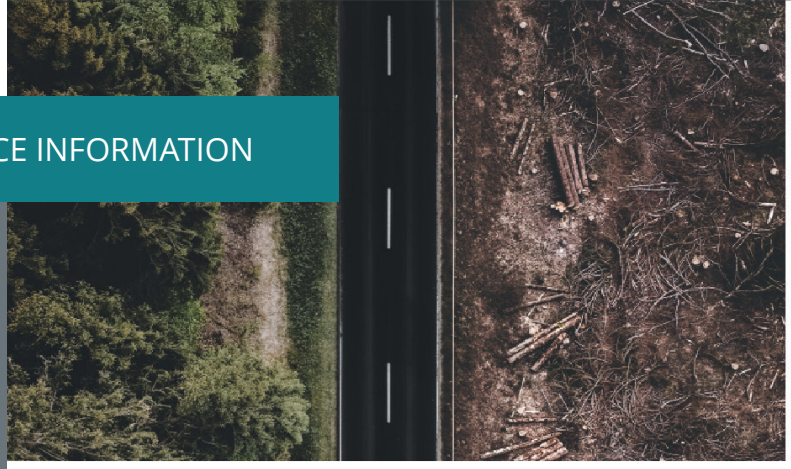
RICS PRACTICE INFORMATION



Insights into compulsory purchase

UK

1st edition, December 2021

RICS®

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RICS standards framework

RICS' standards setting is governed and overseen by the Standards and Regulation Board (SRB). The SRB's aims are to operate in the public interest, and to develop the technical and ethical competence of the profession and its ability to deliver ethical practice to high standards globally.

The RICS Rules of Conduct set high-level professional requirements for the global chartered surveying profession. These are supported by more detailed standards and information relating to professional conduct and technical competency.

The SRB focuses on the conduct and competence of RICS members, to set standards that are proportionate, in the public interest and based on risk. Its approach is to foster a supportive atmosphere that encourages a strong, diverse, inclusive, effective and sustainable surveying profession.

As well as developing its own standards, RICS works collaboratively with other bodies at a national and international level to develop documents relevant to professional practice, such as cross-sector guidance, codes and standards. The application of these collaborative documents by RICS members will be defined either within the document itself or in associated RICS-published documents.

Document definitions

RICS professional standards	**Set requirements or expectations for RICS members and regulated firms about how they provide services or the outcomes of their actions.** RICS professional standards are principles-based and focused on outcomes and good practice. Any requirements included set a baseline expectation for competent delivery or ethical behaviour. They include practices and behaviours intended to protect clients and other stakeholders, as well as ensuring their reasonable expectations of ethics, integrity, technical competence and diligence are met. Members must comply with an RICS professional standard. They may include: • mandatory requirements, which use the word 'must' and must be complied with, and/or • recommended best practice, which uses the word 'should'. It is recognised that there may be acceptable alternatives to best practice that achieve the same or a better outcome. In regulatory or disciplinary proceedings, RICS will take into account relevant professional standards when deciding whether an RICS member or regulated firm acted appropriately and with reasonable competence. It is also likely that during any legal proceedings a judge, adjudicator or equivalent will take RICS professional standards into account.
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Foreword

This practice information was commissioned by RICS to ask some fundamental questions about the operation of compulsory purchase practice in the UK in the 21st century, given that the practice plays and will continue to play an important role in our economy as we develop our infrastructure, regenerate our communities, and ensure provision of housing and essential public services and utilities. All of this must be carried out in the context of significant changes to the economy, accelerated by the COVID-19 pandemic, and of the challenges posed by climate change and the move to a net-zero-carbon economy.

In undertaking the commission, Charles Cowap has traced the origins of and drivers behind compulsory purchase, and has carried out a survey to understand how those involved experience the compulsory purchase process. Using his experience and expertise, he has asked some fundamental questions about how the process operates and how those who have been subject to it have experienced it, opening up a number of points for debate. He has also relied on information from other sources, as well as interviews and discussion with practitioners and claimants.

RICS recognises the vital importance of ensuring best practice in the use of compulsory purchase, and this practice information is designed to stimulate further discussion and wider debate in the sector. Some of the suggestions would require fundamental changes in legislation, whereas other areas could create substantial change by updating and strengthening best practice in the day-to-day work of surveyors and other practitioners in the sector. We look forward to continuing the discussion and working with stakeholders in this important area for the future economic growth and well-being of the country.

Virginia Blackman MRICS

Chair, RICS Compulsory Purchase Expert Working Group

1 Introduction

This practice information has been prepared for RICS as a review of compulsory purchase practice. The work draws primarily on an extensive survey of compulsory purchase practitioners carried out between May 2018 and July 2019, supplemented by information from published sources as well as discussions and interviews with practitioners and claimants.

The document starts with some background and context, before providing overviews of compulsory purchase and compensation for readers who may be less familiar with these topics. This is followed by the results of the 2018–19 survey.

The discussion then widens to consider several themes that have emerged as broader concerns in the operation of our system of compulsory purchase, drawing on published literature and other evidence, including insights from practitioners, complemented by the author's own experience. These themes are:

- the compulsory purchase code and the law
- administration and alternative dispute resolution
- governance and
- improving practice as well as practitioners' skills.

Conclusions and points for further discussion and debate are offered, which it is stressed are the author's own. Some points raised would require changes in the law, while others are more concerned with day-to-day practice and organisational culture.

