

CPO Law & Practice in Scotland: A Stakeholder Event

Wednesday 28th October 2020

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Please note that this event will be recorded.

Welcome and Introduction from the CPA Scotland Chair

Keith Petrie, FG Burnett

Where Are We with Reform of CPO Law and Practice?

Keith Petrie, FG Burnett

CPAS Stakeholder Event CPO Reform in Scotland

A Presentation

by

Keith Petrie FRICS

Chair, CPAS

Where are we with reform?

- While most working with CPOs and compensation assessments were aware of the deficiencies in the two regimes, the politicians and Scottish Government were not similarly aware
- Infrastructure projects were seen as one way of getting the Scottish economy re-balanced after the Great Economic Recession of 2008-2012 and to boost economic activity (same with covid)
- However, many of these projects were not “oven-ready” and could not come to fruition in the short-term.

Where are we with reform?

- This lack of progress lead to questions being raised as to why these projects were not being taken forward, as hoped- with the reply being CPOs and their inefficiency in the modern world.
- Thus, in 2013 Scottish Government requested the SLC to undertake a root-and-branch review of the law of CPOs and compensation assessments in Scotland.

Where are we with reform?

- SLC engaged in a wide-ranging consultation exercise with all relevant stakeholders culminating in the submission of its 778-page report to Scottish Government in September 2016
- While Scottish Government was (and is still) committed to reform, only a small amount of progress has been made- a combination of Brexit and covid has got in the way
- Nevertheless, Neil Langhorn was appointed by Scottish Government to investigate the issues and to drive reform forward

Where are we with reform?

- Initially, Neil had a very steep learning curve but quickly mastered the topic and he has regularly engaged with all of those involved in CPO and compensation worlds
- Up-dated guidance has been issued to all Acquiring Authorities in Scotland
- Acquiring Authorities have been encouraged to use their CPO powers and not to be afraid of so doing

What did the SLC Report say?

- The report was, in essence, divided into two main sections:-
- The first section deals with the existing CPO procedure and how it can be improved
- The second section deals with compensation assessment arrangements and how they can be improved

What did the SLC Report say?

- While a minority of the respondents thought that both regimes worked adequately, the majority were of the view that reform (to one degree or another) was required.
- There was general consensus that the CPO process is too long and too slow- but it was also recognised that the forcible taking of private property should only occur where there is good reason so to do and human rights require to be respected
- There was general consensus that the compensation assessment regime is “unfair” and, as a consequence, agreements take a considerable amount of time to be achieved with “wars of attrition” often occurring

What did the SLC Report say?

- There was also concerns raised regarding the lack of “access to justice” and the “inequality of arms” issues regarding applications (or non-applications) to the LTS
- In all, the report highlighted the fact that we are dealing with archaic legislation which is not fit for purpose in the 21st century

What can be done?

- In the short-term, very little.
- The significant changes required need new primary legislation which, in turn, requires political intervention
- No time within the recently-announced timetabling of business within Scottish Parliament until after the May 2012 elections
- Brexit and covid are much more important

What can be done?

- We will continue to liaise with Neil Langhorn
- We will lobby all the political parties regarding the May 2021 election on the issue of CPO reform in the 2021-2026 Scottish Parliamentary session to ensure that there are manifesto commitments in this regard

Quick-Fixes?

- We appreciate that the introduction of substantial new primary legislation covering a much more efficient CPO process and a fairer compensation assessment regime are our utopia
- However, we believe that there are a number of quick-fixes that can be introduced without recourse to such legislation

Quick-Fixes?

- Powers to allow Acquiring Authorities to take early access to land proposed to be acquired for ground investigation etc. works
- Up-dating of the 1990 Home Loss Payments regime regarding the amounts of the minimum and maximum payments, c/f England
- Revisal to the statutory interest rate amount where the compensation has not been paid at date of entry/vesting and compound interest
- Enforcement of the payment of Advance Payments of Compensation within the prescribed 90-day period

Quick-Fixes?

- “Stop the clock”. Three year period between confirmation of a CPO by The Scottish Ministers and the vesting of the CPO; however, no stopping time if a legal challenge is mounted to the confirmation decision e.g. AWPR CPO
- Extending the minimum 28 day period between the issue of a GVD and the actual vesting date to three months

