

ALEP factsheet

The role of a barrister

If complications occur during the enfranchisement process then it is important to obtain specialist legal advice, whether from a barrister, or from a solicitor with sufficient experience in enfranchisement litigation i.e. in dealing with the Court or FTT (First Tier Tribunal) /Upper Tribunal fall out from a contested claim.

You can apply to the FTT if you are in dispute with your freeholder over a number of factors, including:

- Extending the lease
- Buying the freehold
- Varying a lease
- Breach of lease terms
- Service charges
- The cost of buildings insurance

Why would I need a barrister?

Specialist advice is likely to be required where the freeholder responds to the leaseholder's notice of claim by denying the right to a lease extension and/or asserting that the notice of claim is invalid. In other words, the freeholder rejects the leaseholder's attempt to extend their lease or purchase the freehold, and the leaseholder therefore needs to follow their rights under the statutory process to challenge their freeholder in the courts.

The First Tier Tribunal (Property Chamber) (FTT) handles applications relating to leasehold disputes and leasehold enfranchisement.

How can a barrister help?

If you appear before a tribunal, you may want to get professional advice, and it is sensible to arrange legal representation (i.e. appoint a barrister) if the argument relates to interpreting the law or the conditions of your lease.

The factors that point to instructing a barrister for the hearing are:

1. valuation (i.e. how much of a difference is there between the freeholder's valuation and your own) and
2. Legal complexity

The main advantage of having a representative is that they should be able to help you see the matter from a position of experience and expertise, and to guide you on the approach to be adopted to the other party, particularly if they are also legally represented. If you do not have a legal representative you will be responsible for presenting your own case, including delivering arguments and presenting evidence.

The barrister's duty is to promote the interests of the client by making submissions as to the law on point and the factual and expert evidence before the FTT. The barrister should not give evidence or venture a personal opinion as to the law or the facts.

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