References are appended for those wishing to follow up the sources, as are the results of the statistical tests used to determine the significance or otherwise of some of the survey's findings.

2 Background and context

RICS has an important interest in compulsory purchase, because members of the public faced with the forced loss of their land and property are advised to consult practising chartered surveyors for advice on the manner of their dispossession and the compensation available for their losses.

RICS published the first edition of Surveyors advising in respect of compulsory purchase and statutory compensation in 2017. An article in the RICS *Land Journal* (June 2017, pp.22–23) covering the publication recognised that:

> 'the ability to acquire land and property compulsorily is essential to the functioning of a modern economy. The UK realised this as early as the 19th century, and the origins of RICS itself stem from the need to represent the competing interests of both railway promoters and landowners at the time'.

Surveyors advising in respect of compulsory purchase and statutory compensation, which sets enforceable requirements for RICS members operating in compulsory purchase, recognises some of the challenges and stresses that can arise from even the most modest of land acquisitions.

For example, paragraph 2.9 notes:

> 'The exercise of compulsory purchase and other statutory powers giving rise to compensation can have a very significant impact on all involved. It is especially important that surveyors advising acquiring authorities, commercial partners, owners and occupiers do so competently and responsibly. The aim of all parties, and in particular the surveyors acting for them, should be to agree a fair package of compensation, mitigation or, where appropriate, removal of the property interest from the use or threat of a future use of statutory powers as straightforwardly as possible. The conduct of both sides should be reasonable and take account of the constraints, challenges and impacts faced by the other'.

More succinctly, paragraph 3.5 remarks:

> 'Compulsory purchase or the use of other statutory powers can be a stressful and emotional experience'.

The importance of an RICS professional standard may not be immediately apparent to readers who are not chartered surveyors. RICS defines such a standard as:

> 'set[ting] requirements or expectations for RICS members and regulated firms about how they provide services or the outcomes of their actions'.

There may be disciplinary consequences for a member or regulated firm failing to comply with these requirements or expectations, from fines up to expulsion from the organisation,

and of course associated negative publicity. This reflects the importance RICS attaches to the conduct of surveyors engaged in compulsory purchase work. RICS has a duty to protect the public interest under its Royal Charter. Professional standards, along with practice information, play a vital part in the discharge of this responsibility.

Cases such as Surtees & Anor v United Utilities Water Plc [2015] UKUT 384 (LC) illustrated the need for robust guidance on utility and compulsory purchase matters from RICS for its members. There were also widespread concerns expressed by members to RICS about practical difficulties being encountered with the creaking, old compensation code in a brave new world of privatised utilities, public–private development partnerships, and new approaches to infrastructure projects large and small. Part 7 of the Planning Act 2008 had, for example, introduced Development Consent Orders as a new method for a promoter to proceed with the compulsory purchase of land.

The compulsory purchase of property in the UK has a long history. The UK's compensation code has been widely copied in other parts of the world. Yet even within the UK, this code now diverges between England and Wales, Scotland, and Northern Ireland. Although we call it a code, it is clear from the most cursory examination that it is not a single code at all. The Law Commission's report of 2004 describes it as

> 'a patchwork of diverse rules, derived from a variety of statutes and cases … neither accessible to those affected, nor readily capable of interpretation save by specialists'.

Very large public infrastructure projects such as HS2 have brought a new prominence to compulsory purchase, even since the publication of *Surveyors advising in respect of compulsory purchase and statutory compensation* in 2017. Yet HS2 is just one of many projects either under way or at an earlier planning stage: the National Infrastructure Commission published the National Infrastructure Assessment in 2018, and this points the way to total spending on national infrastructure of £896.1bn from 2020 to 2050, at 2018/19 prices, which represents an average of nearly £30bn a year.

Despite the fundamental and growing importance of compulsory purchase to the nation, it is an area that is little understood by those who are not expert practitioners, and even less well researched, with media headlines often emphasising perceived failings in the system – perhaps at the expense of a more balanced view.

3 Compulsory purchase overview

A public authority or other entity wishing to obtain powers of compulsory purchase must first find statutory authority to do so. Highway land, for example, may be purchased under the Highways Act 1980, using the compulsory order procedures set out in the Acquisition of Land Act 1981. For larger highways in England, however, the development consent order procedure in the *Planning Act* 2008 must be used. Some projects will be authorised under their own specific legislation, for example the hybrid bill procedures used for HS2.

Table 1 shows some typical steps through which compulsory purchase may proceed, although there may be considerable variations from one case to another.

	Step	Notes
1	Land referencing and preparation work for the sponsor or acquiring authority.	Specialist land referencers and the project team gather information about the property ownerships and other interests that will be affected. This is often the first indication for owners and occupiers that their properties may be affected, though there may have been formal announcements beforehand.
2	Publication/making/ submission of a compulsory purchase order (CPO), a development consent order (DCO), a Transport and Works Act 1992 order (TWA) or a hybrid bill.	This step includes advertising the order or bill and notifying affected parties.
3	Initial planning stages and preparation of representations and objections for affected parties.	All compulsory purchase procedures in common use allow a period for formal objections or representations, with enhanced status for objections from those whose property will be affected. The potential impact of the project on individual properties and businesses will be an important focus at this stage.

