circumstances, check the remit of each using the **Useful Links** section at the end of this guide.
- **Get Support** Before you make the decision to make an application you should try and get support from as many of your fellow leaseholders or tenants as possible because not only is there strength in numbers, but the higher number of applicants shows the Tribunal that the application potentially has merit.

It is best to make sure that you have the support in writing, ideally by create a simple form with name, flat or house number, email address, phone number, and signature (similar to a petition).

- **Allocate Time** It is generally very time consuming to put together this sort of case. You will need to therefore carve out time to manage your case.

The Tribunal will also expect the lead applicant to email all applicants with anything related to the case so this is a task you will need to be prepared to take on if you are the lead applicant.

- **Decide on Your Areas of Challenge** Think carefully about which charges you want to contest and what evidence you have to show that the charges you are being asked to pay are inaccurate or extortionate. If you don't have a strong argument relating to a particular charge, it may be better to exclude it.

You will need to provide what is known as a 'Scott schedule' showing exactly what you are asking for and why. This will be passed to the landlord who can add their comments.



## Quick Guide

### Challenging Service Charges at the First Tier Property Tribunal

---

- **Check Your Supporting Evidence** You will need data or evidence to back up your arguments, and you will need to be able to show that not only is the cost unreasonable, but that it was not 'reasonably incurred'. For example:
  - You were charged for works that should never have been done;
  - The amount charged for the works does not reflect the work that was actually done;
  - The works or service being charged for have not been delivered;
  - There was a gap of more than 18 months between the work and the first time you were advised of having to pay for it.

The evidence you collect might include:

- Comparison of the costs being charged for similar works or services previously;
- Photographs or film footage to show that the work has not been carried out;
- Correspondence with the landlord seeking evidence of the actual cost of the work or service such as an invoice or receipt, and a statement from you (or your landlord) to confirm that they were unable or unwilling to provide this evidence; or
- Correspondence with the landlord seeking evidence of the work or service actually being carried out, and a statement from you (or your landlord) to confirm that they were unable or unwilling to provide this evidence.

Neither of the above lists are exhaustive, but they cover most circumstances relating to service charges.

- **Decide What's Reasonable** As part of the application process, you will be asked what amount you consider a reasonable service charge for each contested item. You will need to be able to explain how you arrived at the figure you came up for each contested item, so make sure you have explanatory notes for each should you be asked for it.



## Quick Guide

### Challenging Service Charges at the First Tier Property Tribunal

---

#### Tribunal Stages

- **Submit the Application** Submit an application to the tribunal by completing the form available online at [www.gov.uk](http://www.gov.uk) or [www.hmcts.org](http://www.hmcts.org) or directly available here:

<https://www.gov.uk/government/publications/form-leasehold-7-application-for-an-order-under-section-20c-of-the-landlord-and-tenant-act-1985>

There is an important question that you must not ignore. Section 20C of the Landlord and Tenant Act 1985 provides you with an 'Application for an order limiting payment of the landlord's costs'. It is very important that you answer **yes** to the application so that you won't be liable for the costs. You should also make an application under the Commonhold and Leasehold Reform Act 2002, Schedule (11), paragraph 5a. Both of these limit or eliminate any exposure to the other side's costs.

If the Tribunal agrees to this, it will mean that you won't have to pay the other side's costs if your case is not upheld (you lose). The Tribunal can refuse to make such an order, but it is very rare that they would do so unless they thought that your case was entirely without grounds, although this should have been flushed out during the case management hearing.

You want a hearing so don't agree to the FTT dealing with the application without it, unless there is a compelling reason for example poor health.

- **Dates you are not available** If you have asked for a hearing, make sure you tell the Tribunal when you are not available so they can schedule the hearing to suit all parties.
- **Disability and Access Requirements** You should also make the court aware of any access requirements relating to a disability so that they can accommodate your needs and ensure that you are able to fully participate in the hearing without disadvantage.



