

LANDS TRIBUNAL FOR NORTHERN IRELAND
LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964
LAND ACQUISITION AND COMPENSATION (NI) ORDER 1973
LAND COMPENSATION (NI) ORDER 1982
IN THE MATTER OF REFERENCES

R/2/2004

RITA O'NEILL – CLAIMANT
Re: 26 Havana Gardens, Belfast

R/3/2004

EILEEN DUNN – CLAIMANT
Re: 30 Glenbryn Park, Belfast

R/4/2004

EDMUND CLARKE – CLAIMANT
Re: 54 Harrybrook Street, Belfast

AND

NORTHERN IRELAND HOUSING EXECUTIVE - RESPONDENT

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

Belfast – 10th February 2005

1. For administrative convenience the cases were heard together.
2. The Land Acquisition and Compensation (NI) Order 1973 entitles qualifying residents to compensation for disturbance on being displaced from their homes. The compensating body usually is the Northern Ireland Housing Executive ('the Executive'). In 2003 it processed 440 claims and claimants sought independent professional advice in about 60% of these cases. Claimants are entitled to recover their reasonable costs in obtaining such advice and these three claims arise out of a dispute as to the amount that is reasonable. Although these costs are part of the

3. Rory McNamee BL appeared for all three claimants, instructed by Messrs O'Reilly Stewart, solicitors. Paul Buggy, solicitor, Head of Legal Services appeared on behalf of the Executive. Mr Joe Allen an experienced Chartered Surveyor had advised all three claimants and gave evidence.
4. Edmund Clarke was an owner-occupier of 54 Harrybrook Street, which was vested by the Executive on 31st July 2000. The Executive rehoused him at 52a Upper Glenfarne Street, moving there on 8th September 2003. Ms Eileen Dunn was the owner-occupier of 30 Glenbryn Park, which was vested by the Executive on 18th November 2002 and she was rehoused at 92 Hesketh Park, moving there on 13th November 2003. Ms Rita O'Neill was the tenant of 26 Havana Gardens to which she was decanted as a temporary move from 21 Rosapenna Street to facilitate demolition of that property. She was permanently rehoused at 21 Rosevale Street, moving there on 7th April 2003.
5. The Tribunal was referred to one of its earlier decisions Jean Bunting v NIHE [2003] R/53/2002 in which a similar claim was considered. For some years the Executive had operated a scheme of standard payments to claimants based on categorizing claims by tenure and in Bunting the Tribunal had suggested that representatives on both sides of the fence might wish to give further consideration to agreeing an advisor's/negotiator's fee for each category. The Executive did devise a 'Consultation/Advice Fee' scale ('the Fee scale'). It was based on advice received from the Valuation and Lands Agency ('VLA') and the Executive informed Mr Allen (who appears to act for the majority of claimants in this jurisdiction) of their proposals before formal adoption. But they did not attempt to negotiate agreed figures either with him or with professional bodies who might have an interest in the outcome.
6. With regard to the Clarke and Dunn claims, the claimants are seeking £360 in respect of each; the Executive has offered £210 in accordance with the Fee scale. In respect of the O'Neill claim, on 30th October 2003 Mr Allen invoiced the Executive for an amount of £275. The Executive has offered the scale fee of £230. The claimant now is seeking £420. These amounts in issue are net of VAT. Mr Allen also claims a separate sum for motoring expenses.

7. The Tribunal must consider each claim on its own merits. The ultimate issue boils down to two subsidiary questions. The first is the rate at which such an expert might reasonably be remunerated for his or her time and the second is the amount of time that a suitably qualified expert might reasonably be expected to spend on each claim.
8. In all 3 cases the claimants sought £120 per hour as being a reasonable hourly rate.
9. Mr Allen arrived at this rate as a result of a fee survey in England and Wales. He said that his wife had experience of telephone survey work. She had carried out a telephone survey of members of the Compulsory Purchase Association ('CPA'). It appears that the survey indicated that the rate charged for advisors/negotiators of post qualification experience in excess of 10 years outside London is between £90 and £130 per hour, with the lowest figure being for the most straightforward cases and the upper figure being for demanding cases. The Tribunal was told that the Chair of a group of the CPA, which is considering fees, had confirmed that view. Mr Buggy questioned the reliability and relevance of the results. Although a survey may be very helpful, the Tribunal has grave reservations about the weight it should attach to this survey. It may have been conducted impeccably but there was no direct evidence that would allow the material on which the conclusions were founded to be tested; the survey question was not produced; it was not a survey of fees in N Ireland; there was no detailed analysis of the difficulty and value of the claims considered or of whether the fees were for consultation/advice only or included negotiations.
10. Mr McNamee referred the Tribunal to Donaldson v Eastern Health & Social Services Board [1997] NILR 32. That case related to professional fees to be paid to solicitors in 1996-1997. The outcome was based on a survey by the Law Society of N Ireland but not of fees charged; the survey preferred was one carried out into assistant solicitors' salaries. The hourly rate was arrived at by taking an average of fee-earner's actual or notional salaries, adding for an appropriate share of overheads and reducing that to an hourly rate based on 1,100 chargeable hours in the working year. On the figures assessed in that case the hourly rate was £92.25. It is a small point but it includes basic motoring (as being part of the ordinary overheads). If that figure were indexed linked to bring it up to date he calculated that would produce £103.80. Mr Buggy

