

Appealing to the ADMINISTRATIVE APPEALS CHAMBER OF THE UPPER TRIBUNAL

Against decisions of the First-tier Tribunal (General Regulatory Chamber)

Consumer Credit
Environment
Estate Agents
Transport
Claims Management Services
Gambling
Immigration Services
Local Government Standards in England

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Introduction

About this leaflet

This leaflet is to help both members of the public and advisors. It describes what steps you need to take to appeal to the Administrative Appeals Chamber of the Upper Tribunal, against a decision given by the General Regulatory Chamber of the First-tier Tribunal, once you have asked the First-tier Tribunal judge for permission to appeal. It explains what will happen to an appeal, in the Administrative Appeals Chamber of the Upper Tribunal, once it has been made. It also lists the stages that take place before the judge decides an appeal. **However, it is only a guide and does not have legal status. It does not cover all aspects of every situation, nor does it provide a full interpretation of the procedural rules.**

In particular the leaflet does not describe any of the procedures in the First-tier Tribunal or how to apply for permission to appeal to the First-tier Tribunal judge, which is an essential first step in appealing to the Upper Tribunal. The First-tier Tribunal will have provided information about this.

There is a section, at the end of this leaflet, in which the meaning of some words used in this leaflet, or in documents which you may receive from the Upper Tribunal Office, is explained.

We recommend that you keep this leaflet for reference throughout your dealings with our office.

Please Note:

- Guidance concerning appeals against decisions of the First-tier Tribunal in Information Rights is covered in a separate leaflet.
- Appeals against decisions of the First-tier Tribunal in Charity cases are covered by the Tax and Chancery Chamber. Please see <http://www.tribunals.gov.uk/financeandtax/AboutUs.htm> for further information.

What is the Administrative Appeals Chamber of the Upper Tribunal?

- The Upper Tribunal is an appellate tribunal created by the Tribunals, Courts and Enforcement Act 2007. The Administrative Appeals Chamber is the part of the Upper Tribunal which hears and decides appeals from decisions of the General Regulatory Chamber of the First-tier Tribunal in the following types of cases
 - Consumer Credit
 - Environment
 - Estate Agents
 - Transport
 - Claims Management
 - Gambling
 - Immigration Services
 - Local Government Standards in England

In some of these cases the law applies in all parts of the United Kingdom (that is England, Scotland, Wales and Northern Ireland) and so the First-tier Tribunal and the Upper Tribunal have jurisdiction in all those countries. In others cases the jurisdiction of the First-tier Tribunal and the Upper Tribunal is limited to England, Wales and Scotland and in the remainder to England and Wales. Please see “Which parts of the United Kingdom have jurisdiction” below for a fuller explanation.

- The Administrative Appeals Chamber of the Upper Tribunal consists of High Court judges and other specialist judges appointed by the Queen. All judges are independent of, and in no way connected to, the Environment Agency or Natural England, the Office of Fair Trading, the Registrar for Approved Driving Instructors, Transport for London, the Postal Services Commission, the Claims Management Services Regulator, the Gambling Commission, the Office of the Immigration Services Commissioner, Ethical Standards Officers or Local Standards Committees.
- You may only appeal to the Administrative Appeals Chamber of the Upper Tribunal if you can show that the First-tier Tribunal made an error of law.
 - The exception to this is if your appeal is a particular kind of Local Government Standards in England case. (see below “Reasons (grounds) for Appealing” for more details)

- There is a small team of in-house lawyers called Registrars who may assist the Upper Tribunal judges. They have been authorised by the Senior President of Tribunals to deal with procedural stages of cases. **A judge will always decide an application for permission to appeal and an appeal.**
- **As the Upper Tribunal judges give judicial decisions neither they, nor their Registrars, nor any staff of the Upper Tribunal office, can give legal advice.** A Citizen's Advice Bureau or similar organisation may be able to assist you.

Which parts of the United Kingdom have jurisdiction?

The General Regulatory Chamber of the First-tier Tribunal deals with different types of case in parts of the United Kingdom as set out below. There is also an explanation of the office to which you should send your appeal form if you wish to appeal to the Upper Tribunal and the addresses are set out in the next section.

In general you should send your appeal form to the office of the Upper Tribunal in the country where the First-tier tribunal hearing was held.