Impediments for using CPOs for Land Assembly: Speed and Costs

Neil Strachan, Aberdeen City Council

Rob McIntosh, Aberdeenshire Council

Karen Hamilton, Brodies LLP

IMPEDIMENTS TO USING CPOs FOR LAND ASSEMBLY

28 October 2020



Aberdeenshire
COUNCIL



SPEAKERS



Rob McIntosh
SENIOR LAYWER,
ABERDEENSHIRE COUNCIL

01467 532 970

rob.mcintosh@aberdeenshire.gov.uk



Neil Strachan
PROPERTY ESTATES MANAGER,
ABERDEEN CITY COUNCIL

01224 523 062

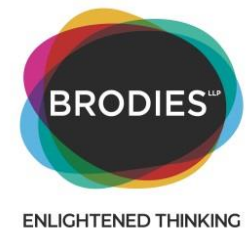
NStrachan@aberdeencity.gov.uk



Karen Hamilton
PARTNER
BRODIES LLP

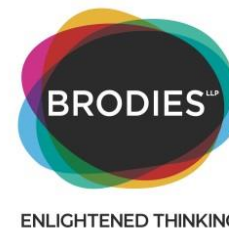
0141 245 6225

karen.hamilton@brodies.com



AGENDA

- To use CPO or not?
- Costs
- Timescales



TO CPO OR NOT

- CPO is an effective tool – large or small projects
- Public interest – necessity not desirability
- Reduces risk – provides degree of certainty of delivery and timescale
- Procedures – set out in legislation and guidance



- Resources – reflect scale and complexity of land assembly
- Inhouse – led by promoting service/department or third party/partner
- External – specialist
- Funding – part overall package



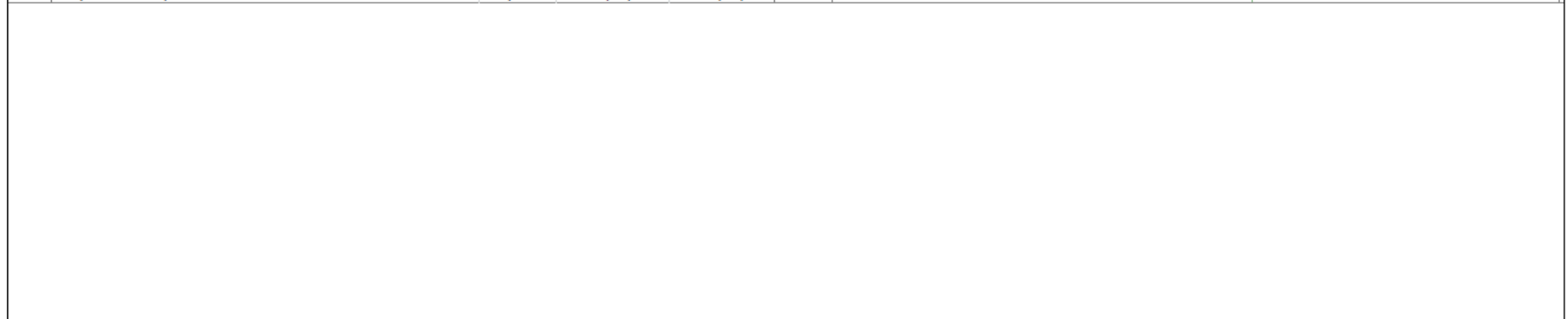
- Understanding of Costs
- Key significant cost areas
- Costs are not just fees paid
- Should surveyors consider CPO costs in voluntary discussions



- “Typical” timescales
 - with inquiry
 - without inquiry
- Timescales you can control (and those you can’t)
- Mitigation – where might savings be made?



ID	Task Name	Duration	Start	Finish	Qtr 2, 2020				Qtr 3, 2020			Qtr 4, 2020			Qtr 1, 2021		
					Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
1	Stage 1 - Preparation of CPO (overall timescale)	30 days	Mon 30/03/20	Fri 08/05/20													
2	Land referencing	20 days	Mon 30/03/20	Fri 24/04/20													
3	Statement of Reasons - background review and initial meeting	5 days	Mon 06/04/20	Fri 10/04/20													
4	Review / finalisation of CPO plan(s)	15 days	Mon 06/04/20	Fri 24/04/20													
5	Preparation/verification of database	20 days	Mon 06/04/20	Fri 01/05/20													
6	Preparation / finalisation of Statement of Reasons	20 days	Mon 13/04/20	Fri 08/05/20													
7	Draft report deadline	1 day	Wed 15/04/20	Wed 15/04/20													
8	Pre agenda meeting	1 day	Mon 20/04/20	Mon 20/04/20													
9	Draft and finalise CPO, including CPO schedule	15 days	Mon 20/04/20	Fri 08/05/20													
10	Draft and finalise template notices, advertisements, lamp post notices	15 days	Mon 20/04/20	Fri 08/05/20													
11	Final report deadline	1 day	Mon 27/04/20	Mon 27/04/20													
12	Committee for CPO approval	1 day	Wed 06/05/20	Wed 06/05/20													
13	Stage 2 - Making and service of CPO (overall timescale)	55 days	Mon 11/05/20	Fri 24/07/20													
14	Making of CPO / signing / placement of adverts	10 days	Mon 11/05/20	Fri 22/05/20													
15	Notification and advertisements	10 days	Mon 25/05/20	Fri 05/06/20													
16	Objection period (minimum 21 days, allow four weeks)	30 days	Mon 08/06/20	Fri 17/07/20													
17	Submission of CPO to Scottish Ministers following objection period	5 days	Mon 20/07/20	Fri 24/07/20													
18	Stage 3 - Objection management (if required)	40 days	Mon 27/07/20	Fri 18/09/20													
19	Stage 4 - Scottish Ministers decision (if all objections withdrawn)	40 days	Mon 21/09/20	Fri 13/11/20													
20	Stage 5 - Implementation of CPO and completion of title	96 days	Mon 16/11/20	Mon 29/03/21													
21	Title refresh and updating/verifying database	10 days	Mon 16/11/20	Fri 27/11/20													
22	Notification / advertisement of confirmation of CPO (including notice of intention to make GVD)	10 days	Mon 30/11/20	Fri 11/12/20													
23	Six-week challenge period	32 days	Fri 01/01/21	Mon 15/02/21													
24	Making General Vesting Declaration	1 day	Wed 10/02/21	Wed 10/02/21													
25	Notice of making GVD	10 days	Thu 11/02/21	Wed 24/02/21													
26	Entry date to land/start date for construction	1 day	Mon 29/03/21	Mon 29/03/21													



