PRACTICE DIRECTIONS

UPPER TRIBUNAL (LANDS CHAMBER)

**** 2020

TABLE OF CONTENTS

Practice Directions

Upper Tribunal (Lands Chamber)

These Practice Directions are made by the Senior President of Tribunals in the exercise of powers conferred by the Tribunals, Courts and Enforcement Act 2007 and with the agreement of the Lord Chancellor as required under section 23(4) of the 2007 Act.

1.0 Commencement, application and interpretation

1.1. These Practice Directions—

(a) come into force on […]

(b) apply to proceedings in the Lands Chamber of the Upper Tribunal

(c) supplement the Rules and should be read with them

1.2 In these Practice Directions—

"the Tribunal" means the Upper Tribunal (Lands Chamber)

"the Rules" means the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 (as amended from time to time) and "rule", followed by a number, is the rule bearing that number in the Rules

a "party" means any person taking an active part in a case in the Tribunal

2.0 Introduction

2.1 These Practice Directions explain the Tribunal's usual approach to managing different types of dispute. They apply to all parties, including anyone representing themselves in the Tribunal.

2.2 The Tribunal's overriding objective is to deal with all cases fairly and justly.

2.3 All parties are required to co-operate with the Tribunal, and with each other, to help the Tribunal achieve its objective.

2.4 All parties are required to comply with these Practice Directions unless the Tribunal gives different directions.

2.5 The Tribunal is aware of the difficulties which unrepresented parties may face, and it takes them into account when it applies the Rules and these Practice Directions.

2.6 All cases in the Tribunal will be one of the following types:

1) an appeal from a decision of another tribunal, to which Part 4 of the Rules applies (see section 7 below);

2) an application for permission to appeal a decision of another tribunal, to which Part 3 of the Rules applies (see section 10 below);

3) the reference of a dispute to the Tribunal under a statute or agreement, (including an appeal against a certificate of appropriate alternative development under section 18 of the Land Compensation Act 1961 or an application under the Electronic Communications Code) to which Part 5 of the Rules applies (see sections 13 and 14 below);

4) an application to discharge or modify a restrictive covenant affecting land under section 84 of the Law of Property Act 1925, to which Part 6 of the Rules applies (see section 15 below);

5) proceedings transferred to the Tribunal by another court or tribunal, to which Part 8 of the Rules applies (see paragraph 3.20 below).

3.0 Case management

3.1 The purpose of case management is to enable all disputes to be determined fairly and without unnecessary delay or expense.

3.2 The Tribunal publishes standard forms of case management directions on its website which can be adapted to suit any case. Parties are encouraged to use these forms when agreeing suitable directions for their own case. The Tribunal will take any directions agreed by the parties into account when giving its own directions.

3.3 Every case will be assigned by the Tribunal to one of four case management procedures:

1) the standard procedure (see paragraph 3.5 below);

2) the simplified procedure (see paragraph 3.8 below);

3) the special procedure (see paragraph 3.12 below);

4) the written representations procedure (see paragraph 3.17 below).

The Tribunal may re-assign a case to a different procedure at any time.

3.4 At the start of a case the parties will state which procedure they would prefer to follow and the Tribunal will take their preferences into account when assigning the case. [It might be helpful at this point to cross-refer to paragraph 16.5 by way of encouraging parties to consider ADR prior to or immediately after the reference is made]

The standard procedure

3.5 Most cases are managed under the standard procedure. It is used in cases where a hearing is required and another procedure is not more appropriate.

3.6 Under the standard procedure the Tribunal will give standard case management directions (by letter or order) to prepare the case for hearing. It will set a date for the final hearing as soon as it can, and will first ask the parties when they are available. If more complicated directions are required the Tribunal may hold a case management hearing or transfer the case to the special procedure (see paragraphs 3.13 to 3.16 for case management hearings).

3.7 Parties may apply for additional or different directions at any time (see section 4.0 below for information about how to apply for directions).

The simplified procedure

3.8 The simplified procedure is used for cases in which no substantial issue of law or valuation practice or dispute of fact is likely to arise. It is often suitable where the amount at stake is modest. The hearing will be relatively informal, evidence will not usually be taken under oath and the hearing will be completed in a single day. This procedure will not normally be appropriate for cases involving more than one expert witness on each side. It is not used for appeals from the First-tier Tribunal or for applications to discharge or modify restrictive covenants.

3.9 When a case has been assigned to the simplified procedure the Tribunal will give standard directions by letter. After each party has provided a statement of case ~~the~~ [Follow with "in accordance with the standard directions"?]

Tribunal will set a date for the final hearing, normally about three to six months ahead. The parties will be told to exchange copies of any documents they want to rely on, to provide a written summary [Is the reference to a written 'summary' intentional? Is a mere summary required or something more?] of the evidence they or their witnesses want to give, and to identify any expert they want to give evidence. If an expert witness is to give evidence their written report must be sent to the Tribunal and to the other party not less than 14 days before the hearing.

3.10 Costs will not be awarded in cases under the simplified procedure unless a party has behaved unreasonably [As discussed at our meeting on 19 December, while the no costs regime means the simplified procedure is popular in rating and other areas, it is unfortunately a deterrent in compensation references where the procedure would otherwise be suitable. A claimant with a dispute amounting to (say) £100K is unwilling to give up the default position of being entitled to costs up to a sealed offer being made. We discussed the possibility of the Tribunal encouraging simplified procedure style directions within the standard procedure, perhaps by including a version in the standard forms referred to in paragraph 3.2.], but the successful party may ask for an order for reimbursement of any fees paid to the Tribunal.

3.11 Avoiding the risk of an adverse costs order is not a good reason to request the simplified procedure in a case for which it is not otherwise suitable. Parties may agree not to seek costs from each other in cases assigned to other procedures and the Tribunal has power to limit costs or to give costs protection in appropriate cases. (See section 23 below for information about costs in the Tribunal).

The special procedure and case management hearings

3.12 The special procedure is used for cases which require closer management because of their complexity, value or wider significance. It can also be suitable where a party has no professional representation, where parties are not cooperating with each other or with the Tribunal, or for categories of case which would benefit ["would otherwise benefit"?] from close supervision. Cases assigned to the special procedure will be managed from an early stage by the Judge or Member expected to preside at the final hearing.

3.13 In all cases assigned to the special procedure the Tribunal will arrange a case management hearing (usually after statements of case have been exchanged). The purpose of a case management hearing is to identify the issues in the case,

to consider how they can best be resolved and to give directions tailored to the requirements of the case. At the case management hearing a fixed date or a hearing window will usually be given for the hearing of any preliminary issues, or for the final hearing.

3.14 Case management hearings are most effective where the parties have first considered between themselves how they would like the case to proceed. Before any case management hearing the parties should therefore discuss and agree as many directions as they can. These may include directions for the determination of preliminary issues, if that might enable the case to be resolved more quickly or at significantly less expense. If any directions cannot be agreed, each party must notify the other party and the Tribunal in advance of the directions it will ask the Tribunal to make. [As part of the position statement? Or separately? What does "in advance" mean?]

3.15 If suitable directions have been agreed by the parties the Tribunal will often dispense with a case management hearing or direct that it take place by telephone. In complex cases it may be helpful for a case management hearing to take place even if all directions have been agreed. The Tribunal is more likely to agree to dispense with a case management hearing if directions are agreed in good time before the hearing.

3.16 Not less than three working days before a case -management hearing each represented party must (and an unrepresented party may) [Would it not be appropriate to require all parties to provide a position statement? It may be very helpful for the Tribunal and the other party to have some idea of what an unrepresented party intends to say. Their unrepresented status could of course be taken into account when considering the failure of the party to comply.] send the Tribunal and the other parties a position statement. This statement should briefly summarise the subject-matter of the case, identify the issues and state the number and specialisms of any expert witnesses expected to give evidence, so far as can be done at that stage. Where both sides are professionally represented a joint position statement may usefully be provided. An agenda of the matters to be considered at the case management hearing should also be provided.

