



The spotlight shines down, guitars scream into life, the crowd roars, vocals kick in and they are back, like they have never been away, how Time Flies.

Time limits in the world of Compulsory Purchase (CPO) and land compensation might not be quite as rock and roll, yet when it comes to statutory limitation it's often a critical issue worthy of headliner attention.

The process of compulsory purchase and use of statutory powers can often be lengthy, from the steps required to acquire land interests and rights through to the resolution of compensation for those affected. Often cases can take several years to resolve completely, particularly in more complex circumstances, whether due to, or in spite of, the actions of the parties involved.

There is a salient truth in all cases however, that time waits for no one when it comes to resolving land compensation cases. Right now there are many claims on major schemes, including Phase 1 of High Speed Two, where the time limits for resolving claims are imminent and action must be taken.

It is imperative that parties involved in land compensation cases, and their professional advisers, are alive to the relevant limitation periods that apply and what to do in every case.

Limitation in Land Compensation

The statutory limitation period relating to land compensation claims is six years, however, critically, the date from when the relevant six year period starts and ends varies depending on the basis of claim.

A claim for compensation arising from compulsory purchase or use of statutory powers is caught by section 9(1) of the Limitation Act 1980 as "an action to recover any sum recoverable by virtue of any enactment..." that "... shall not be brought after the expiration of six years from the date on which the cause of action accrued".

In CPO cases, there is also minimum timescale before legal proceedings to determine compensation can be brought, being one month from the date of service (or deemed served) of a notice to treat or the making of a claim.

Why Is Limitation Important?

The statutory limitation period is perhaps the most important deadline in compulsory purchase and land compensation cases.

If a claimant's right to claim compensation is not either fully resolved by an agreement between the parties, or determined by a tribunal (or other determining body) before the six year period has expired, the right to claim compensation is lost altogether.

Jurisdiction to determine land compensation cases ordinarily sits with the Upper Tribunal (Lands Chamber) (Tribunal). In absence of agreement between the parties, legal proceedings must be commenced by the making of a reference to the Tribunal on, or before the relevant six year period expires to preserve the claimant's entitlement to claim compensation.

Summary of Limitation Periods

The table below summarises the relevant statutory timeframes in respect of a number of key categories of land compensation claims:

Basis of Claim	Period	Commencement Date
Permanent compulsory acquisition of land or rights over land	Six years	Notice to treat/notice of entry – Date that possession of land is taken. General Vesting Declaration – Date of vesting or later date of knowledge, if evidenced that claimant's knowledge of vesting date was later.
Severance & Injurious Affection – S.10 Compulsory Purchase Act 1965	Six years	As above, save that right to compensation is not contingent on the exercise of powers, so a claim may arise where works are undertaken by agreement or in advance of land being acquired.
Temporary possession of land	Six years	Last day of the period of temporary possession. This principle is reflected in s.23(5A)(6) of the Neighbourhood Planning Act 2017, which has not yet been brought into force.
Part 1 claims, Land Compensation Act 1973	Six years	The six year period runs from the first claim date, being the date one year and one day after the relevant public works have been brought into first use.

The timescales set out above do not take into account any separate private agreement between parties to a compensation claim relating to the timing for resolving claims.

Compulsory Purchase of Land

Where an interest in land is compulsorily acquired, the time that the six year limitation period starts to run varies depending on whether the general vesting declaration or notice to treat/notice of entry process of acquisition is used.

(a) Notice to Treat/Notice of Entry

When a notice to treat and notice of entry have been served the six year limitation period starts on the date the acquiring authority enters the land. While, if following the notice to treat procedure, compensation is assessed at the date of entry and taking possession of land.

(b) General Vesting Declaration

The position is a little more complicated where the general vesting declaration process is used. Under Section 10(3) of the Compulsory Purchase (Vesting Declarations) Act 1981 states:

“(3) The time within which a question of disputed compensation arising out of an acquisition of an interest in land in respect of which a notice to treat is deemed to have been served...shall be 6 years from the date at which the person claiming compensation, or a person under whom he derives title, first knew, or could reasonably be expected to have known, of the vesting of the interest by virtue of Part III of this Act”.

In most cases the six year limitation period will run from the date that the title to the land vests in acquiring authority. This is however subject to evidence that the claimant had received notice of the vesting date on or before that date. The general vesting declaration process requires prior notice of the vesting date to be given, therefore in theory in every case the claimant should receive prior notice of the vesting date and, if so, time will run from the vesting date.

However, it can easily be envisaged that there may be circumstances where notice of the vesting date is demonstrated not to have been received by a claimant party, and in such circumstances the six year limitation period will run from the later date when notice of the vesting date is received.

