PRACTICE DIRECTIONS

LANDS CHAMBER OF THE UPPER TRIBUNAL

29 November 2010

Practice Directions
Lands Chamber of the Upper Tribunal

Contents

Practice Directions
Lands Chamber of the Upper Tribunal

1. Commencement, application and interpretation

1.1. These Practice Directions—

a) apply to proceedings before the Lands Chamber of the Upper Tribunal;

b) come into force on 29 November 2010;

c) supplement the Rules and must be read in conjunction with them.

1.2. In these Practice Directions—

a) "the Rules" means the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010;

b) "rule", followed by a number, means the rule bearing that number in the Rules.

2. Alternative dispute resolution

2.1. Stay of proceedings

1) Parties may apply at any time for a short stay in the proceedings to attempt to resolve their differences, in whole or in part, outside the Tribunal process. No fee is payable. On receipt of a joint or consent application made in accordance with rule 6 the Tribunal will by order stay proceedings for a six week period (or such other period as may be specified in the order) for mediation or other form of alternative dispute resolution, ADR, procedure to be followed.

2) The parties may apply for a second or longer stay in the proceedings for ADR. The fee for an interlocutory application must be paid and the parties must satisfy the Tribunal that an additional or longer stay of proceedings would be appropriate.

2.2. Costs

In exercising its power to order that any or all of the costs of any proceedings incurred by one party be paid by another party or by their legal or other representative the Tribunal may consider whether a party has unreasonably refused to consider ADR when deciding what costs order to make, even when the refusing party is otherwise successful.

3. Case management

3.1. Introduction

1) Every case will be assigned to one of the following four procedures as soon as the Tribunal has sufficient information:

a) the standard procedure;

b) the simplified procedure;

c) the special procedure;

d) the written representations procedure.

2) When filing a notice of appeal under rule 24; a respondent's notice under rule 25; a notice of reference under rule 28; or a response to a

notice of reference under rule 29, a party should state which procedure it considers should be followed. The Tribunal will take account of the parties' views when assigning the case. At any time a Registrar or the Judge or Member to whom a case has been allocated for case management may direct that it should be assigned to one of the other procedures.

3.2. Standard procedure

The standard procedure applies in all cases not assigned to one of the other procedures. For the standard procedure case management will be in the hands of the Registrars who will give such directions as appear to be necessary. Directions given may, as appropriate, use elements of the special procedure (for example, timetabling through to the hearing date) or the simplified procedure. A Registrar will hold a case-management hearing should it appear appropriate to do so taking any views expressed by the parties into account. Each party should also consider the matters referred to in paragraph 3.4(2) below.

3.3. Simplified procedure

1) The simplified procedure provides for the speedy and economical determination of cases in which no substantial issue of law or of valuation practice or conflict of fact is likely to arise. It is often suitable where the amount at stake is small. It will not normally be appropriate for cases involving more than one expert witness.

2) The objective is to move to a hearing as quickly as possible and with the minimum of formality and cost. In most cases a date for the hearing, normally about 3 months ahead, will be fixed immediately. Statements of case will be required in accordance with section 6 below. The hearing will be informal and strict rules of evidence will not apply. It will almost always be completed in a single day.

3) Not later than 1 month before the hearing, the parties must exchange copies of all documents on which they intend to rely. Not later than 14 days before the hearing each party must file and exchange—

    (i) an expert's report, if they intend to rely on expert evidence; and

    (ii) a list of the witnesses they intend to call at the hearing.

4) In a case to which section 4 of the Land Compensation Act 1961 or section 175(6) or (7) applies any order in relation to the costs of the proceedings will be made in accordance with the applicable statutory provision. In all other cases no costs order will be made unless the Tribunal—

    (i) considers it appropriate to take the making of an offer of settlement by a party into account;

    (ii) regards the circumstances as exceptional; or

    (iii) considers a wasted costs order should be made.

If an award of costs is made, the amount will not exceed the amount that would be allowed in proceedings in a county court.

3.4. Special procedure

1) A case will be assigned to the special procedure if it requires case management by a Judge or Member in view of its complexity, the amount in issue or its wider importance. Under the special procedure an early case-management hearing will be held for appropriate directions to be given for the fair, expeditious and economical conduct of the proceedings. Where appropriate a date for the final hearing will be fixed at the case-management hearing and the steps which the parties are required to take, and any further case-management hearings, will be timetabled by reference to this date.