The written representations procedure

3.17 Cases which are capable of being decided without a hearing will usually be allocated to the written representations procedure. These include disputes over the meaning of a document, a simple question of law, or a straightforward valuation issue. The Tribunal will allocate a case to this procedure if the issues make oral evidence and argument unnecessary. The wishes [And resources perhaps] of the parties will be considered before allocation but the Tribunal may opt for the written representation procedure even if one party [Or both parties?] requests a hearing.

3.18 Directions will be given for both parties to explain their case in writing and to respond to the arguments of the other party. The Tribunal will usually direct the claimant or appellant to explain their case first (unless they have already done so sufficiently), and the respondent to reply to it; the claimant or appellant will then be allowed to answer the respondent's case.

3.19 The Tribunal will direct each party to identify any documents they wish the Tribunal to take into consideration and to provide copies to the Tribunal and the other party.

Cases transferred to the Tribunal

3.20 A case or issue may be transferred to the Tribunal by another tribunal or a court (normally because of its complexity, value or importance). A case which is transferred will normally be assigned to the special procedure.

3.21 Where a case has been transferred to the Tribunal by the First-tier Tribunal (Property Chamber) the procedural rules of the Property Chamber will continue to apply to the case unless the Tribunal gives a different direction.

4.0 Applying for case management directions

4.1 Any party may apply to the Tribunal for case management directions e.g. for more time to prepare a document, for permission to rely on an amended statement of case or additional expert evidence, or for the disclosure of documents by another party. Before an application is made to the Tribunal other parties must be given a proper opportunity to agree to the proposed direction, or to suggest an alternative.

4.2 Correspondence or emails between parties about proposed directions should not be copied to the Tribunal except when an application is made, and then only those which it is necessary for the Tribunal to consider should be provided.

4.3 Unless it is made during a hearing, an application for directions must be made in writing, including an explanation why the direction is required. Before an application is made a copy of the intended application, including the explanation, should be sent to all other parties. If an agreement is not reached within a reasonable time, the application may then be made to the Tribunal which will usually give its decision without a hearing.

4.4 When an application is made to the Tribunal for directions a copy must be sent to every other party, and they must be told they have 10 days [10 days seems excessive when the other interested party will have already had a "reasonable time" to consider the application in draft before it was made.] to inform the Tribunal of any objection (unless the Tribunal directs a shorter period). The Tribunal must be informed in the application that this has been done.

4.5 If any party objects to the proposed direction, or wishes to suggest an alternative or additional direction, they should explain their objection to the Tribunal in writing as soon as possible and in any event within 10 days of receiving the application (or any shorter period the Tribunal directs).

4.6 If a request for additional directions is urgent, the Tribunal should be told in a covering letter or email. The Tribunal may then shorten the time allowed for other parties to explain any objection.

4.7 An application for more time to take any procedural step should be made in good time before the expiry of the time already allowed, and must include an explanation why the original time limit cannot be complied with. If an application for more time is made after a time limit has expired, the reasons for the failure to comply with the original time limit must be explained. If no good reason is provided the Tribunal is unlikely to allow additional time.

5.0 Statements of case

5.1 Every party in proceedings before the Tribunal must explain their case in a document called a statement of case. In a straightforward case a statement of

case may be as simple as a letter in which the party explains in their own words what the dispute is about and what outcome they are asking for; in a complex case it is likely to be a more formal legal document. The same basic requirements apply to all statements of case.

5.2 The purpose of a statement of case is to identify the relevant facts, the issues to be determined by the Tribunal, and the outcome which the party is asking for. Each statement of case must set out the facts on which the party relies. The legal principles on which a party relies should also be briefly identified, but the statement of case is not the place to debate legal issues in detail.

5.3 A statement of case must be concise and must contain only those particulars necessary to enable the Tribunal and the other party to identify the issues and to understand the basis, in fact and law, of the case that is being advanced. [Is this a little repetitive of the contents of para 5.2 preceding? It should be arranged in separate consecutively numbered paragraphs and, so far as possible, each paragraph should contain no more than one allegation. [Is "allegation" the right word here? Contention? Assertion? , Agreed – this is not as 'plain english' as the remainder of the document]

~~5.3~~5.4 The document should explain the party's case on a point by point basis to allow a point by point response.

~~5.4~~5.5 Statements of case will rarely need to be longer than 25 pages, and should not be unless the Tribunal has already given permission for a longer document. An application for permission to rely on a lengthier statement of case may be made before the commencement of proceedings and should be accompanied by a draft of the document for which consent is sought. [I personally think this an unnecessarily bureaucratic introduction. Surely it is enough for the PD to make clear that 25 pages is the expectation and that any party exceeding this without good reason will be criticised and may be required to re-plead? (or something similar to paa 5.6 below)]

~~5.5~~5.6 Documents must not be annexed to a statement of case unless they are necessary to identify the issues (such as a plan identifying the land to which a reference relates). Uncontentious documents, such as notices or correspondence, should

not be annexed to a statement of case. In the case of a lengthy document, such as a compulsory purchase order, only the relevant part should be annexed.

~~5.6~~5.7 Statements of case which are too lengthy or which include unnecessary documents may be returned by the Tribunal with directions to provide a replacement which complies with this Practice Direction.

~~5.7~~5.8 A party who considers that another party has not provided a statement of case complying with this Practice Direction may apply to the Tribunal for a direction that a further statement of case be provided.

6.0 Disclosure of documents

6.1 The exchange of copies of documents which the parties may have in their possession or control and which are relevant to the issues in the proceedings is known as "disclosure". The duty of all parties to cooperate with each other and with the Tribunal to ensure that cases are disposed of as quickly and cheaply as possible is particularly important in relation to disclosure.

6.2 It is not the practice of the Tribunal to direct disclosure of documents in every case.

6.3 After statements of case have been exchanged parties should discuss between themselves what documents ought to be disclosed and when disclosure should take place. Parties must cooperate by disclosing to each other any documents on which they intend to rely, and by providing copies of relevant documents which another party may wish to rely on.

6.4 The scope of disclosure should be defined by reference to issues in the proceedings and restricted to what is necessary to enable the issues to be determined fairly and at proportionate expense. Where possible, requests for disclosure should be made in respect of specific documents rather than broad categories. Parties should not agree to provide "standard disclosure" without defining the issues to which it is to relate and without considering whether some more limited form of disclosure would be sufficient.

6.5 If a party wishes to see a relevant document a copy should be provided unless there is a good reason for withholding it. Disproportionate requests for

disclosure should not be made, and indiscriminate disclosure of documents of limited relevance must be avoided.

6.4 If agreement cannot be reached on disclosure, or if a party seeks disclosure of additional documents which is resisted, an application should be made to the Tribunal for a direction for disclosure.

7.0 Appeals - Introduction

7.1 There are three types of appeal in the Tribunal:

1) Appeals against a decision of the First-tier Tribunal (Property Chamber) in England, or a decision of a leasehold valuation tribunal or a residential property tribunal in Wales (all of these tribunals will now be referred to as "the First-tier Tribunal") (see section 9 below).

2) Appeals against a decision by the Valuation Tribunal for England or for Wales (which will now be referred to as "the Valuation Tribunal") concerning non-domestic rates (see section 11 below).

3) Appeals against a decision of a local planning authority to grant or refuse a certificate of appropriate alternative development under section 18 of the Land Compensation Act 1961 (see section 12 below).

7.2 Permission to appeal is required for any appeal against a decision of a First-tier Tribunal. Permission is not required for an appeal against a decision of the Valuation Tribunal. See section 10 on permission to appeal.

7.3 Bringing an appeal does not automatically suspend the effect of a decision of a First-tier Tribunal. When the Tribunal receives a notice of appeal or request for permission to appeal against a decision of a First-tier Tribunal it has power to suspend the effect of the decision until after the conclusion of the appeal; this is called "a stay" of the decision. Any request for a stay of a decision should be made prominently in a covering letter when the notice of appeal or application for permission to appeal is submitted.

Notice of appeal

7.4 Every appeal is commenced by filing a notice of appeal using the form available on the Tribunal's website (unless the Tribunal has directed that a previous application for permission to appeal may take the place of a notice of appeal).

