UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

***COMPENSATION** – disturbance – surveyor's and legal fees – claimant's personal time and costs – rule 6 losses – need for evidence to justify claim – lack of direct evidence from claimant – unexplained estimates insufficient – summary assessment of routine items*

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN	**MARIA Da SILVA**	**Claimant**
	and	
	THE LONDON BOROUGH OF BRENT	**Acquiring Authority**

Re: 176 Harlesden Road,
London NW10 3SL

Before: A J Trott FRICS

Sitting at: Royal Courts of Justice, Strand, London WC2A 2LL
on
12 January 2015

Richard Murphy MRICS for the Claimant.
Emmaline Lambert, instructed by London Borough of Brent Legal & Procurement Department, for the Acquiring Authority

The following cases are referred to in this decision:

Harvey v Crawley Development Corporation [1957] 1 QB 485
Thomas Newall Limited v Lancaster City Council [2013] JPL 1531

DECISION

Introduction

1. The claimant, Ms Maria Da Silva, was the leasehold owner of a second floor flat at 176 Harlesden Road, London, NW10 3SL ("No.176"). The London Borough of Brent ("the acquiring authority" or the "council") made a general vesting declaration on 15 August 2008 to acquire No.176 under the London Borough of Brent (176 Harlesden Road, London NW10) Compulsory Purchase Order 2005. No.176 vested in the council on 13 September 2008 which is the valuation date.

2. The acquiring authority have paid compensation of £243,565 and agreed to pay a further £9,531 giving a total of £253,096. This figure includes the market value of No.176 at £200,000, a home loss payment of 15% (rather than the statutory figure of 10%) and payments in respect of fees and disturbance.

3. The remaining dispute concerns claims for legal and surveyor's fees and various disturbance items. The disputed claim amounts to £39,025.

4. Mr Richard Murphy Dip.Surv, MRICS, a partner in Richard John Clarke Chartered Surveyors, appeared for the claimant and also gave evidence. The claimant did not give evidence or produce a witness statement of fact.

5. Ms Emmaline Lambert of counsel appeared for the acquiring authority and called Mr Denish Patel, a project manager at the council's Regeneration and Growth Department as a witness of fact.

6. The reference was heard under the simplified procedure.

Facts

7. No.176 is a two-bedroom second floor flat forming part of a block of flats known as Elmwood House, a three-storey building constructed in the 1970s. It is located on the northern side of Harlesden Road close to the junction with Wrottesley Road and Park Parade.

8. The ground and first floors of Elmwood House comprised 30 bedsits which formed part of the council's sheltered housing stock. The second floor comprised three non-sheltered flats, including No.176.

9. In October 2000 the council transferred its sheltered housing stock, including its freehold interest in Elmwood House, to a registered social landlord called Willow Housing & Care ("Willow") which was established by Network Housing Association whose parent company was Network Housing Group (together known as "Network Housing"). The council agreed to transfer the three second floor non-sheltered flats to Willow once it had obtained vacant possession of them. Willow granted the council a long headlease of these three flats to assist the council in obtaining vacant possession. The council subsequently obtained vacant possession of two of the flats but not No.176.

10. In March 2005 the council granted planning permission for the development of Elmwood House with a new block of 38 flats. The redevelopment was to be undertaken by the Stadium Housing Association which was part of Network Housing. The council had still not obtained vacant possession of No.176 and in June 2005 they resolved to make a Compulsory Purchase Order under section 226 of the Town and Country Planning Act 1990. The claimant objected to the CPO and a public inquiry was arranged for 15 May 2007.

11. Mr Murphy was instructed by the claimant on 26 March 2007 and on 30 March 2007 he wrote to the council to confirm his fee basis with them. The letter attached Mr Murphy's "standard terms for compulsory purchase consultancy". The terms of engagement were listed as:

> "1. Carry out an inspection and survey of the land and buildings to be acquired.
>
> 2. Inspect comparable properties (external).
>
> 3. Carry out necessary research.
>
> 4. Provide client with a valuation of the property.
>
> 5. Research alternative accommodation.
>
> 6. Instruct on the necessary surveys and gas, electrical and drainage tests where necessary.
>
> 7. Negotiate the purchase of new premises.
>
> 8. Agree a claim with Client for Full and Final Settlement where possible.
>
> 9. Negotiate the claim with Acquiring Authority."

The current hourly rate of Mr Murphy was stated to be £140 excluding VAT.

12. The council (Mr Paul McConnell) acknowledged Mr Murphy's letter by email dated 5 April 2007 and said that it was consulting with Network Housing which was "liable for the cost of purchasing the property". Mr McConnell wrote again on 11 April 2007 and said:

> "I have now spoken to Network Housing and we are happy to agree your terms and fees, except that we would wish to cap the fees for researching alternative accommodation to £2,000 plus VAT. I hope this is acceptable to you."