2) Each party should consider whether it is appropriate to make application for the determination of a preliminary issue and for permission to call more than the permitted number of expert witnesses. It should also identify, and where necessary make application for, any other order that it wishes the Tribunal to make at the case-management hearing. The parties must seek to agree the terms of any order that they wish the Tribunal to make.

3) Not less than 7 days before a case-management hearing the parties must file an agreed position statement summarising the subject-matter of the case and, to the extent that it is possible to do so at that stage, the issues. They must also state the areas of expertise of each expert witness that they propose to rely on and the general scope of their evidence.

3.5. Written representation procedure

1) The Tribunal may order that the proceedings be determined without an oral hearing. An order for the written representation procedure to be followed will only be made if the Tribunal, having regard to the issues in the case and the desirability of minimising costs, is of the view that oral evidence and argument can properly be dispensed with. The consent of the parties will usually be required.

2) Directions will be given to the parties relating to the filing of representations and documents and, if necessary, the Judge or Member allocated to the case will seek to carry out a site inspection before giving a written decision.

3) Costs will only be awarded if there has been an unreasonable failure on the part of the claimant to accept an offer to settle, if either party has behaved otherwise unreasonably, or the circumstances are in some other respect exceptional.

4. Appeals for which permission is required

Permission to appeal is required for an appeal from a leasehold valuation tribunal, LVT, or residential property tribunal, RPT. Permission must be sought from the LVT or RPT concerned. Only if the LVT or RPT refuses permission to appeal may an application for permission to appeal be made to the Tribunal. Permission to appeal from a valuation tribunal in a rating case is not required.

4.1. Time limits

1) If permission to appeal is refused by the LVT or RPT, application for permission to appeal may be made to the Tribunal within 14 days of being sent the decision to refuse permission.

2) An urgency direction may be issued, upon application by a party or by the Tribunal acting on its own initiative, to reduce this time limit (see also paragraph 5.3 below).

3) The Tribunal may extend a time limit but no extension will be given unless there is justification for it.

4.2. Applications for permission to appeal

1) Applicants must specify whether their reasons for making the application fall within one or more of the following categories:
    a) The decision shows that the LVT or RPT wrongly interpreted or wrongly applied the relevant law;
    b) The decision shows that the LVT or RPT wrongly applied or misinterpreted or disregarded a relevant principle of valuation or other professional practice;
    c) The LVT or RPT took account of irrelevant considerations, or failed to take account of relevant consideration or evidence, or there was a substantial procedural defect; and/or
    d) The point or points at issue is or are of potentially wide implication.

2) The application must make clear whether the appellant is seeking:
    (i) an appeal by way of review;
    (ii) an appeal by way of review, which if successful will involve a consequential re-hearing; or
    (iii) an appeal by way of re-hearing.

3) If the application does not specify otherwise, the application will be treated as an application for an appeal by way of review.

4.3. Approach of the Tribunal to applications for permission to appeal

1) The Tribunal will determine an application for permission to appeal without a hearing unless it appears to the Tribunal that a hearing is necessary or desirable. Applicants who want the application to be dealt with at a hearing must explain why a hearing is necessary or desirable.

2) The Tribunal will give permission to appeal only where it appears that there are reasonable grounds for concluding that the LVT or RPT may have been wrong for one or more of the reasons (a) to (c) set out in paragraph 4.2 above. In considering whether to give permission the Tribunal will have regard to the importance of the point to the decision itself and in terms of its wider implications (reason d) and to the proportionality of an appeal.

3) If the Tribunal gives permission to appeal—
    a) It may do so on such conditions as it thinks fit;

b) In view of the limitation on the Tribunal's power to award costs in an appeal from an LVT contained in the Rules, it will not be appropriate to impose conditions relating to costs in appeals from the LVT. It would, however, be open to an applicant for permission to undertake to pay all or part of a respondent's costs;

c) It may direct that the appeal is, or any of the issues in the appeal are, to be dealt with by review rather than by rehearing;

d) It may direct that the application for permission to appeal should stand as a notice of appeal.