7.5 A copy of the decision of the lower tribunal must be provided with the notice of appeal. Where permission to appeal has been granted by a First-tier Tribunal, a copy of that permission should also be provided.

7.6 The appellant must provide a separate statement of case with the notice of appeal (called the "grounds of appeal") explaining why the appellant considers the decision of the lower tribunal was wrong. The grounds of appeal should comply with section 5 of this Practice Direction.

7.7 If permission to appeal is not required, or if it has already been given by the First-tier Tribunal, a notice of appeal must be filed with the Tribunal within 1 month (28 days in the case of appeals from the Valuation Tribunal) of the date on which the decision appealed against or the decision giving permission to appeal was *sent* to the appellant, which will be taken to be the date on the First-tier Tribunal's covering letter.

7.8 The Tribunal may extend time for filing a notice of appeal, but will not usually do so unless the delay was insignificant or there was a good reason for the appellant's failure to file the notice in time. An application to extend time must be made when the notice of appeal is filed. It must explain the reasons for the delay and provide any supporting evidence (such as a medical report explaining why the applicant was unable to comply with the time limit).

7.9 If an extension of time is needed because an appellant wants more time to prepare grounds of appeal, the notice of appeal should be submitted within the time permitted together with an application for more time to provide the grounds. If more time is needed in a case where permission to appeal has been granted by a First-tier Tribunal, a copy of the application for permission to appeal made to that tribunal should be provided with the notice of appeal, and a request should be made for further time to provide additional grounds.

7.10 If an appeal is urgent, the Tribunal may shorten the time limits that would otherwise apply if it is satisfied that it is in the interests of justice to do so. Any

request for an appeal to be treated as urgent should be made clearly in a covering letter to the Tribunal when the notice of appeal is filed.

8.0 Types of appeal: review and rehearing

8.1 An appeal against a decision of another tribunal may be determined:

1) by a review of the decision;
2) by a review of the decision, with a view to a re-hearing of the original proceedings by the Tribunal if the appeal is successful; or
3) by a re-hearing of the original proceedings.

8.2 Appeals from a First-tier Tribunal are usually a review of the decision, in which the Tribunal considers oral or written argument but does not hear evidence, but the Tribunal may direct that such an appeal be dealt with by a re-hearing. If an appeal is to be determined by a re-hearing the Tribunal will receive evidence and make its own decision, without reviewing the decision of the First-tier Tribunal (see section 9 below).

8.3 Appeals from the Valuation Tribunal are usually dealt with as a re-hearing at which the Tribunal receives evidence and make its own decision, without reviewing the decision of the Valuation Tribunal. An exception is made for appeals against discretionary case management decisions which will usually be dealt with as a review of the Valuation Tribunal's decision (see section 11 below).

8.4 To avoid the cost and delay of sending a successful appeal back to a First-tier Tribunal for further consideration the Tribunal may direct that an appeal will be dealt with by a review "with a view to re-hearing". The Tribunal will hear argument on the appeal and, if it decides to allow the appeal, it will proceed (usually at the same hearing) to re-hear all or part of the evidence and make a new decision.

8.5 In deciding which type of appeal to direct the Tribunal will take into consideration any views the parties have expressed.

9.0 Appeals from the First-tier Tribunal

9.1 All appeals from the First-tier Tribunal (Property Chamber), including appeals in relation to land registration, are assigned to the Tribunal. The notice of appeal should be in form T601 which is available on the Tribunal's website.

9.2 Most appeals from a First-tier Tribunal are not restricted to an appeal on a point of law only. This is the case in most appeals in residential property cases including service charge, leasehold management, enfranchisement and breach of covenant cases, as well as appeals concerning mobile homes, housing standards and land registration.

9.3 Some decisions of a First-tier Tribunal can only be appealed on a point of law. These include decisions concerning increases in rent, agricultural land or drainage, tenant fees, and the right to buy. What is a "point of law" is widely interpreted and can include:

1) A failure to provide adequate reasons for a decision.
2) A procedural irregularity or obvious unfairness in the proceedings which causes the decision of the First-tier Tribunal to be unjust.
3) A decision based on a finding of fact for which there was no supporting evidence.

9.4 An appeal may be made against any decision of the First-tier Tribunal, including a case management decision, but the Tribunal rarely grants permission to appeal case management decisions and only does so where it is arguable that the First-tier Tribunal has exceeded the limits of its discretion or has otherwise acted unlawfully.

9.5 In an appeal from a decision of a First-tier Tribunal the appellant's grounds of appeal should provide a sufficient statement of case to comply with section 5 of this Practice Direction and no further statement of case need be provided unless the Tribunal specifically requires it.

9.6 In an appeal from a decision of a First-tier Tribunal the respondent's statement of case should briefly state the grounds on which the respondent relies in opposing the appeal or in support of a cross-appeal. If the respondent considers that the decision of the First-tier Tribunal was correct, and does not want to rely

on any other arguments, a letter stating that the respondent agrees with the First-tier Tribunal's decision and its reasons will be a sufficient statement of case.

10.0 Applications for permission to appeal from the First-tier Tribunal

When is permission required and who can grant it?

10.1 Permission to appeal is required for any appeal against a decision of a First-tier Tribunal. Permission is not required for an appeal against a decision of the Valuation Tribunal.

10.2 Permission to appeal can be granted by the First-tier Tribunal. An application for permission to appeal must be made to the First-tier Tribunal within 28 days of the date on which the written reasons for its decision were sent to the applicant. Only if the First-tier Tribunal refuses permission to appeal (or refuses to admit the application because it is late) can a further application be made to this Tribunal.

10.3 If permission to appeal is refused by the First-tier Tribunal (or is granted on only some of the grounds requested), a second application for permission to appeal can be made to this Tribunal.

How and when should an application for permission be made?

10.4 An application for permission to appeal should be made on form T602 which is available on the Tribunal's website. It must be received within 14 days of the date on which the First-tier Tribunal sent its refusal of permission to the applicant (but see paragraph 10.5 below).

10.5 If a First-tier Tribunal has granted permission to appeal on only some of the grounds for which permission was requested, a renewed application for permission to appeal on additional grounds may be made to the Tribunal when the notice of appeal is filed (which must be within one month of the First-tier Tribunal's decision to grant permission). It is more convenient for the Tribunal to receive the notice of appeal and the renewed application at the same time, and the time for making the application will be extended beyond the usual 14 days in those circumstances.

10.6 The Tribunal has power to extend the time for making an application for permission to appeal but will not do so unless there is a good reason for the delay in making the application or the delay is insignificant. A request to extend time should be made when the application for permission to appeal itself is made. The applicant should explain why the application is late and request an extension of time. The applicant should also provide any supporting evidence (such as a medical report explaining why the applicant was unable to comply with the time limit).

10.7 If an applicant wants more time to prepare grounds of appeal, the application for permission to appeal should be submitted within the usual 14-day time limit, together with a copy of the application which was made to the First-tier Tribunal, and a request should be made for further time to provide the grounds of appeal.

10.8 If the First-tier Tribunal refused to consider an application for permission to appeal because it was made late, an explanation must be given why the original application was late, and the Tribunal will only admit the application if it is in the interests of justice for it to do so.

What documents should be provided with an application for permission?

10.9 The applicant must also provide a separate statement of case complying with section 5 of this Practice Direction (called the "grounds of appeal") explaining why the appellant considers the decision of the First-tier Tribunal was wrong. The grounds of appeal may comment on the First-tier Tribunal's reasons for refusing to give permission to appeal but it is not necessary to do so. The grounds of appeal should be concise and should explain any relevant background information which is not apparent from the decision of the First-tier Tribunal.

10.4 A copy of the decision of the First-tier Tribunal must be provided when an application for permission to appeal is submitted, together with a copy of its refusal of permission to appeal, and its covering letter.

10.5 The Tribunal does not have access to documents which were provided to the First-tier Tribunal. A copy of any document which it is essential for the Tribunal to see to understand the grounds of appeal may therefore be provided

with the application for permission to appeal, but the applicant should not send a copy of the First-tier Tribunal hearing bundle; if the Tribunal needs to see any additional documents it will ask for them.

