

Land Compensation Claims Protocol

1. INTRODUCTION

- 1.1. This protocol applies to any claim for compensation ("**Compensation Claim**") made by a claimant to a compensating authority that would, in the absence of agreement between the parties, involve a reference ("**Reference**") to the Upper Tribunal (Lands Chamber) ("**Tribunal**") under Part 5 of the Upper Tribunal (Lands Chamber) Procedure Rules 2010 (as amended) ("**Rules**")¹. It does not apply to any matter that would be referred under Part 5 but which does not involve a Compensation Claim.
- 1.2. "Claimant" in this protocol means the person or persons having the right to make a Compensation Claim. "Compensating authority" in this protocol means the entity which is potentially liable to pay compensation.
- 1.3. This protocol seeks to ensure that, before a Reference is made, the claimant and the compensating authority have:
 - 1.3.1. exchanged sufficient information to understand each other's positions;
 - 1.3.2. discussed each other's positions thoroughly and constructively;
 - 1.3.3. sought to narrow the issues that the Tribunal would have to determine if a Reference were made; and
 - 1.3.4. considered the use of alternative dispute resolution to avoid a Reference being made or to determine at least some of the issues which the Tribunal would otherwise have to determine,as set out in further detail in this protocol.
- 1.4. It is not intended that this protocol should conflict with either the Rules or the Lands Chamber Practice Directions 2010 ("**Practice Directions**"),² however in the event of any conflict the Rules and/or Practice Directions should be followed.
- 1.5. This protocol has been produced by the Compulsory Purchase Association ("**CPA**") and has been endorsed by its members. The Planning and Environment Bar Association (PEBA) the Royal Institution of Chartered Surveyors (RICS) and the Central Association of Agricultural Valuers (CAAV) have contributed to its

¹ A link to the Rules can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/357450/upper-tribunal-lands-chamber-procedure-rules.pdf. Note that this includes appeals under s.18 Land Compensation Act 1961 (certificates of appropriate alternative development).

² A link to the Practice Directions can be found here: https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Practice+Directions/Tribunals/PracticeDirectionsUTLandsChamber_291110.pdf

development. It is therefore evidence of 'best practice' recognised by professional practitioners.

2. GENERAL

2.1. A compensating authority should ensure that, so far as possible, a potential claimant has been provided with adequate information about:

2.1.1. the relevant procedure for making a Compensation Claim (including whether there are any statutory requirements or time limits and whether there is any prescribed, model or suggested form for making a claim). This should be communicated in a way that is readily understandable by someone without experience of the relevant process;

2.1.2. the availability of professional advice to assist a claimant in making and evidencing a Compensation Claim³;

2.1.3. whether, how and when any professional fees that may be incurred by a claimant in relation to a Compensation Claim will be reimbursed;

2.1.4. the importance of maintaining appropriate records in order to substantiate a Compensation Claim; and

2.1.5. the existence of this protocol and the RICS Professional Statement: "Surveyors advising in respect of compulsory purchase and statutory compensation"⁴.

2.2. A compensating authority is encouraged at an early stage:

2.2.1. to provide information or valuation evidence available to it potentially relevant to a Compensation Claim and if possible before the claim is made; and

2.2.2. provide their valuation to assist with the constructive dialogue between the parties.

2.3. Parties to a Compensation Claim are expected to:

2.3.1. discuss each other's positions constructively with the objective of agreeing as much as possible and identifying as precisely as possible the issues which cannot be agreed;

2.3.2. ensure that at appropriate points each parties' position is clearly set out in writing;

³ A list of the members of the Compulsory Purchase Association (that includes accountants, surveyors and solicitors) can be found here: <http://www.compulsorypurchaseassociation.org/find-a-member.html>

⁴ A copy of the Professional Statement can be found here: <http://www.rics.org/Global/RICS-CPO-PS.pdf>

- 2.3.3. from time to time review their own positions in respect of the Compensation Claim, and to communicate any change in those positions to the other party promptly and in writing;
 - 2.3.4. consider at all stages whether alternative dispute resolution would assist in resolving either the whole claim or specific issues within the claim (see section 5); and
 - 2.3.5. disclose sufficient information to enable the other party to understand properly the substance of the party's position, the evidence available to support it and any other material information relevant to the Compensation Claim.
- 2.4. Parties to a Compensation Claim should ensure that any costs which they incur in relation to the claim are appropriate, reasonable and proportionate to the nature and complexity of the claim. Sufficient records should be kept of how costs have been incurred to enable items to be explained and justified if questioned at a later date. Parties should be aware that the Tribunal has the power to order a party to pay all or part of another party's costs of a Reference. Further information on costs is contained in the Rules and the Tribunal explanatory leaflet for compulsory purchase compensation, land compensation disputes and other references.⁵