13. On 26 April 2007 Mr Murphy wrote to the claimant informing her that "Network Housing and Brent Council" had agreed to pay his fee and attached a copy of the council's letter dated 11

April 2007. The claimant signed a formal letter of instruction on 2 May 2007 on this basis of fee payment.

14. On 11 May 2007 Mr Murphy wrote to the Government Office for London ("GOL") and asked that the public inquiry into the CPO be adjourned because he had only recently been instructed. GOL agreed to an adjournment in a letter dated 11 May 2007. The inquiry was re-arranged for 5 December 2007.

15. Negotiations then ensued the key points of which were:

(i) On 15 May 2007 Network Housing offered a shared equity deal whereby the claimant would exchange No.176 for a new flat then under construction. The offer was based at that time on a valuation of No.176 at £195,000.

(ii) On 3 December 2007 Mr Murphy emailed Network Housing setting out the terms that he was prepared to recommend to his client. These included:

1. A shared equity deal;
2. 15% home loss payment;

...

4. All legal and surveyors costs;
5. The value of No.176 to be £220,000;

...

7. Removal costs and "all the other usual disturbance costs (including costs in finding alternative accommodation)".

16. On 4 December 2007 Network Housing emailed its reply and confirmed its agreement "in principle" to items 2, 5 and 7. It said in respect of item 1 that "the principle that we will enter into a shared equity scheme is agreed but must be subject to ratification by [the] board."

17. The claimant applied at the inquiry for a further adjournment, since although she had agreed a sale price for No.176 it had yet to be approved by the Network Housing board. The inspector refused to adjourn the inquiry.

18. The inspector recommended on 2 January 2008 that the CPO be confirmed. On 20 March 2008 GOL wrote to the council asking for an update on the position with regards to the agreed sale price for No.176 that was waiting approval by the Network Housing board. The council replied on 10 April 2008 and said:

> "The offer was based on a valuation agreed at the time between Ms Da Silva's surveyor and an independent valuer acting for Network. The valuation then for [No.176] was £220,000. However if the CPO is confirmed, then an updated valuation will need to be obtained.

... there is no 'agreed' sale price yet as an updated valuation will need to be carried out in the event the CPO is confirmed."

19. The Secretary of State accepted her inspector's recommendations and confirmed the CPO on 17 April 2008. In her decision letter she said that she had "given careful consideration to ... the council's letter of 10 April 2008."

20. At or around May 2008 the council's Mr Manjul Shah took over the administration of the CPO from Mr McConnell. Mr Shah wrote directly to the claimant on 21 May 2008 and asked her to "provide written confirmation that you have authorised Mr Murphy to represent you and that you are happy for us to liaise directly with him in respect of the purchase of the property."

21. On 15 July 2008 Mr Shah wrote again to the claimant and said:

"Please note that the council's agreement in relation to the re-imbursement of Mr Murphy's costs as set out in [the] terms of engagement have been terminated by the council. However, the council will be happy to meet Mr Murphy's reasonable costs in relation to finding alternative accommodation for you in accordance with the compensation regulations."

22. The shared equity deal with Network Housing for alternative accommodation for the claimant did not proceed and eventually the claimant acquired an alternative property at 17 Cheltenham Close which she moved into on 8 January 2009. She acquired this property with financial assistance from her lodger.

Issues

23. The disputed items may be conveniently divided into three categories:

(i) surveyor's and legal fees;

(ii) claimant's personal time and costs; and

(iii) other rule 6 losses.

Issue (i): surveyor's and legal fees

24. The outstanding dispute about surveyor's fees concerns invoice No.3 submitted by Mr Murphy to the claimant (but said to be payable by the council) on 7 July 2009. The invoice was in the sum of £28,600 excluding VAT.

25. Invoice No.3 covers the period from July 2008 until June 2009 and is supported by itemised timesheets giving the date, duration, hourly rate (£150 throughout), a total amount and a description of the work done.

26. The outstanding legal fees relate to an invoice submitted to the claimant on 12 January 2007 by CLC Solicitors in the sum of £394.80 including VAT. The invoice is headed "Re: Challenge to Compulsory Purchase Order on 176 Harlesden Road."

Issue (i): the case for the claimant

27. Invoice No.3 covered the period after the confirmation of the CPO. Mr Murphy said that the time spent up to September 2008 included having to re-confirm his instructions with the client at the request of the council; assisting the client to find an alternative property; attending progress meetings; having to negotiate (again) with the council's newly appointed valuer, the District Valuer, after prompting the council to negotiate at all; meeting with the Housing Officer to explore alternative options, requesting a stay in the council's taking possession of No.176; and dealing with the Network Housing's revised criteria for their offer of assistance.