10.6 The applicant must provide two copies of the application for permission to appeal and the grounds of appeal and sufficient additional copies for service by the Tribunal on each intended respondent.

How will the application be determined?

10.7 The Tribunal will determine an application for permission to appeal without a hearing unless it thinks that a hearing is necessary or desirable. An applicant who wants their application to be dealt with at a hearing must explain why they think a hearing should be held.

10.8 Permission to appeal will be granted if the Tribunal considers the proposed appeal has a realistic prospect of success, unless the sum or issue involved is so modest or unimportant that an appeal would be disproportionate. Permission to appeal may also be granted if the Tribunal considers there is some other good reason for an appeal.

10.9 When it receives an application for permission to appeal, or when it grants permission to appeal, the Tribunal may suspend the decision of the First-tier Tribunal pending the determination of the application or the appeal; a direction suspending the effect of a decision may be made subject to conditions.

10.10 Unless the Tribunal refuses permission to appeal it will send the application to the other parties to the proceedings and allow them 14 days to comment on the application for permission to appeal before it is determined. These comments may explain why permission should not be granted, ask for permission to cross-appeal, or include a request that permission to appeal should be granted only subject to conditions. If the Tribunal grants permission to appeal any representations made by the respondent at this stage may be allowed to stand as the respondent's grounds of opposition to the appeal.

10.11 Once the Tribunal has given permission to appeal the appeal will only proceed if the appellant provides a notice of appeal to the Tribunal within 1 month (see paragraph 7.4 above). When it gives permission to appeal, the Tribunal may dispense with this requirement and allow the application for permission to

appeal to stand as the notice of appeal. If an appellant does not wish to proceed with an appeal for which permission has been granted the Tribunal and the other party should be informed.

10.12 The Tribunal may give permission to appeal subject to conditions (including the payment of all or part of any sum found to have been due by the First-tier Tribunal). If the Tribunal gives permission to appeal subject to conditions the appeal will proceed only if the appellant complies with the conditions.

10.13 When it gives permission to appeal the Tribunal will also give case management directions.

If an application for permission to appeal is refused

10.14 There is no right of appeal against a decision of the Tribunal to refuse permissions to appeal.

10.15 If the claim raises an important point of principle or practice, or there is some other compelling reason, the High Court has power to conduct a judicial review of the Tribunal's decision. It will not do so unless it is satisfied that there is an arguable case, which has a reasonable prospect of success, that the Tribunal's decision refusing permission to appeal and the decision of the First-tier Tribunal against which permission to appeal was sought were both wrong in law.

10.16 An application for permission to apply for judicial review must be made within 16 days after the date on which the Tribunal's decision refusing permission to appeal was sent to the applicant. The application must be made on a claim form with supporting documents. The claim form must be filed at the Administrative Court Office, The Royal Courts of Justice, Strand, London WC2A 2LL. There are also Administrative Court offices in Birmingham, Cardiff, Leeds and Manchester.

11.0 Appeals from the Valuation Tribunal

11.1 A notice of appeal in an appeal against a decision of the Valuation Tribunal concerning non-domestic rating should be in form T385 which is available on the Tribunal's website. Permission to appeal is not required.

11.2 Appeals from decisions of the Valuation Tribunal are usually dealt with by way of a re-hearing (see paragraph 8.3 above).

11.3 Appeals concerning discretionary case management decisions are usually dealt with by way of review.

11.4 In an appeal from the Valuation Tribunal the appellant must provide a statement of case with its notice of appeal, and the respondent must do so when it files its respondent's notice or within such extended period as the Tribunal may allow. In each case the statement of case must comply with section 5 of this Practice Direction.

11.5 Since each party will already have presented its case to the Valuation Tribunal, it should not be necessary to ask for an extension of time to file a statement of case.

11.6 A copy of the decision of the Valuation Tribunal must be provided with the appellant's notice of appeal.

11.7 Unless the decision appealed against was a discretionary case management decision the appellant's statement of case need not refer in detail to the reasons given by the Valuation Tribunal for its decision. It must explain the outcome which the appellant seeks and must provide details of any valuation relied on, including details of any comparable properties.

11.8 If a respondent to an appeal from the Valuation Tribunal intends to ask for a determination on the appeal which is more favourable to it than the decision of the Valuation Tribunal, it must make that clear at an early stage, either by filing a separate notice of appeal of its own or in its statement of case.

12.0 Appeals under section 18, Land Compensation Act 1961

12.1 An appeal under section 18 of the Land Compensation Act 1961 against a decision of a local planning authority concerning a certificate of appropriate alternative development is an exception to the usual procedure concerning appeals and is made by giving notice of reference using form T371 which is available on the Tribunal's website. Permission to appeal is not required.

12.2 The time limit for filing a notice of reference in a section 18 appeal is 1 month from the date of the issue of the certificate of appropriate alternative

development under section 17 of the 1961 Act, but the Tribunal may exercise its power to extend this time if the proper determination of the claim for compensation, for the purpose of which the certificate was issued, makes this appropriate.

12.3 The proper respondent to a section 18 appeal is the authority which will be responsible for paying any compensation awarded. If that authority is not the local planning authority which made the decision which is the subject of the appeal, both authorities should be named as respondents to the section 18 appeal so that both may consider whether they wish to participate in the appeal.

12.4 A section 18 appeal may be consolidated with a compensation claim with which it is associated. Where consolidation is ordered the Tribunal will consider whether the section 18 appeal (and any issues in the compensation claim associated with it) should be heard as a preliminary issue.

13.0 References under Part 5 of the Rules

13.1 A dispute may be referred to the Tribunal under Part 5 of the Rules either by a claimant claiming compensation or another remedy on their own behalf, or by an authority or other body wishing to know how much compensation they must pay. The notice of reference should be in form T371 which is available on the Tribunal's website.

13.2 The Tribunal encourages all parties to exchange information and seek to resolve as many issues as possible by agreement before making a reference. Parties to references for compensation for compulsory purchase or loss caused by public works are encouraged to follow the pre-reference Land Compensation Claims Pprotocol published by the Compulsory Purchase Association http://compulsorypurchaseassociation.org/land-compensation-claims-protocol.html ~~[link].~~ The Tribunal will take an unreasonable refusal to follow the Protocol into account when deciding what order for costs to make at the conclusion of the reference.

Statements of case

13.3 Where a dispute is referred to the Tribunal under Part 5 of the Rules, the person making the reference must [As discussed at our meeting, "should" is preferable

to "might"] provide with the notice of reference a statement of case which complies with section 5 of this Practice Direction.

13.4 If the person making a reference claims compensation or another remedy on their own behalf, their statement of case must provide an explanation of the claim, specify the amount claimed or the remedy sought, and explain how that amount is calculated or estimated.

13.5 If the person making the reference is an authority or other body liable to pay compensation, it need not provide a full statement of its case with its notice of reference, but it must provide a summary which explains the subject of the determination it seeks and the reasons for seeking that determination. An authority's initial summary should be concise and need not anticipate the case of the claimant.

13.6 A response to a notice of reference should be in form T373 which is available on the Tribunal's website. With its response the respondent must also provide a statement of case which complies with section 5 of this Practice Direction. If the respondent claims to be entitled to compensation the statement of case must also comply with paragraph 13.4 above. If the respondent is an authority or other body liable to pay compensation the statement of case must respond to the statement of case of the claimant, [Can/should it be made clear this need not be in the traditional 'paragraph 1 is denied' fashion] and should specify (so far as they are able at that stage) the amount they consider to be due to the claimant and how that amount has been calculated or estimated.

13.7 Where the person who made the reference is an authority, after the receipt of the claimant's statement of case the Tribunal may direct it to provide a statement of case which complies with section 5 of this Practice Direction, or (in a simple case) may direct that the case summary provided by the authority with the notice of reference may stand as its statement of case.

14.0 References under the Electronic Communications Code

14.1 The Electronic Communications Code ("the Code") in Schedule 3A of the Communications Act 2003 sets out the basis on which electronic

communications operators may exercise rights to deploy and maintain electronic communications apparatus on, over and under land.

