



**Fraud Investigation &
Dispute Services**

A Changing Landscape

Compulsory Purchase Survey 2016

EY

Building a better
working world

Foreword



2,068

Ongoing cases across respondents



£775,000

Average value of each ongoing case across respondents



£1.6 billion

Total value of ongoing cases being dealt with by respondents

It is the first time in 200 years that the UK has had such a proliferation of infrastructural megaprojects in the pipeline. The National Infrastructure Commission's Delivery Plan commits to an investment of over £100 billion between 2016 and 2020/2021. Further the new Prime Minister, Theresa May, has signalled that infrastructure will be at the heart of her post-Brexit plans for rebuilding the economy. The use of Compulsory Purchase powers will be an integral part of the implementation of such projects and signal a busy period ahead for professionals working in the field of Compulsory Purchase.

It remains to be seen what impact Brexit will have. Challenges around funding, access to the European Single Market, and exchange rate related increases in material costs are just three concerns which could provide significant challenge to the delivery of such projects. Although some of the country's largest infrastructure projects, such as High Speed 2 and Crossrail 2, remain unconfirmed, it is widely anticipated that approval will be granted and current plans point towards considerable changes to the country's physical landscape in years to come. Improvement in other areas such as airports, road capacity and information and communications technology are vital in ensuring that the recent growth in foreign direct investment continues, particularly outside of London where devolution policies are beginning to gain momentum.

At the time of writing, we await the results of the recent consultations regarding a number of proposed reforms to the

Compulsory Purchase system, with the aim of making the process 'clearer, fairer and faster'.¹ Such modifications could serve to significantly change elements of the work undertaken by Compulsory Purchase Order ("CPO") professionals.

In early 2016, we surveyed just under 100 professionals working in the field of Compulsory Purchase across the UK. This report presents our key findings, which we hope you will find informative and useful in your work.

We would like to thank all of the respondents for taking the time to participate in this survey and for their valuable contributions and insights.

Sara Fowler
Partner, EY CPO Team

sfowler@uk.ey.com



The Compulsory Purchase landscape is undergoing a period of significant change along with the physical landscape.

¹ Department for Communities and Local Government's consultation on further reform of the compulsory purchase system (March 2016)

The need for speed

The issue

The length of time associated with CPOs (from the planning phase through to transfer of ownership and payment of compensation) is a common criticism of the CPO process for claimants and acquiring authorities alike. In the case of major infrastructure projects, any delays in the process (e.g., in land assembly or in settling compensation claims) are likely to have UK-wide economic implications as well as serving to compound the impact on directly affected parties which, in the case of larger projects, can amount to hundreds, if not thousands, of land and/or business owners.

Therefore, one of the objectives of the current reform proposals is to make the process faster.

Our findings

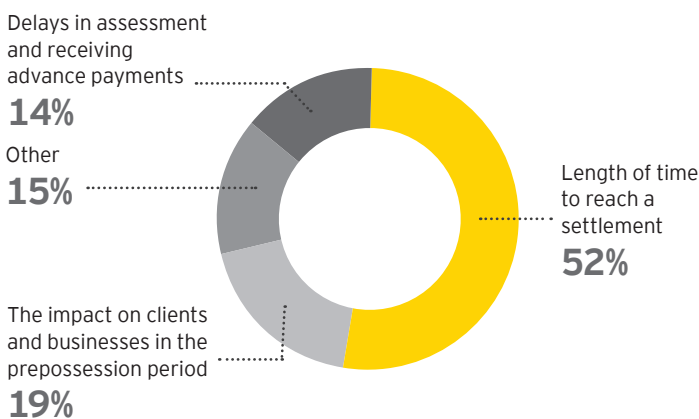
Our survey indicates that the concern over length of process is echoed by our respondents. The greatest concern with regards to both HS2 and Crossrail 2 related to time delay on acquisitions and the payment of compensation (47% in both cases).

We asked respondents to select the biggest challenge they experience when dealing with CPO compensation claims on behalf of claimants. Just over half of the respondents (52%) cited the length of the time taken to reach settlement. Further, 34% of the respondents stated that, on average, their claims take more than three years to reach a settlement following acquisition.

