

## **THE SCS GUIDE TO COMPULSORY PURCHASE AND COMPENSATION**

### **Introduction**

The purpose of this booklet is to give a brief overview of the issues relating to Compulsory Purchase Orders (CPOs), as very little information about them has been available. We hope this leaflet will assist you in understanding some of the issues in this very complex area. The most widely discussed issues at present relate to the various road improvement schemes throughout the country and LUAS (the light rail system).

The current compulsory purchase system, with the public enquiries, notices to treat, notices of entry etc., is a daunting prospect for the individual property and land owner. At the earliest possible stage in the CPO process, the professional advice of a Chartered Surveyor should be obtained.

The Society of Chartered Surveyors can provide a list of its members who specialise and advise on compulsory purchase, compensation and related matters.

### **Background**

Few people are aware that the first CPOs came into operation following an Act of Parliament of 1757. This Act allowed for the formation of the Wide Streets Commission and the subsequent construction of streets such as College Street, D'Olier Street, Westmoreland Street, Capel Street and Dorset Street. These powers were also used in relation to the construction of public utilities, including the canals and railways. While compulsory purchase is wide ranging and often seen as draconian, it would be difficult to progress many national infrastructure projects without these powers.

### **Purpose of Compulsory Purchase & Compensation**

The reason a scheme allowing for the compulsory acquisition of lands exists is to allow public infrastructure projects to proceed for the greater and common good.

It follows therefore, that the affected parties should be duly compensated for their loss/disturbance.

Compensation is available to restore the affected party, in so far as money can, to the same position as before the property/land was acquired. A number of key issues arise from this:

The basis of compensation for property acquired is market value.

Principle of Equivalence. This requires that the affected party is left in the same financial position after the CPO as they were prior to the process.

The compensation should reflect both the actual land acquired and the diminution in value (if any) of the retained area as a result of the CPO.

### **Steps in Compulsory Purchase**

- A statutory body resolves to make a CPO.
- Affected parties will be served with a notice and newspaper notices will be published, stating that the order is about to be submitted to the relevant Minister for consideration.
- Objections can be made, but valid objections are generally on planning or legal grounds only.
- A Public Local Enquiry is held at which affected parties can formally put their views forward.
- Minister either confirms amends or rejects CPO order and publishes details of the decisions in this regard.
- Objections can be made on a point of law and, after expiry of objection period, the CPO is operative.
- Acquiring Authority serves Notice to Treat on the affected parties and discussions commence regarding the level of compensation available.
- The affected party lodges a claim for compensation. This can be made by the claimant's valuer.
- On reaching agreement, compensation is paid; otherwise the matter may be referred by either party to the property arbitrator to assess compensation.
- Acquisition is finalised, compensation paid.

### **Compensation**

The assessment of compensation payable by an Acquiring Authority is based on 16 rules laid out by statute and by the relevant case law.

An experienced Chartered Valuation Surveyor will be able to assess the compensation payable to clients affected by a compulsory acquisition and to negotiate for the affected property/land owners, in order to obtain their full entitlement to compensation.

The assessment of compensation will generally fall under a number of headings of claim which can include the following:

- Value of land acquired.
- Diminution in value of retained lands, if any.
- Costs resulting from acquisition.
- Disturbance.
- Loss of profits or goodwill.
- Loss or depreciation of stock in trade.
- Professional fees necessary for acquisition.

An agreement on compensation can often include an extensive list of accommodation works i.e. fencing, walls, water supply, drainage, relocation of septic tank, double glazing etc.

### **Some Terms for Easy Reference**

#### 1. Notice to Treat

This document is served on the affected party by the Acquiring Authority when the CPO scheme is confirmed by the relevant Minister. It is the Acquiring Authority's way of saying it wishes to enter into discussions to acquire your property.

#### 2. Notice of Entry

This document is served on the affected party by the Acquiring Authority indicating when it intends to enter on the lands, the subject of the CPO.

#### 3. Severance

This comes about when part only of the affected party's property is acquired, e.g. for road widening, dividing the retained property into two or more parts, and leaving lands which have been reduced in value as a result of the acquisition. In this case the affected party is entitled to compensation on both the lands taken and the diminution in value of the retained lands.

#### 4. Injurious Affection

This comes about if there is a reduction in value of the retained lands caused by something which happens on the other lands acquired from the affected party. An example of this could be where a sewerage treatment works is built next door to your house on land compulsorily acquired from you.

There are also some very limited cases where compensation can be payable resulting from the construction of a scheme on other lands. On occasion the Acquiring Authority can be forced to purchase an entire property even though only a portion of the property is the subject of the compulsory purchase order.

### **Common Questions**

#### **Q: What is a CPO?**

A: A CPO is a compulsory purchase order. It happens when an Acquiring Authority puts in

place the procedure to acquire some land or property in order to facilitate public infrastructure projects.

**Q: What are my rights if my property is subject to a CPO order?**

A: You have the right to object; make representations; right to negotiate; right to refer to property arbitrators; right for objections to be heard. Chartered Surveyors are trained to be familiar with all stages of the process.

**Q: What is the statutory valuation date?**

A: The relevant date is normally the date the Notice to Treat is served.

**Q: I understand that my house will be acquired for a future road scheme. Will the Local Authority pay my costs for finding an alternative house now if I now go looking for a property?**

A: Not generally, unless it is agreed in advance with them. Only costs which are incurred after the Notice to Treat is served are generally considered. You should be very careful the type of costs you incur.

**Q: I have been served with a Notice to Treat and a Notice of Entry. How long do I have before the Acquiring Authority move in?**

A: The Acquiring Authority can take possession now and agree the level of compensation later. Interest is paid from the date of entry.

**Q: Does the Acquiring Authority have to purchase all my land?**

A: Not usually, although there are circumstances where the Acquiring Authority can be forced to purchase the entire property.

**Further Information**

For further information, contact the SCS which can provide a list of members specialising in compulsory purchase advice.

The services provided by members include:

- Valuation advice
- Construction advice
- Company valuation advice
- Technical advice on method of claiming and negotiating on your behalf
- Survey of property to assess any potential damage due to works being carried out above or below ground.

The advice of Chartered Surveyors should be obtained at the earliest possible stage in the process. The cost of such services is part of a normal claim for compensation.

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