14.2 The Electronic Communications Code (Jurisdiction) Regulations 2017 provide for dispute resolution functions conferred by the Code on the court to be exercisable in relation to England and Wales by the Upper Tribunal and by the First-tier Tribunal. The same Regulations provide that certain proceedings under the Code may only be commenced in England and Wales in the Upper Tribunal. These include proceedings for the imposition, termination or modification of agreements to which the Code applies, and proceedings for the removal or alteration of electronic communications apparatus.

14.3 Within the Upper Tribunal, proceedings under the Code are assigned to the Lands Chamber.

14.4 Code disputes should be referred to the Tribunal using form T371 which is available on the Tribunal's website. The person making the reference should be identified as the claimant (whether they are a land owner or an operator) and every other party should be named as a respondent.

14.5 Regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 requires that certain Code disputes must be decided within 6 months of being referred. These include disputes where new rights are sought over land on which there is currently no electronic communications apparatus, but are considered not to include disputes about the renewal or termination of existing agreements.

14.6 Pre-reference engagement between the parties is strongly encouraged in all cases, but it is particularly important in those Code cases where the Tribunal is itself subject to strict time limits and in which it will expect a high degree of cooperation from and between the parties. Parties commencing a reference in a Code dispute should seek to agree in advance what directions will be required.

14.7 On receipt of a notice of reference in a Code dispute which must be determined within 6 months (see paragraph 14.5 above) the Tribunal will fix an appointment for an early case management hearing (and it may do so in other Code cases). The case management hearing will usually be dispensed with or dealt with by telephone if the parties agree appropriate directions.

14.8 The case management hearing will be held within two months of receiving the reference. Directions will be given to enable a final hearing to take place, in cases of urgency, within about five months of receiving the reference.

14.9 Although the First-tier Tribunal has jurisdiction to determine Code disputes, such disputes may not currently be commenced in the First-tier Tribunal. The Tribunal may transfer any Code reference to the First-tier Tribunal for hearing. Parties who agree that their dispute should be determined in the First-tier Tribunal may apply for transfer to be considered.

15.0 **Applications concerning restrictive covenants under Part 6 of the Rules**

15.1 In any application for the discharge or modification of a restrictive covenant under section 84, Law of Property Act 1925, the applicant must provide a notice of application in form T379 which is available on the Tribunal's website and a statement of case complying with section 5 of this Practice Direction.

15.2 A person served with an application who objects to the proposed discharge or modification, or who wishes to claim compensation as a result, must explain the basis on which they claim to be entitled to the benefit of the restriction and explain their objection in a notice of objection using form T381 which is available on the Tribunal's website.

15.3 The Tribunal may require an objector who is entitled to the benefit of a restriction to provide a statement of case complying with section 5 of this Practice Direction, especially if compensation is claimed, or it may direct that the notice of objection should stand as the objector's statement of case. The Tribunal may also direct that the applicant should respond to an objector's statement of case.

15.5 If there is a dispute over the entitlement of an objector to the benefit of a restriction, the Tribunal may determine that dispute as a preliminary issue. If there are other objectors whose entitlement to the benefit of the restriction is admitted, the Tribunal may prefer to determine all issues at a single hearing.

15.6 Where there is more than one objector to an application to discharge or modify a restriction, the Tribunal will encourage all objectors who wish to be

professionally represented at the final hearing to appoint a single representative (unless there is good reason not to). If more than one objector wishes to rely on evidence from an expert witness, the Tribunal will usually give permission for one expert to give evidence on behalf of all objectors.

15.7 If no objection is received to an application to discharge or modify a restriction, or if all objections are withdrawn, the Tribunal may determine the application without a hearing.

Costs in applications under Part 6

15.7 The Tribunal has power to award costs on an application to discharge or modify a restrictive covenant affecting land, but the following principles will be applied to the exercise of that power.

15.8 Where an applicant successfully challenges an objector's entitlement to the benefit of the restriction, the objector will normally be ordered to pay the applicant's costs incurred in dealing with that challenge, but only those costs.

15.9 Where an applicant unsuccessfully challenges an objector's entitlement to the benefit of a restriction, the applicant will normally be ordered to pay the objector's costs incurred in dealing with that challenge.

15.10 Unsuccessful objectors will not normally be ordered to pay any of the applicant's costs, unless they have acted unreasonably. Because the applicant is seeking to remove or diminish the property rights of the objector the Tribunal will not usually regard making an objection and pursuing it to a hearing as unreasonable.

15.11 Successful objectors will usually be awarded their costs unless they have acted unreasonably.

16.0 Stays of proceedings and alternative dispute resolution ("ADR")

16.1 Parties may apply to the Tribunal at any time for a short delay in the proceedings (referred to as a "stay of proceedings") to allow time for them to reach agreement either by negotiation or by another form of [OTHERWISE IT DRAWS A LINE BETWEEN NEUTRAL CHAIRING OF NEGOTIATIONS

AND MORE FORMAL PROCESSES LIKE INDPENDENT EVALUATION OR FORMAL MEDIATION] alternative dispute resolution ("ADR") outside the Tribunal process. Guidance on the types of ADR that can be utilised are explained by the Compulsory Purchase Association both in its Protocol (downloadable via the link: https://www.compulsorypurchaseassociation.org/land-compensation-claims-protocol.html), and, in greater detail in its informal advice note "*Alternative Dispute Resolution Procedures in Land Compensation Cases: A summary of the principal options*" (downloadable via the link: https://www.compulsorypurchaseassociation.org/files/ADR.pdf). No fee is payable for such an application to the Tribunal.

16.2 If both parties apply jointly the Tribunal will usually grant a stay of the proceedings for up to two months to allow mediation or another form of ADR to be attempted. During the stay the parties will not normally [PERMIS EXCEPTIONS AS WITH RG'S EXAMPLE]be required to take any step in the proceedings other than to engage actively in efforts to reach agreement.[Should there be an exception where a stay would endanger a listed hearing date?]

16.3 A second or longer stay may be granted if the parties satisfy the Tribunal that it is justified and has a good chance of leading to a settlement. A fee must be paid for such an application. A second or subsequent stay may only be granted by a Judge or Member.

16.4 The Tribunal will not grant lengthy or repeated stays where there is no evidence of progress being made towards a settlement of the dispute. If final agreement has not been reached after a second stay the Tribunal will usually expect the parties to continue negotiations, including ADR, while preparations are made for the final hearing of the case.

16.5 If a party unreasonably refuses to engage in ADR the Tribunal will take that refusal into consideration when deciding what costs order to make at the end of the proceedings, even when the refusing party is otherwise successful. The Tribunal will not treat every refusal of ADR as unreasonable, ~~(~~for example, where the chances of settlement are reasonably considered to be too low., ~~or~~

~~where the value of the claim would make the expense of ADR disproportionate).~~ DELETE AS UNCLEAR AND IN ANY EVENT COULD CONVEY THE WRONG MESSAGE I.E. THAT SMALL OR LOW VALUE CLAIMS SHOULD NOT BE THE SUBJECT OF ADR TECHNIQUES WHEN THE REVERSE MUST BE THE CASE. INDEED, SUCH ADVICE, IF RETAINED, COULD ALSO UNDERMINE OTHER INITIATIVES TO RESOLVE LOW VALUE CLAIMS THROUGH ADJUDICATION OR INDEPENDENT EVALUATION BY E.G. AN RICS DRS APPOINTED PROFESSIONAL]

Preliminary issues

17.1 The Tribunal may order a preliminary issue in the proceedings to be determined at a hearing or by written representations. Issues which may be suitable for determination as preliminary issues are those which are self-contained and which might dispose of the whole or an important part of the case or significantly reduce the number of issues, thereby saving costs, avoiding delay and facilitating settlement.

17.2 A preliminary issue may be ordered to be determined on the basis of agreed facts, or the Tribunal may hear evidence and determine the facts as part of the issue.

17.3 Before any application is made for the determination of a preliminary issue the parties should seek to agree how the preliminary issue should be formulated and as many of the relevant facts as they can.

