

Extracts from a 2003 brochure targeted at leaseholders, from the then **London Leasehold Valuation Tribunal** Re. the duty of Royal Institute of Chartered Surveyors (RICS) members acting as 'expert witness' (bottom of page)

There are two types of witness, witnesses of fact and expert witnesses. Both types can be questioned by the other side on what they say; this is called cross examination. Witnesses of fact can only speak about what is in their knowledge, they cannot speculate. Once they have proved their expertise, expert witnesses can give opinions and can therefore say what should have happened (as opposed to what actually happened).

When you are preparing the application it is sensible to give some thought to how you will prove your case and if you need to call witnesses. These could be people giving evidence that certain things did or did not happen, or you could call an expert surveyor or property manager to say what competent professionals normally do. You will need to check with the people you have in mind that they will be prepared to make a witness statement and, if necessary, to attend the hearing. So who are you likely to call?

It may perhaps be that you have obtained a surveyor's report. Does this mean you will have to call the surveyor to give evidence at the hearing? Not necessarily. If the report is clear enough in its findings, it should be sufficient just to submit it as documentary evidence. However, it could disadvantage you if the other party disputes its findings or produces a surveyor's report which reaches an opposite conclusion and your surveyor is not available to answer questions from the other side and the LVT.

What is a witness statement?

Shortly before the hearing, you will be asked to submit 'witness statements' or reports or 'witness proofs of evidence' from your expert witnesses. These are not quite the same as the documents already submitted as evidence, although they build on them. Put simply, they set out exactly what a witness will say at the hearing. The hearing is not a theatre of surprises and magician's rabbits; the LVT panel want to understand fully both sides' cases before the hearing and then concentrate on the areas of dispute at the hearing. So you will probably have to submit witness statements from the following people:

- other leaseholders: Anyone whose experience is vital to your case should write a statement explaining what they think or have experienced. This must be based on matters of fact, non-expert witnesses cannot give opinion evidence;
- experts: surveyors, property managers or accountants on whose evidence you are relying should submit a witness statement. They are likely to know how to do this, and it is therefore a good idea to ask them early on to write one. This will give you an idea of what is involved and will help you formulate your own statement.

Someone reading your proof, and those of your experts, should immediately know exactly what your complaint is, and what you consider a reasonable charge to pay. Think of it as an opportunity to win your case before the hearing begins.

Expert witnesses

The Royal Institution of Chartered Surveyors has laid down rules governing the professional conduct of surveyors in the provision of evidence. Where the surveyor is providing evidence directly as an expert he or she will be bound by the RICS Practice Statement which requires that "the primary duty of the surveyor is to the judicial body to whom his evidence is given... The surveyor's evidence must be independent, objective and unbiased. In particular, it must not be biased toward the party who is responsible for paying him. The evidence should be the same whoever is paying for it."

Therefore, you cannot expect the surveyor to provide evidence simply to

assist your case. Of course that is what you will want but the surveyor must be absolutely neutral and may, sometimes, have to concede points to the other side which you may feel damages your case. This is unavoidable and **you must be aware of the surveyor's professional duties** when instructing him or her and agreeing on the basis of the case.

If the surveyor has been engaged to conduct the case on your behalf, then **he or she will make clear to the Tribunal the basis on which they are acting;** while as advocate, presenting the case, they may be partial to their client but **when they switch to the role of expert witness** they will declare it to the Tribunal, and the opposition, and must be unbiased. (In practice it may not be wise to have the same person performing the two roles).

9. How does the LVT procedure work?

There are no specific rules, but the LVTs generally follow similar procedures. The London LVT has issued a *Guidance Note* for both applicants and respondents and this is enclosed at the back of this booklet; it provides a useful guide to the procedures and the LVT's requirements.

The steps are usually:

Pre-Trial Review

● *AIM: to establish what is in dispute and what is agreed.*

The LVT is NOT hearing the argument yet. Before the PTR read the other side's case and work out a list of what you differ on. A surprising amount - especially facts - might be in common. If at the PTR it appears something is considered agreed that you thought was in dispute, ask if the LVT understands your case. It is possible the other side has changed their mind, so listen carefully. Above all, don't agree to things you don't like; you won't get another chance to argue them. The PTR should result in a list of the matters in dispute being produced; some applicants have found it useful to bring one with them, and offer it to the tribunal. Following PTR the LVT will issue directions for the further conduct of the case (see the *Guidance Note*).

Exchange of evidence

● *AIM: to establish each side's position.*

The directions will specify a full exchange of documents so that each side is aware of the other's case and agrees to the matters to be included as evidence. This is a necessary requirement and you should not be afraid of revealing your hand at this stage.

Bundles

● *AIM: To compile a single, readable set of papers for the hearing and the LVT's consideration and to ensure that other documents are not produced at the last minute without giving the other side adequate time to consider them.*

The LVT's directions will require the preparation of an agreed 'bundle', of the principal arguments, evidence and supporting documents. This should include documents which relate to the arguments of both sides. Although the contents of the bundle are agreed, it does not mean that the parties have agreed with the substance of those contents.

The agreed bundle for the hearing should be prepared in the same way as the bundle that accompanied the application, (see 'Laying out your case' above) with numbered documents and page numbers. This is so that, in the hearing, you can take the LVT members straight to a particular page. A strong argument supported by compelling documentary evidence can be drastically undermined if it takes minutes for the panel members to find the relevant page during the hearing,