# Land Compensation Claims: the Claimant's Perspective

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This brief paper is written from the Claimant ('C')'s perspective alone, cognisant - naturally enough – of the perspectives of both the compensating authority ('CA') and Tribunal ('T'); and I mention this at the outset simply to avoid repeating it.

I have assumed that the C is singular and male.

## 1. General

The potential C within which we are concerned has, by definition an interest in land affected by a CPO. He may have objected to the proposed CPO, but he will not have been entitled to raise the issue of the value the land subject to the CPO to him or, if he did, he will have been promptly reminded – which he may have found difficult to accept - that this is a matter for another day. But the C should certainly be thinking ahead about the scope of his compensation claim, and how his reasonable losses are to be demonstrated in the event that his land is taken.

One should not lose sight of the fact that the compulsory acquisition of land and its consequences may be unfamiliar to the prospective C who is not supported by or does not have ready access to an experienced professional team; and it may be helpful to outline to him the fundamentals of the compensation exercise.

## 2. Nature of interest in land

Bearing in mind the prospect of compensation for injurious affection or severance of land held with that taken, it will plainly be important to establish the extent of the C's landholding. The CA will, of course, already have ascertained the landholdings directly affected by the CPO; but those acting for the C do need to make sure that they have the wider picture (assuming there is one).

It will also be important to establish the basis – freehold or leasehold and, if the latter, subject to what restrictions (including the term) - upon which land is held. This will avoid the belated discovery of matters that may affect significantly the measure of compensation recoverable.

## 3. Basis of claim

The rules for assessing compensation are, of course, set out in the Land Compensation Act 1961, section 5, as supplemented by many judicial decisions. It's doubtful how much any claimant will benefit from an attempt to produce a potted version of the rules; but it is helpful to all concerned – C and CA alike – to be clear about the basis of the claim. Assuming the claim has to be referred to the T, how would it be pleaded? A great deal of unnecessary and wasteful heart-searching can be avoided if the basis of claim is clear from the outset (viz Pattle).

Three notes on rule 6. (1) This is not restricted to *'disturbance'* and it's not helpful to equate/elide rule 6 and disturbance because it diverts attention, at least, from the prospect of compensation for *'any other matter ...'*. (2) There is a tendency – misplaced, as I see it – to seek to avoid categorising heads of loss as *'any other matter ...'* because it represents the last available basis of claim (the end

of the line); but this is, to my mind, misplaced. (3) It is also well-established, to my mind, that the purpose of the qualification *'not directly based upon the value of land'* is no more nor less than to avoid double recovery, ie compensation in respect of the same loss under rule 2 and rule 6.

**4. The purpose of compensation**

The C will need to understand that although the sum of compensation agreed or awarded will become the consideration for his transfer of his interest in land, it will not – assuming a routine claim - be restricted to the market value of the land taken. He is entitled to a sum of money, capitalised at the valuation date, that places him in the position he would have been in had his land not been taken. That is, to arrive at a figure that compensates him in accordance with *'the principle of equivalence'*:

> *The purpose of these provisions ... is to provide fair compensation for a claimant whose land has been compulsorily taken from him. This is sometimes described as the principle of equivalence. No allowance is to be made because the resumption or acquisition was compulsory; and land is to be valued at the price it might be expected to realise if sold by a willing seller, not an unwilling seller*$_n$ *But subject to these qualifications, a claimant is entitled to be compensated fairly and fully for his loss. Conversely, and built into the concept of fair compensation, is the corollary that a claimant is not entitled to receive more than fair compensation: a person is entitled to compensation for losses fairly attributable to the taking of his land, but not to any greater amount. It is ultimately by this touchstone, with its two facets, that all claims for compensation succeed or fail.* (Shun Fung [1995] 2 A.C. 111 per Lord Nicholls p. 125 C)

The C is not confined to compensation in respect of the market value of his land because: *'land may, of course, have a special value to a claimant over and above the price it would fetch if sold in the open market. Fair compensation requires that he should be paid for the value of the land to him, not its value generally or its value to the acquiring authority'* (ibid p. 125E). So, he is able to recover compensation for the value of being able to conduct his business for the land, if it is used for that purpose. *'Disturbance'* will cover the costs of relocation – or, in difficult cases, partial or total extinguishment. It will also, of course, extend to pre-acquisition losses.

