

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**LAND COMPENSATION (NORTHERN IRELAND) ORDER 1982**

**IN THE MATTER OF REFERENCES**

**PART II**

**And in the Matter of the Allocation of Costs**

**R/1/2003**

**BETWEEN**

**ANTHONY AND CATHERINE CURLEY – CLAIMANTS**

**AND**

**NORTHERN IRELAND HOUSING EXECUTIVE – RESPONDENT**

**Re: 56 Cawnpore Street, Belfast**

**R/2/2003**

**BETWEEN**

**FIONNUALA PERRY – CLAIMANT**

**AND**

**NORTHERN IRELAND HOUSING EXECUTIVE – RESPONDENT**

**Re: 42A Cawnpore Street, Belfast**

**R/5/2003**

**JAMES JOSEPH AND FIONNUALA McCRUDDEN – CLAIMANTS**

**AND**

**NORTHERN IRELAND HOUSING EXECUTIVE - RESPONDENT**

**Re: 84 Clonard Gardens, Belfast**

**Lands Tribunal – Mr Michael R Curry FRICS IRRV MCI.Arb Hon.FIAVI**

**Belfast – 23<sup>rd</sup> March 2004**

1. By a Decision dated 5<sup>th</sup> December 2003 the Tribunal awarded two of the three claimants compensation for legal costs incurred in the purchase of their new houses. In R/2/2003, in the course of the Hearing, the Northern Ireland Housing Executive conceded. The parties having been unable to agree the allocation of costs, referred the issue to the Tribunal.
2. Mr Paul Buggy, solicitor appeared on behalf of the Housing Executive. Mr Joe Allen by leave of the Tribunal appeared on behalf of the three claimants.
3. In cases of compulsory purchase there is a presumption that a successful claimant is entitled to his costs incurred in the proceedings in the absence of some 'special reason' to the contrary. Further, such a special reason should only be found to exist in circumstances where the Tribunal can readily identify a situation in which the claimant's conduct of, or in relation to, the proceedings has led to an obvious and substantial escalation in the costs over and above those costs which it was reasonable for the claimant to incur in vindication of his right to compensation. See Purfleet Farms Limited v Secretary of State for Transport, Local Government and the Regions [2002] EWCA Civ 1430: Per Potter LJ at 29; and Per Chadwick LJ at 42.
4. Mr Buggy accepted that all three claimants had won. Mr Allen suggested that the crux of the matter was that the claimants would not have achieved success without going to the Lands Tribunal. But Mr Buggy suggested that the claimants' conduct had led to an obvious and substantial escalation in the costs over and above such reasonable costs.
5. Briefly the history of the references is this. In mid-2002 claims had been lodged with the Housing Executive who, in response had requested some detail and background to the delay before purchase of the replacement property. Mr Allen had expressed mystification at the request and declined to accede to it.
6. When, in February 2003, the cases were referred to the Tribunal, the Housing Executive suggested that they were premature and wrote "as there is currently no dispute between the Executive and the applicants, the current references to the Tribunal are not properly founded and, in these circumstances, the Executive wishes to place on formal record its intention to seek costs against the applicants in the event

that, when the Executive reaches a decision in respect of the claims, such references prove not to have been necessary.”

7. The Tribunal directed that the claimants should provide explanations for the delay before purchase. In April 2003 Mr Allen provided one-line explanations in each case. At the end of June the Housing Executive informed Mr Allen that they had decided to defend the proceedings and further drew to his attention that they reserved the right to oppose the application on all grounds and not just on time lapse or intention issues.
8. In July 2003 the Tribunal invited each claimant to provide a written explanation for his or her delay. In August 2003 each provided a more detailed explanation. Ms Curley and Mr & Mrs McCrudden provided explanations that differed from the April note. At the Hearing in November 2003 Ms Curley expanded on her reasons and Mr McCrudden gave a different explanation for delay.
9. Mr Buggy suggested that in both cases their conduct was unreasonable. The explanations should have been earlier, consistent and detailed. He suggested that the claimants should not receive any costs.
10. In the case of Ms Perry Mr Buggy did not strenuously press the case against awarding her much of her costs. He suggested that the only unreasonable aspect of her conduct was the reluctance to provide an explanation and that the Housing Executive should not pay her costs prior to when the explanation was given.
11. The Tribunal emphasises the importance of the exchange of sufficient information to allow parties to make an informed judgement on the merits of their cases before reference to the Tribunal. It accepts that all three references were premature. It was not until August 2003 that the claimants first set out the bases of their claims at a level of detail that was sufficient for the Housing Executive to give it proper consideration. Further, the Housing Executive should be allowed a reasonable time for consideration of the claims. Accordingly the Tribunal accepts that the references were premature, regards the claimant's conduct in relation to this aspect of the proceedings as a special reason and concludes that none of the claimants should have any of their costs in these proceedings relating to the period before the end of September 2003.

12. Although Ms Perry could have provided more information before the hearing, Mr Buggy did not strenuously press the case against awarding her costs. Accordingly the Tribunal awards Ms Perry all her costs from the end of September 2003 onwards.
13. The explanation put forward on behalf of Ms Curley in April 2003 was significantly different from that put forward in August 2003. This conduct amounts to a special reason that should be reflected in a reduction in costs after September 2003. Accordingly the Tribunal deducts one-third of Ms Curley's costs from the end of September 2003 onwards.
14. At each stage Mr & Mrs McCrudden changed their explanation. Again, this conduct amounts to a special reason that should be reflected in a reduction in costs. Accordingly the Tribunal awards them one-third of their costs from the end of September 2003 onwards.

#### **ORDERS ACCORDINGLY**

**22<sup>nd</sup> April 2004**

**M R Curry FRICS IRRV MCI.Arb Hon.FIAVI  
LANDS TRIBUNAL FOR NORTHERN IRELAND**

#### **Appearances:**

**Claimants: Joe Allen, Chartered Surveyor.**

**Respondent: Paul Buggy, Solicitor from Legal Services, Northern Ireland Housing Executive.**