4) If the Tribunal gives permission to appeal the appeal will proceed unless—

a) permission was given in part only or subject to conditions; and

b) within 14 days of the date that the Tribunal sent notice of the decision to give permission the applicant notifies the Tribunal that the applicant does not wish to proceed with the appeal.

5. Appeals

5.1. Types of appeal

1) When permission to appeal to the Tribunal has been given by another tribunal the notice of appeal must make clear whether the appellant is seeking:

(i) an appeal by way of review;

(ii) an appeal by way of review, which if successful will involve a consequential re-hearing; or

(iii) an appeal by way of re-hearing.

2) If the notice does not specify otherwise, the appeal will be treated as an appeal by way of review.

3) The Tribunal will take into consideration any views the parties have expressed on the type of appeal proceedings but may direct that the appeal or any of the issues in the appeal are to be dealt with by review rather than by rehearing.

5.2. Time limits

1) If the LVT or RPT gives permission to appeal, a notice of appeal must be filed with the Tribunal within 1 month of the date that the decision giving permission to appeal was sent to the appellant.

2) An urgency direction may be issued, upon application by a party or by the Tribunal acting on its own initiative, to reduce this time limit (see also paragraph 5.3 below).

3) The Tribunal may extend a time limit but no extension will be given unless there is justification for it.

5.3. Urgency directions

1) For appeals from the RPT an urgency direction may be issued to shorten the time limits that otherwise apply to the following actions:

a) giving notice to the Tribunal of an appeal when permission to appeal has been given by the RPT

b) filing and serving a respondent's notice;

c) filing and serving a statement of case.

2) Any urgency direction may also permit the application to the RPT for permission to appeal to stand as notice to the Tribunal of an appeal.

3) An urgency direction may be made by the Tribunal acting on its own initiative or on application by a party. An application for an urgency direction must be made in accordance with the Tribunal procedure for applying for directions.

4) In reaching a decision the Tribunal will take all written representations into account. An urgency direction will not be made unless the Tribunal is satisfied that it is in the interests of justice to do so.

6. Statements of case

6.1. General

1) Each party to an appeal under Part 4 of the Rules, a reference under Part 5 of the Rules or an application under Part 6 of the Rules must provide a statement of its case.

2) The purpose of statements of case is to enable the issues to be determined by the Tribunal to be identified. Each statement of case must therefore set out the basis of fact and of law on which the party relies. It must be in summary form but contain particulars that are sufficient to tell the other party the case that is being advanced and to enable the Tribunal to identify the issues.

6.2. Appeals under Part 4 of the Rules

1) A statement of case must be contained in or be provided with the following:
   a) A notice of appeal under rule 24;
   b) A respondent's notice under rule 25.

2) The following provisions of the Rules and these Practice Directions are to be noted in relation to the above:
   a) An application to the Tribunal for permission to appeal must contain the grounds of appeal on which the applicant relies (rule 21(3)(d));
   b) A notice of appeal must contain the grounds of appeal on which the appellant relies (rule 24(3) read with rule 21(3)(d)); and, where application to the Tribunal for permission to appeal has been made under rule 21, the application must have stated those grounds (rule 21(3)(d));
   c) An application for permission to appeal may stand as a notice of appeal (Practice Direction 4.3(3)(d)); and
   d) A respondent's notice must contain the grounds on which the respondent relies in opposing the appeal or in support of a cross-appeal (rule 25(4(c)); and where application to cross-appeal has been made under rule 22(2) the application must have stated the grounds on which the application was made.

3) Where any notice of appeal or respondent's notice does not contain or provide a statement of case that complies with the requirements of paragraph 6.1(2), application must be made at the time the notice or

respondent's notice is provided for an extension of time for providing the statement of case.

4) Where the Tribunal is of the view that any notice or respondent's notice does not contain or provide a statement of case that complies with the requirements of paragraph 6.1(2) it will order that a statement of case be provided.

5) A party that considers that another party has failed to provide a statement of case that complies with the requirements of paragraph 6.1(2) may apply to the Tribunal for an order that such statement of case be provided, and the Tribunal will decide whether an order should be made.