Project: Example CPO timescales - without inquiry (<10 plots)	Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
	Split		External Tasks		Inactive Summary		Manual Summary		Progress	
	Milestone		External Milestone		Manual Task		Start-only		Manual Progress	
	Summary		Inactive Task		Duration-only		Finish-only			

ID	Task Name	Duration	Start	Finish	Half 2, 2020							Half 1, 2021							Half 2, 2021						
					M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	
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19	Stage 4 - Inquiry preparation / representation (if required)	175 days	Mon 21/09/20	Fri 21/05/21	[Gantt bar from Mon 21/09/20 to Fri 21/05/21]																				
20	Passing to DPEA	5 days	Mon 19/10/20	Fri 23/10/20	[Gantt bar from Mon 19/10/20 to Fri 23/10/20]																				
21	Pre-examination meeting (PEM)	1 day	Mon 14/12/20	Mon 14/12/20	[Gantt bar at Mon 14/12/20]																				
22	Inquiry	3 days	Mon 15/03/21	Wed 17/03/21	[Gantt bar from Mon 15/03/21 to Wed 17/03/21]																				
23	Reporter issues recommendations to Scottish Ministers	20 days	Mon 12/04/21	Fri 07/05/21	[Gantt bar from Mon 12/04/21 to Fri 07/05/21]																				
24	Scottish Ministers' decision	20 days	Mon 17/05/21	Fri 11/06/21	[Gantt bar from Mon 17/05/21 to Fri 11/06/21]																				
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POSSIBLE REFORM

- Electronic communications
- Specialist advisory unit
- Performance monitoring



IMPEDIMENTS TO USING CPOs FOR LAND ASSEMBLY

28 October 2020



Temporary Possession of Land: The Drive Towards a Temporary Possession Code

Scott Logan, Brodies LLP

TEMPORARY POSSESSION OF LAND

28 October 2020



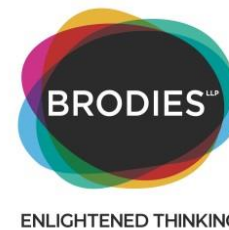


Scott Logan

MANAGING ASSOCIATE
BRODIES LLP

+44 (0) 131 656 0020

scott.logan@brodies.com



TEMPORARY POSSESSION POWERS

Why are they useful?

- Where land is required for a short period only
- To provide flexibility to the promoter
- To reduce impact on affected parties – lesser interference with private rights
- To reduce compensation (protect the public purse)

What are the risks?

- Uncertainty for landowners
- Risk to Scheme delivery
- Do not permit permanent infrastructure to remain



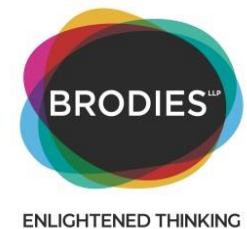
TEMPORARY POSSESSION POWERS

The current position in Scotland

- Must be specifically authorised by statute:
 - E.g. Waverley Railway (Scotland) Act 2006 (Borders Railway)
 - Temporary possession under Roads (Scotland) Act 1984 (s.110(2))?
- Contrast with other authorising statutes e.g. Town and Country Planning (Scotland) Act 1997

Reasons for reform

- The current provisions are inconsistent and lead to uncertainty
- Advantages for promoters and affected parties
- Would provide a clear framework for temporary possession
- Could provide a clear basis for compensation?



TEMPORARY POSSESSION REFORM

What should be included?