However, if your First-tier Tribunal case was heard in Wales or you live in Wales you may choose to send your appeal either to the Welsh office or to the London office.

United Kingdom

In the following types of case the law applies in all parts of the United Kingdom:-

- Consumer Credit
- Environment
- Estate Agent
- Immigration Services
- Information Rights

England, Scotland and Wales

In the following types of case the law applies only in England, Scotland and Wales:-

- Transport
 - Approved Driving Instructor
 - Postal Services

- Gambling

England and Wales

In the following type of case the law applies only in England and Wales:-

- Claims Management Services

England

In the following types of case the law applies only in England:-

- Transport
 - London Service Permit
- Local Government Standards in England

Where are the offices of the Administrative Appeals Chamber of the Upper Tribunal?

London Office

There is an office in London headed by the Tribunal Manager, which deals with appeals from First-Tier Tribunal decisions in England and Wales. The administrative staff process applications for permission to appeal and appeals, prepare case files for the judges, arrange oral hearings and deal with correspondence and queries.

The address of the office is:

Upper Tribunal (Administrative Appeals Chamber)
 5th Floor, Chichester Rents
 81 Chancery Lane
 London
 WD2A 1DD
 DX: 0012 London / Chancery Lane

Telephone (9a.m.–5p.m.) 020 7911 7085
 Fax 020 7911 7093
 Email adminappeals@tribunals.gsi.gov.uk

Welsh Office

Upper Tribunal (Administrative Appeals Chamber)
 Civil Justice Centre
 2 Park Street
 Cardiff
 CF10 1ET

Scottish Office

There is an office of the Upper Tribunal in Edinburgh dealing with appeals from First-Tier Tribunal decisions in Scotland.

The address of the office is:

Upper Tribunal (Administrative Appeals Chamber)
George House,
126 George Street
Edinburgh
EH2 4HH

Telephone (9a.m.–5p.m.) 0131 271 4310
Fax 0131 271 4398
Email ossc@ossc-scotland.org.uk

Northern Ireland Office

Upper Tribunal (Administrative Appeals Chamber)
3rd Floor, Bedford House
16-22 Bedford Street
Belfast
BT2 7FD

Who can appeal to the Upper Tribunal?

Appeals by those who appealed to the First-tier Tribunal

- Individuals and others who appealed to the First-tier Tribunal may appeal to the Upper Tribunal from the decision of that tribunal.

Appeals by other parties to the appeal

- If you won your case at the First-tier Tribunal, it is still possible for other parties at the First-tier level to appeal to the Upper Tribunal
 - The Environment Agency or Natural England (environment)
 - The Office of Fair Trading (consumer credit and estate agents cases)
 - The Registrar for Approved Driving Instructors
 - Transport for London (London service permits cases)
 - The opposing party in a postal services case
 - The Claims Management Services Regulator
 - The Gambling Commission
 - The Office of the Immigration Services Commissioner

- An Ethical Standards Officer or Local Standards Committee
- You will be told if any of them wish to appeal.
- The same rules about applying for permission to appeal apply to all “official” appeals as would apply to an appeal made by you. These rules are explained briefly in the sections “**Before you can appeal**” and “**How to appeal**”.
- If they are given permission to appeal by a First-tier Tribunal judge you will be told by the First-tier Tribunal office.
- You will be entitled to make comments in writing before the Upper Tribunal judge decides the appeal. You will also be able to ask for an oral hearing if you wish.

Before you can appeal

If you wish to challenge the decision of a **First-tier Tribunal** you must always have applied first to the First-tier Tribunal judge for permission to appeal. The First-Tier Tribunal will have told you how to do this.

Reasons (grounds) for appealing

You may only appeal to the Administrative Appeals Chamber of the Upper Tribunal if you can show that the First-tier Tribunal made an error of law.

Examples of where the tribunal may be wrong in law include:

- The tribunal did not apply the correct law or wrongly interpreted the law.
- The tribunal made a procedural error.
- The tribunal had no evidence, or not enough evidence, to support its decision.
- The tribunal did not give adequate reasons for its decision in the written statement of its reasons.

These are only examples and the tribunal may be wrong in law for some other reason not mentioned here.