28. Mr Murphy summarised what happened after September 2008 as follows:

> "(a) In the end, Network refused to give assistance to the claimant.
>
> (b) The claimant, with the assistance of her friend purchased an alternative property.
>
> (c) Richard John Clarke organised a building, electrical and drainage survey.
>
> (d) We also negotiated a settlement with the District Valuer at £200,000.
>
> (e) Our time spent dealing with this is outlined in Invoice 3 ... and we would ask the Tribunal to confirm that in the circumstances, these fees were reasonable."

29. Mr Murphy explained that the claimant was Portuguese and did not speak good English. She found it difficult to understand the compulsory purchase process and was suspicious of authority. She had disabilities due to an accident and could no longer work. Once the mortgage on No.176 was paid off she would not be able to obtain a new mortgage. Her disability affected the type of alternative property she could move into. Furthermore No.176 was a low value property in a high value area which made it difficult to find an affordable alternative property nearby, especially while the council were putting pressure on the claimant to move quickly. She had no access to the internet. All of these factors meant that the search for alternative accommodation was more difficult than usual.

30. Mr Murphy considered the council's cap of £2,000 plus VAT on his fees for researching alternative accommodation to be an arbitrary limit which might or might not have been an adequate amount depending upon the amount of work involved. He did not respond to the

council's invitation in their letter dated 11 April 2007 to accept the cap. Mr Murphy said that he had spoken to Mr McConnell about it and had kept the figure under review as the search for alternative accommodation progressed. Later Mr Murphy had spoken to Mr McConnell about the cap being insufficient. In practice the council had not sought to impose their cap. They had paid the amounts shown in Mr Murphy's invoice Nos. 1 and 2 in respect of "seeking alternative accommodation". Mr Murphy emphasised that while he had referred to the council's cap in correspondence he had not accepted it at any stage.

31. Mr Murphy explained that the invoice from CLC Solicitors covered more than work done to challenge the CPO. He said that it included advice about the options available to the claimant. Mr Murphy said he had seen documents about such advice but he acknowledged that they had not been submitted in evidence.

32. Mr Murphy summarised the claimant's case by saying that the type of invoices he had submitted to the council in this case was the same as those submitted to, and accepted by, other acquiring authorities. The veracity and accuracy of his time sheets had not previously been challenged. Mr Murphy said that he thought his involvement would assist the council to deal with a difficult case but it had proved otherwise as the council put the claimant under such pressure to move that she became suicidal. It became very unpleasant because the council threatened imminent possession and the claimant did not know whether she would be thrown out onto the street. Mr Murphy had not focused upon the agreement with the council but instead had concentrated on resolving a very real human problem. In doing so he had acted reasonably. The council was wrong to consider the claim in terms of the average amounts it expected to pay for surveyor's fees for a property of this type. It was necessary to consider exactly what happened and what pressures were on the claimant. Each case had to be considered on its merits. *Harvey v Crawley Development Corporation* [1957] 1 QB 485 established that a claimant could claim for a loss which was not too remote and was a natural and reasonable consequence of dispossession. Mr Murphy said that his invoice No. 3 met these criteria.

Issue (i) the case for the acquiring authority

33. Mr Patel said that he had taken over the case approximately two years ago and had not been involved at the time the costs were incurred by the claimant. He said that he was neither a chartered surveyor nor a qualified lawyer.

34. Mr Patel had experience of some 30 leasehold buy-backs by agreement which he explained were purchases made under the threat of compulsory purchase powers and were therefore analogous to compulsory purchase acquisitions. Mr Patel said that where "occasionally" (five or six times) a surveyor had been appointed by a vendor, the surveyor's fees had typically not been more than £5,000 or approximately 1.5% of the agreed valuation for a property worth £200,000. He submitted an example of such an invoice in the amount of £5,040 relating to the acquisition by the council of a property in Cambridge Road, Kilburn. He said that disturbance claim payments were "on average between £5,000 - £12,000" for all heads of claim. e.g. SDLT, fixtures and

fittings, removal costs and replacement property acquisition costs. Mr Patel said that in his experience the highest payment for surveyor's fees was £7,000.

35. He accepted that his figure of £5,000 did not include work done in looking for alternative accommodation and that he had "not come across a leaseholder making that sort of claim." He agreed that it would be logical for an acquiring authority to pay more where that type of work had been undertaken. Mr Patel said that the example invoice that he had adduced in evidence related to an investor who did not live in the property that was acquired. The fee paid did not include any payment for searching for alternative accommodation.

36. Mr Patel considered that the claim for surveyor's fees in this case was unreasonable. The council had already paid fees of £9,975.85 to Mr Murphy in respect of his first two invoices and any further payment was unwarranted. This was not a complex case, despite Mr Murphy's arguments to the contrary. Property searches were easily undertaken for this type of property and Mr Murphy's claim was excessive.

