

## **Draft 4**

# Pre-Action Protocol for Claims for Compensation following Compulsory Acquisition of Land and for Depreciation in the value of Land following Public Works (the 'Compensation Protocol')

## **1 Introduction**

### 1.1

This protocol applies to claims for compensation, following or in anticipation of the compulsory acquisition of land, and to compensation for the diminution in the value of land resulting from the construction and use of public works.

Claims falling within the above description include:

- Claims for compensation following the acquisition of new rights in or over land
- Claims for the value of land acquired
- Claims for severance or injurious affection (whether or not land has been acquired)
- Claims for compensation for any disturbance or other losses
- Claims for any statutory payments arising in relation to compulsory acquisition
- Claims for compensation under Part I of the Land Compensation Act 1973.

This protocol also applies to claims for compensation where temporary possession of land is taken under statutory powers.

It does not apply to compensation claims in relation to statutory wayleaves, or similar, such as under the Electricity Act 1989, the Digital Economy Act 2017 ( Electronic Communications Code), rights to lay pipes under the Water Industry Act 1991, and the Land Drainages Act 1991. It does not apply to coal subsidence claims, or in respect of the acquisition of rights of oil exploration and exploitation.

### 1.2

This protocol sets out conduct that the Upper Tribunal (Lands Chamber) ("the Tribunal") would normally expect parties to follow before issuing a Reference. It will apply both where the person claiming compensation ("the Claimant") makes a Reference, and where a Reference is made by an

acquiring or compensating authority (“the Authority”). The obligations placed on the parties are set out from {section/paragraph X} below.

### 1.3

Where a Claimant or Authority does not have professional advice when making or responding to a claim for compensation or a Reference, they should still comply with the terms of this protocol, so far as is reasonably possible. In this protocol ‘surveyor’ is intended to encompass reference to any other suitably qualified person, according to the nature of the dispute.

### 1.4

Parties should assist each other to ensure this Protocol is followed.

## 2 Objectives of the Protocol

### 2.1

This protocol seeks to:

- establish a reasonable process and timetable for the exchange of information relevant to a claim for compensation;
- Set standards for the content and quality of claims and their supporting documentation; and
- Set out the Tribunal’s expectations for the conduct of pre-action negotiations.

### 2.2

The protocol’s objectives are:

#### 2.2.1

to encourage the exchange of early and full information about a claim for compensation;

#### 2.2.2

to encourage the parties to take reasonable steps to avoid a Reference by encouraging settlement of the dispute before proceedings are commenced; and

#### 2.2.3

to support the efficient management of proceedings where a Reference cannot be avoided.

#### 2.3

A flow chart is attached at **Annex A**, which shows each of the stages that the parties are expected to undertake before the issue of a Reference.

**Comment [CC1]:** Annex A still to be drafted

### **3 Relationship to Tribunal Rules and Practice Direction**

#### 3.1

This protocol applies in the pre-reference period, before the Upper Tribunal (Lands Chamber) Procedure Rules 2010 (as amended) and the Lands Chamber Practice Directions 2010 (as amended) are engaged. It sets out the standard of conduct that the Tribunal expects parties to adhere to in that period.

#### 3.2

The protocol is consistent with the Rules and Practice Direction. However, in the event of any conflict between this protocol and the Tribunal Rules and/or the Practice Direction, the Rules and/or Practice Direction will prevail.

### **4 Sanctions for non-compliance**

#### 4.1

Where a party fails to comply with this Protocol, the Tribunal will take this into account when exercising its case management functions, and when considering any question of costs.

## 4.2

Failure to comply with this protocol may result in the Tribunal imposing sanctions on the non-complying party. Such sanctions may include but are not limited to costs sanctions.

## 4.3

The Tribunal has full discretion when dealing with any instance of non-compliance with the protocol and will respond to breaches in a manner proportionate to their seriousness and consequences. The Tribunal is not likely to be concerned with minor or technical breaches of the protocol and will consider whether the parties have complied with its requirements in substance.