The exception to this rule is in a Local Government Standards in England case where the individual, against whom the original complaint was made, may also appeal findings of fact, if their appeal is against

- (a) a decision that they failed to comply with a code of conduct, and/or
- (b) a decision imposing suspension or another sanction

If you have a representative, you should ask your representative to advise you about the grounds of appeal and to help you to complete the necessary form for appealing.

You must always give full details of your reasons for appealing

How to Appeal

In general

Once you have applied to the First-Tier Tribunal judge for permission to appeal to the Upper Tribunal -

- If the **First-Tier Tribunal judge refuses you permission, or does not admit your application because you were late, you may apply to an Upper Tribunal judge** for permission to appeal
- If the **First-Tier Tribunal judge grants you permission** to appeal, **you should send your appeal** to the Upper Tribunal.

Details of what you need to do are set out below. They are also set out in the special form for applying for permission or appealing and the Notes, which go with the form.

Suspension of the First-tier Tribunal Decision and “Stop Notices”

The decision of the First-tier Tribunal may be suspended either by that tribunal or by the Upper Tribunal. If you wish to apply to the Upper Tribunal for suspension, please say so on the application form and give your reasons. If the First-tier Tribunal issued or confirmed a stop notice (in an environment case) and you wish to apply for the stop notice to be suspended please fill in the question on the appeal form and give your reasons

How to apply to a judge in the Upper Tribunal for permission to appeal

- If the **First-Tier Tribunal judge** refuses your application for permission to appeal, **or does not admit your application because you were late**, you may apply for permission to appeal direct to the Upper Tribunal judge. **You must always have applied to the First-Tier Tribunal judge first.**
- The **First-Tier Tribunal** will send you a letter telling you that the judge has refused you permission to appeal or refused to admit your application. You should then send your application to the Upper Tribunal so that it is **received no later than one month** after the date on the letter notifying you of the First-Tier Tribunal judge's ruling. You should use the form which the First-Tier Tribunal office will give you or, if you cannot get a copy, just write a letter setting out your reasons for appealing.
- You should enclose the necessary documents.
 - A copy of the decision notice issued by the First-tier Tribunal
 - A copy of the written reasons for the tribunal's decision, if separate.
 - The letter from the First-tier Tribunal telling you that you have been refused permission to appeal or that your application has not been admitted
- You may ask for an oral hearing of your application for permission to appeal. If the Upper Tribunal judge grants your request you will be told the date and place normally at least 14 days in advance
- **If you are late in applying for permission** you must ask for an extension of time and explain why your application was not made in time. Unless the Upper Tribunal judge considers you should be granted an extension of time your application will not be admitted and **you will not be able to appeal.**
- If your application for permission to the First-tier Tribunal was not admitted because you were late you should explain why your application was not made in time. The Upper Tribunal judge may only admit your application if the judge considers it is in the interests of justice. If the Upper Tribunal judge does **not admit your application you will not be able to appeal**

- You may withdraw your application for permission to appeal at any time before it is decided. You just need to write a letter to the Upper Tribunal office. If you wish to ask for your application to be reinstated you should write to the Upper Tribunal office within one month. If you are late you may ask for an extension of time.

What happens if the Upper Tribunal judge refuses you permission to appeal?

- The office will send you a copy of the judge's ruling refusing you permission to appeal, including the reasons.
- If the Upper Tribunal judge decides your application for permission without an oral hearing and refuses you permission or gives permission on limited grounds or subject to conditions you may apply in writing within 14 days for the decision to be reconsidered at an oral hearing. –**see the section on oral hearings below**
- A refusal of permission to appeal may be set aside by the Upper Tribunal judge if there has been a procedural irregularity in the proceedings and the judge considers that it is in the interests of justice to do so. For example, if a document relating to the proceedings has gone astray or a party or his representative was not present at a hearing. An application to set aside must be made in writing **within one month**.
- There is no right of appeal to the Court of Appeal against a refusal of permission to appeal or refusal to accept a late application. You may also not appeal against the decision of an Upper Tribunal judge to grant permission to appeal to another party.

How to appeal to the Upper Tribunal once you have been granted permission to appeal

- If the First-Tier Tribunal judge grants you permission to appeal, the First-Tier Tribunal office will send you a letter telling you.

