

SCPA Training Event 2021

Wednesday 24th February 2021

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Please note that this event will be recorded.

Welcome and Introduction from the CPA Scotland Chair

Keith Petrie, FG Burnett; CPA Scotland Chair

COMPULSORY PURCHASE

Elaine Farquharson-Black, Brodies LLP

Alasdair Burnet QC

Keith Petrie, FG Burnett

24 February 2021



FG Burnett



ENLIGHTENED THINKING

SPEAKERS



WHAT WE WILL COVER

- SCPA
- Resolution of disputed compensation through the Lands Tribunal Process
- Rule 6 Disturbance

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The Compulsory Purchase Association in Scotland



The Compulsory Purchase Association Scotland (CPAS) represents the interests of CPA in Scotland.

The Compulsory Purchase Association is a not for profit member organisation that promotes best and effective practice in the delivery of land for infrastructure, housing and regeneration through the use of compulsory purchase powers. Its members represent both acquiring authorities and claimants affected by compulsory acquisition, and come from a range of professional disciplines involved in the compulsory purchase process, including chartered surveyors, lawyers, barristers, forensic accountants, planners and land referencers. In that sense, it truly reflects the profession.

The CPA is a non-partisan organisation and neither supports nor opposes specific public works schemes. Its objective is to work for the public benefit in relation to compulsory purchase and compensation in all its forms. It seeks to promote the highest professional standards amongst practitioners at all levels, and to ensure that the legal framework for compulsory purchase and compensation is clear, fair and effective.



RESOLUTION OF DISPUTED COMPENSATION THROUGH THE LANDS TRIBUNAL PROCESS

DISPUTED COMPENSATION

- Section 8 Land Compensation (Scotland) Act 1963
 - *“Where by or under any statute (whether passed before or after the passing of this Act) land is authorised to be acquired compulsorily, any question of disputed compensation and, where any part of the land to be acquired is subject to a lease which comprises land not acquired, any question as to the apportionment of the rent payable under the lease, shall be referred to the Lands Tribunal for Scotland...”*
- Section 14 Land Compensation (Scotland) Act 1973
 - *“(1)Any question of disputed compensation under this Part of this Act shall be referred to and determined by the Lands Tribunal.”*
- 6 year deadline

LANDS TRIBUNAL



MEMBERS



Lord Minginish



Ralph Smith



Andrew Oswald



Charles Marwick

CURRENT CASES

- 2079 current applications, including:
 - ❑ 1810 Valuation Appeals
 - ❑ 48 Electronic Communications Code
 - ❑ 144 Compensation

PROCEDURES

- Procedure on references under s. 8.
 - ❑ The Lands Tribunal shall sit in public.
 - ❑ Does not prevent the determination of cases without an oral hearing.
 - ❑ Not more than one expert witness on either side shall be heard unless the Lands Tribunal otherwise directs; except that, where the claim includes a claim for compensation in respect of minerals, or disturbance of business, as well as in respect of land, one additional expert witness on either side on the value of the minerals or, as the case may be, on the damage suffered by reason of the disturbance may be allowed.
 - ❑ A member of the Lands Tribunal dealing with the proceedings shall be entitled to enter on and inspect any land which is the subject of the proceedings.
 - ❑ The Lands Tribunal shall, on the application of either party, specify the amount awarded in respect of any particular matter which is the subject of the award.

RULES

- Lands Tribunal Act 1949
- Tribunal and Inquiries Act 1992
- Lands Tribunal for Scotland Rules (as amended)1971
- Lands Tribunal for Scotland Rules 2003
- Rule 20 – Tribunal may regulate its procedure as it thinks fit.
- Similar to Court of Session/Sheriff Courts

APPLICATION

- Made on Form 1
- Submitted with fee
 - £78 < £20k
 - £130 > £20k
- Served on Acquiring Authority by Tribunal

**Excerpt from the Lands Tribunal for Scotland Rules 2003
(SSI 2003 No. 452)**

FORM 1

Application for Determination of Question of Disputed Compensation

To:- The Lands Tribunal for Scotland
 George House
 126 George Street
 Edinburgh EH2 4HH

I/We*.....hereby
 apply for the determination by the Lands Tribunal for Scotland of the question of
 which particulars are set out below.

