

Q&A: A New (Potentially Temporary) Home for Unopposed Business Lease Renewals

As part of the initiative to distribute property cases between the courts and the tribunal, from 1 December 2017, all unopposed business lease renewal claims (Claims) that are issued in the County Court at Central London (CCCL) will be transferred to the First Tier Tribunal as part of a pilot scheme lasting for one year.

All existing Claims in the CCCL will also be transferred. This is not a national pilot, which means that any Claims falling outside of the CCCL will continue as before in the appropriate county court.

1. Can I choose whether my Claim is referred to the First Tier Tribunal?

No. All Claims issued in the CCCL will be transferred to the tribunal. However, for the purposes of this pilot, only Claims relating to a property falling within the CCCL's jurisdiction will be transferred under the pilot scheme.

2. Will cases referred to the First Tier Tribunal be more likely to be referred to PACT for valuation?

No. All Claims can be deferred for a period of three months at the issuing stage, in which to consider referrals to PACT. After this period, the tribunal has stated that no further stays will be granted for this purpose, save for in exceptional circumstances. This is a stricter approach to that adopted by the county courts.

3. Will surveyors be involved in assessing valuation in the First Tier Tribunal?

Yes. A valuer, as an assessor, will sit alongside the judge at hearing and, in the same way as is done in the county court, parties will submit and exchange expert valuation reports. Pursuant to the Standard Directions (hereinafter), expert reports are filed at a much earlier stage in the First Tier Tribunal than typically seen in the county court.

4. Will the Civil Procedure Rules still apply?

Yes. The Civil Procedure Rules will continue to apply to the proceedings. If the Claim proceeds to a hearing, the tribunal judge will sit as a county court judge with an appointed tribunal valuer. The fact that the judge will be assisted by a valuer will hopefully provide comfort to those concerned about the inability to refer the Claim to PACT after the issuing stage.

5. Can the First Tier Tribunal award costs?

Yes. As the Civil Procedure Rules continue to apply, the First Tier Tribunal judge will have the same ability to award costs as a county court judge. The tribunal will also still have the benefit of full cost shifting powers.

6. Will it be quicker to have a case resolved in the First Tier Tribunal?

Substantially so! Claims in the First Tier Tribunal are expected to take no more than 20 weeks from the issue of the claim to the final hearing. There will be no case management conferences and no opportunity to stay the proceedings after the first opportunity given upon issuing.

The First Tier Tribunal Standard Directions will commence immediately after the Claim is issued, and the first direction will fall just two weeks later. As a result, the tenant will only have one opportunity to amend the draft lease and experts' valuation reports will become due very soon thereafter. This does not mean, however, that negotiations can continue between the parties throughout the proceedings in the background.

7. Does the First Tier Tribunal have different case management powers?

As aforementioned, the Civil Procedure Rules will continue to apply to these claims in the usual way. However, you must be aware of the Standard Directions that will apply in the First Tier Tribunal. In line with what we are used to, it remains the case that specific disclosure directions should be unnecessary on the basis that the parties should disclose all relevant documents at an early stage.

Failure to comply with these directions could mean striking out of the claim for a claimant, or being barred from the litigation or having terms determined against you for a defendant.

8. What will the benefits be?

Your Claim will be heard by a judge who has greater knowledge and experience of property matters, with the assistance of an assessor valuer. Costs will potentially be saved that may have otherwise been incurred in endless stays being agreed and, on occasion, in attending unnecessary case management conferences and directions hearings.

9. Are there any disadvantages to my Claim being held in the First Tier Tribunal?

Not necessarily. Whilst it is difficult at this early stage to tell whether the pilot scheme will be successful, one potential disadvantage is that more claims will inevitably proceed to trial, as the process to reach this stage is much shorter and cannot be stayed. As trials are typically the most expensive part of the litigation, parties will need to be better prepared than they would previously have needed to be in order to avoid any abortive trial costs and counsel brief fees.

10. Any other key differences to the county court?

It has been explicitly stated that, due to the amount of Claims that settle at a late stage, Claims will be listed at the same time as a number of other Claims over a two-day period. Priority of being heard will be decided by reference to those parties who have complied with all directions and delivered hearing bundles on time, so we will be rewarded for our good behaviour, it seems. Otherwise, you may be waiting in the tribunal building until you are called in for your hearing.

Interestingly, tribunal decisions will be published on the Justice website, unless a written request is made against publication.

In summary, it appears that this pilot may signal the start of a sea change in the case management of unopposed lease renewal claims. The tribunal has sought to lay down the law in terms of strict compliance with the directions, sanctions for failures and timescales in determining Claims. Time will tell whether the distribution of these Claims means that there is sufficient resource to follow through on these promises.

Should you have any further queries in respect of this pilot or lease renewal claims generally, please do not hesitate to contact our Real Estate Litigation team.

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