- You should then send your appeal to the Upper Tribunal so that it is **received no later than one month** after the date of the letter notifying you of the First-tier Tribunal judge's ruling. You should use the special form if you can. If not, just write a letter saying you wish to appeal and giving your reasons. **If you do not do this you may lose your opportunity to appeal.**
- If you are late you must ask for an extension of time and should explain why your appeal was not made in time. Unless the Upper Tribunal judge considers you should be granted an extension of time your appeal will not be admitted **and you will not be able to appeal.**
- If the Upper Tribunal judge grants you permission to appeal you will not normally have to make a separate appeal. You will be told by the office if you have to.

What happens once permission has been granted?

How will the appeal proceed?

- The Upper Tribunal judge will give reasons for granting permission to appeal (or make directions if permission was granted by the First-Tier Tribunal judge) and you will be told how the appeal is to proceed
- Once you have appealed to the Upper Tribunal, or an Upper Tribunal judge has granted you permission to appeal, the office will copy the appeal papers, including the notice of appeal to you and the other parties to the case (called respondents). There is a more detailed explanation of who may be a respondent in the section headed '**the Meaning of Words**'.
- If the other party to the appeal (see page 3) **has appealed**, the Upper Tribunal office will ask whether you have a representative and you (or your representative) will be asked if they wish to make comments on the appeal.
- You should note that all comments or observations made by one party will be copied to all the other parties. The office will do this by sending out letters explaining what, if anything, needs to be done next.

What you should do if you wish to withdraw your appeal

- If you have been granted permission to appeal, you need the agreement of the Upper Tribunal to withdraw, so you should explain your reasons. If you then want your appeal to be reinstated you should write to the Upper Tribunal office within one month. If you are late you may ask for an extension of time.
- If the other party to the appeal has appealed you cannot withdraw from the appeal. You do not need to take any part but a decision will be made whether or not you do.

Oral Hearings

Will there be an oral hearing of the appeal?

- You or your representative may ask for an oral hearing of your appeal. You should give your reasons so that the judge can take account of them when deciding whether to hold an oral hearing.
- If the appeal has been made by another party and you are a respondent and the judge decides to have an oral hearing you will be told about it and will be entitled to attend even if you did not ask for a hearing.
- An Upper Tribunal judge can direct an oral hearing even though no one has asked for one.

Arrangements for an oral hearing

- Hearings will usually be in London but can be held in other parts of England or in Wales, Scotland or Northern Ireland. Hearings may also be conducted by video-link. If a hearing in London would be difficult for you, you should explain why and what alternative arrangement would best suit you.

What will happen if there is an oral hearing

- Once the date for an oral hearing has been set, you will be sent a letter with details of the time and place, facilities available and a map to show you how to get there.
- You must normally be given at least 14 days notice of the date of a hearing but usually you will be given more.
- The Upper Tribunal judge will decide the procedure at any oral hearing bearing in mind that appeals to the Upper Tribunal are only on the ground of error of law
- The judge will not usually give a decision at the end of the hearing. It will be sent to you and all other parties after the hearing has taken place.
- Where a case raises a particularly important or difficult point of law, or the Chamber President considers it appropriate, it may be heard by three judges instead of one.

What you should do if you cannot attend an oral hearing

- If you or your representative wishes to ask for the hearing to be postponed the judge or registrar will deal with your request. You should write unless the time is very short in which case you may telephone.
- If you or your representative does not attend the hearing, the judge will decide whether to go ahead without you. If you are delayed on your journey to the hearing, you should make every effort to ring the office to let them know immediately.

The decision of the Upper Tribunal on the appeal

How and when is the appeal decided?

- If there is no oral hearing, the appeal papers will be sent to the Upper Tribunal judge to be decided once all the parties have made their written comments in accordance with the directions made by the judge.

