

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**LAND COMPENSATION (NORTHERN IRELAND) ORDER 1973**

**IN THE MATTER A OF REFERENCE**

**R/10/2002**

**BETWEEN**

**DAWN BELL – CLAIMANT**

**AND**

**SOUTH & EAST BELFAST HEALTH & SOCIAL SERVICES TRUST – RESPONDENT**

**PART II**

**Re: 3 Lisburn Road, Belfast**

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

**Belfast – 22<sup>nd</sup> November 2004**

1. The Claimant (Mrs Bell) claimed a disturbance payment. She referred the claim to the Tribunal but the Respondent (the Trust) questioned the jurisdiction of the Tribunal. The parties agreed a preliminary point to be put to the Tribunal: “whether the Lands Tribunal has jurisdiction pursuant to Article 38(4) of the 1973 Order to determine the applicant’s entitlement as opposed to the amount of a disturbance payment”. In a Decision dated 18 June 2004 the Tribunal determined the point in favour of the Trust. The Trust now claims costs but limited to Counsel’s fees only.
2. Garrett O’Kane BL instructed by Patrick C Donaghy, Solicitors appeared for Mrs Bell. Patrick Good BL instructed by the Departmental Solicitor’s Office appeared for the Trust.
3. The Lands Tribunal Rules (NI) 1976 broadly provide that the costs of and incidental to any proceedings shall be in the discretion of the Tribunal. Mr Good suggested that in the circumstances, this not being a matter involving actual compulsory acquisition, the Tribunal should follow its discretionary guidelines as set out in Oxfam v Earl and

Others BT/3/1995 - the general presumption being that unless there are special circumstances costs follow the event. Mr O’Kane suggested that, although Mrs Bell was not actually exposed to a Vesting Order, her objectives were comparable to a claimant who was, in that both would be endeavouring to obtain compensation from an authority with compulsory purchase powers. He referred the Tribunal to Emslie & Simpson Ltd v Aberdeen District Council [1995] RVR 159 and the subsequent discussion in Purfleet Farms Ltd v Secretary of State for Transport Local Government and the Regions [2003] 1 P&CR.

4. The Tribunal accepts that in the ordinary case, unless there are special circumstances costs follow the event. The Trust won and there was no aspect of its conduct to suggest a special award.
5. However the Tribunal is of the view that in compensation references, the starting point is the presumption that the cost of determining disputed compensation should fall on the authority to whose use of compulsory powers the need to determine compensation was attributable. That has been the position since the time of the Land Clauses Consolidation Acts 1845 and probably before that. That view is wholly consistent with the principle of equivalence.
6. The Tribunal accepts that there was no actual compulsory acquisition but compulsory purchase powers cast a long shadow. Had it not been for the possession of compulsory acquisition powers, and the displacement of Mrs Bell as a consequence of the Trust’s proposals for redevelopment for it to carry out its function, the issue of a payment under Article 37 would not have arisen. This is a ‘compensation reference’.
7. The presumption is rebuttable. The issue in the instant case was not about amount but, for example in regard to the consequences of offers to settle, special rules were made in the Acquisition of Land (Assessment of Compensation) Act 1919 at Section 5 and the subsequent Land Compensation (NI) Order 1982. And the Tribunal otherwise has a wide discretion. (See e.g. Emslie & Simpson Ltd v Aberdeen DC; English Property Corporation v Royal Borough of Kingston-Upon-Thames (1998) 77 P&CR 1; and the discussion in Purfleet Farms).

8. On the one hand the preliminary issue is an important point about which court has jurisdiction in a compensation reference (see *Rating & Valuation Reporter* June 2005) and there was sufficient uncertainty for it to be sensible and reasonable to test the point if required. That might suggest Mrs Bell should not be out of pocket. But on the other hand the issue may not have arisen if Mrs Bell had not chosen the Lands Tribunal as the forum and Mrs Bell did not win.
9. On balance the Tribunal concludes that it is fair to make no award of costs.

### **ORDERS ACCORDINGLY**

**16<sup>th</sup> August 2005**

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

#### **Appearances:**

**Garrett O’Kane BL instructed by Patrick C Donaghy, Solicitors appeared for the Claimant.**

**Patrick Good BL instructed by the Departmental Solicitor’s Office appeared for the Respondent.**