## Quick Guide

### Challenging Service Charges at the First Tier Property Tribunal

---

- **Judge Issues Directions** Once the Tribunal receives your application it will be given to a judge who will issue directions (instructions) to both parties giving time limits for responses from both parties to the application.
- **Case Management Meeting** There is usually a case management conference usually held in person when you will be able to put the outline of your case and ask the Judge to instruct the respondent to provide you with the evidence you need to prove your case.
- **Disclosure** You and the defendant will both be allowed to ask the other side to 'disclose' information relevant to your case, and if the judge agrees, a legally binding order will be made for disclosure of this information.

When asking the judge for disclosure of information relevant to your case, don't be tempted to ask for every invoice for every year without a very good reason. The Judge is likely to refuse on the grounds that it is making an unreasonable demand on the respondent and it could undermine your credibility.

You can however ask for all invoices for particular expenses that seem to be unreasonable.

- **Exchange of Tenant and Landlord Cases** There is an exchange of the respective cases through the following stages:
  - **Tenant's case:** You send the landlord the Scott schedule, the evidence supporting your case, and any signed witness statements.
  - **Landlord's case:** The respondent replies having added their comments to the schedule, and any evidence they intend to use to rebut your case, plus their own witness statements.
  - **Tenant's reply:** You can send a brief supplementary reply to the landlord addressing anything they have put forward which you believe to be inaccurate.



## Quick Guide

### Challenging Service Charges at the First Tier Property Tribunal

---

- **Bundle** You will then need to prepare an indexed bundle of all documents for the hearing. Your bundle will include your application, Scott schedule, and evidence. This has to be prepared as a pdf document with page numbers as the court proceedings rely heavily on referring to page numbers when discussing the case. If you are not used to working with pdf documents, see if you can get help from a friend or colleague.
- **Mediation Offer** It may be that the landlord offers to negotiate (mediation) instead of going through the full Tribunal. This can happen at any time up until each case has been presented. Think carefully about whether you want to agree. On the plus side, it could save a lot of time and effort whilst giving you what you want. On the downside, mediation can drag the process out longer if it is not successful and you return to court.
- **Non-Disclosure Agreements (NDAs)** If mediation is conditional on signing an NDA, it should be approached with great caution. An NDA is a restriction on what you can say about your settlement, and who you can say it to. There is no good reason for a landlord to demand this from you.
- **Hearing** If mediation is not offered, or is unsuccessful, the case will proceed to a hearing.

The Tribunal, as the name implies consists of three members. These are the judge who has legal training, a chartered surveyor, and a lay person.

The landlord will probably have instructed a barrister and both you and they will sit at a desk in front of the panel.

At this stage it is a good idea to try and get as much support as possible to attend but they are not allowed to speak unless or until they are called as a witness, nor are you allowed to converse with anyone who may be sitting with you.

See the next pages for the template Scott schedule and useful sources of information.

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## Quick Guide

### Challenging Service Charges at the First Tier Property Tribunal

---

#### Template Scott Schedule

[Issue and date range, for example 'Disputed Service Charges - 2021-2023']

Case Reference: [Number]

Premises: [Address]

ITEM	COST	Tenant's Comm	Landlord's Comments	
For example 'Energy Costs'	£114,547.85	The average cost for the 5 years prior was £74,452. The average for the following 2 years was £102,891 - an increase of 37%.		
For example 'Staff Costs'	£219,355.95	The costs have increased from an average of £132,000 to over £200,000. No explanation has been provided for the increase.		



## Quick Guide

### Challenging Service Charges at the First Tier Property Tribunal

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#### Useful Sources of Information

- [Government website – general advice: Solve a residential property dispute](#)
- [Government website - About the Property Chamber](#)
- [Government website – Property Chamber Cases and Lists](#)
- [Leasehold Advisory Service – Applying to First Tier Tribunal](#)
- [Shelter – Service Charges](#)
- [Shelter – How to Take Your Landlord to Court for Repairs](#)
- [The Housing Ombudsman Service – Making a Complaint](#)
- [The Regulator of Social Housing and Housing Ombudsman Factsheet](#)
- [The Regulator of Social Housing - Making a Complaint](#)

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