Temporary Possession of Land

Temporary possession powers arise under different statutory provisions and are often specific to individual schemes, for example High Speed Two or Crossrail.

The concept of temporary possession is simple; a compensating authority gives notice to an owner and/or occupier of land that it requires use of the relevant land on a temporary basis for the purposes of a specific scheme. In return, the owner/occupier is entitled to two things, first the return of the land once the temporary use has been concluded; and second, compensation for loss and damage arising during, or as a result of the temporary possession.

In reality, periods of temporary possession can often extend for lengthy periods, in some cases many years, during which ongoing impact on owners and occupiers may occur.

The question is, when does time start to run on limitation for the purposes of determining compensation? Although relatively untested as things stand, the general view is that the six year limitation period begins at the end of the period of temporary possession. This is logical, in so far as it is only when the temporary possession period has finally ended that the circumstances that may give rise to compensable losses will be finally complete.

What if a Claim Can't Be Resolved Before the Limitation Period Expires?

Where no agreement has been reached between the parties to resolve a compensation claim once and for all, one of two things must be done:

(a) Legal Proceedings

The default position is that either a claimant or compensating authority may commence legal proceedings.

In land compensation cases, this will almost certainly mean starting legal proceedings in the Tribunal by the filing of a notice of reference on or before the expiry of the deadline. The Tribunal's own rules and practice directions set out helpful guidance on how to make a reference, however the practical reality is that there is often a reasonable lead in time required to prepare the necessary Tribunal documents. Careful attention must be given to the procedural time limits and requirements for making Tribunal reference in every case.

(b) Agreement Between the Parties

The alternative is for the parties to a claim to agree that more time will be allowed before either party is required to commence legal proceedings. Often it is in both parties' interests to postpone starting litigation, given the time and costs involved in doing so.

It is common for parties to enter into a formal contract, often known as a "standstill agreement", to record the agreement. In practice, it is not uncommon to find that compensating authorities have different approaches, some will issue a unilateral letter purporting to grant an extension of time, while others will insist on a formal contract being entered into either by simple contract or deed. In any case, it is important that any agreement between the parties is made in writing and clearly set out.

Strictly speaking, most of these agreements operate by recording the parties' agreement that the compensating authority will not raise a limitation defence in any legal proceedings after the original limitation date and a future revised/extended date. Legally, this type of agreement operates by way of contractual agreement or estoppel.

The important thing to note is that the grant of any form of extension is entirely within the discretion of the parties and subject to the terms agreed between them. It is critical that standstill agreements of this nature are clearly drafted and entered into in good time before the statutory limitation date expires.

'I'm Outta Time'?

Perhaps inevitably many land compensation cases have come before the Tribunal and courts on the question of limitation. Most of these cases turn on disputes over the time limits applicable in the case, the steps taken or not taken by a party to comply with the limitation deadline or arguments over agreement/conduct between the parties impacting the limitation date.

Two examples of previous limitation decisions in land compensation cases concerning timescales for bringing a reference:

1. Timing for making a Tribunal reference

In *Land and Estate Developments UK Ltd v Nottingham City Council* [2021] UKUT 25 (LC) the Tribunal was tasked with deciding whether a claimant had made a reference for compensation out of time, thereby being statute barred from doing so.

The interest in question was a long leasehold interest in land and buildings, which was vested in the acquiring authority on 1 July 2014. Notice of reference was made to the Tribunal on 30 June 2020 via email, the first of four being received at 5:08 p.m., and the last at 5:31 p.m. The acquiring authority argued that the deadline for filing of the notice was 5p.m. on 30 June 2020, being six years counted from the date of vesting. It also argued that the Tribunal's own procedural rules required steps to be taken by parties by 5pm.

It was found that the reference was made by the end of last day of the period of the limitation period, being a reference made before midnight on 1 July 2014, within six years of the date that the land was vested and was therefore in time. The Tribunal's own procedural rules did not take precedence over the Acquisition of Land Act 1981 that did not impose a specific time of day limit for a reference to be made.

2. Estoppel

In *Hillingdon LBC v ARC Ltd (No 2)* [2000] 3 EGLR 97, the Court of Appeal held that the acquiring authority was estopped by convention from relying upon the expiry of the relevant limitation time limit, as negotiations were ongoing between the parties. The court noted that the acquiring authority would not be able to raise a defence of limitation if it had previously communicated to the claimant that it would not raise such a defence, despite technically being out of time.

Summary

Limitation is a critical issue when dealing with land compensation claims that no party can ignore. Being alive to the relevant timescales and keeping control over steps required to ensure a claim is resolved in time are fundamental to any case strategy. Like a rockstar in their final gig, by the time the last curtain comes down, no party should be left hoping for an encore.

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