

Ms Mary Dallas
Ministry of Justice
102 Petty France
London
SW1H 9AJ
United Kingdom

26th February 2010

Dear Ms Dallas,

Review of Fees for the Lands Tribunal

Thank you for forwarding a copy of the above consultation document to the Compulsory Purchase Association (CPA) providing us with the chance to comment on the Government's proposals.

The CPA National Committee has carefully considered the consultation paper and I am pleased to set out the views of the Association on the attached pro forma.

This response is specifically in respect of fees relating to the determination of compulsory purchase and other compensation claims eg Planning Acts compensation.

Yours sincerely

Paul Astbury

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Review of Fees for the Lands Tribunal

List of questions for response

We would welcome responses to the following questions set out in this consultation paper.

Please email your completed form to mary.dallas3@tribunals.gsi.gov.uk

Question 1. Do you agree, given the length of time since the last increase in the fees, that it is reasonable to increase the fees for lodging and processing cases by the proposed amounts? How may the proposal be improved?

Comments: The CPA agrees that the fees for lodging and processing cases should be increased. The increases in respect of which the CPA wishes to comment are set out below.

Lodging fees	£250	Agree
Lodging fees, restrictive covenants	£800	Agree
Rights to light	£1200/£1500	Agree
Absent owner applications	£500	Agree

The Government may also wish to consider indexation of fixed fees by RPI (with appropriate rounding) every say 5 years to help keep fees updated and avoid a large increase and accumulated 'losses' between major reviews.

Question 2. Do you agree with the proposal to create a fixed hearing fee for non-monetary cases? How may the proposal be improved?

Comments: The CPA agrees with the proposed changes to fixed hearing fees for non-monetary cases.

Question 3. Which of the two options for determining hearing fees outlined above do you prefer? How may the proposal be improved?

Comments: The CPA strong preference is for Option A where fees are based on the determination of the Tribunal.

We are concerned that fees based on the amount in dispute (Option B) are vulnerable to distortion by the position of one of the parties. This may be due to unrealistic aspirations of value or a genuine disagreement on a point of principle. The determination of compensation by the Tribunal after having heard the arguments of both sides is a sounder basis upon which to calculate fees and is more likely to result in a fee proportionate to the compensation properly payable.

We believe that the upper limit of the Option A fee basis could be replaced with a sliding scale fee of 1% of the compensation awarded for that part of the award above £1million. Therefore an award of £3m would give a fee of

£1m at 2% = £20,000

£2m at 1% = £20,000

Total fee = £40,000

An award of £10m would attract a final hearing fee of £110,000.

This should generate sufficient additional receipts for the final hearing fee for cases of lower value to be reduced, either by basing all final hearing fees on 1% of the award, or if possible providing a lower rate up to £500,000 awarded compensation. This would be of particular assistance to small and medium sized enterprises pursuing relocation or extinguishment claims, the group which tends to be hardest hit by compulsory purchase.

For higher value claims a sliding scale instead of a limit would make the cost of the Lands Tribunal more comparable with the cost of other forms of dispute resolution and encourage use of alternatives as envisioned in the impact assessment.

We have some concerns about the definition of a hearing for the purposes of percentage fees. Where the parties agree the compensation prior to a full substantive hearing, but then have a short hearing to deal with costs and the Tribunal makes an award as to costs, and/or makes an order by consent as to the amount of the compensation, this is sometimes treated as a hearing for the purposes of a percentage fee. Thus, on the example given above, if the parties agreed compensation at £10m, but sought a consent order in these terms, and an award of costs, the hearing might only last an hour, but it might be treated as a hearing for which the fee would be £110,000. We think this would be unreasonable, and suggest that such hearings should be differently defined and treated as interlocutory applications for fee purposes.

We have a further concern about the effect of the fee structure in relation to group references. Unlike the High Court, where CPR Pt 19 makes provision for group litigation orders, the current Tribunal rules make no provision. That is of concern in relation to the determination of fees where a number of references are ordered to be heard together, or where a representative number are ordered to be heard. We suggest that the hearing fees, in such cases, should be calculated by reference to the highest award of any of the references heard. The fees should not be calculated by reference to the sum of the awards.

Question 4. Overall, do you think the proposed package of revisions is reasonable, given our target of moving to 50% of cost recovery? How may the proposal be improved?

Comments: The CPA believes that overall the proposed package of revisions is reasonable. The proposal may be improved as suggested in the response to Question 3.

Question 5. **We are particularly interested on your views on the Impact Assessment. Are you aware of any other factors that we need to be aware of with regard to the increase of fees affecting:**

- a) **small firms**
- b) **the wider private sector**
- c) **the public sector?**

Comments:

Question 6. **We are also interested on your views on how an increase of fees may affect certain groups of people. We are particularly interested on your views on aspects around:**

- a) **race equality**
- b) **disability equality**
- c) **gender equality.**

Comments: The CPA broadly agrees with the impact assessment. We are concerned that the forecast 20% reduction in use of the Tribunal due to increased fees is likely to be biased towards the lower value claims where smaller businesses may find it more risky to pursue a reference where points of principle are at stake.

We believe our proposed alterations to Option A would spread the reduction more proportionately across all claims.

Do you have any evidence of equality impacts that have not been identified within the equality impact assessment? How can they be mitigated against?

Comments: Subject to our comments regarding small and medium enterprises at questions three and five we are not aware of any groups that would be disproportionately affected by the proposals. We do not have any evidence of equality impacts on the basis of race, disability or gender.

We would also welcome any other comments you have about the proposals and how they may affect individuals or organisations.

Comments:

Please complete the section overleaf to tell us more about you.

About you

Please use this section to tell us about yourself

Full name	Paul Astbury
Job title or capacity in which you are responding (e.g. member of the public etc.)	Chairman of the Compulsory Purchase Association responding on behalf of the Association.
Date	24 th February 2010
Company name/organisation (if applicable):	Compulsory Purchase Association
Address	4a Woodside Business Park, Whitley Wood Lane, Reading,
Postcode	RG2 8LW
If you would like us to acknowledge receipt of your response, please tick this box	<input checked="" type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

The Compulsory Purchase Association

The CPA is an organisation created to bring together and channel the wealth of expertise in the subject of Compulsory Purchase and Compensation, to promote this important area of work and to foster a basis for best practice. In doing so it not only provides a sounding board for change in this sphere but makes comment and provides recommendations relating to relevant Law Commission, government department and other Reports and existing /proposed Legislation. As an important adjunct it promotes training initiatives together with opportunities for those in CPO professions to network and share experience and knowledge. It is a fully independent and self funded organisation. The CPA was founded in 2002 and currently has over 500 members.

The objectives for the CPA are to:

- Establish a multi-disciplinary association of persons interested in compulsory purchase.
- Enable free exchange of views, experience and advice.
- Provide correspondence and newsletters to members by e-newsletters and e-mails.
- Promote lectures, seminars, and similar events, on compulsory purchase topics for both members (at preferential rates) and non-members.
- Provide networking opportunities for members Liaise with Universities to provide assistance on compulsory purchase topics.
- Act as a reference point and sounding board for Government, the Law Commission and others on compulsory purchase issues and proposals.
- Promote best practice in all aspects of compulsory purchase.
- Remain independent of all organisations so as to offer balanced and unprejudiced views and advice.