	Step	Notes
4	Expert representation, presentation or advocacy at public inquiry, hearing or other review.	This is the stage at which formal representations and objections will be considered, normally by an inspector appointed specifically for the purpose.
5	Agreement of accommodation works.	Accommodation works are works undertaken on the retained land of a claimant. They are done in order to mitigate the impact of compulsory acquisition of part of the affected property, and they are expected to be cost-effective in reducing compensation claims. They can be an important way of reducing impact and mitigating the concerns of property owners and occupiers. Owners and occupiers may be willing to withdraw or reduce the scope of objections where suitable accommodation works are promised. Examples include new security fences or access in industrial settings, and changes to field access, drains, water supplies and boundaries on farms. Soundproofing may be a legal obligation in certain situations although, strictly speaking, this would not be an accommodation work, but other examples of work undertaken for environmental screening on a claimant's retained property would be accommodation works. The main saving in compensation tends to arise in the claim for severance and injurious affection – and to some extent disturbance.
6	Blight procedures and blight notices.	Blight has a narrow statutory meaning in compulsory purchase. Statutory blight is restricted to the land required for the project, in contrast with the wider, more generalised blight that may temporarily affect property values. Affected parties may serve a blight notice on the relevant authority and, if upheld, this will bring forward the purchase of their property. There are precise procedural and legal requirements that must be satisfied. Relevant authorities may also use their discretionary blight powers to deal with properties in a wider affected area. Details vary considerably from case to case.

	Step	Notes
7	Compulsory purchase instrument confirmed.	This may take the form of a CPO, a DCO or even an Act of Parliament, depending on the original statutory authority for the scheme. Confirmation will be made by the relevant Secretary of State, an inspector or, in some cases, the acquiring authority itself, or of course Parliament in the case of a specific act such as those used for HS2. Confirmation is notified to objectors and those affected, as well as being advertised more generally. It is only at this stage that an acquiring authority has formally received its power of compulsory purchase.
8	Notice to treat or other notice.	A formal notice from the acquiring authority that it intends to negotiate for the purchase of property. Information is required on the nature of the claimant's interest in the property, and they are also asked to set out their claims for compensation. This will need to be formalised later, however, and claims are not limited by anything included in or omitted from the response. An alternative procedure is the use of a general vesting declaration (GVD). A GVD is an instrument unique to compulsory purchase, under which the declared property 'vests' in the acquiring authority's ownership on the specified date. In other words, the acquiring authority simply takes over ownership on the declared date.
9	Notice of entry.	In practice, the acquiring authority may need to take entry before it can complete the formalities of land transfer and payment of compensation. A notice of entry can therefore be served, giving at least three months' notice of the intention to take entry. The authority may take formal ownership of the land acquired using normal conveyancing principles. Alternatively, it may use the vesting procedure, with a general vesting declaration which states that all the land acquired vests in the authority on a stated date.

	Step	Notes
10	Advance payments of compensation.	A claimant can request an advance payment of compensation. This will be requested in most cases to ensure that claimants have sufficient funds pending the final settlement of their compensation claims, which may be some time later. Advance payments are due within two months of the request, or by the date of notice of entry or GVD if this date is later.
11	Entry is taken.	This date is significant because, in most cases, it becomes the valuation date, and interest is due on any compensation not paid by this date.
12	Negotiation and agreement of claims for compensation.	This process is likely to continue throughout the period of acquisition and initial construction. In some cases, it will not be possible to finalise the claims until the project is completed, particularly with regard to claims for disturbance during the works. Typical heads of claim for an owner–occupier losing part of their property will be: • market value of land acquired • reduction in market value of land retained due to the scheme, known as severance and injurious affection • disturbance compensation to reflect the financial impact of disruption experienced during the works • statutory payments such as home loss payment, basic, and occupier loss payment where applicable • professional fees for valuation and legal representation and • interest on any amounts unpaid since the date of entry. Case law on the different types of claim that can be made is extensive, often requiring close attention to ensure that they are formulated properly and fully.

	Step	Notes
13	Compensation disputes.	The formal resolution of compensation disputes is the responsibility of the Upper Tribunal (Lands Chamber) in England and Wales, and its counterparts in Scotland and Northern Ireland. Alternative dispute resolution may also be sought before a formal referral to the tribunal and is officially encouraged. There is, however, a time limit for such reference to the tribunal, which is generally six years from the date of entry. Protective references may arise where this deadline is looming for larger schemes where it may not have been possible to complete settlement of the claim in time.
14	Part 1 claims period opens.	Claims can be made under Part 1 of the Land Compensation Act 1973 for limited compensation payable to nearby owners who satisfy the detailed eligibility rules. The claim period opens one year after the new project has been first used or, in the case of a road, declared open. Disputes are also referred to the Upper Tribunal (Lands Chamber) and its Scottish and Northern Irish counterparts.

Table 1: Overview of typical compulsory purchase process

Table 1 provides no more than the briefest and simplest overview of compulsory purchase, and references to statute and case material are minimised. Similar powers allow utility companies to take rights as well as to purchase land outright, and these are governed by separate procedures set out in the relevant legislation.

The then Department for Communities and Local Government, now the Department for Levelling Up, Housing and Communities, published five introductory leaflets on compulsory purchase procedures and compensation in England in 2004. However, there have since been significant changes to the compulsory purchase regime, and updated versions were due to be published at the time of writing. Their target readership is potential claimants.