- **The appeal should normally be decided within 20 weeks of the date permission to appeal was granted by the Upper Tribunal judge (or of the date the appeal was received), but it may be longer than that, for instance, if there is an oral hearing or if the case is complex.**

The Judge's decision

- The Upper Tribunal judge may give a decision orally at a hearing but will not normally do so.
- In any event, the Upper Tribunal must always send you a copy of the judge's decision in writing.
- The judge must give reasons for the appeal being allowed or dismissed unless all the parties have agreed otherwise.
- The Upper Tribunal office will send you a copy of the judge's decision. They also send a copy to your representative if you have one and to the other parties to the appeal.
- If the judge has sent your case back to be re-decided by the First-Tier Tribunal, you will receive a letter from that office. If you want to have an oral hearing at the new tribunal, you should say so on the form the First-Tier Tribunal office will send you.
- If the Upper Tribunal judge dismisses your appeal, or the result of the appeal is not wholly favourable to you, you have the right to apply for permission to appeal to the relevant appellate court. The office will send you a letter telling you about your right to appeal. There is more detail about this in the section **"What to do if you are dissatisfied with the decision of an Upper Tribunal judge"** – see below.

Particular issues which may arise on appeals

How much will it cost to appeal?

- There is no fee payable for applying for permission to appeal or for appealing to the Administrative Appeals Chamber of the Upper Tribunal.
- The Upper Tribunal may order one party to pay another party's costs but only if the case has been conducted unreasonably.

Representatives

- It is open to you to have a representative, whether legally qualified or not, to help you fill in the appeal form, deal with letters from the Upper Tribunal office, make and respond to submissions and appear in front of the judge for you if there is an oral hearing.
- If, for any reason your solicitor or other representative stops acting for you, you must notify the Upper Tribunal office otherwise the office are entitled to assume that you are still represented and will send documents to the representative and not to you.

Is legal aid available?

- Legal aid is not generally available within these jurisdictions

What to do if you are dissatisfied with the decisions of the Upper Tribunal

In general

- You may apply to the Upper Tribunal for a decision on an appeal to be set aside on certain limited procedural grounds.
- You may appeal to the relevant appellate court against the decision of Upper Tribunal. **You need permission first.**

How to apply for the decision of the Upper Tribunal to be set aside

- The Upper Tribunal has the power to set aside its decision in limited circumstances where there have been certain procedural errors. If you think there has been a procedural error you should send a written application to set aside so that it is received no later than **one month** after the date of the office letter sending you the Upper Tribunal decision. You should give your reasons.

How to appeal to the relevant appellate court against an Upper Tribunal decision

- The relevant appellate court may be the Court of Appeal in England and Wales, the Court of Session in Scotland or the Court of Appeal in Northern Ireland. Before deciding an application for permission to appeal the Upper Tribunal will specify which of these courts will be the relevant appellate court.
 - There is a right of appeal to the relevant appellate court against the decision of an Upper Tribunal judge if it is wrong in law. You must have permission from the Upper Tribunal, or if the Upper Tribunal refuses, from the court
 - An application for permission to appeal to the relevant appellate court must be received by the Upper Tribunal **within one month of the latest of-**
 - ❖ Written notice of the decision being sent to you, or
 - ❖ your being notified of amended reasons for, or a correction of, the decision following review (see below), or your being notified that an application to set aside (made in time or with an extension of time) has not been successful.
- The time limit may be extended by the Upper Tribunal judge
- You must make your application in writing identifying the alleged error or errors of law and stating the result you ask for.

How the Upper Tribunal considers your application for permission to appeal

- On an application for permission to appeal, the Upper Tribunal may review the decision and may set it aside, amend the reasons for it or correct it if-
 - ❖ when making the decision the judge overlooked a legislative provision or binding authority which could have had a material effect on the decision, or
 - ❖ since the decision, a higher court has made another decision binding on the Upper Tribunal which, if made before the decision, could have had a material effect on it.

- The Upper Tribunal must notify the parties in writing of the outcome of any review.
- If the Upper Tribunal takes any action on review without first giving every party an opportunity to make representations it must allow that party to apply for the action to be set aside and the decision to be reviewed again.
- If the Upper Tribunal does not review, or on review decides not to alter the decision, it must decide whether to grant permission to appeal to the relevant appellate court. It must record the decision in writing and give reasons for refusing permission. It can give permission in respect of only some of the grounds put forward, but if so, must give reasons for its refusal of the other grounds.
- If you are refused permission to appeal by the Upper Tribunal you may renew your application in the relevant appellate court .
- If the Upper Tribunal grants you permission you will need to appeal to the relevant appellate court.
- The time limits are short so if you wish to renew your application or to appeal you should contact the relevant appeal court office as soon as possible. Contact details will be provided when the Upper Tribunal notifies you of the outcome of your application for permission to appeal.

