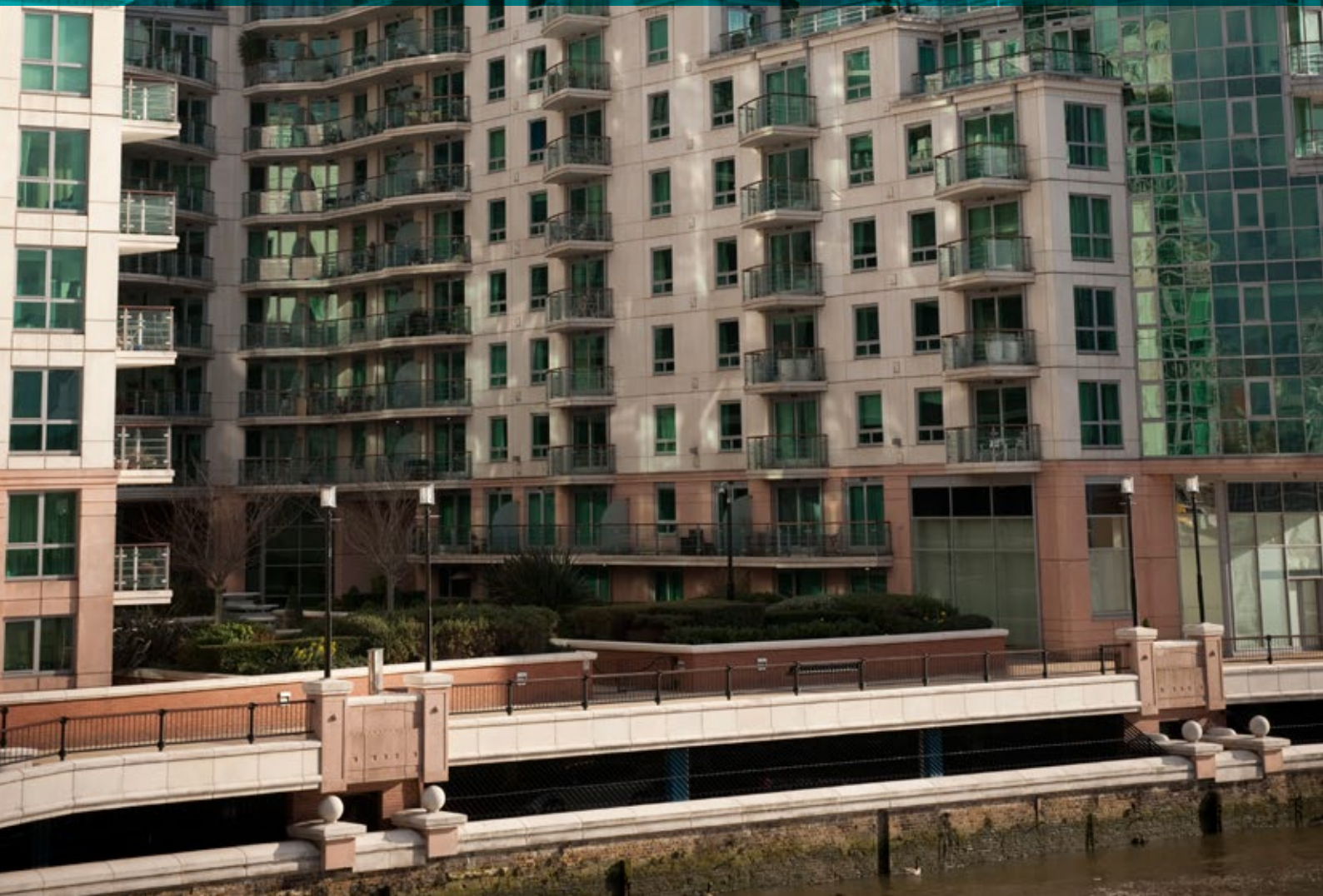




ADVICE NOTE

APPOINTING A MANAGING AGENT BY TRIBUNAL

How to go about appointing a managing agent by Tribunal



Note:

As the leading trade body for residential leasehold management, ARMA is also an important resource for leaseholders. Our Advice Notes cover a range of topics on the leasehold system to help leaseholders understand their rights and responsibilities and ultimately get the most out of living in their flat.

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SUMMARY

Under Section 24 of the Landlord and Tenant Act 1987, any leasehold flat owner has the right to apply to a Tribunal to change their managing agent if they're unhappy with the current one. But it's normally a last resort — there are time and cost implications and the appointment will only be granted if you can prove fault with the current management.

The process can be initiated by a single leaseholder or a group, and it's a good alternative when there's no enthusiasm in the block for going down the Right to Manage route.

In this Advice Note we'll look at how you can go about appointing a new managing agent through a Tribunal.

WHAT TO DO IF YOU'RE UNHAPPY WITH THE WAY YOUR BLOCK IS BEING MANAGED

There are several options to consider before thinking about appointing a managing agent by Tribunal.

You should first of all establish who's at fault. It's not always the managing agent. It could be your landlord or Residents' Management Company (RMC).