17.4 An application for the determination of a preliminary issue should set out the point of law or other issue to be decided. It should be accompanied by a statement of agreed facts, or a description of the facts which the Tribunal will be required to determine and the extent of the evidence which will be required. The application should state why, in the applicant's view, determination of the issue as a preliminary issue would be likely to enable the proceedings to be disposed of more quickly or at less expense.

17.5 If the Tribunal decides to order the determination of a preliminary issue it will give such directions as appear to it to be required.

18.0 Expert evidence

18.1 Permission is required to call more than one expert witness (two if the case concerns mineral valuation or business disturbance). Expert evidence adds significantly to the cost of proceedings and permission for additional experts will only be given where it is proportionate and necessary to enable the Tribunal fairly to determine the matters in dispute.

18.2 Before the Tribunal will permit additional experts to give evidence it will first require the parties to consider whether evidence on any issue can be given by a single joint expert. When considering whether expert evidence should be provided by a single joint expert the Tribunal will take into account all the circumstances and in particular:

1) The nature and complexity of the issue and its importance in the proceedings,

2) the amount in dispute in the proceedings,

3) the practicality of instructing a single joint expert.

18.3 A party must allow the expert of another party to have reasonable access to the land or building which is the subject of the proceedings, or which is relevant to any issue in the proceedings. Access should be allowed on reasonable notice for such reasonable period as the expert may request, and should include the opportunity to take photographs or ["And/or"] measurements.

18.4 Except in a case proceeding under the simplified procedure, the Tribunal will not permit an expert witness to act additionally in an advocacy role during the hearing. In any case an expert witness may assist a party before the hearing (for example, by drafting and filing documents and liaising with the Tribunal) and at the hearing in a supportive capacity provided the expert is not remunerated for those services on a contingency basis (see paragraph 18.24).

Communication between experts

18.5 Parties should inform the Tribunal and each other at an early stage (and in any event before a case management hearing) of the area of expertise of each expert witness they wish to rely on and the issues which the proposed expert's evidence is intended to address. Where possible the name of the intended expert should be made known and contact details exchanged.

18.6 Where more than one party intends to rely on expert evidence in the same field, the experts should meet or communicate with each other before they write their reports to discuss the scope of their evidence and to agree:

1) a list of the issues on which they have each been asked to express their opinion;[This implies that the expert should have received instructions setting out the scope of the evidence required. It might be helpful to make a reference to the desirability of such instructions. More generally, the joint experts' statements can sometimes be problematic where one party raises an issue that the other has not anticipated, an expert has to be appointed quickly and has not had sufficient time to get to grips with the issues. We're not sure how this might best be resolved – perhaps by making it clear that statements of case should seek to identify the issues on which expert evidence is required?]

2) a list of the key documents which both are likely to refer to; these should be contained in a joint bundle of core documents to which experts should then refer without including further copies as appendices to their reports; [Suggest that it should be made clear that the bundle can be added to as the reference proceeds]

3) such facts relevant to their evidence as they are able to agree at that stage, including plans, photographs, measurements or other details concerning the property or matter to be valued, or any comparable property or transaction on which either proposes to rely, and any other matters of methodology or presentation;

4) in a case where experts intend to rely on computer-based valuations a common model or software programme.[Could the PD include provision somewhere making clear that parties should allow the other expert access to their computer model? There have been issues in HS2 claims of experts

suggesting their counterpart should recreate them themselves using spreadsheet data, which adds time and cost to proceedings.]

18.7 Experts in the same discipline may seek clarification of each other's opinions on a without prejudice basis at any time and should cooperate with each other to ensure that each has a thorough understanding of the other's views.

18.8 It is the duty of expert witnesses to assist the Tribunal by identifying the differences between them and explaining the reasons for those differences. The Tribunal will direct experts to communicate with each other after they have exchanged reports to seek to agree further facts and to produce a joint statement identifying the issues on which they agree, the issues on which they do not agree, and a brief explanation of the reasons for their disagreement.

18.9 Discussions between experts are confidential and without prejudice to the case of the parties by whom they are instructed. They may not be referred to at the hearing unless the parties agree.

18.10 The procedure to be adopted at a meeting of experts or in discussions between them is a matter for the experts themselves, not for the parties or their legal representatives.

The expert's report

18.11 In all cases involving expert witnesses the parties should consider the sequence in which evidence is to be exchanged. Expert evidence should usually be exchanged after the exchange of evidence of fact. Where the opinion of one expert depends on inputs from another expert, evidence in different disciplines may be exchanged sequentially (for example, planning or quantity surveying evidence may conveniently be exchanged before valuation evidence). In appropriate cases the parties may agree or the Tribunal may direct that the reports of expert witnesses in the same discipline be exchanged sequentially rather than simultaneously.

18.12 An expert's report should be addressed to the Tribunal and must include in all cases (including those under the simplified procedure) [Should this paragraph cross-refer to Rule 17 of the Tribunal's rules?]:

1) details of the expert's qualifications;

2) a statement of the substance of the instructions received by the expert (whether written or oral), summarising any facts the expert has been asked to assume which are material to the opinions expressed by the expert;

3) the name and qualifications of any person who has undertaken any inspection, investigation or calculation for the purpose of the report and on which the expert has relied and a statement whether such work has been carried out under the expert's supervision;

4) a summary of the expert's conclusions;

5) confirmation that the basis of the expert's remuneration (or that of the expert's firm) is not related to the outcome of the proceedings;

6) confirmation that the expert has complied with the requirements of any relevant professional body of which the expert is a member;

7) confirmation that the expert understands their duty to the Tribunal and has complied with that duty, and a statement of truth in the following terms:

> "*I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer*."

18.13 An expert's report should be as concise as the subject matter will allow. It should be arranged in numbered paragraphs, and any tables and appendices must be legible and clearly presented. Experts in the same discipline should make use of the joint bundle of core documents agreed at their initial meeting which should then be referred to without duplication in their reports.

18.14 Where the facts which an expert has assumed to be correct are reasonably capable of giving rise to a range of informed opinion on the matters dealt with in the report the expert should summarise the range of opinion, explain where the expert's opinion sits within that range and give reasons for the expert's view.

18.15 An expert should explain whether and how the opinions expressed would change if facts alleged by a party other than one by whom the expert is instructed were assumed to be correct.

18.16 If the Tribunal gives permission, an expert may provide a further report responding to the evidence served by another party. The purpose of such a supplemental report is to provide any further relevant information, to identify the respects in which the views of the experts differ and to assist the Tribunal to understand the reasons for those differences.

18.17 Instructions given to an expert are not privileged from disclosure but the Tribunal will not order disclosure or permit questions concerning such instructions, other than by the party who instructed the expert, unless it is satisfied that there are reasonable grounds to consider the statement of instructions given in the expert's report may be inaccurate or incomplete.

18.18 When an expert's report has been filed with the Tribunal, any party may rely on the report as evidence in the proceedings.

Written questions to experts

18.19 A party may put written questions to the expert instructed by another party for the purpose of obtaining clarification of the views expressed in the expert's report. Any such questions must be copied to the party instructing the expert or its professional representative.

18.20 If an expert considers that questions which have been asked are oppressive in number or content, or have been put for any purpose other than to obtain clarification of the expert's report, the expert or the party instructing them may ask the Tribunal to disallow the questions.

(a) Without the prior permission of the Tribunal questions may not be put to an expert more than once, or later than 1 month after service of the expert's report. [If the expert has produced more than one expert report, it seems reasonable that questions could be put in respect of each of them

(b) One month seems too long a period. By the time a response has been received it may be too late to be considered in subsequent evidence particularly as these directions only require a response within a reasonable time]

18.21 An expert's answers to written questions will be treated as part of the expert's evidence.

18.22 A refusal by an expert to answer reasonable and proportionate questions within a reasonable time may be taken into account by the Tribunal in considering what weight to give to the expert's evidence.

Experts' remuneration

18.23 An expert who is to be paid on a contingency basis may not give evidence. (Payment on a contingency basis means the fee paid to the expert or the expert's firm is related to the degree of success achieved in the proceedings by the party instructing the expert).

19.0 Preparation for the hearing

19.1 Parties must cooperate with each other to ensure that the case is prepared for hearing without unnecessary delay or expense.