If you wish to appeal to the relevant appellate court, you are advised to take legal advice, as you may become liable for costs.

The Meaning of Words

The following words are either used in this leaflet or may be used in documents you receive from the office of the Administrative Appeals Chamber of the Upper Tribunal.

- An **appeal** is made by a person (or other party to the appeal) who has been given **permission to appeal**

- An **appellant** is the person, or other body, who is appealing, or applying for permission to appeal. Often, however, a person who is applying for something, including permission to appeal, is called an **applicant**.
- The **Court of Appeal in London** is a higher court (for cases in England and Wales) to which you may be able to appeal against an Upper Tribunal decision if it is specified by the Upper Tribunal as the relevant appellate court .
- The **Court of Appeal in Belfast** is a higher court (for cases in Northern Ireland) to which you may be able to appeal against an Upper Tribunal decision if it is specified by the Upper Tribunal as the relevant appellate court.
- The **Court of Session in Edinburgh** is a higher court (for cases in Scotland) to which you may be able to appeal against an Upper Tribunal decision if it is specified by the Upper Tribunal as the relevant appellate court.
- **Oral hearings** are described in the section titled “**What happens once permission has been granted**”.
- **Permission to appeal** is the first essential step in the appeal process. If you do not have **permission** you will not be able to **appeal**.
- **A point of law, error of law and wrong in law**: examples are given in the section titled “**Reasons for appealing**”. You must bear in mind that there may be other points of law and if you are uncertain you may like to seek advice as described in that section.
- **A procedural error** is something that has gone wrong with the procedure in an appeal. The procedural rules in relation to appeals to the Upper Tribunal are set out in the Tribunal Procedure (Upper Tribunal) Rules 2008 as amended. However, only certain limited errors give you the right to have a decision **set aside**. These are set out in rule 43 of the Rules.
- **A Registrar** is a barrister or solicitor who works in the Upper Tribunal and who is authorised to deal with certain procedural matters. A **judge** will always decide an **application for permission** to appeal or an **appeal**.
- **A Response** contains the observations made by a **respondent** in a written document answering the points made in an appeal or the points that the judge has raised in a **Direction**. **A Response** may also be called **observations** or **submissions**.
- **A respondent** is a person who has a right to take part in or oppose an **appeal** that has been made to the Upper Tribunal
When an individual appeals to the Administrative Appeals Chamber of the Upper Tribunal, the respondent will normally be:
 - ❖ The Office of Fair Trading in consumer credit and estate agents cases.
 - ❖ The Registrar for Approved Driving Instructors for approved driving instructor cases.
 - ❖ Transport for London for London service permits cases.
 - ❖ The opposing party in a postal services case.
 - ❖ The Claims Management Services Regulator
 - ❖ The Gambling Commission.
 - ❖ The Office of the Immigration Services Commissioner.
 - ❖ An Ethical Standards Officer or Local Standards Committee.*When any of the above have appealed:*
 - ❖ The individual who won the case at the appeal tribunal will be the respondent.
 - ❖ There may also be other respondents, depending on the type of case. You will be told who they are
- **A Submission** is made by any party in a written document answering the points made in an appeal or the points that the judge has raised in a **Direction**. **Submissions** may also be called **observations**

General Note

A consolidated version of the law governing the procedure on applications to the Upper Tribunal for permission to appeal and appeals is set out in the following document:

**The Tribunal Procedure (Upper Tribunal) Rules 2008 - SI 2698/2008
showing amendments made by S.I. 2009/274 and S.I. 2009/1975**

which can be found at the bottom of the following webpage, within the 'Publications' section:

<http://www.tribunals.gov.uk/Tribunals/Rules/tribunalprocedurecommittee.htm>

Alternatively, the individual statutory instruments can be found using the search function at: <http://www.opsi.gov.uk>

Further information can be found by consulting part 1 of the Tribunals Courts and Enforcement (TCE) Act 2007 at:

http://www.opsi.gov.uk/acts/acts2007/ukpga_20070015_en_1