## **THE PROTOCOL**

### **5 The Claim**

#### 5.1

The obligations in this part apply to a person who wishes to make a claim for compensation to which this protocol applies.

#### 5.2

In the case of the compulsory acquisition or temporary possession, of land, the Claimant should send the Authority a claim document that satisfies the requirements of the Land Compensation Act 1961 and any regulations thereunder, or under the Land Compensation Act 1973, of which there is an illustration at either Annex B (land acquisition) or C (Part I claim) ("the Claim").

The Claim should include details of any claim for the value of land taken, severance and/or injurious affection, disturbance or other losses, and any statutory payments. The Claim should be sent within any time limit specified by any legislative requirement.

#### 5.3

Where, such as in the case of a claim for disturbance or other losses, the heads of claim and measure of loss or damage cannot be identified and/or prepared in detail within any legislative time limit, the Claimant shall include within the Claim an outline of the potential heads of claim and, if

possible, estimates of the compensation sought. Once such details are known, they should be provided to the Authority in an updated Claim as soon as reasonably possible.

#### 5.4

It is for a claimant to prove their loss. As such, claims should be accompanied by appropriate supporting information.

Subject to any legislative requirements, the Claim should include:

##### 5.4.1

Where compensation is sought for land taken, and/or severance and injurious affection, or other diminution in the value of land: Full details of the interest in the land being acquired, a copy of any registered title to the land, copies of any leases or licences pursuant to which the land is or was occupied, details of the condition of the land at the valuation date, a copy of any valuation relied upon (with supporting comparables, where applicable), any relevant planning permission(s) and/or lawful use and development certificates, and, if reliance is being placed on an assumed planning permission or on 'hope value', a statement setting out the basis for that assumption or hope value.

The claim should also include a statement explaining how any legislative requirement about the effects of the scheme underlying the compulsory acquisition is addressed.

**Comment [CC2]:** Further clarification may be required. Comments welcomed.

##### 5.4.2

Where a claim is made for disturbance or other losses, the Claim should include a statement as to the losses and expenses the Claimant has suffered or incurred, and/or anticipates incurring.

In the case of losses or expenses already suffered or incurred, details should include the date(s) on which the loss or expense was suffered or incurred, and should be supported by invoices or other documentary evidence, including (where available) narrated invoices and/or receipts.

**Comment [CC3]:** Ditto

In the case of losses or expenses anticipated to be incurred, such as the fees of professional advisors, the Claim form should provide details of the costs or losses expected to be incurred, including an estimate of the amount and the basis for any estimate.

##### 5.4.3

Where the losses claim include loss suffered by a business, the Claim should include an explanation of how any loss has been calculated, supported by accounts for the business. The accounts provided should where possible include the accounts for a period of at least three years before any date when it is said that the business has suffered loss, and should include any other accounts available up to the date of the Claim.

#### 5.4.4

Where a claim is made for the partial or total extinguishment of a business, the Claim should include a statement explaining why the business had to be extinguished (in whole or part), and explaining the attempts made to relocate or otherwise continue the business, including identifying any properties inspected for relocation and explaining why such properties were unsuitable.

#### 5.4.5

Where a claim is made for any statutory payments, the Claim should include a statement explaining the entitlement to such a payment, and if applicable, how the sum claimed has been calculated.

#### 5.4.6

Where compensation is sought for the personal time of the Claimant, the Claim should be accompanied by a record of the time claimed for and details of how the time was spent. In the case of a claim for the time of any directors or officers of a company, the Claim shall additionally set out any payments made by the company in respect of such time, or how any loss to the company is otherwise said to arise.

#### 5.4.7

Where the Claimant has made an application for an advance payment of compensation, the date and details of any such application, and any payment subsequently received, shall be included in the Claim.

#### 5.4.8

Where the claim is for compensation for the temporary possession of land, the claim should include such details as set out at paras 3.2.1 to 3.2.5 above as are appropriate to justify the Claim. The Claim should identify any statutory notices served in connection with the taking of temporary possession, and state the period(s) of temporary possession that are the subject of the Claim.

