

The CPA's Law Reform Lecture 2015



Welcome & Introduction by the Conference Chairman

Richard Guyatt
Partner, Bond Dickinson

Accreditation of compulsory purchase professionals

Adrian Maher

Head of Operational Property, Transport for London

Accreditation of compulsory purchase professionals

Adrian Maher, MRICS
Head of Operational Property.
Transport for London

Background

- Low volume of experienced compulsory purchase surveyors. (*Only 279 CPA surveyor members*).
- Market value and many S7 injurious affection claims are capable of being dealt with by non specialist CP surveyor but not disturbance
- *CPO is complex*. “The current law of compulsory purchase of land is difficult to locate, complicated to decipher and elusive to apply”. Lord Carnwath, Chairman of the Law Commission 2004.
- Volumes of CP increasing exponentially from a very low base. The problem of a skills shortage will get worse

The problem

- Lack of experience results in learning on the job without supervision, mistakes, delay, increased cost.
- Compounded by claimants and acquiring authorities professional advisors often not meaningfully engaging on compensation assessment until after the loss has been incurred
- Claimants never dealt with CP before & cannot tell experienced from inexperienced.
- Anyone can purport to be competent at offering CP advice, but none has a specific requirement for study or practice of compulsory purchase law or practice.

Accreditation- the proposal

- CPA to set up a Limited Company called the “Compulsory Purchase Standards Board”. (CPSB).
- The objective of the CPSB is *“To both promote high levels of skills and best practice in the field of compulsory purchase and also give claimants visibility on those professionals who have reached defined thresholds of knowledge and experience. This will be done by accreditation, enforcing standards, developing training and encouraging new professionals into the compulsory purchase field.”*
- Once up and running for surveyors and lessons learned, the proposal is to introduce similar schemes for other professions.



Levels of accreditation

The CPSB will accredit surveyors for the CPA at 3 different levels with support from an Assessing Institution.

Level	Knowledge & experience required
Foundation	Can demonstrate good sound knowledge of the fundamental principles of law and practice for the CP
Practitioner	<p>Good knowledge and experience to demonstrate ability to deal with straight forward cases.</p> <p>Would give the client sensible sound advice with no material errors or omissions</p>
Expert	<p>Demonstrable experience with a proven track record in settling wide range of compensation claims.</p> <p>Ability to deal sensibly and effectively with most complex cases. Competence to act as a good expert witness.</p>



More about the scheme

- Window for experienced practitioners to skip foundation level entry
- Certificate/ letters for those qualified
- Not mandatory. Market forces will drive its take up.
- All those who pass the assessments will be expected to undertake CPD annually and pay a modest fee to be on a register of members.
- Once accredited will be a mandatory practice statement on standards, ethics and behaviours.

Next steps

- Appoint an eminent leader of the steering group
- Enter into a dialogue with the College of Estate Management on assessment criteria, content and extent of skill competencies & training programmes
- To work up an outline business plan and establish the approximate funding requires for initial set up and running costs. Pump priming funding is expected to be externally funded.
- Discuss the makeup of the compulsory purchase standards board with RICS and other bodies identified above
- A worked up proposal to be presented to the AGM in October for approval.

Measure of success in 2-3 years

- More surveyors coming into the profession and being properly trained
- A web site listing substantial body of surveyors at all 3 levels
- A significant reduction to in house training programmes and a move to structured training with the training burden spread among all experienced practitioners
- Legal and other professions wanting to take forward their own accreditation schemes
- A sharp drop in non accredited surveyors undertaking disturbance compensation claims

Does the Protocol go far enough?

- Biggest problem is that costs are crystallised before meaningful dialogue with the acquiring authority.
 - Obligation on the acquiring authority and claimants to work together on the basis of disturbance claims before entry taken and even before NTT.
 - Statutory obligation for these costs to be paid for by the acquiring authority
 - Obligation of claimant to provide acquiring authority with evidence of losses claimed as soon as practicable. If they don't and this increases the costs of either sides professional fees then these are to be borne by the claimant.