Texts that provide a fuller treatment of the subject in England and Wales include 2018's *The Law of Compulsory Purchase*, which is now in its third edition and reflects the changes made by the Neighbourhood Planning Act 2017. The 11th edition of *Compulsory Purchase and Compensation* by Barry Denyer-Green was also published in 2018, and similarly reflects the introduction of the 2017 Act.

Meanwhile, the government publication Guidance on compulsory purchase process and the Crichel Down Rules also provides a useful overview of the regime in England, with particular reference to procedural matters, and was most recently updated in 2019. The non-statutory Crichel Down Rules require government departments, under certain circumstances, to offer

surplus land back to the former owner or their successors at the current market value. The Welsh government has produced its own version for Wales, Compulsory Purchase in Wales and 'The Crichel Down Rules (Wales Version 2020)' (Circular 003/2019).

3.1 The compulsory purchase or compensation code

The compulsory purchase or compensation code is sometimes discussed as though it is a single identifiable source of information for compulsory purchase practitioners and those affected. It is not. In fact, the so-called code is spread across numerous Acts of Parliament and is informed by many reported cases. Elements of this are still based on 19th-century legislation.

It might be expected that a compensation code would contain an overarching principle or objective for compensation. This is not to be found in the statutory provisions, although the remarks of Lord Justice Scott in *Horn v Sunderland Corporation* [1941] 2 KB 26 are often quoted:

> '... the right to be put, so far as money can do it, in the same position as if his land had not been taken from him. In other words, [the claimant] gains the right to receive a money payment not less than the loss imposed on him in the public interest, but, on the other hand, no greater'.

Numerous statutes provide powers of compulsory purchase for specific objectives. Much of this legislation refers to the procedures in the *Acquisition of Land Act* 1981. A reasonably comprehensive list can be found in the government guidance on the compulsory purchase process and the Crichel Down Rules. Further matters are variously covered in the Land Compensation Acts of 1961 and 1973, and the Compulsory Purchase Act 1965.

These acts have in turn been heavily amended by the

- Planning and Compensation Act 1991
- Transport and Works Act 1992
- Planning and Compulsory Purchase Act 2004
- Planning Act 2008
- Localism Act 2011
- Housing and Planning Act 2016 and
- Neighbourhood Planning Act 2017.

Note that, while this list covers the main legislation, it does not reflect the various utility acts.

Meanwhile, the statutes retain references to the Land Clauses Consolidation Act 1845; for example, in section 10 of the *Compulsory Purchase Act* 1965. Most of the more recent legislation has proceeded by amendments to the earlier legislation. Suffice it to say that this situation can be bewildering to the layperson or non-specialist.

More recently we have seen complex interactions that can arise between the understanding of compulsory purchase derived from case law and tribunal decisions with the impact of subsequent statutory intervention. Bishopsgate Space Management Ltd and Teamworks Karting Ltd v London Underground Ltd [2004] RVR 89 established that, for business tenancies under the Landlord and Tenant Act 1954, no compensation was available for losses beyond the end of the immediate lease, even if there was every prospect of that lease being renewed for another term or longer. Even the tribunal was moved to comment in its decision that this was a paradox, given the treatment of the lesser interest of a licensee.

Section 35 of the *Neighbourhood Planning Act* 2017 amends section 47 of the *Land Compensation Act* 1973 to reverse this finding, but the reversal only applies where the compulsory purchase order or similar instrument was confirmed on or after 22 September 2017; see the Neighbourhood Planning Act 2017 (Commencement No. 2) Regulations 2017.

HS2 demonstrates one practical consequence of this: business tenancies covered by the Hybrid Act for phase 1 of the project will not in theory benefit from the change, while those covered by the Bill for phase 1A and 2 will benefit once that legislation is passed. This illustrates just one complexity of the code: the tension between decided cases, the law as it was, the law as it is now, and the use of commencement orders to initiate legislative changes.

As mentioned, the Law Commission published two reports on compulsory purchase in 2004. An overarching recommendation was that new legislation was needed to set out standard procedures and a clearly defined compensation code. The existing arrangements were described as,

> 'a patchwork of diverse rules, derived from a variety of statutes and cases over more than 100 years, which are neither accessible to those affected, nor readily capable of interpretation save by specialists'.

This recommendation was never implemented.

The Law Commissioner Lord Carnwath led this work, and describes a 'number of progressive legislative amendments and additions', which are 'far from the comprehensive approach which the Commission had advocated, and it remains to be seen how far it will have helped to clarify or simplify the law', in his introduction to *The Law of Compulsory Purchase*.

The law in England and Wales is now more complex than it was in 2004. With the prospect of considerable growth in the use of compulsory purchase powers, should it now be a priority to revisit the Law Commission's recommendation for modernisation and consolidation? It should also be noted that the modest tweaks and changes made to the compensation code in England have not been mirrored in Scotland where, for example, there is no parallel to the basic and occupier loss payments introduced in England and Wales by the *Planning and Compulsory Purchase Act* 2004.

4 Survey of practitioners and wider evidence

The evidence for this practice information is drawn from a survey of compulsory purchase practitioners, discussions with practitioners and claimants, published reviews of compulsory purchase, and direct experience of schemes in progress or recently completed.

4.1 The survey

The survey went live in May 2018. The first responses were received later in the month and by the end of July 2019 a total of 82 responses had been received.