11. Although senior valuers and district valuers of the VLA may be involved from time to time in cases, the Tribunal accepts that for the ordinary claim the Executive's advisors are primarily Grade 1 Valuers in N Ireland. From 1st April 2003 the VLA charge rate for a Grade 1 Valuer was £91.82. This figure appears to be about a 3.5% increase over the previous year.
12. In summary, it is just a matter of judgment but taking all the evidence into account, attaching greatest weight to the local and reliable VLA information, less weight to the fees determined for the local but different profession, the legal profession, and least weight to the much less reliable evidence of the CPA telephone survey of valuers elsewhere, in England and Wales, the Tribunal concludes that the hourly rate for these claims should be £95.00 to include basic motoring but net of VAT.
13. In both the Clarke and Dunn claims the amount of time claimed was 3 hours. In the O'Neill claim the amount of time claimed was 3 hours 40 minutes. The reason why the O'Neill claim took longer was that in Mr Allen's view her disturbance claim would have substantially exceeded the standard payment and accordingly he prepared and lodged an itemized claim. However to obtain prompt payment she settled for and accepted the standard amount.
14. At the relevant time Mr Allen had not kept time sheets but he later set down as best he could recall the amount of time he had spent on each case. There were three elements; the first was an inspection of the former dwelling, the second the inspection of the new property after each claimant had relocated and the third was time spent assessing the claim and submitting it (see Bunting).
15. Mr Buggy produced the VLA's checklist for domestic disturbance claims. Mr Allen would not accept his suggestion that by giving claimants a written questionnaire his time could have been used more effectively. The Tribunal agrees; it is not persuaded that in the circumstances Mr Allen's more bespoke working methods based on personal experience were inefficient. But that is not to say that any scheme to assist generally with the evaluation of claims would be disregarded as a matter of principle.

“To lose a home through compulsory purchase by the State is a devastating experience.”

(Stuart Bridge, Law Commissioner for England & Wales referring to “*Towards a Compulsory Purchase Code*” Law Com No s 286 and 291).

16. Any help, to those who have lost their homes, in the form of better information or enhanced advice should be encouraged. The evidence before the Tribunal included an Information Sheet prepared by Mr Allen, the VLA checklist for domestic disturbance claims and Lecture Notes prepared within the VLA. This material when considered together with examples from other places may suggest that the Executive could promote publication of relevant information, if necessary focused only on claims relating to unfurnished tenancies (90% of all domestic disturbance claims). The publication could deal plainly with the ordinary heads of claim and indicate where independent expert advice was desirable. If so, that should help more claimants come to an informed view of the strength of their claim against the background of the standard amounts and focus expert assistance where it is most needed.
17. It was suggested that the socio-economic circumstances that gave rise to the displacements would indicate that many claimants might be socially excluded. If so they might have personal difficulties in comprehending their claims and extra time may be required for explanations from advisors. However there was no evidence that any of these three claimants faced personal difficulties that would require any special allowance to be made. Apart from a slight adjustment to disregard this factor and also the risk arising from the absence of any contemporaneous note, the Tribunal adopts the times as recalled by Mr Allen as reasonable in the circumstances of these particular cases. Accordingly in both the Clarke and Dunn claims the Tribunal allows 2 hours 40 mins. and in the O’Neill claim allows 3 hours 20 minutes.
18. Mr McNamee also referred the Tribunal to the amounts that would have been paid under the obsolescent extra statutory scale - Rydes scale. The fee under that scale for these claims would have been £275. The last revision of the scale was some 8 years ago but as it is value-based there is some inbuilt buoyancy. As Mr Buggy

19. Having arrived at these conclusions on the rate and the hours, it follows that the Tribunal determines the claims for fees in both the Clarke and Dunn claims at £253.50 and in the O'Neill claim at £316.50, plus VAT. These amounts include basic motoring.

20. Mr Buggy referred to the RICS Guidance note on fee calculation post Ryde's Scale 6 March 2003. It suggests mediation for dispute resolution. The Tribunal is grateful for the careful preparation by the parties in Bunting and these latest claims but, bearing in mind all the resources deployed, the Tribunal would encourage an attempt at mediation prior to bringing any further disputes on fees. The Tribunal accepts that some might regard mediation organised by the RICS on their own members' fees as an 'away match' but if there is that objection, another appointing body might assist.

ORDERS ACCORDINGLY

8th March 2005

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

Appearances:

Rory McNamee BL appeared for all three claimants, instructed by Messrs O'Reilly Stewart, solicitors.

Paul Buggy, solicitor, Head of Legal Services appeared on behalf of the Respondent.