#### 5.5

In the case of a claim for a payment pursuant to Part 1 of the Land Compensation Act 1973, the Claim must comply with any legislative requirements about the content of the Claim.

Full details of the interest in the land or property affected, a copy of any registered title(s) to the land, and copies of any leases pursuant to which the land is occupied should be provided.

Additionally, any valuations must be accompanied by appropriate supporting evidence, such as comparable evidence, and the Claim must clearly identify the physical factors alleged to have caused the diminution in value of the subject property.

#### 5.6

Any claim prepared by a chartered surveyor must contain a signed endorsement that any requirement of the Royal Institution of Chartered Surveyors has been complied with. The endorsement should confirm that in the surveyor's opinion:

##### 5.6.1

The valuations have been prepared in accordance with all the relevant legislative requirements;

##### 5.6.2

The surveyor has followed any specified or relevant codes of practice or guidance issued by the RICS, including the current RICS practice statements on Surveyors advising in respect of compulsory purchase and statutory compensation and Surveyors Acting as Expert Witnesses;

##### 5.6.3

The surveyor acknowledges that if he is to act as an expert witness in any Reference to the Tribunal, he owes a primary duty to the Tribunal to give his own opinion of values, and not to his client.

## **6 The Authority's Response**

### 6.1

Where a Claimant has provided a Claim satisfying or substantially satisfying the requirements set out in **section 5** of this Protocol, the Authority shall provide a written response to that claim ("a Response") within a reasonable time frame, normally within 56 days. The Response should set out in reasonable detail the Authority's position on every head of claim in respect of which compensation is sought.

Where the Authority is unable to respond within a 56 day period it shall inform the Claimant as soon possible, explaining why it is unable to respond fully at this time and stating when it will do so.

### 6.2

If the Authority fails to provide a Response to any one or more heads of claim in the Claim (not being a head of claim in respect of which the Claimant has reasonably been asked to provide evidence or additional evidence which has not thereafter been provided within a reasonable timeframe) and in any subsequent Reference to the Tribunal then raises matters that should have been made available in the Response, the Tribunal may take that omission into account in considering whether the Authority has complied with this protocol.

### 6.3

The Response should:

#### 6.3.1

Set out clearly the Authority's position in respect of all aspects of the Claim, including identifying any heads of claim that are accepted, and in what amount, and otherwise providing a response to each and every head of claim, explaining what (if any) monetary sums that the Authority considers are payable as compensation, supported by valuations or other relevant information;



### 6.3.2

Follow the requirements for a Claim set out above, so far as appropriate;

### 6.3.3

If the Authority considers that further information is required in respect of any head of claim, or any aspect of it, set out what further information is required and why, and specify a reasonable time frame (normally 21 days) for any such further information to be provided;

### 6.3.4

confirm that the Authority and/or its surveyor will attend a meeting or meetings as proposed under **section 7** below;

### 6.3.5

specify a reasonable time frame within which the Claimant should provide an Answer to the Response (if any) in accordance with the paragraphs below. This will usually be within 56 days of the date of the Response.

## **7 The Claimant's Answer**

7.1 A Claimant is not obliged to provide an Answer to the Authority's Response, but if the Claimant does not do so and in any subsequent Reference to the Tribunal then raises matters that could and should have been set out in an Answer, the Tribunal may take that omission into account in considering whether the Claimant has complied with this protocol.

### 7.2

Where the Claimant does provide an Answer the Answer shall deal with each and every matter in the Response so far as the same is not an admission of any head of claim in the Claim. The Answer should usually be provided within 56 days of the Claimant receiving the Response.

### 7.3

The Answer should follow the requirements for a Response set out above, so far as relevant and appropriate.

## **8. Intended Reference by the Authority**

### 8.1

Where an Authority is proposing to make a Reference, and it has not received a Claim as described in this protocol, the Authority should notify the Claimant of its intention to make a reference and invite the Claimant to submit a Claim within a reasonable period, normally 42 days.