During the CPO process, and especially where delayed or inadequate advance payments are received from acquiring authorities, affected parties are often required to self-fund:

- ▶ Relocation to a new site (including the purchase costs of a new site)

Figure 1: Biggest challenge facing claimants



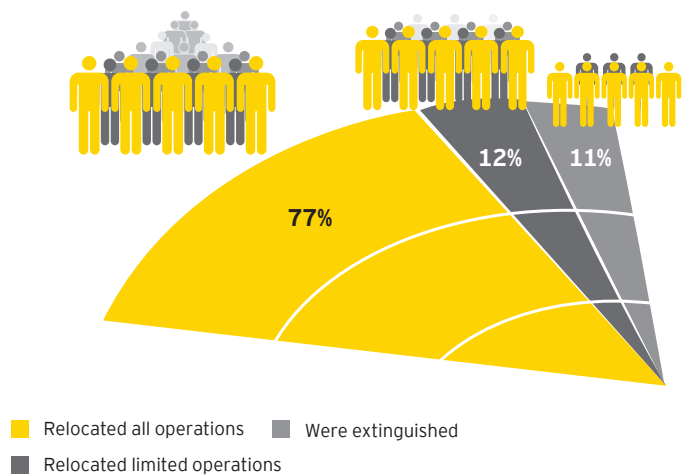
Q. What is the biggest challenge you experience with regards to CPO compensation claims when you are acting for claimants?

Base: 48

- ▶ A decline in financial performance both before and after possession is taken
- ▶ Other disturbance costs

Such costs can be incurred several years before compensation is received which can have significant damaging effects on businesses.

Figure 2: Impact on businesses



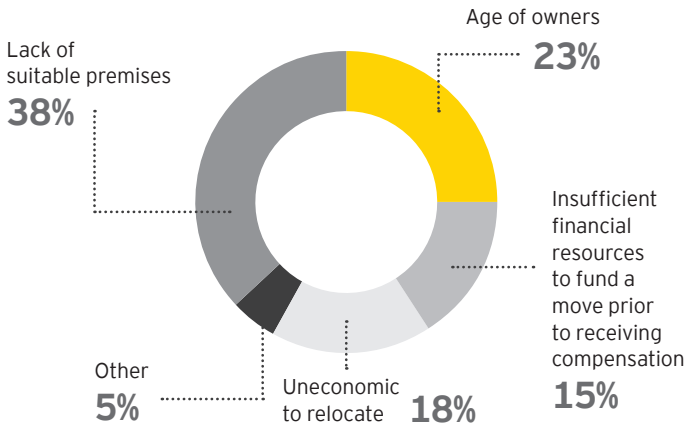
Q. Of your cases which settled in the last 12 months, what percentage of businesses: Could relocate all operations; Could relocate limited operations; Were extinguished?

Base: 51

**Richard Guyatt,
Chair of the Compulsory Purchase
Association**

“To deliver the fullest economic benefits, the process must speed up. Schemes should take less time to assemble land, but promoters have to give affected parties more certainty, in terms of cost and timetable. Having a US-style obligation on promoters to make an offer and to try to relocate when appropriate would clarify the terms of engagement.”

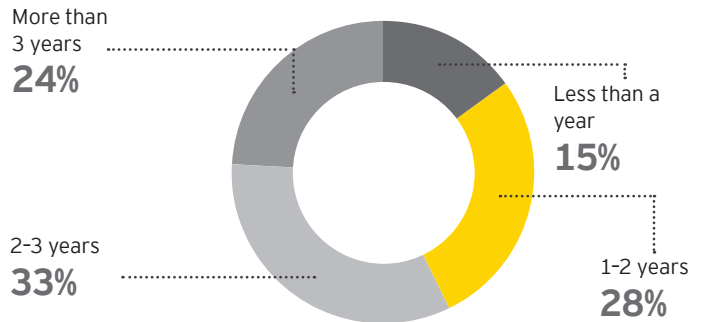
Figure 3: Reasons for partial relocation or extinguishment



Q. What were the reasons for partial relocation or extinguishment ?

Base: 35

Figure 4: Length of time businesses are affected by the blighting effect of scheme proposals before compulsory acquisition