The purpose of the survey was to gather information about practitioners' direct experience of compulsory purchase by reference to individual schemes, or claims in which they had been or were involved. The first part of the survey sought to profile the schemes and the respondents, while later sections aimed to elicit information about their experience and opinion of compulsory purchase in practice.

4.1.1 Scheme details

A wide range of schemes are represented in the responses. Of the 81 respondents who gave any details of their specific scheme, the list included:

- utilities: water; gas; sewers; energy connectors; electricity lines and cables; flood alleviation
- transport: dualling and other improvements to existing roads; new roads; new railway lines, principally but not exclusively HS2
- blight notices and
- other powers: at least one response related to *Planning Act* 2008 powers designed to enable orderly development, while another related to the acquisition of a national nature reserve.

Respondents were asked who they represented. Of 80 responses, 24 came from acquiring authorities or promoters, 25 represented a single claimant, and 31 represented multiple claimants. This suggests that we have a reasonable balance of perspectives between promoter and claimant interests.

In 81 cases, respondents allocated the acquiring authority or promoter to a given category, as shown in Table 2.

Promoter category	Number	%
Central government department or agency	22	27
Local authority	5	6
Utility: gas	2	2
Utility: water	22	27
Utility: electricity	7	9
Utility: telecommunications	1	1
Private or public company with access to compulsory purchase powers	18	22
Other	4	5

Table 2: Promoter categories chosen by respondents

Table 2 suggests the survey achieved a reasonable coverage of the range of circumstances in which such powers may be exercised.

The nature of the statutory authority for the schemes also indicated a similar diversity, as Table 3 indicates.

Statutory authority	Number	%
Authorising act and CPO	21	26
Authorising act and DCO	7	9
Transport and Works Act 1992	2	3
Water industry powers	22	27
Electricity powers	5	6
Gas powers	2	3
Telecommunications Act 1984	1	1
Electronic Communications Code/Digital Economy Act 2017	0	0
Hybrid Act of Parliament	18	22
Other	3	4

Table 3: Statutory authority identified by respondents for compulsory purchase

It may be noted that HS2 was not the only scheme in this survey that was authorised by a hybrid act. The Water Resources Act 1991 was also mentioned twice in the 'other' category.

In terms of location, most of the schemes were in England, with smaller numbers in Wales and Scotland, and none in Northern Ireland. The distribution is shown in Table 4. There were 81 responses to this question, most of which mentioned only one country. However, two respondents did give multiple answers, one being England and Wales and the other being England, Wales and Scotland. Both respondents were responsible for very large utility projects.

Region	Number	%
England	59	73
Wales	13	16
Scotland	12	15
Northern Ireland	0	0

Table 4: Scheme nation

Respondents were then asked at which stage of the procedure they had been involved. Table 5 shows that respondents were involved in all stages, from inception through to references to the Upper Tribunal (Lands Chamber) and its Scottish counterpart, the Scottish Lands Tribunal.

Stage	Number	%
Land referencing and preparation work for sponsor or acquiring authority	22	27
Initial planning and representation for claimant or affected parties	36	44
Expert representation or advocacy at public inquiry, hearing or other review	11	14
Agreement of accommodation works	53	65
Blight notice	11	14
Claim for advance payment	40	49
Response to notice to treat or other notice	27	33
Negotiation and agreement of claim for compensation	71	88
Alternative dispute resolution procedure	5	6

Stage	Number	%
Reference to Upper Tribunal (Lands Chamber)	9	11
Other	7	9

Table 5: Stages at which respondents were involved

Another way to look at the profile of respondents is to ask which elements of a compensation claim they were involved with, and Table 6 shows their wide-ranging engagement.

Element of claim	Number	%
Market value of land acquired	61	75
Valuation of other rights taken	35	43
Severance and injurious affection	42	52
Disturbance claim	71	88
Compensation based on equivalent reinstatement rule 5, section 5, Land Compensation Act 1961	14	17
Home loss payment	13	16
Basic loss payment	25	31
Occupier loss payment	26	32

Table 6: Elements of compensation claim

Question 8 of the survey was open-ended and asked for an indication of the total value of the claim. The 70 answers ranged from £600 to £20m, giving a mean of £1.4m. The median figure of £97,500 is, however, more representative of the profile.

Question 9 was another open-ended question that asked for the date of the respondent's first involvement in the scheme; the earliest was 15 November 2001 in a response provided on 30 July 2018. The distribution of the 78 responses by year of first involvement is shown in Table 7.

Year of first involvement	Number of respondents
2001–2005 inclusive	3
2006–2010 inclusive	8
2011–2015 inclusive	28
2016	14

Year of first involvement	Number of respondents
2017	14
2018	10
2019	1
Total	78

Table 7: Date of respondents' first involvement

Half the cases reported had therefore commenced since the start of 2016; nevertheless, the duration of some of the earlier examples is surprising. For example, the limitation period for any claims where entry was taken before 1 January 2014 expired on 1 January 2020 if the claim was not referred to the appropriate tribunal before then.

Most respondents to the survey were chartered surveyors, numbering 74 out of 81. Respondents could choose more than one category for this question, however, and the other predominant qualification was fellowship of the Central Association of Agricultural Valuers, accounting for 45 of 81 respondents. Four respondents said they were qualified by experience only.