- A general temporary possession power
- Procedural and notice requirements
- Counter notice procedure?
- Provisions regulating period of possession
- Reinstatement provisions
- Compensation and advance payments

TEMPORARY POSSESSION REFORM

Can reform be achieved now?

- Legislative timetable – lack of parliamentary time for full scale CPO reform
- Stakeholder “buy-in”
- English experience – “easy win” e.g. Neighbourhood Planning Act 2017
- Could non-statutory Guidelines re best practice assist?



Home Loss Payments/Business Loss Payments: Mind the Gap

Keith Petrie, GF Burnett
Archie Rintoul, RICS Scotland

CPAS Stakeholder Event Home Loss Payments and Business Loss Payments

A Joint Presentation

by

Archie Rintoul and Keith Petrie

Home Loss Payments (HLPs)

- HLPs were first introduced in the UK in 1973; in Scotland via the Land Compensation (S) Act 1973
- Amount by way of the 1973 Act calculated by reference to a multiplier on the RV of the property
- Revised in the Planning and Compensation (S) Act 1990 as a consequence of RVs for residential properties disappearing- to 10% of the open market value (Rule 2) of the interest acquired

HLPs

- However, the amount payable was (and still is) subject to a minimum payment of £1,500 and a maximum of £15,000
- HLPs introduced notwithstanding Rule 1 in Section 12, Land Compensation (S) Act 1963
- Recognition that the loss of one's house can cause considerable stress and grief to the occupier

HLPs

- There has been no review in Scotland of the minimum and maximum amounts, despite pressing by RICS Scotland and CPAS
- There have, however, been a series of reviews in England- with the latest review in August 2020 leading to the minimum payment being £6,500 and the maximum payment being £65,000
- Thus, a VERY wide discrepancy between England and Scotland which we believe requires to be rectified

HLPs

- Thus, what rectification is required?
- Brought up to be in line with the 2020 English minimum and maximum amounts?
- Adjustment as to how a HLP is calculated by being more reflective of how long the claimant has lived in the property?

Business Loss Payments (BLPs)

- Basic and Occupier Loss Payments inserted into 1973 Act in England and Wales only by Planning and Compulsory Purchase Act 2004
- Intended to provide a payment similar to HLPs but to businesses
- For Basic Payment, need to have freehold interest, OR have tenancy for not less than one year
- Sum paid is 7.5% of “the value of the interest”, Or £75,000, whichever is the lesser
- Basic Loss Payment also paid to investors, as well as owner occupiers and qualifying tenants

BLPs – What are they?

- Occupiers' Loss Payment is paid to owner occupiers and to tenants
- Amount paid is 2.5% of “the value of the interest”, or £25,000, whichever is the lesser
- Alternative basis of calculation for OLP by reference to an amount for the land (£2.50/sq m for non agricultural subjects or £50 - £100/Ha for agricultural), or an amount for the building (£25/sq m of GEA) – can be used particularly where tenant's R2 interest of little value, but still up to £25,000
- Parallel provisions for agricultural interests
- Thus, owner occupiers can get a maximum of £100,000, investors can get up to £75,000, but tenants – if there is little value in the lease – may get not much over £25,000

BLPs – Why were they introduced?

- Recommended by CPPRAG (Compulsory Purchase Policy Review Advisory Group) - set up by DETR – in Review dated 2000
- Law Commission Report in 2001 states payment is in recognition that:
- “those who have had their property taken from them should receive an additional “loss payment” in recognition of the physical and psychological upheaval which that causes”
- Specifically not a premium on top of OMV “as an element in the valuation” – as pre 1919 payments – but an additional sum like HLP

BLPs – Problems?

- Method of calculation is potentially ambiguous – “value of the interest” does not actually make clear whether it is only the value of R2 element which is taken into account – although DCLG say it is so
- “building amount”, for alternative OLP calculation, is based on GEA
- Seems to many to be unbalanced in favour of investors; why do they get up to £75,000, when many tenants get little more than £25,000, but suffer most of the disadvantage
- Said during passage through parliament that additional payment would speed up negotiations – but no apparent effect on this

BLPs – Do we need them in Scotland?

- Essentially an issue of fairness: is it more equitable that those who are forced against their will to sell their property for public purposes receive an additional payment in recognition of the “physical and psychological upheaval”, as CPPRAG termed it, similar to the HLPs which go to householders?
- Can't really be justified on any other basis – experience is that as they are calculated and paid direct by acquiring authorities, and agents negotiating claims have no role in this, they do not speed up agreement

Question and Answer Session

Thank you for attending today's event.

We look forward to seeing you all very soon!

Questionnaires

Please fill in your questionnaire

A link was sent to you via in your zoom link email and also via zoom chat during the event



@cpa_org



The Compulsory Purchase Association



CPO Law & Practice in Scotland: A Stakeholder Event

We look forward to seeing you very soon!

This event has now finished.