6.3. References under Part 5 of the Rules

1) A statement of case must be contained in or be provided with the following:

    a) A notice of reference under rule 28; and

    b) A response to the notice of reference under rule 29;

2) The following provisions of the Rules are to be noted in relation to the above:

    a) A notice of reference must contain the matters set out in rule 28(3)(g) and (h);

    b) A response to the notice of reference must contain the summary required by rule 29(2)(c) and, where the person making the response is the claimant, the matters set out in rule 29(2)(d);

3) Where any notice or response does not contain or provide a statement of case that complies with the requirements of paragraph 6.1(2) application must be made at the time the notice or response is provided or made for an extension of time for providing the statement of case.

4) Where the Tribunal is of the view that any notice or response does not contain or provide a statement of case that complies with the requirements of paragraph 6.1(2) it will order that a statement of case be provided.

5) A party that considers that another party has failed to provide a statement of case that complies with the requirements of paragraph 6.1(2) may apply to the Tribunal for an order that such statement of case be provided, and the Tribunal will decide whether an order should be made.

6.4. Applications under Part 6 of the Rules

1) A statement of case may be contained in or be provided with:

    a) An application under rule 32; and

    b) A notice of objection under rule 34.

2) The following provisions of the Rules are to be noted in relation to the above:

    a) An application under Part 6 must contain the matters set out in rule 32(1)(g), (h), (i) and (j);

b) A notice of objection must contain any ground of objection (rule 34(2)(d));

c) If an objector has been admitted to oppose the application, the Tribunal must either direct that the applicant and each objector shall provide a statement of case or that the application and each notice of objection shall stand as that party's statement of case (rule 36).

7. Preliminary issues

1) On the application of any party to proceedings or on its own initiative the Tribunal may order any preliminary issue in the proceedings to be disposed of at a preliminary hearing where such issue is properly severable from other issues in the proceedings and where its determination might effectively dispose of the whole case or reduce the issues in the case, thereby saving costs and avoiding delay.

2) An application by a party for the determination of a preliminary issue should set out with precision the point of law or other issue or issues to be decided. It should where appropriate be accompanied by a statement of agreed facts, and it should state whether in the view of the party making the application the issue can be decided on the basis of the statement of agreed facts or whether evidence will be required. If evidence is said to be needed the application should state what matters that evidence would cover. The application should state why, in the applicant's view, determination of the issue as a preliminary issue would be likely to enable the proceedings to be disposed of more expeditiously and/or at less expense.

3) If the Tribunal decides to order that the issue should be determined as a preliminary issue it will give directions as to the filing in advance of the hearing of any experts' reports, witness statements, documentary evidence and statement of agreed facts that appear to it to be required.

8. Expert evidence

8.1. Agreeing matters of fact

Where more than one party is intending to call expert evidence in the same field, the experts must take steps before preparing or exchanging their reports to agree all matters of fact relevant to their reports, including the facts relating to any comparable transaction on which they propose to rely, any differences of fact, and any plans, documents or photographs on which they intend to rely in their reports.

8.2. Form and content of expert's report

1) An expert's report should be addressed to the Tribunal and not to the party from whom the expert has received instructions. It must:

(a) give details of the expert's qualifications;

(b) give details of any literature or other material on which the expert has relied in making the report;

(c) say who carried out any inspection or investigations which the expert has used for the report and whether or not the investigations have been carried out under the expert's supervision;

(d) give the qualifications of the person who carried out any such inspection or investigations; and

(e) where there is a range of opinion on the matters dealt with in the report—

i) summarise the range of opinion, and

ii) give reasons for his or her own opinion;

(f) contain a summary of the conclusions reached;

(g) contain a statement setting out the substance of all material instructions (whether written or oral). The statement should summarise the facts and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based.

2) The instructions referred to in sub-paragraph 1(g) above will not be privileged against disclosure but the Tribunal will not, in relation to those instructions order disclosure of any specific document or permit any questioning in the Tribunal, other than by the party who instructed the expert, unless it is satisfied that there are reasonable grounds to consider the statement of instructions given under sub-paragraph 1(g) to be inaccurate or incomplete.