Respondents were also asked about the qualifications of the other party's representative. Again, chartered surveyors were predominant, cited in 68 of 81 responses. Experience only was cited by nine respondents. The full list of qualifications or professions also included two solicitors, one barrister, and one chartered engineer/project manager, as well as direct dealings with claimants.

Respondents were asked whether a code of practice had been issued, and 42 out of 79 respondents to this question – some 53% – said it had. This question elicited some other interesting comments, which included:

- the code of practice issued by a certain statutory body diluted rights afforded to claimants in each manifestation
- so many codes of practice have been issued by a particular acquirer that it is impossible to find the information you need, and even acquiring bodies seem uncertain
- following the code of practice's introduction, clients were informed and offered a copy on request
- although a particular statutory undertaker has a grantor's charter, it appears only to have paid lip service to it and
- the given promoter publishes various codes of practice but doesn't abide by them.

The timescale from agreement of compensation to its payment was the subject of question 14, with more than half the respondents saying this had been longer than 30 days. Figure 1 shows the distribution.

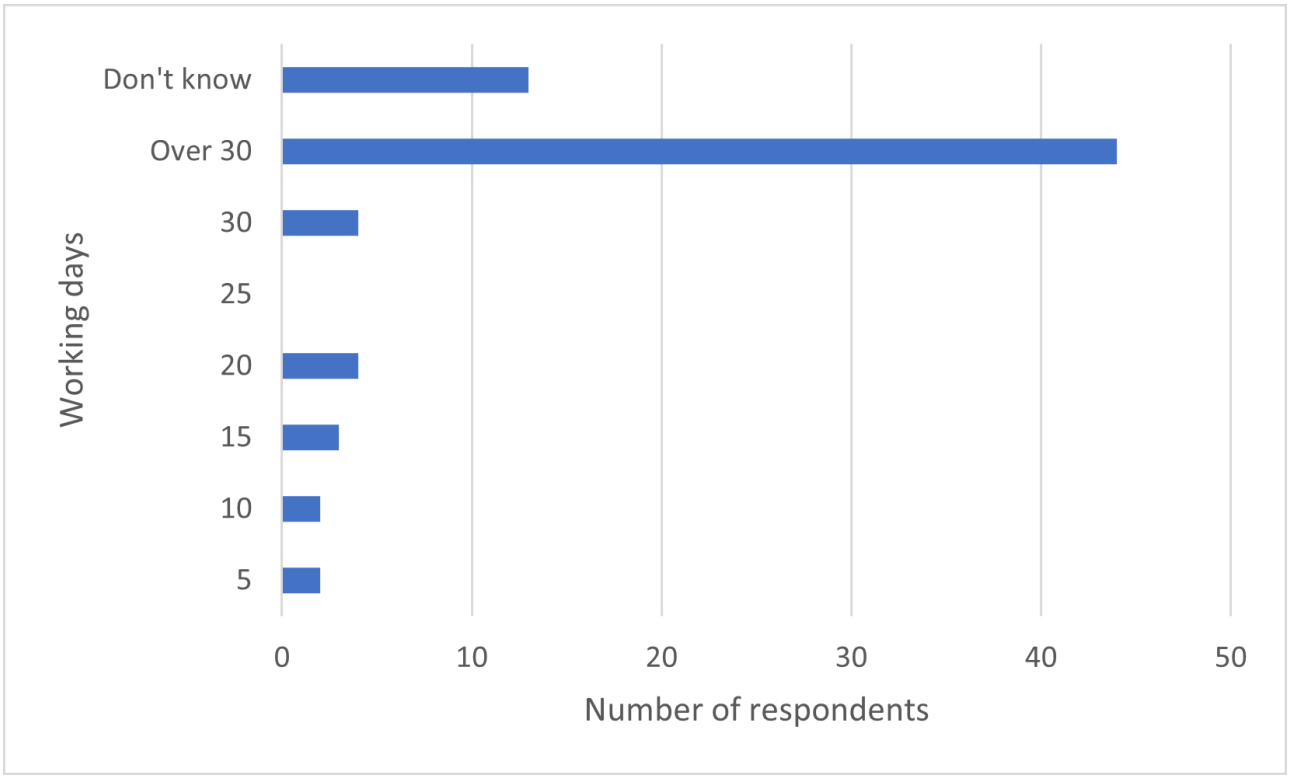

Figure 1: Working days from agreement to payment of compensation

This question also prompted 41 individual comments. A period of six months was mentioned by several, and more than 18 months by another. One response acknowledged that the delay was not due to the acquiring authority but the legal nature of the claimant – a large charity – and its internal processes.

In 45 of the 81 responses, professional fees were paid on a similar timescale to the claim itself, but in 10 of the 81 responses the timescale was reported to be a lot slower.

The answers cited so far have been descriptive, in that they simply report the detail of respondents' experiences. Taken together, they show that the survey was:

- successful in garnering responses from representatives of both parties to a compensation claim
- able to cover a full range of authorising powers and schemes, although with more emphasis on infrastructure and utility powers than development powers
- comprehensive in its coverage of the various stages of compulsory purchase
- geographically comprehensive as far as England, Wales and Scotland are concerned
- representative of a good range of claim values, from the very small to the very large and
- successful in securing responses from chartered surveyors, the principal profession involved in the negotiation of compensation claims on compulsory purchase.

4.1.2 Respondents' opinions

The rest of the questions sought opinions of various aspects of compulsory purchase.