37. Mr Patel referred to the RICS Guidance Note on the calculation of fees relating to the exercise of compulsory purchase powers which said at page 2 that:

> "... the claimant's surveyor ... must demonstrate that the fees to be claimed have been properly incurred, and are reasonable and proportionate to the compensation at stake and the complexity of the claim."

Mr Patel considered that a total claim of some £40,000 for surveyor's fees was not reasonable or proportionate to the size and complexity of a claim for a two-bedroom flat worth £200,000.

38. Mr Patel said that Mr Murphy had not justified the travelling costs that he had incurred as required by the RICS Guidance Note. Nor, said Mr Patel, had Mr Murphy provided the council with the "arrangements for payment" as agreed with his client. The council had not been provided with interim charging schedules and Mr Patel said that "charges were never agreed in advance of being incurred". Mr Patel did not understand why the work done was not done for a fixed fee or by of a percentage of the total compensation received, usually 1.5%.

39. Mr Patel also relied upon paragraph 2.55 of the Government's Guide to "Compensation to Residential Owners and Occupiers" (Department for Communities and Local Government, April 2010) which stated:

> "... Every loss should be considered on its merits and should be recoverable if a natural, direct and reasonable consequence of being disturbed. **The onus is on the claimant to justify his or her claim. Therefore it is up to you to prove that you should be compensated rather than expect the acquiring authority to come up with anything. Accordingly, it is of the utmost importance that you keep a detailed record of losses sustained and costs incurred in connection with the acquisition of your property. You should keep all relevant documentary evidence such as receipts, invoices and fee**

quotes. You should also keep a record of the amount of time you have spent on matters relating to the compulsory purchase of your property."

40. Ms Lambert submitted that although Mr Murphy described the council's £2,000 cap on fees for researching alternative accommodation as being an "arbitrary limit" and argued that he had not agreed to it, he plainly did not dispute it. Throughout the correspondence in 2008 Mr Murphy's stance was "Brent did not have a choice". He had not shown that he had at any time tried to limit his involvement. In a letter to the council dated 12 August 2008 Mr Murphy stated "it is not possible for me to provide a budget as I am not sure how many properties I will have to view." In that letter he also said that he was going to limit his search to properties worth in the region of £310,000. It was unreasonable for him not to have restricted his search already to property that was affordable by the claimant.

41. Ms Lambert said that Mr Murphy's fees were neither reasonable nor proportionate as required by the RICS guidelines. They amounted to 20% of the value of No. 176. This was not a complex claim; it was a residential flat of modest value. Mr Murphy had increased his hourly rate from £140 to £150 without consulting the council. Ms Lambert identified several examples of claims which she said were not properly itemised or explained. Simple administrative tasks were exaggerated, including a two paragraph letter which was said to have taken 40 minutes to prepare. Some items had been double or even triple counted. There were regular claims for a "review" of the file or of correspondence which were unjustified given Mr Murphy's continuous involvement with the case. Travelling time was also claimed despite this not having been included in the terms and conditions and in breach of the RICS guidelines which required it to be demonstrated that such reimbursement was appropriate. In total Mr Murphy sought reimbursement for 257 hours of which 191 hours related to invoice No.3. Ms Lambert said this was some eight times the usual amount of surveyor's time for a case of this nature and complexity.

Issue (i): discussion

42. The acquiring authority emphasise that their agreement to Mr Murphy's terms of engagement was qualified by the imposition of a cap of £2,000 plus VAT in respect of the fees for researching alternative accommodation. But they seemingly ignored this cap when they paid Mr Murphy's first invoice (dated 24 July 2007). The amount of that invoice attributable to seeking alternative accommodation was £3,027.50 excluding VAT. Mr Murphy's second invoice (dated 5 February 2008 and revised on 1 July 2008) contained an allocation of £5,547.50 excluding VAT to seeking alternative accommodation. Mr Shah recommended payment of this amount but made it subject to a deduction described as "Capped Cost Overspend £2,327.50" although only £327.50 was deducted from the recommended payment. It is not clear from the evidence how this figure was calculated. But even after reviewing the sums due to the claimant from the council Mr Shah recommended payment of £8,247.50 in respect of seeking alternative accommodation. The cap of £2,000 was seemingly not invoked at that time.

43. The invoice in dispute, invoice No.3, is dated 7 July 2009 and relates to work undertaken between July 2008 and June 2009. It amounts to £28,600 plus VAT, giving a total of £32,890.