Q. On average, of the claims you deal with, how long are businesses affected by blight before their land is acquired?

Base: 55

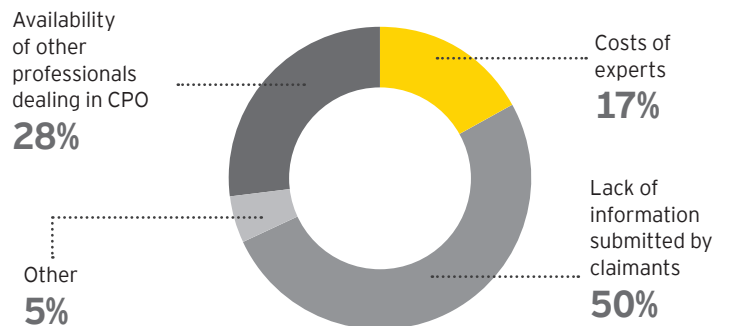
Our survey found that 85% of respondents are working with businesses affected by the blighting effect of scheme proposals for a period of more than one year before land is compulsorily acquired. With the ability to file a reference up to six years after possession is taken, there is potential for compensation, in some cases, to be outstanding some ten years after a business was initially impacted by a CPO.

To add further strain to businesses, simple interest on any outstanding balance of compensation is currently set at 0.5% below the Bank of England base rate. The impact of the recent post-Brexit fall in UK base rate is yet to be understood.

The current proposed reforms include the introduction of penal interest of 8% above base rate for late settlement of advance payments. This may encourage acquiring authorities to make more generous advance payments and reduce the amount of claims referred to the Tribunal. This would be a welcome move for the 14% of our respondents that cite delays in assessment and receiving advance payments as being the biggest challenge facing claimants.

Our survey suggests the biggest challenge faced by acquiring authorities (cited by 50% of respondents) is the lack of information submitted by claimants.

Figure 5: Biggest challenge for acquiring authorities



Q. What is the biggest challenge for acquiring authorities when dealing with compensation claims?

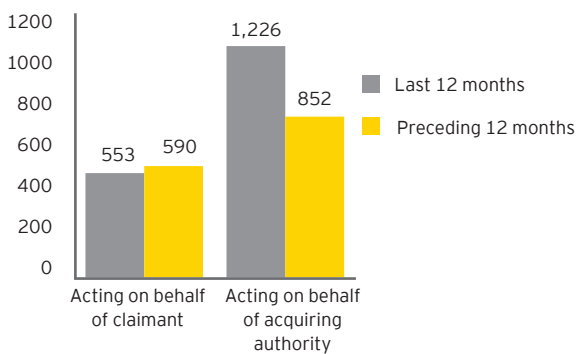
Base: 47



Concerns over the quality of information received from claimants may prove a hindrance in settlement negotiations, thereby contributing to a slower process. Alternatively, this concern could be viewed as indicative of the mistrust that can arise between parties during a drawn-out process.

The findings of our survey suggest pressure on acquiring authorities will intensify as the number of complex cases over the last year has significantly increased.

Figure 6: Number of cases



Q. How many individual CPO claims did you take on where you acted on behalf of the claimant (acquiring authority) in the last 12 months? And the preceding 12 months

Base: 56 (59)

The challenge

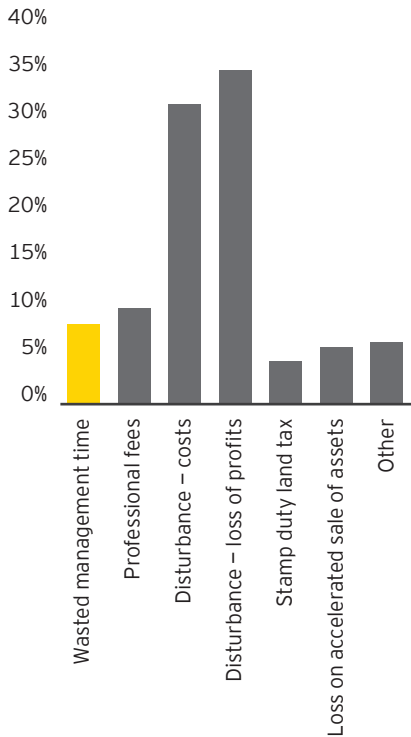
The current consultation addresses a number of areas which could reduce the length of the CPO process. Clearly, finding ways to improve the speed of the CPO process remains one of the key challenges for the CPO profession and Government going forward.