Question 16 asked respondents to score the following aspects of their counterparts' professional involvement on a five-point scale:

- technical and legal understanding of compulsory purchase and compensation
- responsiveness
- timeliness
- communication
- valuation technical ability and
- helpfulness.

The rating scale, or Likert scale, used for this purpose is shown in Table 8.

Category	Score
Significant failings or gaps that were never or rarely acknowledged	1
Significant failings or gaps that were nevertheless addressed when identified	2
Satisfactory, but with little or nothing exemplary	3
Good, with much to commend; nevertheless, improvements could easily have been achieved	4
Exemplary, and any potential for improvement was no more than marginal	5

Table 8: Rating scale for respondents' opinion of their counterparts

Tables containing the detailed results for each aspect can be found in Appendix A.

A summary of the collated data is shown in Table 9, which highlights several points from the survey. The overall scores tell us that the area where respondents appear to perform best is in their technical and legal understanding of compulsory purchase. This is fairly closely followed by technical proficiency in valuation itself.

However, at a mean score of more than three and less than four, this illustrates an overall level that is at least satisfactory but with little or nothing exemplary, tending towards being good with much to commend despite room for improvement remaining.

Element	Mean acquiring authority score of claimants (number = 24)	Rank order	Mean claimant score of acquiring authorities (number = 56)	Rank order	Overall score	Rank
Technical and legal understanding of the compulsory purchase process and the compensation code	2.83	3	3.52	1	3.32	1
Valuation technical ability	2.71	6	3.38	2	3.17	2
Helpfulness	2.75	5	2.93	3=	2.89	3
Consistency	2.78	4	2.93	3=	2.87	4
Timeliness	2.92	2	2.71	6	2.76	5
Communication	3.04	1	2.80	5	2.88	6

Table 9: Summary of rating scale results

Beyond technical and legal understanding, the softer skills of helpfulness, consistency, communication and timeliness all fail to achieve a score of three overall, suggesting that not even a satisfactory level is being achieved.

However, there were more than twice as many responses to the survey from claimants as there were from acquiring authorities and it is clear from Table 9 that this has to some extent biased the overall results. For example, the acquiring authority score for claimants' timeliness put this second in the rank order, whereas claimants' scoring of authorities placed this sixth.

Nevertheless, it is clear from Table 9 that these respondents feel there is considerable scope for improvement across all the areas surveyed. Acquiring authorities appear to have most to gain from making more effort to be timely, helpful, communicative and consistent. Claimants' valuers meanwhile need to work on their technical ability in valuation, helpfulness and consistency. Everybody needs to work on all the elements if professional practice is to be at least consistently 'good, with much to commend', let alone exemplary.

The difference between the two groups' responses suggested the need for further analysis to establish whether these differences are merely random, or symptoms of something more systematic, and in such a way that the different sizes of the two groups becomes less material.

On further analysis, there was a statistically significant difference between the two groups of respondents on three of the elements; Appendix A shows the results of a chi-squared test on these three elements. Chi-squared testing measures the likelihood that a difference in distributions is merely down to chance, by reference to the probability that the difference is significant; it calculates the probability that the difference is random on a scale of 0 to 1. No significant difference was shown between the two groups on the matters of consistency and helpfulness, but there was a significant difference between their opinions of the other's knowledge of the compensation code, timeliness and valuation technical ability.

Question 17 asked respondents how satisfied they felt claimants were, to the best of their judgement, with the process they had experienced and the final compensation settlement. Levels of dissatisfaction with the process were high, with 30 out of 58 respondents very unsatisfied. A further nine were unsatisfied, while a total of 18 were either satisfied or very satisfied; none were delighted.

Levels of satisfaction with the actual compensation settlement were distributed a little more evenly, with 29 out of 78 respondents satisfied, 26 respondents very or slightly unsatisfied, and 13 very satisfied or delighted.

Two open questions asked respondents to identify up to three aspects of the claim where they felt there was significant scope for improvement, and up to three aspects that they felt exemplified good practice.

The question on good practice drew 139 responses from 69 respondents. The responses were coded into 11 different categories, later reduced to eight as overlaps became clear in detailed coding work. Table 10 shows the eight categories in descending importance; the top two in particular reflect the results from the Likert-scale questions, focused as they are on timeliness, consistency, communication, and valuation technical ability.

Category code	Number of coded responses
Timeliness, early liaison, availability and accessibility of agents, consistency of representation, regular updates and consultation, transparency and attention to detail	71
Valuation technical ability and the submission of full and reasoned claims	21
No good practice existed or could be identified	13
Expertise of district valuers	5
Accurate and timely records of condition	2
Understanding of farming	2

Category code	Number of coded responses
Benefits of early expert inputs	1
Landowners undertaking reinstatement works	1

Table 10: Good practice coded responses

Table 11 shows the top-scoring areas for significant scope for improvement. This question drew 167 responses from 73 respondents. These responses were initially coded into 19 categories. Table 11 shows these in descending order for which five or more responses were coded. Again, these mirror the earlier results based on the Likert-scale questions and the identified good practice.

