

CPA Proposed Revisal Document

in respect of

RICS UK VPGA 16

Valuations for statutory financial compensation assessments

Application and Scope of The Red Book

1 The assessment of compensation claims where interests in real estate are compulsorily acquired is strictly controlled by legislation and case law, which varies within the four nations of the UK. Members must be aware of and follow the mandatory contents of the April 2017 RICS Professional Statement “Surveyors acting in respect of compulsory purchase and statutory compensation” which requires members to be able to demonstrate a proper understanding of the statutes, statutory instruments, case law and government guidance in respect of the compulsory purchase code when undertaking work relating to compulsory purchase instructions. For the avoidance of doubt, such property valuations are subject to the general requirements of PS1 and PS2.

2 Exceptions under section 5 of PS1 may apply to compulsory purchase work where, in particular, the valuation is an indication of the likely outcome of a negotiation. However, while the requirements of VPS1-5 inclusive are not mandatory in these circumstances, they nevertheless demonstrate good practice and should be followed, where appropriate. Members must also be aware that the requirements of the April 2017 Professional Statement remain mandatory and cover some areas also covered by VPS1-5 e.g. members to have prepared and to possess detailed signed-off terms of engagement so that all material matters have been adequately covered for all aspects of the advice and service to be provided. All valuations undertaken for statutory compensation assessment purposes e.g. open market valuations where either all or part of a property has been compulsorily acquired, Part 1 claims, granting of easements or wayleaves are subject to PS1 and PS2. Notwithstanding this, in most, if not all cases, assessment of compensation claims will involve negotiations between the parties which will be primarily based upon the valuations produced by both entities and may therefore be subject to the exception to VPS1-5.

3 The circumstances in which members can be engaged in cases where a compulsory acquisition has already taken place or in advance of a compulsory purchase are varied. However, in essence, members are likely to be involved in either (a) have been commissioned by an Acquiring Authority (or a commercial partner of an Acquiring Authority) or working within the Acquiring Authority and providing valuation advice to a client service within the Acquiring Authority to assess and negotiate compensation claims on its behalf or (b) have been engaged by the person or entity whose interest in real estate is proposed to be or has already been compulsorily acquired and have been instructed to assess and negotiate the claim on behalf of the claimant.

4 Members involved in the assessment and negotiation of financial compensation claims must provide balanced professional advice to secure an equitable outcome consistent with the requirement to agree a fair and reasonable compensation claim settlement in accordance with the compulsory purchase code for a reasonable cost and within a reasonable timescale. Thus, the

conduct of members is to act reasonably, competently and responsibly taking into account all relevant circumstances surrounding the proposed or actual acquisition. These principles are fully set out in the April 2017 RICS Professional Statement.

5 Notwithstanding the above, it is inevitable that sometimes disputes will occur either with regard to differences on legal interpretation and/or valuation matters. When this occurs, there is an established route by which resolution can be achieved- in England and Wales, the dispute is referred to the Lands Chamber of the Upper Tribunal, in Scotland to the Lands Tribunal for Scotland and in Northern Ireland to the Lands Tribunal for Northern Ireland. In such situations, the relevant RICS Professional Statements “Surveyors acting as expert witnesses” are applicable, the contents of which are mandatory for members to follow. Such disputes are often lengthy and potentially very costly for both parties and consideration is being given by RICS to establish suitable Alternative Dispute Resolution methods. Members who become involved in any ADR process must exercise care to ensure that the advice offered and service provided in such cases is in accordance with the contents of the relevant Practice Statements and The Red Book.

Valuation matters under or in anticipation of compulsory purchase

6 Compulsory purchase and compensation payments first came to the fore in the UK in the mid-19th century with the advent of the railway system. At around that time, consolidating legislation came into effect (replacing the need for individual compulsory purchase orders) some of which is still in use today but has been supplemented over the last 175 years with numerous Acts of Parliament enacted within the four nations of the UK and associated case law- to form what is known as the Compulsory Purchase and Compensation Code- and it is upon this Code that financial compensation claims are assessed and negotiated. The relevant statutory definition of value must be used in assessing the compensation and members should note that the VPS4 definition of Market Value is not fully compatible with the statutory definition for compulsory purchase, in particular with regard to a special purchaser. Members should therefore take care to ensure that the basis of value adopted is correct and clearly explained, even where the contents of VPS1-5 are not mandatory. Members must also be aware of applicable statutory and case law provisions disregarding the impact of the compulsory purchase and its underlying scheme and the assumptions that can be made regarding planning status and prospects as required by the April 2017 Professional Statement: these can be treated as Special Assumptions. Members are reminded that compensation assessments which include the value of property are regarded by RICS as valuations and that each nation within the UK has its own specific compulsory purchase and compensation legislation.

7 Compensation assessments have a fixed statutory date of valuation dependent upon the method used by an Acquiring Authority to compulsory purchase interests in real estate: such methods include Notice to Treat or a General Vesting Declaration. Up until there is a fixed date, then the valuation date is current (Blight Notices fall into this category). Accordingly, members must be aware of market conditions prevailing and the availability and analysis of comparable sales/letting evidence. Members must also take into account relevant statutory and case law assumptions and disregards relating to the impact of the compulsory purchase scheme.