8.3. Written questions to experts

1) Where they think it necessary to do so, a party should put written questions about the report of an expert instructed by another party. Normally such questions should be put once only; should be put within 1 month of service of the expert's report; and should be only for the purposes of clarification of the report. Where a party sends a written question or questions direct to an expert and the other party is represented by solicitors, a copy of the questions should, at the same time, be sent to those solicitors. It is for the party or parties instructing the expert to pay any fees charged by that expert for answering questions put under this procedure. This does not affect any decision of the Tribunal as to which party is ultimately to bear the expert's costs. An expert's answers to questions put in accordance with this paragraph will be treated as part of the expert's report.

2) Where a party has put a written question to an expert instructed by another party in accordance with the above paragraph, unless the Tribunal orders otherwise it should be answered within 3 weeks. The Tribunal or a Registrar may order that the question must be answered and the Tribunal may also make such an order in relation to a question that has not been put in this way. If the question is not answered the Tribunal or a Registrar may make one or both of the following orders in relation to the party who instructed the expert: that the party may not–

    i) rely on the evidence of that expert; or

    ii) recover the fees and expenses of that expert from any other party.

8.4. Discussions between experts

1) After the exchange of the experts' reports, and again if rebuttal reports are exchanged, the experts of like discipline should usually meet and, where the Tribunal so directs must meet, in order to reach further agreement as to facts; to agree any relevant plans, photographs, etc; to identify the issues in the proceedings; and where possible, to reach agreement on an issue. The Tribunal may specify the issues which the experts must discuss. The Tribunal may also direct that following a discussion between the experts the parties must prepare a statement for the Tribunal showing those facts and issues on which the experts agree and those facts and issues on which they disagree and a summary of their reasons for disagreeing. The Tribunal will usually regard failure to co-operate in reaching agreement as to the facts and issues as incompatible with the expert's duty to the Tribunal and may reflect this in any order on costs that it may make.

2) The contents of the discussions between the experts are not to be referred to at the hearing unless the parties agree. Where experts reach agreement on an issue during their discussions, the agreement will not bind the parties unless the parties expressly agree to be bound by the agreement.

8.5. Computer-based valuations

Where valuers propose to rely on computer-based valuations they must agree to employ a common model which can be made available for use by the Tribunal in the preparation of its decision. Directions should be sought from the Tribunal at an early stage if there is difficulty in reaching agreement.

8.6. Single joint expert

1) A party may apply for an order that expert evidence in the proceedings should be given by a single joint expert jointly instructed by the parties to the proceedings. The application should include submissions on the matters to be taken into account by the Tribunal set out in paragraph 2 below.

2) When considering whether expert evidence should be from a single joint expert the Tribunal will take into account all the circumstances and in particular, whether:

   (a) it is proportionate to have separate experts for each party on a particular issue with reference to–

      (i) the amount in dispute;

      (ii) the importance to the parties; and

      (iii) the complexity of the issue;

   (b) the instruction of a single joint expert is likely to assist the parties and the Tribunal to resolve the issue more speedily and in a more cost-effective way than separately instructed experts;

   (c) expert evidence is to be given on the issue of liability, causation or quantum;

   (d) the expert evidence falls within a substantially established area of knowledge which is unlikely to be in dispute or there is likely to be a range of expert opinion;

   (e) a party has already instructed an expert on the issue in question;

   (f) questions put in accordance with paragraph 8.3 are likely to remove the need for the other party to instruct an expert if one party has already instructed an expert;

   (g) questions put to a single joint expert may not conclusively deal with all issues that may require testing prior to the final hearing;

   (h) a conference may be required with the legal representatives, experts and other witnesses which may make instruction of a single joint expert impractical; and

   (i) a claim to privilege makes the instruction of any expert as a single joint expert inappropriate.

8.7. Reliance on expert evidence by another party

When a party has disclosed an expert's report any party may use that expert's report as evidence at the hearing.

9. Procedure at the hearing

1) The procedure at a hearing of the Tribunal is within the discretion of the presiding Judge or Member. Except under the simplified procedure, the procedure adopted will generally accord with the practice in the High Court and the county courts. In particular, the claimant, applicant or appellant will begin and will have a right of reply, evidence will be taken on oath, and the rules of evidence will be applied. The Tribunal will throughout seek to adopt a procedure that is proportionate, expeditious and fair in accordance with the overriding objective.

