

National Roads Authority

Guidance on the payment of Professional Fees in relation to Compensation Claims under the Roads Law

The Roads Law (2005 Revision) which governs compulsory acquisition and compensation relating to road schemes in the Cayman Islands, does not expressly state that the NRA are required to pay the claimant's agent's professional fees when acquiring land. However, it has been recognized in the UK as a legitimate expense that arises as a direct result of the acquisition and should thus be allowed as an item of claim for compensation. So, persons whose land is subject to acquisition (under section 3 of the Road Law) are entitled, at their choosing, to appoint a professional advisor ('the Agent') to act on their behalf in the settlement of compensation claims. Professional fees which are reasonably incurred by the Agent in negotiating the claim will be reimbursed to the Claimant as part of the compensation settlement.

This Guidance sets out the terms and conditions of this reimbursement, and provides advice to both Claimants and Agents as to how the professional fees will be assessed and paid.

Terms of Engagement

Agents are appointed by the Claimant, on terms and conditions agreed between the parties i.e. the Claimant and the Agent. The terms of engagement should set out what services the Agent will provide and the cost of these services.

There is no contractual agreement between the Agent and the National Roads Authority ('NRA'). Any dispute between the Claimant and the Agent should be dealt with independently of the NRA, utilising the complaint and/or dispute resolution arrangements mandated either by the Terms of Engagement or the requirements of the Agent's professional organisation.

Fee Arrangements

Agents advising claimants must ensure that in all cases the basis upon which they propose to charge fees, the arrangements for payment, and any subsequent changes of the fee arrangements are agreed not only with the Claimant but also set out and submitted to the NRA from whom in due course reimbursement will be sought. In particular, Agents are urged to avoid disputes at a later date by ensuring that these steps are taken as soon as possible after accepting an instruction.

Members of the Royal Institution of Chartered Surveyors (RICS) are reminded that as in all cases regarding instructions between a Surveyor and client, the basis of remuneration must be set out in writing. Agreement to the basis of fees should also be confirmed in writing, by the Claimant and the National Roads Authority.

Under no circumstance should Claimant's be advised that the fees incurred will be recovered in full from the National Roads Authority (or similar) as such statements are

incorrect. The NRA will reimburse the professional fees deemed to have been reasonably and necessarily incurred in dealing with the Claim. The NRA is under no obligation to compensate claimants in full for all fees incurred.

Bases for Calculating Fees

A variety of bases may be utilised, subject in all cases to agreement between the parties involved. Such bases may include but are not limited to:

- a predetermined 'fixed fee' arrangement where the scope of work can be clearly defined;
- a percentage of the compensation received (provided that the matter is settled by negotiation and is not determined through legal proceedings where the Agent involved is acting as an expert witness and
- on a time spent multiplied by an hourly rate basis.

Not all of the above methods will be suitable or appropriate for every type of claim and therefore it is of the utmost importance that the basis for calculating fees is agreed in advance. The NRA expects that the vast majority of cases will be dealt with on a time-cost basis.

Fee Rates

There is no restriction on the rates an Agent may charge to their Client, however reimbursement will not exceed CI \$150 per hour (or equivalent). Hourly rates at or near this upper threshold will only be paid to professionally qualified Agents; non-qualified Agents will be compensated at a lower rate.

Recording Time

It will be necessary for Agents to take care in every case to accurately record the time spent and the nature of the work carried out directly relevant to a compensation claim. In many cases, the time spent working on a claim is likely to form a significant factor in the assessment of the fee. It may also be necessary for surveyors to be required to verify and justify the time spent working on a claim. The extent to which the record is accurate and comprehensive may be a significant factor when an assessment is made of the 'reasonableness' of the claim.

Assessment of Fees Incurred

It is acknowledged that experienced practitioners advising in relation to compulsory purchase and compensation require a detailed understanding of a complex area of law, knowledge of valuation, an understanding of the use and basis of occupation of the property to be acquired. The gaining of such knowledge, for the purpose of settling compensation claims, is not compensatable.

The Claimant's Agent must demonstrate that the fees claimed have been properly incurred and are reasonable and proportionate to the compensation at stake and the complexity of the claim. Agent's dealing with multiple claims relating to the same Claimant or vicinity (and thus utilising similar comparable evidence) will be expected to

utilise knowledge gained in dealing with one claim in settling the other claim/s, without duplication of time incurred.

Payment

Reimbursement of Agent's fees will occur concurrently with the payment of agreed compensation, by a single cheque made payable to the Claimant (or their designated party). Agents will not receive a separate payment from the NRA and they should recover monies owing in accordance with their terms of engagement with the Claimant.

Fees Upon referral to Roads Assessment Committee

In the event that a compensation claim is referred to the Roads Assessment Committee for determination, all fees incurred after that referral (and those before it, if agreement cannot be reached) will be subject to an award of cost by the Committee itself, and as such, this guidance will not apply.

Disputes

Given that Professional Fees are part of the compensation due to the claimant, in the event that agreement as to the fees to be reimbursed cannot be reached, the dispute may be referred to the Roads Assessment Committee.

Tips for avoiding disputes

1. The fees should relate to the reasonable cost of undertaking the work and should reflect the time, expertise and effort required to undertake the task and be commensurate with the size or complexity of the claim.
2. Eliminate unnecessary research and details.
3. Prevent the convening of meetings where telephone calls/emails would suffice.
4. The Agent is to undertake the claim as economically as possible by managing his/her time effectively.
5. Ensure that claimants are informed of their duty to mitigate their costs.
6. Where the compensation is agreed at 'nil' due to the effect of betterment, the reasonable professional fees incurred in arriving at this conclusion will be paid.
7. As no compensation is paid for invalid claims, the cost of any time spent in respect of such claims will not be subject to reimbursement.

Approved by the NRA Board on 14th October 2009.