

## How to run a compensation claim in the Upper Tribunal (Lands Chamber)

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- Increasing development activity requiring use of CPO powers
- Payment of compensation ordinarily follows acquisition of land...
- ... but key that parties consider impact of CPO on compensation rights at earliest possible stage
- Reference to the Upper Tribunal (Lands Chamber) often a means of last resort



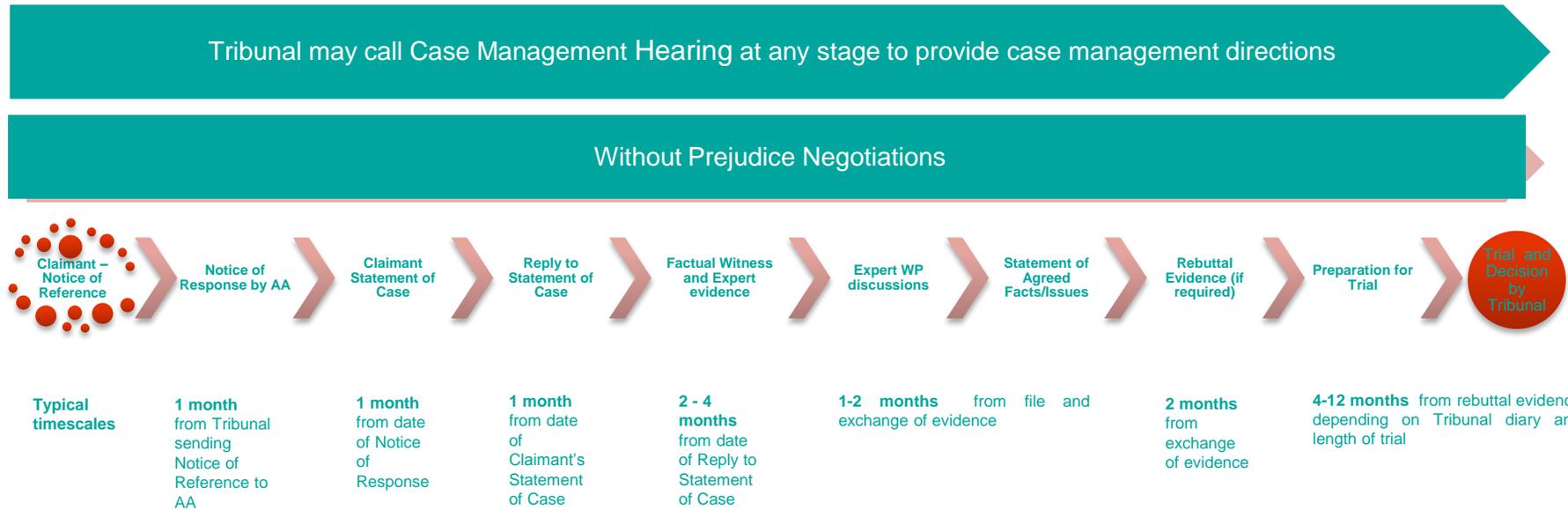
- Multi-disciplinary team effort
- Detailed claim prior to Tribunal reference
- How much information to disclose?
- Key goal - engagement between the parties and avoid Tribunal reference
- Advance payments



# Upper Tribunal (Lands Chamber)

- The Tribunal has its own rules:
  - The Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010; and
  - Practice Directions of the Upper Tribunal (Lands Chamber) 2010.
- Responsive and practical
- Tribunal applications
  - Extensions of time.
  - Disclosure.
  - Preliminary issues.
  - Stay of proceedings.





Typical timescale for running Tribunal proceedings is between 12 – 18 months in most cases, but can be longer or shorter depending on the complexity of the case, number of stages involved and the availability of the Tribunal to hear the case.

# Making the reference to the Tribunal

- Formal pre-action letter – pre-cursor to making a reference
- Starting the reference
  - Either party can submit a reference
  - Key documents: Notice of Reference and Statement of Case
- Flexible procedures
  - Written
  - Simplified
  - Standard &
  - Special
- What about evidence?