In the following sections we explore other factors that could impact on the objective of a clearer, fairer and faster process.



Wasted management time

Figure 7: Split of business losses



Q: Of your current cases, what is the average percentage split of business losses across the following heads of claim?

Base: 37

The issue

In terms of making the Compulsory Purchase process clearer, fairer and faster, improved clarity around the burden of proof faced by claimants and more consistent application of the level of evidence required would be of significant benefit.

Our findings

Our respondents reported wasted management time as the fourth largest element of loss, with over 43% responding that wasted management time is greater, or equal to, 10% of the total claim value. In many cases this represents a significant financial sum as well as a major personal contribution by management and staff in responding to the challenges associated with compulsory acquisition.

The challenge

Regardless of size, claims for wasted management time have often proved to be one of the more contentious items due to challenges faced in evidencing the losses suffered.

Last year's decision of P R Francis FRICS in *Kendon Packaging Limited vs Greater London Authority* [2015] brought some clarity to this item of loss and appears to acknowledge the wider impact on businesses making the process fairer to claimants.

However, further Tribunal decisions are required to demonstrate consistency in how such losses are assessed.

P R Francis FRICS concluded: "in order to relocate ... the directors had to take time and undertake a considerable amount of work ... I think it reasonable to infer in this case that the Company would at least have recouped the cost of the directors' time if it had been devoted instead to the business". The claimant was awarded 50% of the claim which had been made of £231,570.

This decision moved away from that of M Rodger QC in *Lancaster City Council v Thomas Newall Ltd* (2013) where it was held that a claimant needed to be able to demonstrate that the diversion had caused actual loss.

Hannah Griffin
Assistant Director, EY CPO Team

"Claims for wasted management time have notoriously been difficult to recover. That said, my recommendation is to ensure there is an evidential trail to support any future claim. This should set out the time spent and the activities undertaken by management and staff in dealing with the CPO. Consider maintaining a separate diary and obtaining third party quotations for work undertaken internally."

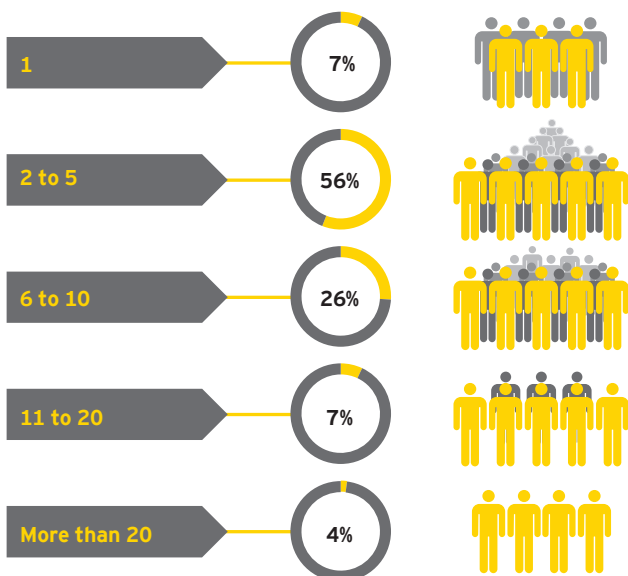
Future skills shortage



The issue

A common concern of the CPO surveyors we work with is the capacity of professionals within the industry to deal with increasing workloads anticipated from the likes of HS2 and other significant infrastructure projects. This, coupled with similar concerns over skill shortages in the construction industry, looks set to provide significant challenge to the current reform proposals to make the process clearer, fairer and faster.