Does the Protocol go far enough?

- Give Tribunal power to issue directions before a full reference
 - Right for either side to apply for discovery at any time following NTT but without triggering full Tribunal process. - essential to get evidence to back up aspects of the claim.
 - Right to apply for directions on appointment of single independent expert. Costs of such an expert to be borne by the acquiring authority-
 - Presumption in favour of appointment of such an expert

Proposed pre-reference protocol for compulsory purchase compensation claims

Meyric Lewis

Barrister, Francis Taylor Building

CPA Chairman



Francis Taylor Building

CPA Law Reform Lecture

Proposed pre-reference protocol for compulsory purchase compensation claims

By Meyric Lewis
Francis Taylor Building

Francis Taylor Building Inner Temple London EC4Y 7BY DX: 402 LDE T 020 7353 8415 F 020 7353 7622 E clerks@ftb.eu.com www.ftb.eu.com



Francis Taylor Building

CPA – alongside reform agenda – concerned to help
make CPO process as efficient and non-disputatious
as possible

Therefore promote culture – in common with other
forms of contentious litigation – whereby prospective
parties regard adversarial dispute resolution as “last
resort”

Francis Taylor Building Inner Temple London EC4Y 7BY DX: 402 LDE T 020 7353 8415 F 020 7353 7622 E clerks@ftb.eu.com www.ftb.eu.com



Francis Taylor Building

Culture change in civil litigation

Objective of Woolf reforms/CPR

– avoiding contentious dispute resolution if possible



Francis Taylor Building Inner Temple London EC4Y 7BY DX: 402 LDE T 020 7353 8415 F 020 7353 7622 E clerks@ftb.eu.com www.ftb.eu.com



Francis Taylor Building

Exchanging of info so either side can understand the other's case

Identification of issues

=> make a realistic offer of settlement

and – ideally – avoid litigation altogether



Francis Taylor Building Inner Temple London EC4Y 7BY DX: 402 LDE T 020 7353 8415 F 020 7353 7622 E clerks@ftb.eu.com www.ftb.eu.com



Francis Taylor Building

So, subject to consultation, CPA proposes draft pre-reference protocol

Plus template for pre-reference letter and opposing party's response

Proposed for use in all Upper Tribunal (Lands Chamber) compensation claims

Potential for costs penalties if not complied with



Francis Taylor Building Inner Temple London EC4Y 7BY DX: 402 LDE T 020 7353 8415 F 020 7353 7622 E clerks@ftb.eu.com www.ftb.eu.com



Francis Taylor Building

Early start on negotiations

Clear identification of the basis of the claim

Full exchange of information on either side

– all with objective of arriving at a realistic possibility of settlement

(Reference = last resort)



Francis Taylor Building Inner Temple London EC4Y 7BY DX: 402 LDE T 020 7353 8415 F 020 7353 7622 E clerks@ftb.eu.com www.ftb.eu.com



Francis Taylor Building

Aim of protocol

- (a) to enable parties to settle issues between them without needing to make a reference to the Tribunal and/or
- (b) to support effective management by Tribunal/parties of any reference which cannot be avoided



Francis Taylor Building Inner Temple London EC4Y 7BY DX: 402 LDE T 020 7353 8415 F 020 7353 7622 E clerks@ftb.eu.com www.ftb.eu.com



Francis Taylor Building

NB overriding objective to deal with cases justly and fairly

Therefore parties to try to further the overriding objective by early exchange of information

timely response to reasonable requests from the other party

=> exchange of info/consideration of ADR

(NB costs)



Francis Taylor Building Inner Temple London EC4Y 7BY DX: 402 LDE T 020 7353 8415 F 020 7353 7622 E clerks@ftb.eu.com www.ftb.eu.com



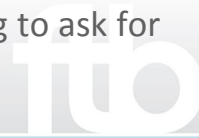
Francis Taylor Building

Claimant's claim – as soon as has all info needed to formulate

Letter of claim: concise summary of the matter

sufficient to allow the authority to understand the legal/evidential nature of the claim

=> AA can investigate issues without needing to ask for further info



Francis Taylor Building

NB section 4

NB general discretion on costs





Francis Taylor Building

If Claimant does not send Letter of Claim as soon as it has all the info...