On 15 July 2008 the council wrote to Ms Da Silva and said that they had (unilaterally) "terminated" the agreement with Mr Murphy on fees but would "be happy to meet Mr Murphy's reasonable costs in relation to finding alternative accommodation for you in accordance with the compensation regulations." So for the work done by Mr Murphy in seeking alternative accommodation as recorded in invoice No.3 the council had waived the cost cap which they had previously ignored in any event. Under these circumstances I do not consider the costs cap of £2,000 to be a relevant factor in resolving the dispute about invoice No.3. What matters is whether Mr Murphy's fees were reasonable amounts reasonably incurred for the work covered by that invoice.

44. Mr Patel, who was not involved in the dispute until circa April 2013, says that the payment of £9,971 already made to Mr Murphy in respect of invoices Nos. 1 and 2 is sufficient. Payment by the council of those invoices means they accepted them as being a reasonable amount for the work that was done prior to July 2008. There was no suggestion at the time that that would be the final payment and that it was intended to cover any future work. Indeed the council's letter dated 15 July 2008 made it clear that it was expected that Mr Murphy would undertake further work for which he would be paid his reasonable costs.

45. Mr Patel also says that he "does not understand either why work such as this on a modestly valued property was not done for a fixed fee or by way of percentage of the total compensation received." The answer is simple: the council did not suggest such methods of payment to Mr Murphy but instead accepted his proposal of an hourly rate charge.

46. In considering the amount of Mr Murphy's fees I note that he had to deal with several persons from the council, Network Housing and their valuers. There were changes of council officer dealing with the matter which led to the acquiring authority reviewing, and changing, their attitude to the claim and to the value of No.176. This inevitably meant that Mr Murphy had to undertake more work than he would have done had the council and Network Housing taken a more consistent approach. Mr Murphy was also asked to confirm that he was still instructed to act for the claimant. There was nothing to suggest that he had been disinstructed and Mr Shah's insistence that such confirmation be obtained was an unnecessary and unwarranted distraction and a waste of Mr Murphy's time for which he should be reimbursed. I also take into account the particular difficulties faced by the claimant that I have outlined in paragraph 29 above. It is not surprising or unreasonable that Mr Murphy needed to spend time explaining the compulsory purchase process and reassuring his client.

47. In my opinion Mr Murphy complied with the RICS guidelines by agreeing the basis of his fee in writing with his client, having first obtained the qualified agreement of the acquiring authority. The basis of that fee was that it would be met by Network Housing and the council and not by the claimant. Mr Murphy does not appear to have agreed his increased hourly rate of £150 with either Network Housing or the council.

48. Travelling costs are charged at Mr Murphy's hourly rate. The council say these costs (i) were not specified in Mr Murphy's terms of engagement and (ii) were not demonstrated to be

appropriate in accordance with the RICS guidance. But the council apparently did not query the travelling costs that were itemised on invoices Nos.1 and 2 and they seem to have paid these in full except where (if at all) they related to entries which were categorised as "CPO Challenge." The principle of paying for travelling time had been conceded by the council in practice. In the council's letter to the claimant dated 15 July 2008, in which it unilaterally terminated its previous agreement with Mr Murphy about fees, it did not say anything about not paying travelling costs in future as it had done in the past.

49. I take into account all of the above factors when assessing what fees were reasonably incurred by Mr Murphy in respect of his invoice No.3. This is not a complex claim. It involves the valuation of a two-bedroom flat at £200,000 and the assessment of disturbance costs arising. The total surveyor's fees claimed are some £38,500 or nearly 20% of the value of No. 176. That is a very significant figure and appears to be disproportionate to the size and complexity of the claim. At times the costs of travelling form a disproportionate amount of the claim. For instance the entries for 3 May 2007 (invoice No.1) show that 4.25 hours out of a total of 8 hours related to travel time. Invoice No.3 provides a less specific description of travel time than the previous invoices and does not identify it separately.

50. In my opinion the amount charged by Mr Murphy in invoice No.3 is disproportionate to the nature and scope of his instructions. In particular I do not think that it was necessary for the claimant to view 60 alternative premises, despite the particular difficulties she faced and the specific accommodation requirements that they created. It should have possible to reduce this number without visiting them all. A more discriminating filter in terms of size, price and the required facilities would have reduced the necessity for so many inspections. Furthermore I do not understand why it was necessary for Mr Murphy to accompany Ms Da Silva on the majority of these visits (he said in evidence that he "generally went with her"). Mr Murphy said that Ms Da Silva could drive and I consider that it was, at least in the first instance, her responsibility to view suitable alternative accommodation on her own. It was a two hour return trip from Mr Murphy's office to No.176 and so Mr Murphy must have spent a considerable amount of time travelling to and from such site inspections.

51. I accept Ms Lambert's specific criticisms of the items in invoice No.3 where there has been double or even triple accounting. I also accept that Mr Murphy did not consult either his client or the council about the increase in his hourly rate from £140 to £150. In his reply dated 12 August 2008 to the council's letter dated 15 July 2008 Mr Murphy said "My hourly rate is as previously agreed." I take that rate, in the absence of any agreement to an increase, to be £140 per hour.