Figure 8: Team size



Q. How big is the team in your office which deals with CPOs?

Base: 88

Figure 9: HS2 expectations



Q. Do you expect the number of HS2 cases you deal with to increase, decrease or stay the same in the next 12 months?

Base: 46

Our findings

We asked respondents how long they have acted in the CPO field. Our findings show:

- ▶ The majority, 77%, of professionals have more than ten years' experience with 48% having more than 20 years' experience
- ▶ 10% of respondents have less than five years' experience

These findings suggest that there are fewer people entering the profession than those who have considerable experience who may be unable to increase workload further or may be nearing retirement.

Our survey indicates this maybe of concern to the legal and surveying professions with 13% of lawyers stating they have less than five years' experience, and 40% with more than 20 years' experience.

Amongst surveyors, 7% stated they have less than five years' experience, with 51% having more than 20 years' experience.

Figure 10: Experience of respondents

How long have you acted in the CPO field?		Surveyors	Lawyers
Less than 2 years	▶	1%	3%
2-5 years	▶	5%	10%
5-10 years	▶	10%	20%
10-19 years	▶	33%	27%
20-29 years	▶	31%	20%
More than 30 years	▶	20%	20%

Q. How long have you acted in the CPO field?
Base: 91

The challenge

These findings, as well as the implications of further reforms to the CPO process, suggest significant strain on the profession signalling the need for substantial, immediate, investment by firms, industry bodies and the Government to ensure there is a future talent pool capable of dealing with CPOs.

In the absence of such investment, the profession faces the prospect of a skills shortage which will only exacerbate the problem with regards length and speed of process, as claimants and acquiring authorities alike will have more limited access to the appropriate professional advice.

There is a significant risk that, with such a shortage of available expertise, parties look for advice from sources who are not sufficiently experienced in CPO which, in itself, can lead to further delays in the process and unrealistic expectations.

Amanda Clack, EY Partner and RICS President

“These findings indicate a strong demand for the skills of surveyors to support compulsory purchase. With the Government’s post-Brexit aim to drive the economy through investment in infrastructure, there is clearly a great opportunity for surveyors either entering the profession or looking to refocus their skills in this niche area.

The war for talent, and developing professionals with the right skills to meet market demands remains a key focus for RICS. As industry demands remain high for RICS qualified professionals, especially in infrastructure, it is even more relevant for our members to support and deliver improved outcomes for clients in the area of complex infrastructure projects that deliver such important economic benefits to the public and to the country.”

Alternative Dispute Resolution (ADR)

Sara Fowler
Partner, EY CPO Team

“In my experience the use of ADR should be considered in all CPO cases. It can speed up the process and, when successful, be more cost effective.

Of course, there are cases where mediation is not viable. However, I have been involved in a number of cases, in commercial disputes and CPOs, which have been successfully mediated. A lot can be gained from allowing the parties the ability to set out their positions in a non-adversarial environment.”

The issue

The desire to make the Compulsory Purchase process clearer, fairer and faster could, to some extent, be achieved through the increased use of ADR.

Our findings

The Tribunal’s rules and guidance support and encourage the use of ADR. They acknowledge the benefits ADR can bring in appropriate cases enabling the Tribunal to award costs against a party which refuses, unreasonably, to consider its use. Despite this, our survey indicates that ADR in CPO cases is not commonly used as a mechanism for resolving disputes with only 15% of respondents having used ADR in the last 12 months, the most popular form being mediation. A greater percentage of respondents (21%) have given evidence at the Upper Tribunal (Lands Chamber) over the last year. This further highlights the limited use of ADR and the challenges ahead.

Our survey suggests there is potential to make the CPO process quicker through the use of ADR with 81% of respondents achieving some settlement success using it. Further, significant benefits of mediation include the flexible and confidential process allowing the parties to remain in control and resolve the matter in line with their terms and needs.

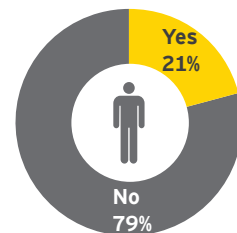
The challenge

Whilst our survey did not canvass opinion on why ADR is so underutilised in CPO disputes, it is possible that lack of familiarity with the process, and/or a lack of understanding of the benefits it can bring, are key contributors.

With no mention of ADR in the current consultation on reforms to the CPO process it may be hard for collaborative dispute resolution approaches to gain traction.