Hearing bundles

19.2 It is the responsibility of the claimant, applicant or appellant to prepare a bundle of documents for the use of the Tribunal at the final hearing. Where that party is not professionally represented it may be convenient for another party to be responsible for preparing the bundle, but only if both parties agree or the Tribunal so directs.

19.3 Unless the Tribunal gives a different direction, the party preparing a hearing bundle must provide all other parties who are to take part in the hearing with one copy of the bundle, at the cost of the receiving party.

19.4 The content and organisation of the hearing bundle should be agreed between the parties in good time before the hearing. Unless the parties agree a different time-table the claimant should submit proposals to all other parties at least 6 weeks before the date fixed for the hearing. The other parties must submit details of additions they require and any suggestions for revision of the claimant's proposals to the claimant at least 4 weeks before the hearing.

19.5 Preparation of the hearing bundle must be completed not later than 10 days before the date for service of skeleton arguments unless the Tribunal orders otherwise. [I'm not entirely sure these work together. If skeletons are required 3 weeks prior to the hearing, that might only leave 4 days for bundle preparation?

Should 19.4 refer to 6 and 4 weeks prior to the date for the first skeleton instead?]

19.6 Hearing bundles should include only necessary documents, and the parties must consider carefully what documents are and are not necessary. Costs wasted by the inclusion or copying of unnecessary documents may be disallowed by the Tribunal.

19.7 In more complex cases it is likely to be helpful for a core bundle of the most important documents to be prepared.

19.8 All bundles prepared by professional representatives (and, so far as possible, by unrepresented parties) should be prepared as follows, unless there is a good reason for adopting a different approach:

1) No more than one copy of any document should be included.
2) Correspondence with the Tribunal should not be included.
3) Contemporaneous documents, and correspondence, should be included in chronological order, but a contract, lease or similar document which is central to the case may be included separately.
4) Bundles should be printed/copied single-sided, and no file should contain more than 300 (single-sided) pages.
5) Bundles should be contained in an appropriate file which should not be overfilled; the size of file used should not be larger than necessary for the contents.
6) Bundles should be paginated, in the bottom right hand corner; the pagination should begin afresh at the beginning of each bundle.
7) Bundles should be indexed, but the index need not list every item (e.g. a chronological bundle of correspondence need not list each letter separately).
8) Bundles should be numbered and labelled on the spine with a brief title of the case, the number of the bundle (in a large font) and a short description of the contents; the number of the bundle should also be on the inside front cover.

9) Dividers or tabs within bundles assist in the organisation and use of a bundle, but they should not be overused (e.g. individual pieces of correspondence should not ordinarily be divided).[Could these be insisted on for bundles of a certain length?]

10) Large documents, such as plans, should be placed together in an easily accessible file.

11) Plans should be in A3 size and to scale, where appropriate, and should be colour copied where that is necessary for them to be understood. Photographs must be clear. [And in colour unless the original was not or no colour copy is available e.g. because of age of photo or colour original being lost.]

19.9 In cases under the simplified procedure, and in appeals to be determined by way of review, the Tribunal will usually require only one copy of the hearing bundle. In other cases, two copies will usually be required but the Tribunal will be able to provide confirmation if requested.

19.10 Hearing bundles should be delivered to the Tribunal two weeks before the date fixed for the hearing, unless the Tribunal gives different directions.

19.11 In any case in which witnesses will be called to give evidence, the party who has prepared the hearing bundle must bring an additional copy to the hearing for the use of witnesses.

Skeleton arguments

19.12 Unless the Tribunal gives different directions, parties with professional representation are required to provide the Tribunal and the other parties with a concise written summary of their case (referred to as a "skeleton argument") seven days [I wonder if the standard period should be 14 days. 7 days can be used to ambush (even if in theory that should not happen) and (speaking from experience as an advocate) can then distract from preparations for the trial. Or if a changed position is set out in a skeleton, there is little time to deal with it.] before the date of the hearing. The document should include a list of essential reading identifying those documents which the Tribunal should read before the hearing and providing an estimate of the time required to do so. The Tribunal

may direct that skeleton arguments be exchanged sequentially. A skeleton argument is not required in a case under the simplified procedure, but parties may provide one.

19.13 A chronology should also be prepared in any case where it is likely to be of assistance; wherever possible it should be agreed between the parties and cross-referenced to the hearing bundle.

19.14 Parties without professional representation are also encouraged (but not required) to provide a concise written summary of their case to assist the Tribunal and the other party.

19.15 Skeleton arguments should not be more than 25 pages. Any application to serve a longer skeleton should be made in writing and in good time before the date for service. [Ditto my comments on the need to apply for permission for a SoC longer than 25 pages.]

19.16 A joint bundle of any court or tribunal decisions, extracts from legal textbooks or relevant statutory material referred to in the skeleton argument of either party should be agreed and provided to the Tribunal two days before the hearing.

20.0 Procedure at the hearing

20.1 The procedure to be followed at a hearing will be determined by the Tribunal. It will be designed to enable the dispute to be determined in a way which is proportionate and fair, and which avoids unnecessary delay, formality and expense.

20.2 In cases under the simplified procedure, the Tribunal will discuss and agree the procedure to be followed at the start of the hearing. A less formal procedure will generally be adopted, witnesses will not usually give evidence under oath, and the formal rules of evidence will not apply. Cases under the simplified procedure will normally be heard by a single Judge or Member.

20.3 In other cases the Tribunal will usually follow the practice of the High Court:

1) The claimant, applicant or appellant will present their case first, followed by the respondent, and the claimant etc will have a right of reply.

2) In a case in which oral evidence will be given the claimant or applicant may make a short opening statement, but it may be assumed that the Tribunal has read the parties' skeleton arguments and is familiar with the outline of the dispute.

3) Witnesses will give evidence under oath or affirmation.

4) Unless the Tribunal orders otherwise, a witness statement will stand as the evidence in chief of any witness called to give oral evidence. With the Tribunal's permission, a witness may briefly amplify their witness statement or give evidence in relation to new matters which have arisen since the witness statement was served.

5) Any substantial addition to the evidence contained in a witness statement should be included in a supplemental statement provided to the Tribunal and other party as soon as possible after the need for it is identified. The permission of the Tribunal will be required before any supplemental witness statement may be relied on but service of the supplemental statement should not be delayed until permission has been given.[Is all this also intended to apply to experts referred to in point 6 following?]

6) Expert witnesses will usually give evidence after witnesses of fact. In a case involving more than one expert witness on each side, the Tribunal will usually wish to hear experts in the same discipline one after another (rather than hearing all of the experts called by the claimant, then all of those called by the respondent).

7) In more complex cases parties should agree before the hearing what will be the most convenient order for witnesses to give evidence and should prepare a timetable for the hearing for the Tribunal to consider. [Shouldn't this be a requirement in all cases? It is not helpful to advocates for there to be any doubt about the order of witnesses in all cases lasting more than a day.]

8) After all evidence has been given both parties may make closing submissions, with the respondent going first. In more complex cases the Tribunal may require [When would notice of this be given? Again, it would be unhelpful for advocates to be sprung with this at short notice.] the

claimant to summarise its case first, before the respondent replies, with the claimant then having a right of reply on issues of law. [Why should the claimant not also have a right of reply on points of fact?]

21.0 Site inspections

21.1 It will often be necessary for the Tribunal to inspect land or buildings which are the subject of the proceedings, and, where practicable, any other relevant land or buildings referred to by the parties or their experts. Parties are encouraged to consider whether a site inspection would be of assistance and inform the Tribunal. An inspection may be undertaken before or after the hearing.

21.2 The purpose of the Tribunal's inspection is to assist it to understand the evidence. Unless the Tribunal decides to make an unaccompanied inspection, it will usually wish to be accompanied by not more than two representatives from each side.

21.3 The Tribunal will not receive new evidence during an inspection, and comments from the parties or their representatives will be limited to pointing out, at the request of the Tribunal, features of significance which have been referred to in the evidence.