52. At the end of his closing submissions Mr Murphy referred to an open letter written to him by the council on 22 December 2009 in which the council comment upon invoice No.3 and state:

> "With a view to achieving a reasonable settlement we have analysed your application [for payment of invoice No.3] and allocated costs to those activities instructed in our letter of 15 July 2008 and made allowances for costs associated with compiling and agreeing the final compensation claim.

Our assessment of a reasonable settlement currently stands at £16,018.31 plus VAT.

Due to the delay in your submitting your application there remain a number of items that we are unable to reconcile that we value at £5,512.48 that we require better particulars of before we can consider it [for] payment.

With a view to [mitigating] costs of further checking and cross checking by ourselves we are prepared to make a full and final settlement payment of £18,500 plus VAT to clear your account."

53. In my opinion the council's offer was a generous one given the factors that I have outlined above. I make a summary assessment of the claimant's outstanding surveyor's fees at £14,300 plus VAT which is half of the amount claimed in invoice No.3.

54. The claimant also seeks reimbursement of legal fees amounting to £394.80 including VAT comprising an invoice dated 12 January 2007 from CLC Solicitors. In my opinion this sum is not compensatable as the invoice states in terms that it relates to a "challenge to Compulsory Purchase Order". I take this to mean that the work done was in respect of advice given to the claimant about her objection to the CPO. That is not a matter that gives rise to a claim for compensation before this Tribunal. Mr Murphy says that the advice given also related to a review of the claimant's "options" but there is no reference to this in the invoice.

Issue (ii): claimant's personal time and costs

55. The claimant seeks the following compensation:

(a) £2,100 for her time spent in viewing approximately 60 alternative properties (calculated as 120 hours at £35 per hour, although this gives a figure of £4,200);

(b) £112.50 for travelling costs (225 miles at 50p per mile); and

(c) Mobile phone bills of £50 (unspecified).

56. Mr Murphy said that these heads of claim were all estimates. No time had been recorded and there were no supporting invoices. No enquiries had been made of the mobile phone company because to have done so would not have been cost effective or proportionate. The claims were reasonable estimates of the costs incurred by the claimant in having to search for alternative accommodation.

57. Ms Lambert submitted that there was no evidence that the claimant had spent 120 hours looking at alternative properties or that she had lost £35 per hour as a direct consequence. Nor had the claimant explained the breakdown of the mileage claimed or the provenance of the rate of 50p per mile. No phone bills had been produced to support the claimant's figure of £50. Ms Lambert said that *Thomas Newall Limited v Lancaster City Council* [2013] JPL 1531 [2013] JPL

1531 was authority for the proposition that a claimant, even an individual, must justify their claim. No justification had been made for any of these three heads of claim. In any event, the council had agreed to pay a home loss payment of 15% rather than the statutory figure of 10% and this had been intended to cover such items.

Issue (ii): discussion

58. There is no evidence to support any of these three heads of claim. They are simply estimates of time and cost. No details are given of which properties were inspected, how far away they were from No.176 or how long it took to get there. No justification is given for the rate of 50p per mile and no explanation is given of the £50 claim for mobile phone calls. The hourly rate for the claimant's own time (stated to be £35) is arbitrary. I understand that the claimant was not working and was receiving disability benefit and Mr Murphy produced no evidence or argument to justify the rate of £35per hour. The claimant did not attend the hearing and did not produce a witness statement to support this, or any, head of claim.

59. *Thomas Newall* was concerned with losses claimed by the directors of a company and not by an individual. Rimer LJ said at 1539 para 26:

> "I can well see that if an individual faced with a compulsory purchase acquisition reasonably devotes his own time to dealing with it, he ought in principle to be compensated for his time. He can fairly say that the expenditure of such time represents a loss to him. In this case the question is whether TNL, a company, has incurred any like loss."

60. I would emphasise the words "in principle". In *Thomas Newall*, as in this case, the claimant:

> "...adduced no relevant evidence. Its claim under this head should therefore have been rejected. The tribunal's holding that it did in fact suffer loss was an error of law because there was no evidence justifying it" (page 1541 para 31).

The council had informed the claimant about the importance of obtaining supporting evidence. For instance in an email to Mr Murphy dated 19 August 2008 the council said:

> "We would need to evidence expenditure incurred and therefore I would ask you to ensure Ms Da Silva keeps all receipts and where possible to support her claim."

The Government's guide to compensation (see paragraph 39 above) makes the same point, although I note that the version relied upon by Mr Patel had not been published when the claimant was searching for alternative accommodation. In the absence of any explanation or evidence in support of these heads of claim, other than Mr Murphy's assertion that they are reasonable estimates, and given that the claim for Mr Murphy's fees already includes the time he spent searching for and inspecting alternative accommodation, I make no award of compensation in respect of them.

