

Discussion Paper – Pre-reference Protocol for Compulsory Purchase Compensation Claims

Introduction

Since the changes brought about by the amendments to the Civil Procedure Rules in attitudes to litigation, it has been commonplace for parties to explore means of avoiding contentious dispute resolution if possible. With that objective in mind, many forms of proceedings are subject to pre-action protocols which require prospective claimants and defendants to engage in meaningful negotiations as early as possible with a view to exchanging all relevant information so that either side can understand the other's case, can make a realistic offer of settlement and, ideally, avoid litigation altogether.

Alongside its reform agenda, the Compulsory Purchase Association is concerned to help make the CPO process as efficient and non-disputatious as possible. The Association therefore wishes to promote a culture, in common with other forms of contentious litigation, whereby prospective parties will regard adversarial dispute resolution as a last resort. To this end, potential claimants and acquiring authorities will be urged to make available and exchange relevant and necessary information to spell out the nature of their respective cases and to define the issues between them so that realistic and proportionate opportunities for settlement can be explored.

It is hoped that in most cases these exchanges will take place long before the stage is reached when either side might consider referring the matter to the Upper Tribunal (Lands Chamber) for formal resolution.

To this end, the CPA will undertake a consultation on the proposals set out below for a "Pre-reference Protocol for Compulsory Purchase Compensation Claims" so as to ensure that they reflect the views of the profession. When representations have been considered, it is hoped that the Upper Tribunal will endorse the content of the proposals and then have the ability to reflect non-compliance with its terms in decisions on costs where appropriate.

The Protocol

Subject to consultation as referred to above, it is proposed that the Protocol for Compulsory Purchase Compensation Claims should take the following form, together with a template for a letter before reference and for the opposing party's response. Despite the objective of the proposed Protocol to secure an early and meaningful exchange of information, there will be cases where the acquiring authority is the party who is contemplating making the reference and so the terms of the templates should be adapted accordingly.

Pre-reference Protocol for Compulsory Purchase Compensation Claims

1. This protocol applies to claims for compulsory purchase compensation (including but not limited to claims under Part I of the Land Compensation Act 1973 and claims for compensation under the Electricity Act 1989) which would be decided by the Upper Tribunal (Lands Chamber) ("Tribunal") if a reference was made to it to determine the

claim. If the terms of the protocol are not complied with, the Tribunal may impose costs penalties to reflect the consequences of a failure to comply.

2. The protocol encourages an early start on negotiations between the parties, a clear identification of the basis of the claim and a full exchange of information on either side, all with the objective of arriving at a realistic possibility of settlement so that the resolution of a disputed claim by the Tribunal can be avoided. In all cases, references to the Tribunal should be regarded as an option of last resort.
3. The aim of this protocol is (a) to enable the parties to settle issues between them without needing to make a reference to the Tribunal and (b) to support the effective management by the Tribunal and the parties of any reference which cannot be avoided.
4. Claimants are normally entitled to their reasonable and proportionate professional costs of commencing, negotiating and settling their claim even if the matter does not go to the Tribunal. It may be possible for a claimant, if the authority does not agree those costs, to have them determined by the Tribunal as a discrete issue.
5. The parties are reminded of the Tribunal's overriding objective to deal with cases justly and fairly. The parties must bear in mind the overriding objective when complying with this protocol and must try to further the overriding objective by (amongst other things) early exchange of information and timely responses to reasonable requests from the other party. If the parties do not comply with the terms and spirit of this protocol, the Tribunal is likely to take that into account when exercising its discretion on costs.
6. The parties are therefore encouraged to achieve the aims of this protocol by (a) exchanging information about any issue and (b) considering using alternative dispute resolution ("ADR").

The Claimant's claim

7. The claimant should have submitted its claim in response to notice to treat following confirmation of a compulsory purchase order – or deemed notice to treat where a general vesting declaration has been executed and in certain other cases. If (for good reason) the amount or heads of claim have changed, the claimant should notify the authority as soon as reasonably practical.
8. For claims subject to Section 4 of the Land Compensation Act 1961, there are specific provisions dealing with costs if a claimant fails to provide a properly particularised claim. The Tribunal retains a more general discretion (in all cases) to take into account any failure to comply with the terms of this protocol.

The Claimant's letter of claim

9. Before starting a reference, the claimant should send to the authority a letter of claim setting out a concise summary of the matter sufficient to allow the authority to understand the legal and evidential nature of the claimant's claim and investigate the issues without needing to ask for further information ("Letter of Claim"). The standard format of a Letter of Claim is set out in Annex A below. The claimant should send the Letter of Claim as soon as it has all the information it needs to formulate its claim (assuming the claimant has proceeded with reasonable diligence).
10. If the claimant does not send the Letter of Claim as soon as it has all the information it needs to formulate its claim (again assuming the claimant has proceeded with reasonable diligence), the authority should write to the claimant drawing attention to the terms of this protocol and inviting the claimant to take steps to submit a Letter of Claim. If the Claimant fails to do so, it may be penalised in costs by the Tribunal.
11. If, despite encouragement to do so, the claimant fails to send a Letter of Claim, the authority may either (a) set out its best assessment of the claim available to the claimant, appropriately supported and particularised as set out above (and should do so within 6 weeks of sending the letter in accordance with paragraph 10 of this protocol) or (b) tell the claimant it proposes to refer the claim for compensation to the Tribunal if it does not receive a Letter of Claim in the next 6 weeks.