*Cautionary notes*

The C should not, however, be encouraged to get carried away with the idea of *'equivalence'*, because it cuts both ways. The principle is rooted in 'fairness', and therefore provides both a floor for the C and a ceiling for the CA.

He should also be advised that the T will expect the C to have behaved reasonably in response to the prospect and subsequent confirmation of the CPO and to have mitigated his loss. The C should factor this into its response to the prospect of a CPO at an early stage. The evidence can then reflect a measured response from the outset.

**5. Preparation and reference to the T**

There is a heavy emphasis in these claims on securing as much agreement as possible and narrowing the issues between the parties. That's all very helpful, but the C must be alive to the prospect that he may not be able to agree all of the factual material necessary to support his claim and that, where he is not, he must call factual evidence (eg to support the relocation supervision costs or interim loss of profits claimed). It may be helpful to organise staff so that it is clear who is

responsible for collating, maintaining and giving evidence – and to avoid losing key staff members. Being clear about where responsibility for the evidence lies should help to ensure that the story-line underlying the claim is straight and consistent (viz the Coventry station quandry).

Up to the sealed offer stage, the C should be confident of recovering his costs, provided reasonably incurred. He has, after all, had the losses to be quantified imposed upon him. The C should, however, be alive to the prospect that exaggeration of the claim (eg by reference to unhelpful comparables) may result in costs being disallowed or a partial order against C.

The key consideration, in deciding whether and when to refer a claim to the T, is whether the claim is itself ready. The overriding objective of the rules is to enable the T to deal with cases fairly and justly; and parties must both help the T to further the overriding objective and co-operate with the T generally (rule 2(1) & (4)). The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 ('the rules') have very significantly expanded the powers of the T. Following a reference and after the CA's response (Part 5 of the rules deal with these), one can envisage the Registrar seeking to establish a framework of directions in which the claim is to be brought forward. It's important to expect active case management, though this can very often be achieved by agreed directions (avoiding unnecessary appearances).

**6. Particular powers**

It is worth drawing attention to perhaps these five aspects of the rules, of which those advising C should certainly be aware.

First, the T may consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues, or treat a case as a lead case (eg Land Compensation Act 1973 Part 1 claims for depreciation in the value of land caused by the use of public works): rule 5(3)(b).

It may, secondly, permit or require a party or another person to provide documents, information, evidence or submissions to the Tribunal or a party: rule 5(3)(d). This is supported by the power to summons witnesses and make orders requiring questions to be answered or documents to be produced: rule 18.

Thirdly, it may deal with an issue in the proceedings as a separate or preliminary issue: rule 5(3)(e). The T proceeds not infrequently by hearing and determination of preliminary issues of law, where that process has the potential to 'cut through' much of the disputed content of a claim and save costs. If it emerges that there is an issue of law between the parties, the C should give serious consideration to identifying a preliminary issue of law.

To this a note of caution attaches. First, the C will be concerned to make sure that the issue is stated both accurately and neutrally. Second, he should make sure that it is agreed on a factually satisfactory basis. An order that there should be a hearing of a preliminary issue of law will proceed on the basis of a statement of facts to be agreed between the parties; and it is important to ensure that both parties are in fact agreed. So, if the intention is that it is to be assumed for the purposes of the preliminary issue that the claim succeeds in all or particular respects, it is sensible to have this discussion with the CA sooner rather than later.

Fourthly, the T has been given wide powers to rule on: the issues on which it requires evidence; the nature of the evidence it requires; whether the parties may provide expert evidence and, if so, whether they should jointly instruct a single expert; any limit on the number of witnesses a party may put forward; and the manner in which evidence (or submissions) are to be produced: rule 16.

And finally, an expert's duty to the T on matters within his expertise overrides any obligation to the party from whom he has received instructions and no party may call more than one expert witness without the permission of the T (though the starting point is two in respect of mineral valuations or business disturbance): rules 17(1) - (3). It's all too easy to overlook these limits.

## 7. Postscript

The overriding emphasis of this brief paper is on securing and maintaining a clear view of the basis of claim and the principles upon which it is based and the importance to C of preparation. For an example of what to avoid, see Welford v. TfL [2011] EWCA Civ 129

Finally, those advising C might note that the T has recently issued Explanatory Leaflet: a Guide for Users (January 2011), which is available on line and provides some helpful basic information but *'is not a substitute for professional advice'*!)

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