Issue (iii): other rule 6 losses

61. The remaining heads of claim are concerned with claims made under section 5 rule 6 of the Land Compensation Act 1961. They comprise:

(a) curtains/blinds: £1,925 including VAT

(b) carpets/laminated flooring: £3,533.50 including VAT

(c) mortgage broker's fee (W T Franklin): £1,200

(d) Three TV satellite dishes (Sky, Portuguese, Philippine): £650

(e) BT reconnection: £150

(f) Sky TV reconnection: £60

(g) Bathroom/WC handrails: £250

Issue (iii): the case for the claimant

62. The claims for items (a) and (b) were not made for a loss on a forced sale or for costs of adaptation. Mr Murphy explained that these were items that had been left at No.176 and which were not reflected in the value of that property. The amounts claimed were his estimates of what it would cost to install those items in No.176 as new at the valuation date. Mr Murphy said that it was necessary to consider the claimant's loss by looking at the existing curtains and not by reference to the "new property which would be a different size." The cost of adapting the existing curtains to the new property would have been greater than the cost of new curtains.

63. Mr Murphy said that for a long time the claimant did not have any carpets or curtains at the new house because she had no funds. She was claiming for the curtains and floor coverings that she had lost and not for new curtains or carpets/flooring. Mr Murphy had reduced the amount of the claim following comments received from the acquiring authority, for instance he had deleted the claims for a spare set of curtains and for the cost of new tiling in the kitchen and bathroom. The council appeared to have accepted the principle of paying compensation for these items as evidenced by its comments on a Scott schedule adduced by the claimant.

64. The mortgage broker's fee (item (c)) was shown on the completion statement for the remortgaging of 171 Langham Road, London N15 3LP. This property was owned by the claimant's friend who was providing funds for the claimant's purchase of her new property. Mr Murphy accepted in cross-examination that the completion statement was not an invoice; that there was no name or identifying heading on the completion statement and that the broker, W T Franklin, had not been approached to provide a copy of the invoice.

65. The amounts claimed for items (d)-(f) were all estimates of the original cost of installation at the old premises. The cost of installing handrails in the bathroom (item (g)) was an estimate by Mr Murphy and had been agreed by the council in principle in the Scott schedule produced as part of Mr Murphy's evidence.

Item (iii): the case for the acquiring authority

66. Ms Lambert submitted that the claim for items (a) and (b) was misconceived. The cost of providing new curtains and carpets in No.176 was not relevant. The claim concerned what the claimant had lost and that did not comprise new curtains or new carpets/flooring. The existing value of these items would, in any event, have been reflected in the agreed value of No.176.

67. There was no explanation of how Mr Murphy had arrived at his estimates, what measurements he had used, why net curtains were required in every room (including the kitchen and at the front door), the type of carpet chosen nor any range of prices. There was no evidence to show that any monies had been spent on these items at the new property.

68. Mr Murphy had acknowledged that the only evidence in support of the claim for the mortgage broker's fee was a single entry on an unattributed, undated and unreferenced completion statement which did not identify the mortgage broker concerned. The evidence was insufficient to support the claim.

69. None of items (d)-(g) was supported by evidence of payment or an explanation of the basis of the estimates. Nor was there any evidence that the claimant even had such items at No.176.

Issue (iii): discussion

70. The claimant appears to base her claim for items (a) and (b) on the cost of providing new curtains and carpets at No.176. It seems that the council did not appreciate the basis of the claim for items (a) and (b) until the hearing. In the Scott schedule included in Mr Murphy's evidence the council stated that "Subject to invoice we accept the basis of your estimate for [curtains/blinds]", presumably on the basis that this was for their provision at the new property. Similarly with respect to carpets/laminated flooring the council said "reimbursement shall be made against receipts for necessary works, not betterment" (by betterment they were referring to the tiling of the bathroom which was subsequently abandoned as part of the claim).

71. There is no evidence of actual expenditure on new curtains/blinds or carpets/laminated flooring, even six years after the valuation date. The only evidence is Mr Murphy's estimates for replacement curtains and carpets at No.176. He said that these estimates had been provided by Paul Simon Home Furnishing Stores and Carpetright plc respectively.

72. I would expect the value of the fitted carpets and flooring to be reflected in the agreed valuation of £200,000 for No.176, although Mr Murphy said that it would make no difference to the price with or without the carpets. Mr Murphy said in cross-examination that he could not remember what floor coverings there were in the replacement property. He said that he "suspected" there were just floorboards and laminated flooring. Mr Murphy said that the claimant had not inherited any curtains from the vendor of the replacement property. The direct evidence of the claimant would have been of considerable assistance on this and other matters but the only evidence on the point is that from Mr Murphy.