8 A wide variety of properties and real estate interests are compulsorily acquired and, as a consequence, all of the recognised methods of property valuation require to be employed dependent upon the property type and interest being acquired. Thus, members need to be fully

aware of the utilisation of these methods and when they should be used. However, it should be noted that a Rule 5 claim i.e. equivalent re-instatement is not a valuation for PS1-2 purposes. Further, detailed valuation skills are required when it is being contended that the property acquired has a value for development or re-development which is considerably higher than its existing use value. Such cases may require a range of other professionals e.g. planners, engineers, quantity surveyors either to support that contention or to refute that contention and, accordingly, members require to work within their areas of knowledge and competence.

9 In addition, the compensation claim may not just be limited to the open market value of the real estate interest acquired but may also include an element known as “disturbance” i.e. the costs and expenses arising from dispossession of an interest in land. In some cases, the amount of “disturbance” may involve the analysis of business performance; accordingly, a detailed knowledge and understanding of financial statements, notably profit and loss accounts, will be required, although many elements of a “disturbance” claim are not valuations in themselves. Members are reminded to recognise their areas of expertise and at all times to work within their limitations and not to purport expertise in areas where they are not experienced.

10 As with any valuation, detailed record keeping is critical as it is common for compensation claim cases to extend over a long period of time, especially if the claim is disputed and a reference for formal resolution is exercised. Equally, it is not unusual for a member to be instructed some time after a property has been acquired and, in some cases, where it no longer exists or it has been materially changed and, thus, the Acquiring Authority’s representatives and/or the claimant will require to maintain detailed records. In addition, in such circumstances, appropriate research into the actual state of the property (construction, accommodation, condition etc.) as at the valuation date will be required, perhaps having to be supplemented by a series of reasonable assumptions where detailed records do not exist.

11 It is often the case nowadays that, as part of the overall justification for a particular public work which will necessitate the use of compulsory purchase powers, an initial forecast of the likely compensation burden on the Acquiring Authority will be sought with that forecast up-dated as time and circumstances evolve- this is often named a Property Cost Estimate (PCE). It is recommended that members exercise a high degree of care if instructed to undertake a PCE (or any up-date thereon) and to issue and always work within suitable terms of engagement that reflect the considerable uncertainties of such an exercise. This is because, amongst other things, such estimates tend to be undertaken on a “desk-top” basis with no actual inspections of the properties concerned, only limited consideration of development and/or re-development prospects can be undertaken, limited or no recourse to the financial statements the owners and occupiers of commercial and/or agricultural businesses and limited information on lease agreements and rents payable. All these factors can and will have a material effect on the amount(s) of the PCE and, thus, it is especially important that the contents of VPS1-5 are followed as far as possible, if they are not mandatory. Particular regard should be had to clear statements under the required headings in VPS1 and 3 relating to limitations of the investigations, the purpose of the PCE and material uncertainty. The basis of valuation should be clearly stated and should be the statutory basis of valuation.

12 Even though real estate interests are compulsorily acquired, that does not necessarily mean that compensation payments will then flow automatically. Indeed, the reverse is true as, in the first

instance, a claimant needs to formally lodge a claim for compensation. Further, the amount of compensation may not be able to be accurately assessed in the short-term (this is particularly the case where part-only of a property has been acquired) and/or there is a significant difference between the amount formally claimed and the opinion of the Acquiring Authority on the amount due. In these types of circumstance, there will likely be a delay prior to the claim being settled and thus the compensation legislation provides for payments to account to be made. These payments to account are known as Advance Payments of Compensation and represent 90% of the Acquiring Authority's estimate of the likely compensation payable. Thus, once an application for an Advance Payment of Compensation has been received together with all relevant information that Acquiring Authority deems necessary, then the onus is on the Acquiring Authority's valuer to make an accurate assessment. While such an assessment is not an offer to settle the claim, an Advance Payment is a valuation under PS1 and PS2.

Obligations on Valuers

13 As with rent reviews and rating appeals, disputes about the correct level of compensation due will, on occasion, arise and, as stated above, there are different entities within the four nations of the UK which have been established to deal with the resolution of these disputes. The member's duty is to the client (which will either be the Acquiring Authority or the claimant). Accordingly, until the member takes on the role of an expert witness, the member can advocate the claim on behalf of the client by way of negotiation. However, members must follow the mandatory requirements under the April 2017 Professional Statement to provide balanced professional advice and to act reasonably, competently and responsibly and not to be influenced by the client to take a position which the member cannot properly support. However, once a member has accepted the role of an expert witness in a compensation dispute, the member's duty switches to the appropriate resolution body and, in such situations, the relevant mandatory RICS Professional Statements on surveyors acting as expert witnesses are applicable in addition. Accordingly, members must give their objective opinion to the court of tribunal once the member has taken on the role of an expert witness.

14 In conclusion, compulsory purchase is a complex area and, while many of the key principles in the assessment of compensation claims are well-established, some aspects are continually evolving as a consequence of new legislation and/or Upper Tribunal (Lands Chamber) and Lands Tribunal decisions. Thus, the April 2017 Professional Statement requires that all members working in this niche field require to constantly keep up-to-date with primary and secondary legislation changes as well as case law decisions in order that they are able to provide the high standard of service that clients, both within the public and private sectors, require and expect.