A cultural change in order to make the compulsory purchase process more collaborative is likely to result in a streamlined and faster process. However, such change is likely to be a long term aspiration.

Figure 11: Evidence given at the Upper Tribunal



Q. In the last year have you given evidence at the Upper Tribunal (Lands Chamber)?

Base: 61

Our findings suggest there are significant challenges ahead for the profession and the Government, from a range of macro and micro economic factors. It remains to be seen if the process of compulsory acquisition in the UK will ever be considered clearer, fairer and faster by both claimants and acquiring authorities.

About the EY CPO Team

EY's CPO team advises on claims following compulsory purchase of business premises, including relocation, extinguishment and hybrid cases. We act on behalf of acquiring bodies and affected businesses, combining an innovative approach and deep financial knowledge to help assess a fair level of compensation.

Our experienced team is based across five UK offices and is part of EY's Fraud Investigation & Dispute Services practice. We have worked on claims ranging from £500,000 to £90m and our experience includes giving expert oral evidence to the Upper Tribunal (Lands Chamber) on numerous occasions.

In the Lands Tribunal case of Optical Express (Southern) Limited vs. Birmingham City Council (2004), the evidence presented by EY partner Sara Fowler set a precedent in relation to the basis on which compensation for post possession loss of profits are calculated.

We can work as part of a wider team alongside other professional advisors to supplement their work providing support and ensuring a consistent approach. In more complex cases we can assist with project management of the claim.

We use our extensive experience of this type of work to:

- ▶ Provide robust and objective advice
- ▶ Offer practical and commercial ideas
- ▶ Consider the profile and sensitivities of the claim
- ▶ Tailor our approach to the nature and size of each situation

Our aims are to:

- ▶ Assess a fair level of compensation
- ▶ Support a timely resolution to quantum disputes
- ▶ Provide value for money to encourage future investment and development in public interest projects

To find out more please contact:

Sara Fowler – 07887 633 092

Hannah Griffin – 07974 205 229

Andrew Johnson – 07785 488458

David Bell – 07738 711 404

eycpoadmin@uk.ey.com

Survey approach

Between March and June 2016, we surveyed 97 professionals working in the field of Compulsory Purchase across the UK. These included surveyors, solicitors, barristers, planners and accountants, with the significant majority being members of the Compulsory Purchase Order Association. The survey was conducted electronically and was designed to elicit views and information on the changing landscape of Compulsory Purchase Orders. The survey was conducted anonymously. Statistics have been prepared on the basis that no respondents have acted, or continue to act, on the same claim.

About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients. For more information about our organization, please visit ey.com.

About EY's Fraud Investigation & Dispute Services

Dealing with complex issues of fraud, regulatory compliance and business disputes can detract from efforts to succeed. Better management of fraud risk and compliance exposure is a critical business priority – no matter the size or industry sector. With over 4,500 fraud investigation and dispute professionals around the world, EY provides the analytical and technical skills needed to quickly and effectively conduct financial and other investigations, and gather and analyze electronic evidence. Working closely with you and your legal advisors, we will assemble the right multidisciplinary and culturally aligned team, and bring an objective approach and fresh perspective to challenging situations, wherever you are in the world. And because we understand that you require a tailored service as much as consistent methodologies, we work to give you the benefit of our broad sector experience, our deep subject matter knowledge and the latest insights from our work worldwide.

Ernst & Young LLP

The UK firm Ernst & Young LLP is a limited liability partnership registered in England and Wales with registered number OC300001 and is a member firm of Ernst & Young Global Limited.

Ernst & Young LLP, 1 More London Place, London, SE1 2AF.

© 2016 Ernst & Young LLP. Published in the UK.
All Rights Reserved.

ED None

EY-000008138.indd (UK) 10/16. Artwork by Creative Services Group Design.

Information in this publication is intended to provide only a general outline of the subjects covered. It should neither be regarded as comprehensive nor sufficient for making decisions, nor should it be used in place of professional advice. Ernst & Young LLP accepts no responsibility for any loss arising from any action taken or not taken by anyone using this material.

ey.com/uk