AA should write to the claimant drawing attention to the terms of protocol and inviting the claimant to take steps to submit a Letter of Claim

If Claimant fails to do so, may be penalised in costs by the Tribunal



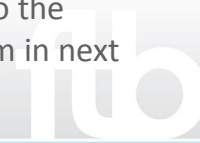
Francis Taylor Building

If, despite encouragement to do so, Claimant fails to send Letter of Claim

AA may either

(a) set out its best assessment of the claim available to the claimant, appropriately supported and particularised as set out above (within 6 weeks of sending their letter) or

(b) tell the Claimant it proposes to refer claim to the Tribunal if it does not receive a Letter of Claim in next 6 weeks





Francis Taylor Building

AA's response

In all cases where Claimant has sent Letter of Claim

AA should respond by setting out its analysis of the claimant's claim, appropriately supported and particularised as above ("Letter of Response")

Even where basis of claim or head of claim not fully supported, explained or particularised, AA should still make its best assessment of the claim or head of claim available to the claimant so far as it is able to do so



Francis Taylor Building

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



Francis Taylor Building

If, after receipt of Letter of Claim, AA requires further info from Claimant

AA should ask for it within 2 weeks of receiving the Letter of Claim (“Letter of Clarification”)

Claimant should reply to Letter of Clarification within 2 weeks of receipt



Francis Taylor Building

After Letter of Response, 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/correspondence should not be allowed to impede swift resolution of the claim





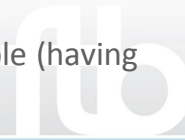
Francis Taylor Building

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

Consider whether some form of ADR would assist the agreement of claim

If ADR would assist, then

Consider what form of ADR would be most suitable (having regard to nature of claim/matters in issue)



Francis Taylor Building

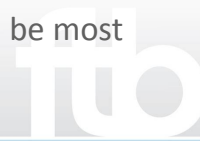
Options might include

early neutral evaluation

mediation or

arbitration

(But a matter for the parties which means might be most appropriate in the circumstances)





Francis Taylor Building

If, despite terms of protocol, the matter is ultimately referred to the Tribunal

Parties may be required to provide evidence that they did consider alternative means of resolving the dispute

and Tribunal may have regard to any failure to do so in determining costs



Francis Taylor Building Inner Temple London EC4Y 7BY DX: 402 LDE T 020 7353 8415 F 020 7353 7622 E clerks@ftb.eu.com www.ftb.eu.com



Francis Taylor Building

Only if all attempts at reaching agreement fail should parties contemplate referring the matter to the Tribunal – and then only as a last resort

If a disputed claim is referred to the Tribunal – nevertheless hoped parties' attempts to resolve the claim before making a reference will result in saving Tribunal time

by disposing in advance of matters which are agreed/identifying the outstanding issues to be resolved



Francis Taylor Building Inner Temple London EC4Y 7BY DX: 402 LDE T 020 7353 8415 F 020 7353 7622 E clerks@ftb.eu.com www.ftb.eu.com



Francis Taylor Building

CPA Law Reform Lecture

Proposed pre-reference protocol for
compulsory purchase compensation claims

By Meyric Lewis
Francis Taylor Building

Francis Taylor Building Inner Temple London EC4Y 7BY DX: 402 LDE T 020 7353 8415 F 020 7353 7622 E clerks@ftb.eu.com www.ftb.eu.com

The CPA's Law Reform Lecture 2015

