

On 6 April 2018, further changes to the law that governs compulsory purchase and compensation will come into effect.

These include two direct changes affecting CPO compensation:

- **Advance payments** – Significant amendment to the rules governing advance payments of compensation.
- **Compensation after withdrawal of notice to treat** – Introduction of a new right for successors in title to the original recipient of a notice to treat to receive compensation for loss or expenses caused by the giving and withdrawal of a notice to treat.

The changes being introduced under the Housing and Planning Act 2016 (HPA 2016) and the Neighbourhood Planning Act 2017 (NPA 2017) are part of a wider package of measures aimed at improving and speeding up the compulsory purchase process and sit alongside growing moves in the CPO sector to improve behaviours and conduct in dealing with CPO compensation claims.

They follow previous changes to the CPO compensation regime that came into force on 22 September 2017, targeted at creating a clearer compensation regime and addressing some of the perceived inequities under the current system, including:

- **No scheme principle** – New statutory provisions (s.6A-6A Land Compensation Act 1961) codifying the rules for assessment of the “scheme” for the purpose of assessing compensation for land taken.
- **Disturbance compensation for business tenancies** – Placing unprotected commercial tenants with no security of tenure on a broadly equivalent footing to protected business tenants by requiring the prospect of renewal of a tenancy to be taken into account as part of assessing disturbance compensation.
- **Removal of “second chance” compensation** – Abolishing the right for a claimant to claim for additional compensation where planning permission for additional development land was granted within 10 years of a CPO being completed.

This article highlights some of the key practical changes being introduced this week, particularly the reform of the advance payment regime and wider measures to improve the process of determining CPO compensation claims.

Advance Payment Compensation

The CPO compensation regime provides for a claimant to receive a proportion (90%) of the total compensation it may be entitled to as a result of a CPO in advance of the total amount of compensation being agreed or determined.

One of the aims is to enable the release of compensation monies at an earlier stage in the CPO process to put a claimant in a financial position to reduce the disruption often caused by a CPO, for example to assist a claimant in relocating or mitigating against losses that may result from a CPO.

However, in practice, delays in the process are often experienced and it has long been acknowledged that the current statutory provisions under section 52-52B of the Land Compensation Act 1973 require improvement. The outcome of a government consultation process in 2015 demonstrated support for a faster mechanism for determining the amount and enforcing the making of advance payments.

The changes to the advance payment rules coming into force on 6 April 2018 are limited in scope but include:

- The new right for a claimant to make an advance payment request after a CPO is authorised
- Obligation for acquiring authorities to make payment after a notice of entry or general vesting declaration is given
- A shorter timescale of two months (reduced from three months) for an acquiring authority to make an advance payment
- Entitlement for acquiring authorities to request further information within 28 days before processing an advance payment request
- New entitlement to advance payments in cases involving the exercise of temporary possession powers once those powers are in force

Prior to 6 April 2018, an owner or occupier of land is only entitled to receive an advance payment of compensation after possession of land has been taken by an acquiring authority exercising its CPO powers. The new provisions will enable a claimant to make a request for an advance payment as soon as the compulsory acquisition is authorised. However, perhaps surprisingly, there is no corresponding obligation imposed on an acquiring authority to make an advance payment until a notice of entry or general vesting declaration has been served.

Further, the HPA 2016 introduces an obligation on acquiring authorities to determine whether they have enough information to estimate the amount of compensation and, where needed, require the claimant to provide additional information within 28 days of receiving an advance payment request. The actual payment should then be made by the later of (i) before the end of the day on which possession is taken, or (ii) within two months (reduced from three months) from the date of the request or when further information requested is received. The new provisions will place greater onus on acquiring authorities to consider and act on requests promptly, which will need to be factored into CPO scheme budgets.

The HPA 2016 also introduces complementary provisions that provide for repayment of an advance payment made where a notice of entry is withdrawn or ceases to have effect (providing it is registered as a local land charge). This does not, however, extend to general vesting declarations, leaving a gap of protection for acquiring authorities.

It is also worth noting that the ability to request an advance payment will also apply in respect of new temporary possession powers to be introduced, which is provided for under Section 24 of the NPA 2017. However, similarly to the powers themselves, this provision is not yet in force.

Crucially, the new provisions will not have retrospective effect, so any CPO authorised before 6 April 2018 will not be subject to the new rules. This includes claims in respect of Phase 1 of the High Speed 2 rail project between London and Birmingham, which are still subject to the existing regime.

Are there penalties if an acquiring authority does not make payment within the new timescales?

In short, not yet. Whilst the HPA 2016 includes provisions for penalty interest payments to be introduced where advance payments are paid late, the provisions are not yet being brought into force and no decision has been made by the Treasury over the interest rate that will apply. It has been mooted that a penalty interest rate, equivalent to the court rate of 8% or similar, could apply. However, this remains subject to further consultation.

Whilst the new advance payment provisions are to be welcomed in creating the possibility of advance payments being made prior to possession being taken, it remains to be seen whether they will in fact lead to earlier payments being made in practice.

Until the new interest provisions are brought into force, the jury will be out as to whether the revised regime will have the necessary (or at least some) "teeth" to encourage earlier and faster advance payments to be made as intended.

Claims for CPO Compensation

At present, there are no regulations stipulating what information a claimant must provide to an acquiring authority when making a claim for compensation following a CPO. The quality of claims can often vary, such as too little information being provided to enable proper assessment of a claim, which can lead to delays in considering claims and often increases the likelihood of litigation.

Under the HPA 2016, there is scope for further regulations to be made to specify information that a claimant must provide when submitting a claim for compensation to an acquiring authority. However, at present, no regulations have yet been made.

The Ministry of Housing and Local Government has published a model claim form that parties are encouraged to adopt. This is a welcome starting point, but without specific regulation, it remains to be seen whether it will improve practices and reduce associated delays and costs that can arise.

The new statutory measures concerning CPO compensation sit alongside wider moves in CPO practice to promote better behaviours amongst parties and professionals involved in CPO compensation matters, aiming to reduce timescales and costs in resolving compensation claims.

These include the introduction in April 2017 of the mandatory RICS Professional Statement for Surveyors advising in respect of compulsory purchase and statutory compensation, governing conduct amongst RICS members advising on CPO and other compensation matters.

Also on the near horizon are proposals due to be published by the Compulsory Purchase Association for the introduction of a voluntary Pre-Action Protocol for Land Compensation claims, promoting earlier and improved cooperation between parties and greater use of Alternative Dispute Resolution such as mediation, to resolve claims.

This suite of recent statutory changes are geared towards creating a clearer, faster and fairer compensation regime. Time will tell what impact the changes will have, but perhaps it is the gathering momentum behind improving practices in dealing with CPO compensation claims in the sector that may ultimately lead to tangible improvements in resolving claims rather than rule changes alone.

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