

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2021] UKUT 0048 (LC)
UTLC Case Number: ACQ/46/2020

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – COSTS – compensation cases heard under the Tribunal’s Written Representations procedure – application fee and determination fee awarded to claimant – costs of the reference claimed by litigant in person – Litigants in Person (Costs and Expenses) Act 1975 – costs awarded based on rate in CPR Practice Direction 46

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN

GOLF CAFÉ BARS LIMITED

Claimant

-and-

**WEST YORKSHIRE COMBINED AUTHORITY (1)
NETWORK RAIL INFRASTRUCTURE LIMITED (2)**

**Acquiring
Authority**

**Re: Land at 1 Little Neville Street
Leeds
LS1 4ED**

DETERMINATION ON COSTS BY WRITTEN REPRESENTATIONS

Peter McCrea FRICS FCI Arb

Wayne Parkinson, Director, for the Claimant

Daisy Noble, instructed by Eversheds Sutherland, for the Acquiring Authority

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The following cases are referred to in this decision:

Golf Café Bars Limited v West Yorkshire Combined Authority and Network Rail [2021] UKUT 16 (LC)

R H Tomlinssons (Trowbridge) Ltd v Secretary of State for the Environment [1999] 2 BCLC 760, CA

Introduction

1. This short decision is about costs incurred by an unrepresented party in a compulsory purchase reference to the Tribunal. Two questions arise. First, whether the normal position in proceedings determined under the Tribunal's written representations procedure, where costs are not awarded, applies to references for compensation claimed as a result of a compulsory purchase. Secondly, whether and at what rate can a successful litigant in person (be it a company or individual, but in either case without professional representation) claim for time spent in preparing and presenting their case.

2. On 27 January 2021 the Tribunal handed down its substantive decision in this reference, in which I awarded compensation totalling £147,192 to the claimant. I have now received submissions on costs from the parties.

Submissions

3. For the claimant, Mr Parkinson claims £8,783.84 in costs, comprising £5,565 for work done by him in preparing and presenting its claim over 185.5 hours at £30 per hour, the application fee of £275, and the determination fee of £2,943.84.

4. For the acquiring authority, Ms Noble's primary position is that there should be no order for costs because the reference was determined under the Tribunal's Written Representations procedure, referring to paragraphs 3.21 and 24.6 of the Tribunal's Practice Directions. However, in recognition of the claimant's partial success in its claim, the authority is willing to pay £3,218.84, comprising the application fee and the determination fee.

5. Alternatively, if I am minded to award the claimant its costs of the reference, Ms Noble submits that any costs order should reflect that the claimant was only partially successful, achieving only £147,192 from a claimed figure of £412,868 – she suggests that a reduction of 50% would be appropriate. The authority accepts that the claimant, as a litigant in person, may be awarded costs in respect of any work done and expenses and losses incurred in connection with the proceedings (see Litigants in Person (Costs and Expenses) Act 1975 and Tribunals, Courts and Enforcement Act 2007, Sch 8, para 6.)

Discussion

6. While the Tribunal's Practice Directions indicate that costs will not normally be awarded in cases under the written representations procedure, they also explain at paragraph 24.13 that the costs incurred by a claimant in establishing the amount of compensation to which they are entitled following the compulsory acquisition of their land are part of the expense that has been imposed on the claimant by the acquisition, and that, for that reason, the Tribunal will normally make an order that the costs incurred by a claimant who is awarded compensation should be paid by the acquiring authority. That practice reflects both the principle of equivalence and the unfairness which would be caused if a claimant deprived of its property in the public interest was unable to recoup the expenses it had incurred in presenting its claim and was left to meet them out of the award of compensation. I can see no good reason not to apply it in this case and I therefore reject the authority's primary submission.

7. The Tribunal has the power under Rule 10(14) of the Tribunal's Procedure Rules to order a party to pay another party the whole or part of any fee paid. Following my rejection of the

authority's primary submission, it is appropriate to allow the claimant to recover the fees paid in the reference, and the authority does not argue otherwise.

8. Turning to the claimant's costs, the Litigants in Person (Costs and Expenses) Act 1975 applies to proceedings before the Upper Tribunal (section 1(1)(ba)) and it enables a litigant in person to recover sums in respect of any work done, and any expenses and losses incurred, by the litigant in or in connection with the proceedings to which the order relates. The claimant has acted without legal representation and is not prevented from being a litigant in person because it is a limited company (see *R H Tomlinssons (Trowbridge) Ltd v Secretary of State for the Environment* [1999] 2 BCLC 760, CA). The position is not the same as in relation to the claimant's pre-reference costs, which I dealt with in paragraph 68 of the substantive decision. Pre-reference costs are recoverable as compensation for loss, and loss must be proven. In contrast, the 1975 Act permits a sum to be allowed in respect of any work done by a litigant in person in connection with the proceedings, whether or not they caused the litigant in person any pecuniary loss (see, for example, paragraph 22.2 of the Senior Courts Costs Office Guide).

9. In the civil courts, where a litigant in person has not proved that they have suffered loss as a result of the work they have done in the proceedings, CPR 46.5(4)(b) (and the Practice Direction which supplements it) allows an amount to be awarded for the time reasonably spent on doing the work, limited to £19 per hour. It is appropriate for the Tribunal to adopt the same approach.

10. I assess the time that could be said to have been reasonably spent on the proceedings as two thirds of the time claimed, say 120 hours, and allow the CPR rate of £19, totalling £2,280.

11. I therefore award to the claimant £3,218.84 in Tribunal fees, and £2,280 in costs, totalling £5,498.84.

P D McCrea FRICS FCI Arb

9 March 2021