### 8.2

Where, following the making of the request described in **paragraph 8.1**, an Authority still does not receive a Claim, then prior to making a Reference the Authority shall write to the Claimant and indicate the heads of claim in respect of which it anticipates the Claimant may be entitled to make a Claim.

Where it is reasonably possible for an Acquiring Authority to make an assessment or estimate of the compensation payable under any head of claim in respect of which it considers the Claimant may be eligible, details of such assessment or estimate shall be provided in the letter, supported by any relevant valuation(s) or other supporting information. The Claimant should then be given a further reasonable period, normally 56 days, in which to respond to this letter.

## **9 Disclosure of Documents**

### 9.1

Disclosure will generally be limited to the documents required to be support the Claim, the Authority's Response and any Answer, as described above. The parties can however agree that further disclosure may be given.

### 9.2

**If either or both of the parties consider that further disclosure should be given but there is disagreement about some aspect of that process, then the Tribunal in any Reference will have**

regard to such dispute in considering whether either or both parties have complied with this Protocol.

**Comment [RPC4]:** Comments on whether this needs further clarification welcomed.

## 10 Good practice by an Authority

### 10.1

Authorities should provide early advice and information to those likely to be affected by compulsory purchase. This early advice should cover {what do we think?} and should be made available in a form that can be readily understood by a person without experience in the field of compulsory purchase and compensation.

### 10.2

In the case of claimants who are unlikely to take professional advice at an early stage of compulsory purchase, the advice should include an explanation of the records which might usefully be kept in order to substantiate a subsequent claim, especially where small businesses with less sophisticated record keeping are likely to be involved.

### 10.3

In all cases, Authorities should provide potential claimants with advice about taking professional advice and explain whether they are prepared to underwrite the cost of such advice and, if so, the basis upon which professional fees will be reimbursed.

### 10.4

In all cases early information should be provided, and updated when appropriate, as to the likely timings of any acquisition, such as when possession is likely to be required, so that claimants can arrange their affairs in a planned and timely manner.

## 11 Negotiations

### 11.1

The parties and/or their respective surveyors are encouraged to meet before the Authority is required to provide the Response and should generally meet within 42 days after the Authority has provided the Response. The meetings will be held on a without prejudice basis and the parties should seek to agree as many of the items in dispute as possible. Parties should consider the use of Scott Schedules or ongoing Statements of Agreed Facts and Issues to record areas of agreement and/or disagreement. Examples are given [in...](#)

## **12 Alternative Dispute Resolution**

### 12.1

The parties should consider whether some form of alternative dispute resolution procedure would be more suitable than a Reference to the Tribunal, and if so, endeavour to agree which form to adopt. In particular, consideration should be given to evaluative mediation, in which an experienced practitioner is able to use their own judgement on the merits of the cases of the respective parties.

### 12.2

Both parties may be required by the Tribunal to provide evidence that alternative means of resolving their dispute were considered. The courts and the Tribunal take the view that litigation and/or a Reference should be a last resort, and that a Reference should not be issued prematurely when a settlement is still actively being explored. The Tribunal may give particular consideration to the extent of the parties' compliance with this part of the protocol when making orders about who should pay costs, subject to any legislative requirements.

### 12.2

Information on mediation and other forms of alternative dispute resolution may be found through the following: [www.justice.gov.uk/guidance/mediation/index.htm](http://www.justice.gov.uk/guidance/mediation/index.htm). and the Royal Institution of Chartered Surveyors ([www.rics.org/](http://www.rics.org/)).

### 12.3

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Notwithstanding the above, it is expressly recognised that no party can or should be forced to mediate or enter into any form of alternative dispute resolution.

### **13 Parties' review of their positions**

#### 13.1

Both a Claimant and an Authority are encouraged to regularly review their positions in respect of any Claim made, and to communicate any change in those positions to the other party promptly and in writing.

#### 13.2

Where the procedure set out in this Protocol has not resulted in the resolution of any dispute between the Claimant and the Authority, they should in particular undertake a further review of their respective positions prior to any Reference being made.

Consideration should be given to any opportunity for avoiding commencing proceedings or, at the least, narrowing the issues between them.