The response of the authority

12. In all cases where the claimant has sent a Letter of Claim, the authority should respond by setting out its analysis of the claimant's claim, appropriately supported and particularised as set out above ("Letter of Response"). Even where the basis of the claimant's claim or head of claim has not been fully supported, explained or particularised, the party responding to the claim should still make its best assessment of the claim or head of claim available to the claimant in so far as it is able to do so. The Letter of Response should (a) include a figure for the amount of its assessment of the claimant's entitlement to compensation (if any) and (b) be sent to the claimant within 8 weeks of receiving the Letter of Claim. The standard format of a Letter of Response is set out in Annex B.
13. If following receipt of the Letter of Claim, the authority requires clarification or further information from the Claimant, it should ask for such clarification or information within two weeks of receiving the Letter of Claim ("Letter of Clarification"). The claimant should reply to the Letter of Clarification within two weeks of receiving it.

Action following exchange of correspondence between the parties

14. Following issue of the Letter of Response, the parties should seek to reach agreement on as many heads of claim as possible within 4 weeks. Where the amounts at stake justify it, there should be a meeting between the parties (or their experts) to establish common ground. But the process of meetings or further correspondence should not be allowed to impede the swift resolution of the claim.
15. If after this period of 4 weeks, extended as necessary to allow agreement if possible, the parties have been unable to reach an agreed position, then they should consider whether some form of ADR would assist the agreement of the claimant's claim. If ADR would assist, then the parties should consider what form of ADR would be most suitable having regard to the nature of the claim and the still matters in issue. These options might include early neutral evaluation, mediation or arbitration. But it will be a matter for the parties which of these means might be most appropriate in the circumstances.
16. If, despite the terms of this protocol, the matter is ultimately referred to the Tribunal, the parties may be required to provide evidence that they did consider alternative means of resolving the dispute between them and the Tribunal may have regard to any failure to do so in determining costs.
17. It is only if all attempts at reaching agreement fail that the parties should contemplate referring the matter to the Tribunal and then only as a last resort. If a disputed claim is referred to the Tribunal, it is nevertheless hoped that the parties' attempts to resolve the claim before the making of a reference will result in the saving of Tribunal time by disposing in advance of matters which are agreed and identifying the outstanding issues to be resolved.

Annex A

Standard format for Claimant's Letter of Claim

(To be adapted as necessary where the authority or body responsible for paying compensation takes the initiative as referred to in para. 9 above)

Letter of Claim before proposed reference to Upper Tribunal (Lands Chamber)

This is the Claimant's Letter of Claim under the pre-reference protocol for compulsory purchase (and other) compensation claims ("Protocol"). You can see the Protocol by visiting: [\[insert website address\]](#). In accordance with the terms of the Protocol, your authority should respond, **within 8 weeks of the date of receiving this letter**, by setting out its analysis of the claim, appropriately supported and particularised as required by the Protocol. The authority's response should include a figure for the amount of its assessment of the claimant's entitlement to compensation (if any) under each respective head of claim identified below.

Claimant's name:

Claimant's Company Registration Number (if applicable):

Land affected:

Address for correspondence/solicitors' or agents' details where applicable:

Claimant's interest in land affected:

Statutory provision under which claim made:

Amount of compensation claimed:

Total Amount Claimed (if more than one mount of compensation claimed):

Acquiring/Compensating Authority:

Acquiring/Compensating Authority's address for correspondence:

Summary of claim (including details of legal and evidential nature of claim sufficient to allow the Authority to investigate the issues identified without needing to ask for further information):

Under Paragraph 13 of the Protocol, you are entitled to ask for clarification or information within 2 weeks of receipt of this Letter of Claim.

Annex B

Standard format for Acquiring/Compensating Authority's

Response to Claimant's Letter of Claim

Letter of Response to Letter of Claim

Claimant's name:

Land affected:

Acquiring/Compensating Authority's assessment of compensation:

Acquiring/Compensating Authority's assessment of total amount payable (if more):

Acquiring/Compensating Authority and address for correspondence:

This is the Acquiring/Compensating Authority's Letter of Response to the Claimant's Letter of Claim under the pre-reference protocol for compulsory purchase (and other) compensation claims ("Protocol"). You can see the Protocol by visiting: [[insert website address](#)]. In accordance with the Protocol, the Authority sets out below its

analysis of the claim, appropriately supported and particularised as required by the Protocol, and include a figure for the amount of the Authority's assessment of the claimant's entitlement to compensation (if any) under each respective head of claim.

[Or **Letter of Clarification**: Before responding fully to the Claimant's claim, the Authority requires the following information and/or clarification from the Claimant, which should be provided within two weeks of receipt of this letter, in accordance with the terms of the Protocol. **NOTE any such request must be made by the Authority within two weeks of receipt of the Claimant's Letter of Claim**]