73. In *Thomas Newall* Rimer LJ said at 1541 [32]:

> "I fully recognise the deference that an appellate court should pay to decisions of an expert tribunal in relation to decisions falling within its area of particular expertise. The 'management time' issue was not, however, one falling within the specialist expertise of this tribunal."

Claims for replacement curtains and carpets feature routinely in references to the Tribunal involving the displacement of a claimant from their home. In my opinion the assessment of such losses is one which falls within the expertise of the Tribunal. This is a reference under the simplified procedure where the "strict rules of evidence will not apply" (Lands Chamber Practice Direction 3.3(2)) and the Tribunal is able to use its experience of similar cases to give context to the limited evidence produced by the claimant, bearing in mind that the council accepted these heads of claim in principle in its comments on the claimant's Scott schedule. In my opinion it is appropriate to make a summary assessment of the claimant's loss under headings (a) and (b) and I allow the combined sum of £1,500.

74. There is reference to the mortgage broker's fee (item (c)) in a copy of a completion statement contained in the claimant's evidence. That completion statement also refers to a payment to Bluepoint Property Lawyers for which there is a supporting invoice. The council have agreed to reimburse this sum. By doing so the council have, in my opinion, accepted that the cost of re-mortgaging the claimant's friend's property is not too remote. I consider that it was reasonable to instruct a mortgage broker under the circumstances and I accept, as a bare minimum, the evidence about the cost of that broker given by Mr Murphy. I therefore allow this item.

75. The amounts claimed in respect of items (d)-(g) were said by Mr Murphy in cross-examination to be estimates of what it cost the claimant historically to install those items at No.176, although when asked about them in cross-examination he said that he "didn't see them" at that property. There are no invoices in respect of the old installation and according to the claimant's statement of case the claimant has not yet installed these items at her new property. If she has indeed installed some or all of them there are no invoices to support the claim. These items include specialised and unusual satellite dishes for which there is no supporting evidence. I disallow the claims for the satellite dishes and the SKY reconnection fee. I allow the cost of the BT reconnection which is said to be based on a verbal quote and to which the council agreed in principle. Again this is a routine head of claim in such references and I allow the amount claimed of £150 including VAT.

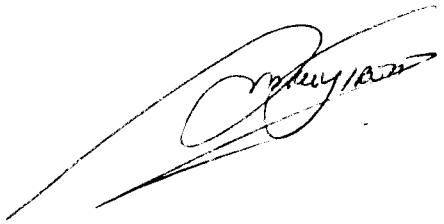
76. The final item is for the installation of handrails in the new bathroom/WC. The council accepted the principle of payment of this item (as amended) as accommodation works but such agreement was made "subject to receiving original receipt." There is no such receipt but given that the claimant is disabled and that the council accepted that the "amount [is] agreed" I allow the claimed figure of £250 as being reasonable.

Determination

77. I determine the outstanding compensation payable by the council to be £26,930.50 in accordance with the attached Appendix.

78. The reference was heard under the simplified procedure which is not a procedure under which costs are normally awarded. Particular rules apply, however, by virtue of section 4 of the Land Compensation Act 1961 where an unconditional offer in writing has been made by one of the parties. Mr Patel's exhibit DP-1: Invoice summary by Richard John Clarke (Mr Murphy) contains an email from Ms Commons of that firm dated 17 December 2014 which states "we have had to revise our sealed offer (yet again)." This suggests that at least one unconditional offer in writing has been made. I therefore invite the parties to make submissions on costs and a letter giving directions for the exchange of submissions accompanies this decision which is final on all matters other than costs.

Dated 31 March 2015



A J Trott FRICS

APPENDIX

SUMMARY OF COMPENSATION PAYABLE

ITEM	DESCRIPTION	AMOUNT CLAIMED (£)	AMOUNT AWARDED (£)
1	Balance of agreed value of No.176	7,000	7,000 (agreed)
2	Balance of agreed Home loss payment (15%)	1,050	1,050 (agreed)
3	Surveyor's fees	28,600	14,300 + VAT
6	Legal advice (CCL Solicitors)	394.80	NIL
8	Mortgage payments since vesting	805.95	805.95 (agreed)
9	Curtains/blinds	1,925	1,500
10	Carpets/laminated flooring	3,533.50	(Included in item 9)
11	Claimant's time	2,100	NIL
12	Claimant's travel costs	112.50	NIL
13	Claimant's mobile phone bills	50	NIL
15	Mortgage broker's fee	1,200	1,200
16	Legal fee re: new mortgage	674.55	674.55 (agreed)
17-19	TV Satellite dishes	650	NIL
20	BT reconnection	150	150
21	Sky reconnection	60	NIL
22	Bathroom handrails	250	250
	Total	**48,556.30**	**26,930.50 + VAT (item 3)**