*(name & address of applicant)

Particulars

1. Distinguish the subjects to which the application relates sufficiently precisely to enable them to be identified.
2. Give names and addresses of the parties to the dispute.
 - (1)
 - (2)
3. Give a concise statement of the nature of the dispute, and of the grounds on which compensation is claimed.
 (This paragraph should also contain amount claimed and details thereof)

PROCESS

- Answers to be submitted, usually within 21 days
- Adjustment period
- Procedural hearing(s)
- Documents
- Witness statements
- Authorities
- Notes of Argument

HEARING

- Usually two members sit
 - Legal
 - Valuation

- Examination-in-chief
- Cross-examination
- Re-examination
- Closing submissions

- Site inspection

DECISION

- Aim for 8 weeks
 - Written
 - Available on Tribunal website

- Appeal to Court of Session
 - Within 42 days
 - Point of law

EXPENSES

- Normally expenses follow success
 - Submissions may be made
 - Tenders
 - Certification of Counsel and expert witnesses
-
- Taxed
 - Auditor of Court of Session
 - Auditor of Sheriff Court

RULE 6 DISTURBANCE



DISTURBANCE - GENERAL

- The assessment of compensation following either whole or part compulsory acquisition is based on the concept of Equivalence.
- Accordingly, the claimant, as far as money, can, is to be left in no better, and no worse, a position after the compulsory acquisition as before the compulsory acquisition.
- Entitlement to disturbance compensation is contained within S.12 Land Compensation (S) Act 1963.

DISTURBANCE - GENERAL

- S.12 states “The provisions of Rule 2 shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land.”
- Disturbance compensation will be claimed by the person so disturbed and thus in the vast majority of cases will be the occupier of the affected property.
- However, Schedule 17A, Planning and Compensation Act 1991 provides for landlords of investment properties to claim for the costs incurred in the purchase of an alternative investment property provided it is within a 12-month period of acquisition.

DISTURBANCE - GENERAL

- Disturbance will occur to the occupier of the affected property in either a whole or part-only compulsory purchase situation.
- The principles behind the assessment of disturbance compensation were set out by Lord Denning, then Master of the Rolls, in *Harvey v Crawley* (1956).
- However, set against these principles, each element of the disturbance claim requires to be decided on its own merits.

DISTURBANCE – WHOLE PROPERTY ACQUIRED

- Where the whole of a property is acquired, then it will be necessary for the occupier to vacate the subjects. Normally, the occupier will wish to seek to identify, purchase (or lease) a suitable alternative property and thereafter move into that property. However, S.36 Land Compensation (S) Act 1973 provides for residential occupiers to be re-housed, if they wish.
- The reasonable costs associated with the identification and purchase/lease phases of a removal are recoverable and will include the claimant's time, professional fees, LBTT, abortive expenses.
- The physical removal will include the actual removal costs, notification of change of address, advertising of the removal.

DISTURBANCE- WHOLE PROPERTY ACQUIRED

- For businesses, there may be a claim for loss of profits on either a temporary or permanent basis. Recourse to the client's profit and loss accounts will be required.
- Also for businesses, there may be adaption costs but the concepts of "value for money" and "new for old" may apply.
- Also for businesses, there may overtime and/or redundancy payments to be made.
- S.43 Land Compensation (S) Act 1973 provides for a person running a business who is aged over 60 can claim for total extinguishment rather than having to re-locate- subject to certain conditions and undertakings

DISTURBANCE- PART ONLY ACQUISITION

- Disturbance may arise during the construction phase of the public work.
- The larger the scheme, the potential for a greater degree of disturbance e.g. AWPR/B-T and over a longer period of time.
- For businesses, there may be a temporary loss of profitability during this time.
- S.26 Land Compensation (S) Act 1973 provides for the recovery of (removal) expenses if a temporary removal from the property is necessary.

Q & A



FG Burnett



ENLIGHTENED THINKING

Closing Summary from the CPA Scotland Chair

Keith Petrie, FG Burnett; CPA Scotland Chair

Thank you for attending today's event.

We look forward to seeing you all very soon!

In the upcoming days, you will receive an email which will include your post-event documentation. This email will include the following: CPD, online Questionnaire and a link to the event recording.



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We look forward to seeing you all very soon!

This event has now finished.