If it is your managing agent, you should complain directly to them first. If they're an ARMA member they must have a fully published complaints procedure, and give you the right to complain to an independent ombudsman if you're not satisfied with the outcome.

If there's an RMC for your block you should complain to the resident directors. They are responsible for the managing agent's activities and have the power to remove a firm they have appointed.

If there isn't an RMC in place, you could consider the Right to Manage. This gives a group of leaseholders the right to take over the management of their block. You need at least 50% of leaseholders to support the initiative and it will cost some money — but it does mean you won't have to go a Tribunal to prove fault with the current landlord or agent.

If you've complained to your landlord, RMC directors and the managing agent, and the problems still exist then it could be time to consider applying to a Tribunal to appoint a new managing agent. To appoint a new agent for your block you need to apply to the First Tier Tribunal (Property Chamber) in England or the Leasehold Valuation Tribunal in Wales. For ease, we'll just refer to both as 'the Tribunal'.

YOU SHOULD ALSO MAKE SURE YOU GET SOME GOOD PROFESSIONAL ADVICE BEFORE GOING DOWN THE TRIBUNAL ROUTE, AND CONSIDER APPOINTING A SOLICITOR BECAUSE YOU WILL NEED TO PROVE FAULT WITH THE CURRENT MANAGEMENT.

GETTING STARTED

First off, you should check that you're eligible to apply to the Tribunal. You need to be a long leaseholder with a lease that was originally granted for over 21 years. To qualify, your block must contain at least two flats. Leasehold houses cannot exercise this right.

The right to go to a Tribunal to appoint a manager is not available where the landlord is:

- A local authority
- The Commission for New Towns
- An urban development corporation
- The Housing Corporation
- A registered housing association
- A fully mutual housing association or a charitable housing trust
- Resident on the premises which is a converted (not purpose-built) property, and less than half the flats are let on long leases

You should also make sure you get some good professional advice before going down the Tribunal route, and consider appointing a solicitor because you will need to prove fault with the current management.

Serving notice

Before you apply to a Tribunal you must serve a 'Section 22 notice' on your landlord — not on your managing agent. The notice must state the faults of the current management (see 'what you need to prove' below).

If the faults are capable of being remedied then you must give your landlord a reasonable time to do so. What constitutes a reasonable time will depend on the circumstances but if you're not satisfied that the faults have been remedied within that time, then you can make an application to the Tribunal.

WHAT HAPPENS NEXT

Once you've served the Section 22 notice, you will have to go through the following steps:

1. You'll need to complete the application form for the Tribunal — it's quite straightforward and not difficult to complete. Go to www.gov.uk/housing-tribunals
2. You'll be required to attend a pre-trial review to set out the steps that need to be taken prior to the hearing of your application, and a hearing date will be set.
3. You'll need to provide a 'statement of case', which will expand on the faults set out in the Section 22 notice and your application. You'll be expected to give reasons and evidence for claiming these faults.
4. If your landlord or RMC resists your application (not all of them do), they will provide a statement of case in reply, setting out why they resist.
5. You'll need to nominate an alternative managing agent who will be interviewed by the Tribunal. They will have to produce a management plan and evidence of their professional indemnity insurance policy. You will also need to provide a draft Management Order (you may need legal advice on this).
6. You'll have to produce a bundle of all the documents the Tribunal will need to consider your application and they will also use it to direct you at the pre-trial review. The documents should arrive at the Tribunal a week or so before your hearing.

WHAT YOU NEED TO PROVE

The Tribunal will look at a number of factors when considering the case and they'll need to be satisfied that:

1. The landlord or current managing agent is in breach of their obligations under the lease relating to the management of the premises
2. The service charges have been unreasonable
3. The landlord or agent is in breach of the Royal Institution of Chartered Surveyors' (RICS) Service Charge Residential Management Code, or the Association of Retirement Housing Managers' (ARHM) code of practice for retirement leasehold blocks
4. The landlord or manager has failed to comply with Section 42 of the Landlord & Tenant Act 1987, which states they must hold service charge money in trust
5. Other circumstances exist that justify the appointment of a new manager

You only need to prove one of the grounds above but you must also satisfy item 5: that it's just and convenient to appoint a new manager in the circumstances.



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FURTHER INFORMATION

- The Leasehold Advisory Service is a government funded organisation that offers free legal advice on the leasehold system. Visit them at: www.lease-advice.org
- To find out more about the First Tier Tribunal (Property Chamber) in England visit: www.gov.uk/housing-tribunals
- To find out more about the Leasehold Valuation Tribunal in Wales visit: rpt.wales.gov.uk

Note:

Whilst every effort has been made to ensure the accuracy of the information contained in this ARMA Advisory Note, it must be emphasised that because the Association has no control over the precise circumstances in which it will be used, the Association, its officers, employees and members can accept no liability arising out of its use, whether by members of the Association or otherwise.

The ARMA Advisory Note is of a general nature only and makes no attempt to state or conform to legal requirements; compliance with these must be the individual user's own responsibility and therefore it may be appropriate to seek independent advice.