3. MAKING A CLAIM

- 3.1. Any Compensation Claim should be made within the prescribed time limit, be on any prescribed form and contain any prescribed information.
- 3.2. In all cases, claimants should ensure that their claim form or claim letter together with any supplementary valuations, calculations or other information provides sufficient information to enable the compensating authority to understand the claim and how it is supported. A claimant may expect a compensating authority to request further information if it believes it has insufficient information about the claim.
- 3.3. There is no prescribed form for a Compensation Claim related to compulsory purchase. However, the "Claiming Compensation for the Acquisition or the Occupation of Land Model Claim Form" ("**Model Claim Form**") can be used for certain types of Compensation Claim involving compulsory purchase of land or interests and/or the taking of temporary possession. The form and accompanying notes provide

⁵ The Tribunal's explanatory leaflets can be found at the following link: <https://www.gov.uk/government/publications/upper-tribunal-lands-chamber-land-compensation-t604-and-t616>

a guide as to the content needed for relevant Compensation Claims as well as the supporting documents⁶.

- 3.4. Where there is a statutory prescribed form for making a claim, then the prescribed form should be used. In all other cases, claimants should clearly set out their Compensation Claim in writing following the principle set out in paragraph 3.2 of this protocol.

4. BEFORE MAKING A REFERENCE

- 4.1. Before making a Reference, the party intending to make the reference should contact the other party in writing in order to:
 - 4.1.1. notify the other party of its intention to make a Reference;
 - 4.1.2. summarise the matters agreed between the parties;
 - 4.1.3. summarise the outstanding issues in dispute between the parties;
 - 4.1.4. provide the other party with an opportunity to respond to the outstanding issues.
- 4.2. Except in the circumstances set out in paragraph 4.5 the other party should be given at least 28 days to provide a response before a Reference is made.
- 4.3. If a response is provided, then the party proposing to make a Reference should consider whether there are further opportunities to reach a settlement or narrow the issues between the parties before a Reference is made.
- 4.4. For the avoidance of doubt, it is expected that the parties will have had constructive discussions on all aspects of the claim in order to achieve the objectives of this protocol summarised in paragraph 1.3 above before this final exchange of correspondence prior to making a Reference.
- 4.5. A Reference should not be made prematurely when the resolution of outstanding issues is still actively being explored, except where there is a requirement to make a Reference to comply with a time limit in respect of a Compensation Claim. Parties should also be aware of the ability to enter into an agreement to extend the statutory limitation period on a Compensation Claim. A Reference followed by an immediate request to stay to allow further negotiation expends the resources of the Tribunal which could have been prevented through such an agreement. Where it has been necessary to make a Reference in order to comply with a time limit before it has been possible to comply with this protocol, the parties should expect to comply with this

⁶ The Model Claim Form and guidance to it can be found at the following link:

protocol after the Reference has been made and should seek directions from the Tribunal to enable them to do so.⁷

- 4.6. When making a Reference parties are encouraged to serve a copy of the Reference papers on the other side to ensure the efficient provision and exchange of information between the parties.

5. ALTERNATIVE DISPUTE RESOLUTION

- 5.1. This protocol does not attempt to advise parties to a compensation dispute how claims might be settled or issues resolved without litigation in the Tribunal. However, it does require that in all cases parties should give due consideration to any opportunity to avoid a Reference or narrow the issues between them by using alternative dispute resolution (“**ADR**”).
- 5.2. The use of ADR, including mediation, can provide a less formal and more cost effective method of resolving compensation disputes and the Tribunal seeks to encourage its use in appropriate cases. The Tribunal will bring to the attention of the parties the availability of any appropriate alternative procedure for resolution and, if the parties wish, may facilitate its use (for example by granting a stay of proceedings).⁸ The claimant and the compensating authority should also be aware that the Tribunal may consider whether a party has unreasonably refused to consider ADR when deciding what costs order to make, even when the refusing party is otherwise successful.⁹
- 5.3. The Tribunal’s Explanatory Leaflet for Compulsory Purchase Compensation, Land Compensation Disputes and Other References (T604)¹⁰ provides brief information on the use of ADR in compensation cases, focusing on mediation. Information on all forms of ADR is provided by the Royal Institution of Chartered Surveyors.¹¹ In most cases the parties should consider taking professional advice about the use of ADR.

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<https://www.gov.uk/government/publications/compulsory-purchase-process-and-the-crichel-down-rules-guidance>

⁷ More information on forms and guidance appropriate to a Reference to the Lands Chamber (Upper Tribunal) can be found at the following link:

⁸ See rule 3 of the Rules.

⁹ See paragraph 2.2 of the Practice Direction.

¹⁰ <https://www.gov.uk/government/publications/upper-tribunal-lands-chamber-land-compensation-t604-and-t616>

¹¹ <http://www.rics.org/uk/knowledge/glossary/alternative-dispute-resolution/>