2) Cases assigned to the simplified procedure list will be heard by a single Judge or Member. The procedure at the hearing will be informal and strict rules of evidence will not apply.

10. Site inspections

1) Where appropriate the Tribunal will seek to enter and inspect the land or property that is the subject of the proceedings, and, where practicable, any other land or properties referred to by the parties or their experts.

2) At such inspection, the Tribunal will (unless otherwise agreed) be accompanied by one representative from each side and will not accept any oral or written evidence tendered in the course of the inspection. The Tribunal may make an unaccompanied inspection without entering on private land.

3) The Tribunal may enter land only with the consent of the occupier. If the occupier is a party to the proceedings the Tribunal may take into account the withholding of consent to enter and inspect that party's land when deciding any application for costs.

11. Fees

The fees to be paid in respect of proceedings in the Tribunal are specified in the Upper Tribunal (Lands Chamber) Fees (Amendment) Order 2010. Unless the Tribunal directs otherwise, the appropriate hearing fee is payable by the party initiating proceedings, but without prejudice to any right to recover the fee under an order for costs. A solicitor acting for a party must be on the record, and will be responsible for the fees payable by that party while he or she is on the record.

12. Costs

12.1. Power to award costs

1) Under section 29 of the Tribunals, Courts and Enforcement Act 2007 the Upper Tribunal has power to order that the costs of any proceedings incurred by one party shall be paid by any other party or by their own or the other party's legal or other representative. This power is limited by the Rules in the case of appeals from LVTs (see paragraph 12.6 below).

2) In awarding costs the Tribunal may settle the amount summarily or direct that they be the subject of detailed assessment by a Registrar on a specified basis (see paragraph 12.10 below).

12.2. Exercise of discretion in awarding costs

Costs are in the discretion of the Tribunal, although this discretion is qualified by particular provisions in section 4 of the Land Compensation

Act 1961 (see paragraph 12.3(2) below) and where the case is heard under the simplified and written representations procedures (see paragraph 12.8 below). Subject to what is said below the discretion will usually be exercised in accordance with the principles applied in the High Court and county courts. Accordingly, the Tribunal will have regard to all the circumstances, including the conduct of the parties; whether a party has succeeded on part of their case, even if they have not been wholly successful; and admissible offers to settle. The conduct of a party will include conduct during and before the proceedings; whether a party has acted reasonably in pursuing or contesting an issue; the manner in which a party has conducted their case; whether or not they have exaggerated their claim; and the matters stated in paragraphs 2.2, 8.3(2), 8.4 and 10 above.

12.3. The general rule for costs

1) The general rule is that the successful party ought to receive their costs. On a claim for compensation for compulsory acquisition of land, the costs incurred by a claimant in establishing the amount of disputed compensation are properly to be seen as part of the expense that is imposed on the claimant by the acquisition. The Tribunal will, therefore, normally make an order for costs in favour of a claimant who receives an award of compensation unless there are special reasons for not doing so.

2) Particular rules, however, apply by virtue of section 4 of the Land Compensation Act 1961. Under this provision, where an acquiring authority has made an unconditional offer in writing of compensation and the sum awarded does not exceed the sum offered, the Tribunal must, in the absence of special reasons, order the claimant to bear their own costs thereafter and to pay the post-offer costs of the acquiring authority. However, claimants will not be entitled to their costs if they have failed to deliver to the authority, in time to enable the authority to make a proper offer, a notice of claim containing the particulars set out in section 4(2). Where a claimant has delivered a claim containing the required details and have made an unconditional offer in writing to accept a particular sum, if the Tribunal's award is equal to or exceeds that sum the Tribunal must, in the absence of special reasons, order the authority to bear their costs and to pay the claimant's post-offer costs.

12.4. Standard basis and indemnity basis

The Tribunal will normally award costs on the standard basis. On this basis, costs will only be allowed to the extent that they are reasonable and proportionate to the matters in issue, and any doubt as to whether costs were reasonably incurred or reasonable and proportionate in amount will be resolved in favour of the paying person. Exceptionally the Tribunal may award costs on the indemnity basis. On this basis, the receiving party will receive all their costs, except for those which have been unreasonably incurred or which are unreasonable in amount, and any doubt as to whether the costs were reasonably incurred or are reasonable in amount will be resolved in favour of the receiving party.

