

## ISSUES RAISED REPORT

### LAND COMPENSATION CLAIMS PROTOCOL

On 22 May 2018, the Compensation Purchase Association (CPA) launched a consultation of its members on a proposed Land Compensation Claims Protocol (Protocol). The aim of the Protocol is to encourage constructive engagement between parties before a reference to the Upper Tribunal (Lands Chamber) is made, ultimately leading to a reduction in cost and increased speed in determining compensation.

In addition to the consultation, the CPA undertook engagement with representatives of other professional bodies and the Upper Tribunal (Lands Chamber). Guy Roots also spoke about the Protocol at the annual CPA Conference on 11 July 2018.

The consultation closed on 31 July 2018.

During the consultation the CPA received feedback from a number of individuals and entities as well as further feedback from those on the working group developing the Protocol. In summary:

- Feedback on the Protocol was positive.
- No objections were received to the principle of the Protocol.
- No major alterations to the structure of the Protocol were suggested.
- Minor amendments to the Protocol were suggested. The suggested amendments and their status within the revised draft are included at the end of this Report.

The CPA would like to thank all those who took the time to review the draft Protocol and provide feedback.

As a result of the positive feedback received, the CPA is putting the question of the adoption of the Protocol to its members. If the Protocol is adopted by CPA members, CPA members should aim to meet the standards of the Protocol and be able to expect other members to do the same but there is no proposed sanction for members that do not follow the Protocol. It is hoped that the Protocol would become recognised as best practice ultimately leading to the adoption of a formal Pre-reference Protocol by the Upper Tribunal (Lands Chamber).

The Protocol contains some elements that are necessarily a compromise between claimants and acquiring authorities. If members approve of the principle of the Protocol then it is hoped they will be able to vote in favour of the adoption of the Protocol even if their preference may be to see minor amendments in certain places to the Protocol. If the Protocol is adopted by CPA members, the CPA will:

- periodically review how the Protocol is being followed;
- review whether any changes to the Protocol are necessary following its implementation; and
- continue to push for the formal adoption of a Protocol by the Upper Tribunal (Lands Chamber).

The Protocol will be adopted by the CPA if a simple majority of the members voting, vote in favour of its adoption. The outcome of the vote will be announced at the CPA's Annual General Meeting on Monday 15 October 2018.

### Suggested amendments and status in final draft

Paragraph	Amendment suggested	Status of suggested amendment and reason
1.4	Insert link to Upper Tribunal’s Practice Directions in footnote	Accepted – convenience in having link in footnote.
1.5	Include “endorsed by” in the final sentence	Rejected – the Protocol has not been endorsed by PEBA, RICS and CAAV and inclusion of “endorsed by” in the final sentence may suggest that it has been. “Endorsed by” is included in the first sentence in respect of the CPA.
1.5	Include “leading” before “professional practitioners” in the final sentence	Rejected – in general the evidence is from professional practitioners as a whole through the endorsement by the CPA and the contribution to its development from PEBA, RICS and CAAV.
1.5	Change “and is” to “and has been” in the first sentence`	Accepted – reflecting that it will have been endorsed by members once the protocol is in place.
1.5	Remove “also” from the second sentence	Accepted – superfluous word.
2.1	Opening words amended to create a stronger obligation	Accepted – opening words amended.
2.1	Introducing paragraph simplified	Accepted – introducing paragraph simplified. It remains implicit in the paragraph that a potential claimant should be provided with the details listed before the potential claimant is eligible to make a claim. The paragraph recognises there may be limited circumstances in which a compensating authority may not have been aware of a particular potential claimant for example because of the type of claim being made or that the potential claimant was not expected to be in scope for a claim in initial analysis.
2.1.2	Add to the end of 2.1.4 obtaining professional advice on records needed to support claims	Accepted in part – no change had been made to 2.1.4 but instead “and evidencing” has been added to 2.1.2 which deals with professional advice.
2.1.4	New section about when costs will not be paid and when costs are at risk	Rejected – the protocol will deal with a number of different types of claim and therefore the detail has been kept to a high level. The obligation on the compensating authority in relation to fees is at 2.1.3 and should result in a clear statement from the compensating authority about when fees will be payable depending on the type of claim involved. The position in relation to fees will continue to be monitored and considered as this protocol is reviewed from time

Paragraph	Amendment suggested	Status of suggested amendment and reason
		to time.
2.1.5	Link to the RICS note to be corrected	Accepted – original link to the covering page for the Professional Statement. Now the link is to the Professional Statement itself.
2.2.2	Qualification of the valuation being based on the information available or sufficient information being available	Rejected – during the formation of the protocol this paragraph has been the subject of some debate. The paragraph currently only encourages an acquiring authority to provide an early valuation and no more. Where insufficient information is available a qualified valuation could be provided or a compensating could seek the information it needs to provide that valuation. In relation to compulsory purchase an acquiring authority remains under the obligation to seek voluntary agreement and use compulsory purchase as a last resort and this paragraph does not change that requirement.
2.3.2	Add that the position in writing should be on a without prejudice basis unless the parties agree	Rejected – it will be for the parties to decide how to conduct their discussions and correspondence however the paragraph encourages parties to set out their position at appropriate points and in order to aid the progression of negotiations you would expect where possible for that correspondence to not be on a without prejudice basis.
2.4	Change “appropriate, reasonable and proportionate” to “reasonably incurred and reasonable and proportionate in amount”	Rejected – “reasonable” already relates to the word “incur” earlier in the paragraph. The proposed change would also lose the word “appropriate” which adds an additional element to the paragraph. “In amount” was not felt to add anything as the paragraph already deals with costs.
2.4	Delete “The Tribunal may not make costs orders in other types of Reference”	Accepted – the sentence was incorrect and the paragraph amended accordingly.
2.4	Incorrect link	Accepted – link now corrected.
3	Re-order parts of paragraph 3	Accepted – former paragraph 3.6 has moved to the end of 3.2. Former paragraph 3.5 has moved to the end of 3.4.
3.2	Suggestion to add wording to emphasise provision of timely information will prevent delay in the assessment for 90% advance payment	Rejected – suggested amendment added another level of detail to a high level statement. The protocol will also apply in a number of types of claim that could be made to the Upper Tribunal (Lands Chamber).

<b>Paragraph</b>	<b>Amendment suggested</b>	<b>Status of suggested amendment and reason</b>
3.3	Delete “situations”	Accepted – superfluous word.
3.3	Delete “useful”	Accepted – protocol now factual as to the status of the guide.
3.4	Delete “In other types of Compensation Claim”	Accepted – confusion between the wording in 3.4 and former 3.5. Amended wording makes the new paragraph 3.4 read better.
4.2	Replace “save” with “except”	Accepted – plain English.
4.2	Change 28 days to 20 working days	Rejected – whilst there is little difference between 28 days and 20 working days, the paragraph provides that at least 28 days would be provided and it is hoped parties would use common sense over a holiday period in requesting a date for a response.
4.5	Replace “save” with “except”	Accepted – plain English.
4.5	Add sentence in relation to the ability to enter into a stand still agreement	Accepted – initially suggested for inclusion to paragraph 5, but considered best placed in paragraph 4.5.
5.1	Improvements to make the clause read better	Accepted
5.1	Add “facilitation techniques, often known as” before “alternative dispute resolution”	Rejected – whilst the purpose of the amendment was acknowledged it was felt the wording was sufficiently clear as it stood.
5.2	Changes to improve the wording and replace “courts”	Accepted in part – amended as per the final draft.
5.2	“unsuccessful” should read “successful”	Accepted – typo
5.3	Link incorrect	Accepted – link now correct