- Managing competing interests:
  - Claimant – focus on evidencing the claim and mitigation efforts
  - Acquiring authority – scrutinising every aspect of the claim

- Taking control of the case

- Case management
- Disclosure of information
- Interim applications



- Engagement between parties and experts throughout is often key

- Experts play central role in CPO compensation claims
- Imperative that consistent claim strategy developed
  - Factual matrix underpins expert evidence
  - Experts must take objective stance
- Duty owed to the Tribunal not instructing party
- Formal requirements for expert reports
  - Form and content prescribed
  - Statement of truth
- Giving evidence in the Tribunal – it is what you say that counts



- General rule – Successful party entitled to payment of reasonable costs
- Costs protection
  - Sealed offers
  - Costs shifting powers
- Costs assessment



- Distinction between costs forming part of compensation claim and costs of the reference to the Upper Tribunal (Lands Chamber)
- Costs forming part of the claim (s.5 Land Compensation Act 1961)
  - costs of transferring the land to the acquiring authority;
  - professional costs incurred in putting together the claim (pre-reference costs).
- Costs of the reference
  - professional costs incurred in relation to a reference to the Tribunal
  - includes legal and other costs of professional advisers and instructed experts

- **What is a Sealed Offer?**
- Without prejudice save as to costs offer to settle.
- Copy of offer sent to the Tribunal in a sealed envelope, which is not opened until after decision has been given in the substantive claim.
- If Claimant fails to beat offer then Tribunal will order Claimant to pay Acquiring Authority's costs from the date of the offer unless special reasons not to do so (Section 4, Land Compensation Act 1961)
- Exception to the rule: Claimant's failure to give notice of claim to Acquiring Authority (s.4(1)(b) LCA 1961)
- Key consideration for Acquiring Authority about timing and level of a sealed offer

# Is the Tribunal the only option?

- Tribunal rules actively encourage use of ADR
- Alternative dispute resolution
  - Mediation
  - Arbitration
  - Negotiation
- Tactical advantages can be gained by pursuing ADR – even if no settlement achieved
- Potential costs implications in the Tribunal if a party refuses to engage in ADR



# Overview of ADR options available

|  | Mediation  | Early Neutral Evaluation  | Expert Determination  | Arbitration   |
|--|--|---|---|---|
| What is it?  | Informal procedure where a neutral third party assists parties to work towards a negotiated settlement.  | Independent and impartial evaluator appointed to give the parties an assessment of the merits of their case.          | Third party determination by specialist appointed expert suitable to case.  | Formal process to determinate a dispute by an independent arbitrator.   |
| Confidential?  | Yes  | Yes   | Yes   | Yes – but there are exceptions.   |
| Without prejudice/Without prejudice save as to costs | Without Prejudice unless otherwise agreed.   | Without prejudice unless otherwise agreed.  | Not applicable as decision is binding.  | Not applicable as decision is binding.  |
| Binding Decision?                                    | No decision made – parties retain total control whether or not to settle and on what terms.  | No decision made – evaluator provides an informed view on likely outcome if matter determined by a court or Tribunal. | Decision is binding with limited grounds to set aside.  | Decision is binding and akin to a court order with limited grounds of challenge. Award may in exceptional circumstances be set aside. |
| Costs  | Parties generally bear own costs and split mediator fees 50/50. If no settlement, parties can agree that mediation costs form part of costs of any separate legal proceedings. | Parties generally bear own costs and split evaluator fees 50/50.  | Expert will generally be given power to make a costs award, however subject to the terms of the expert's appointment. | Arbitrator usually has ability to make an award on costs.   |

- Consider ADR at every stage of claims process and keep under review.
- Think carefully about the aims and most appropriate method of ADR.
- To offer or not to offer?
  - Can be benefit in being the party making the offer to pursue ADR.
  - Think carefully before refusing an ADR request and give reasons for refusal.
- Be prepared:
  - Whichever ADR process is adopted make sure case is well presented and key arguments made clear.
- Remember ADR is not a “one-off” chance – can pursue ADR multiple times and for different issues if necessary.

# Case study on mediation in a CPO context

- Case Scenario:
  - CPO of land for residential development.
  - Claimant owner of 1 acre plot, with existing bungalow and history of unlawful commercial uses – claim total c. £1.8 million for value of the land (Rule 2) based on prospect of redevelopment for residential use.
  - AA position – existing use value of land with limited ‘hope value’ c. £500k. Costs to remediate land c. £800k. Overall Rule 2 valuation – nil.
  - C rely on evidence of valuation surveyor; AA evidence from surveyor and environmental expert
  - AA sealed offer at £250k in Tribunal proceedings.
  - Claimant impecunious and no reasonable prospect of AA recovering any costs awarded.
- Going into mediation poles apart!
- Mediator effective in drawing out key issues in the case and risk to C of proceeding to trial.
- Mediation concluded in 1 day and resulted in settlement achieved at c. £400k all in.
- AA happy as result within settlement budget and avoid costs of Tribunal. C recognised sensible outcome in light of risks if case went trial.