21.4 The Tribunal will not enter private land without the permission of the occupier, and any party who wishes the Tribunal to make an inspection of such land must obtain the prior permission of the occupier.

21.5 Matters observed by the Tribunal during its inspection are part of the evidence in the case and must be accessible to all parties. If the occupier of land which the Tribunal wishes to inspect is a party to the proceedings the Tribunal will expect access to be allowed to it and to the representatives of the other party. If a party refuses to permit access to its own land the Tribunal may take such refusal into account when deciding what weight to give to the evidence of that party and when deciding what order to make in relation to costs.

22.0 Tribunal Fees

22.1 Fees payable to the Tribunal at different stages of the proceedings are specified in the Upper Tribunal (Lands Chamber) Fees (Amendment) Order 2010 (as amended) and are published on the Tribunal's website.

22.2 No fees are payable in appeals from the First-tier Tribunal concerning land registration.

22.3 Unless the Tribunal directs otherwise, a hearing fee is payable by the party who commenced the proceedings. Where that party is successful in the proceedings the Tribunal may direct that the hearing fee be reimbursed by the other party.

22.4 Fees may be dispensed with in certain cases where an individual has limited resources. Details are available on the Tribunal's website.

23.0 Costs

23.1 The Tribunal has power to order that one party pay costs incurred by another party in the following cases:

1) references for compensation for the compulsory purchase of land (including claims for temporary possession of land [Should reference be made to s18 LCA 1961 appeals (where costs are part of the compensation payable)]);
2) references for compensation for injurious affection of land as a result of public works;
3) applications to discharge or modify restrictive covenants under section 84, Law of Property Act 1925;
4) appeals from the Valuation Tribunal;
5) appeals from the First-tier Tribunal concerning land registration;
6) references under the Electronic Communications Code;
7) references under the Riot Compensation Act 2016; and
8) in judicial review proceedings transferred to the Tribunal.

23.2 In any of the cases listed above (except judicial review proceedings) the Tribunal may direct that no order for costs will be made against one or more of the parties in respect of costs incurred after the direction.

23.3 The Tribunal may also direct that a limit will apply to the amount payable by one or more parties in respect of costs incurred after the making of the direction. Where parties are of unequal means, different limits may be applied to each of them.

23.4 A party who wishes to apply for a direction imposing such a limit, or giving full protection against an adverse costs order should do so at an early stage in the proceedings and must provide details of their own resources and an explanation why it would be in the interests of justice for a direction to be made.

23.4 The Tribunal has no general power to order that one party pay another party's costs of an appeal from the First-tier Tribunal. In such cases the Tribunal may, with the consent of the parties or where there is a disparity of interest or resources between the parties, direct that an order for costs may be made in the proceedings against one or more of the parties in respect of costs incurred following such a direction.

23.5 In any case, including in appeals from the First-tier Tribunal, the Tribunal may order that one party reimburse any fees paid to the Tribunal by another party (including any fees paid to the First-tier Tribunal).

23.6 If, in any case, the Tribunal considers that a party (or a party's representative) has behaved unreasonably in bringing, defending or conducting the proceedings, it may order the party to pay costs incurred by another party in the appeal, or it may order the representative to pay any wasted costs incurred by another party. An application for such an order should usually not be made until the outcome of the proceedings is known, and should identify the conduct which is relied on as being unreasonable. The Tribunal will consider whether to ask the other party to respond to the application and may summarily dismiss the application without requesting a response.

How the power to award costs is exercised

23.7 The Tribunal's power to award costs is discretionary, and it will usually be exercised in accordance with the principles applied in the High Court. The general rule is that the successful party ought to receive their costs from the unsuccessful party. The Tribunal will have regard to all the circumstances of the

case, including the conduct of the parties; whether a party has succeeded on part of their case, even if they have not been wholly successful; and admissible offers to settle. The conduct which may be taken into account will include conduct during and before the proceedings; whether a party has acted reasonably in pursuing or contesting an issue; the manner in which they have conducted their case; whether or not they have exaggerated their claim; and whether they have unreasonably refused to engage in ADR or comply with a relevant pre-reference protocol.

23.8 The Tribunal will normally award costs on the standard basis. Costs will only be allowed to the extent that they are reasonable and proportionate to the matters in issue, and any doubt as to whether costs were reasonably incurred or reasonable and proportionate will be resolved in favour of the paying party.

23.9 Exceptionally the Tribunal may award costs on the indemnity basis. On this basis, the receiving party will receive all their costs, except for those which have been unreasonably incurred or which are unreasonable in amount, and any doubt as to whether the costs were reasonably incurred or are reasonable in amount will be resolved in favour of the receiving party.

Costs in compulsory purchase compensation cases

23.10 The costs incurred by a claimant in establishing the amount of compensation to which they are entitled following the compulsory acquisition of their land are part of the expense that has been imposed on the claimant by the acquisition. For that reason, the Tribunal will normally make an order that the costs incurred by a claimant who is awarded compensation should be paid by the acquiring authority.[Should it be made clear that the usual approach to standard/indemnity costs will apply? (Assuming that is the intention)]

23.11 By statute (section 4, Compulsory Purchase Act 1961) a successful ["Successful" seems a little incongruous in the context of this paragraph] claimant will not normally receive their own costs and unless there are special circumstances [Section 4 uses "reasons"] will normally have to pay the costs of the acquiring authority:

1) for any period before a notice of claim was given to the acquiring authority which contained sufficient details to enable the authority to make an offer of compensation; or

2) for any period after the reasonable time for acceptance of an offer made by the authority to pay a sum in compensation which was more than the compensation eventually determined by the Tribunal.

Offers to settle

23.12 Any party may make an offer to another party to settle all or part of the proceedings on terms specified in the offer. An offer to settle part of proceedings or a particular issue must clearly identify which part of the proceedings or issue it relates to.

23.13 Every offer should state for how long it will remain open for acceptance. An offer which does not state how long it is open for will be assumed to be open for acceptance until the commencement of the hearing to which the offer relates. An offer should state whether or not it includes interest (if it has been claimed), at what rate and for what period it covers. It should also state whether or not it includes agreement to pay the other party's costs and either the amount or the basis of those costs.

23.14 Unless it is specified in an offer that it is intended to be an open offer, it will be assumed that any offer of settlement is intended to be without prejudice to the case of the party making the offer and neither the offer nor the fact that it has been made may be referred to at the hearing by any party.

23.15 An open offer may be referred to in the proceedings. An offer marked 'without prejudice save as to costs' or similar wording, may be referred to after the Tribunal has made its decision in the proceedings when it is considering what order to make in respect of costs.

23.16 The party making an offer on the basis that it is "without prejudice save as to costs" should not send a copy of it to the Tribunal. The Tribunal should not be informed of the existence of the offer until after the proceedings have been determined. If requested by a party to do so, the Tribunal will then consider the

offer when determining the question of the costs of the proceedings.[Should section 4 sealed offers be dealt with in a separate para]

Submissions on costs

23.17 Where the Tribunal has given its final decision in writing the parties may make written submissions on costs. Where the issue of costs is particularly complicated the Tribunal may hold a hearing before making an award.

23.18 Where the Tribunal makes an order for the payment of costs, the costs to be paid will either be an amount agreed between the parties, or an amount determined by the Tribunal following assessment by the Registrar. A party who is dissatisfied with the Registrar's assessment of costs may apply to the Registrar for a review and, if still dissatisfied, may apply for the assessment to be carried out again by a Judge.

23.19 For a hearing which has lasted one day or less, the Tribunal will usually expect to carry out a summary assessment of costs in order to avoid the expense and delay of a detailed assessment. For an interim application any party who wants a summary assessment of their costs should prepare a summary of their costs and serve it on the other party and the Tribunal not less than 24 hours before the hearing. For a final hearing of one day or less where the Tribunal has power to award costs, a summary of costs should be provided with the written submissions on costs which the Tribunal will invite when it gives its decision.

23.20 In longer cases costs which cannot be agreed by the parties must be referred by the receiving person to the Registrar to be the subject of a detailed assessment.

LORD JUSTICE […]

SENIOR PRESIDENT OF TRIBUNALS

[ ] ~~2019~~2020