12.5. Applications under section 84 of the Law of Property Act 1925

1) On an application to discharge or modify a restrictive covenant affecting land, the following principles will be applied in respect of the exercise of the Tribunal's discretion regarding liability for costs.

2) Where an applicant successfully challenges an **objector's entitlement to object** to an application, the objector is normally ordered to pay the applicant's costs incurred in dealing with that challenge, but only those costs. Where an applicant unsuccessfully challenges an objector's entitlement to object to an application, the applicant is normally ordered to pay the objector's costs incurred in dealing with that challenge.

3) With regard to the **costs of the substantive proceedings**, because the applicant is seeking to remove or diminish particular property rights that the objector has, unless they have acted unreasonably, unsuccessful objectors to an application will not normally be ordered to pay any of the applicant's costs. And successful objectors will usually be awarded their costs unless they have acted unreasonably.

12.6. Appeals from Leasehold Valuation Tribunals

On an appeal from an LVT the Tribunal may not order a party to the appeal to pay costs incurred by another party unless, in the opinion of the Tribunal, the party ordered to pay costs or its representative has behaved unreasonably in bringing, defending or conducting the proceedings. Where in view of such conduct it does order a party to pay costs the Tribunal may not award more than the LVT could order in such circumstances (currently £500).

12.7. Offers to settle

1) In any proceedings before the Tribunal any party may make an offer to any other party to settle all or part of the proceedings or a particular issue on terms specified in the offer. Neither the offer nor the fact that it has been made may be referred to at the hearing if it is marked with 'without prejudice save as to costs' or similar wording, or if it is said to be a 'Calderbank' offer.

2) Offers to settle part of proceedings or a particular issue must clearly identify which part of the proceedings or the issue that it relates to. Offers should also state whether or not the offer is open for acceptance indefinitely or for a specified period of time. An offer should state whether or not it includes interest (if it has been claimed), at what rate and for what period it covers. It should also state whether or not it includes agreement to pay the other party's costs and either the amount or the basis of those costs.

3) The party making an offer to settle must send a copy of it to the Tribunal within a sealed envelope enclosed with a cover letter. The Judge or Member hearing the case will not see the offer (it will remain in its sealed envelope separate from the Tribunal's case file) or be informed of its existence until after the proceedings have been determined. If

requested by a party to do so, the Judge or Member may then consider the offer, when considering the question of the costs of the proceedings.

12.8. Simplified and written representations procedure

Where proceedings are determined in accordance with the simplified procedure or the written representations procedure, costs will only be awarded if there has been an unreasonable failure on the part of the claimant to accept an offer to settle, or if either party has behaved otherwise unreasonably, or the circumstances are in some other respect exceptional.

12.9. Submissions on costs

Where, as is almost invariably the case, the Tribunal issues a written decision determining the substantive issues in the proceedings, this will be sent to the parties with an invitation to make written submissions as to costs. Following consideration of these submissions the Tribunal will issue an addendum to the decision determining the liability for costs. It may be possible, particularly where there are only two possible outcomes of the proceedings, for the Tribunal to invite submissions as to costs at the conclusion of the hearing. This procedure will be followed wherever possible. Where the issue of costs is particularly complicated the Tribunal may hold a costs hearing before making an award.

12.10. Assessment of costs

1) In a simple case or on an interlocutory hearing the Tribunal may make a summary assessment of costs. A party who proposes to apply for a summary assessment must prepare a summary of the costs and serve it in advance on the other party.

2) Costs which cannot be agreed by the parties must be referred by the receiving person to a Registrar to be the subject of a detailed assessment. A party who is dissatisfied with a Registrar's assessment of costs may apply to the Registrar for a review and, if still dissatisfied, may apply to the Chamber President for a further review.

These Practice Directions are made and issued by the Senior President of Tribunals in exercise of powers conferred by the Tribunals, Courts and Enforcement Act 2007 and with the agreement of the Lord Chancellor as required under section 23(4) of the 2007 Act.

LORD JUSTICE CARNWATH
SENIOR PRESIDENT OF TRIBUNALS
29 November 2010