Category code	Number of coded responses
The need for better communication and engagement, transparency and a less adversarial approach	40
The need for greater timeliness, faster responses and payments	29
The need for accurate area measurements and evidence	14
The need for early scheme details being provided, with notices and clear strategies or plans for the delivery of the scheme	5
Improved attitudes from acquiring authorities, utilities and particularly their contractors	5
The need for better understanding of compulsory purchase, compensation and valuation	5
Experience and competence levels could be improved	5

Table 11: Scope for improvement coded responses

Other categories scoring fewer than five mentions and not shown in Table 11 were as follows:

- inconsistency of representation and staff turnover
- fee concerns
- knowledge of farming, the Integrated Administration and Control System through which farm support payments are managed, soils handling, drainage, and fencing

- management of landowner/claimant expectations
- slow and inconsistent legal processing
- agreement of private means of access and accommodation works
- payment times for both compensation and fees once amounts agreed
- opaque approval procedures once claims have been negotiated with authority valuers
- a need for better plans and drawings with various area requirements more clearly defined
- funding for initial costs of engagement by landowners
- greater independence of Valuation Office Agency from acquiring authorities.

To check how the claims reported in the survey reflected practice more generally, respondents were asked how typical their experience with the particular claim was. Of 81 responses to this question, 28 felt it was about typical of other claims in their experience, 35 felt the experience reported was a bit or a lot worse than others, 16 felt it was a bit or a lot better, and two respondents said they did not know how the experience compared.

Finally, 45 respondents provided contact details as an expression of their willingness to discuss their experience further.

5 Discussion: the wider context

The survey findings can be placed in the context of a wider discussion that draws on:

- direct professional experience and engagement
- documentary sources that have been reviewed in the preparation of this practice information and
- discussions and presentations on compulsory purchase, some conducted more formally as semi-structured interviews and others more informally and opportunistically.

The discussion has been organised into a number of themes:

- the code and the law
- administration and dispute resolution
- governance and
- improving practice, improving the practitioners.

5.1 The code and the law

A number of observations from the above sources relate to the compulsory purchase and compensation code itself.

5.1.1 Discretionary blight

Discretionary blight provisions may appear to some to be outside the terms of the code, but the view of the author is that the authority for discretionary blight payments is to be found in the legislation on compulsory purchase; for example, section 26 of the *Land Compensation Act* 1973, as amended by the *Planning and Compensation Act* 1991. For this reason, they are treated here as a full part of the code.

Discretionary blight provisions lead to wide variation in practice between authorities and schemes. HS2 has, for example, set out extensive guidance on the circumstances in which it will purchase property under what amount to discretionary blight provisions. This is in stark contrast to the criteria used by the Department for Transport or the Welsh government for discretionary blight arising from new road schemes.

5.1.2 Basic and occupier loss payments

Basic and occupier loss payments, introduced in the *Planning and Compulsory Purchase Act* 2004, are subject to claim maximum limits that have not been increased since then. There remains confusion over the calculation of these claims; only one case from the Upper Tribunal (Lands Chamber) seems to have been reported in which the matter has been specifically addressed.

In Khan v Stockton-On-Tees Borough Council (Rev 1) [2017] UKUT 432 (LC), the claimant's surveyor added 10% to a claim that consisted of the market value of the house acquired and items of disturbance. The tribunal awarded the additional payment on the market value of the property only. However, when challenged on his reasons for adding the extra payment to the whole claim, the surveyor could only offer the answer that this was what he had heard in a lecture.

The internal guidance used by the Valuation Office Agency is itself unclear on the matter, ultimately instructing valuers to recommend payment on the value of land taken only. The problem arises from the interpretation of the 2004 Act itself, in particular section 33A that it inserts into the 1973 Act. This refers to the percentage payment being added to the value of the claimant's interest.

What does this phrase mean in this context? At its narrowest, it may only mean the market value of land taken, but at its widest it may mean the whole claim. But it could instead mean the elements of the claim for land taken and severance and injurious affection; or, the value of the interest in the affected property before part of it was taken.

Khan did not include a claim for severance and injurious affection. This lack of clarity reflects the imprecision of the code itself, and underscores the inability of the current administrative and dispute resolution mechanism to address problems of this nature, given that the more restricted interpretation seems to have been accepted since 2004 in the interests of achieving an overall settlement. The Valuation Office Agency's operating manual on compulsory purchase emphasises the scope for interpretation, before settling on the more restricted approach as recommended practice for district valuers.

5.1.3 Advance payments

Acquiring authorities are under an obligation to make advance payments within two months of a request, and no later than the end of the date of entry if a satisfactory request is made in time. In practice this does not always happen, but there are no sanctions against an acquiring authority that fails to make the payment in time. This problem is compounded by the very low interest rates on overdue payments at the time of writing, and the continuing reluctance of the Treasury to make regulations that would apply a more commercial rate. The power to make these regulations was introduced by the *Housing and Planning Act* 2016, and yet by late 2021 no measures have been introduced.

5.1.4 The legislation

The legislation itself consists of a jumble of different statutes. Furthermore, these themselves contain no overriding principle that claimants and authorities can apply when faced with fundamental difficulties of interpretation, beyond Lord Justice Scott's dictum in *Horn v Sunderland Corporation* [1941] 2 KB 26 about the principle of equivalence, namely that compensation should place the claimant in the same position as if their land had not been taken, so far as money can enable this.

5.1.5 Legislative response

Bishopsgate Space Management Ltd and Teamworks Karting Ltd v London Underground Ltd [2004] RVR 89 demonstrates that when a fundamental problem is identified it can take far too long to correct. It was not until the *Neighbourhood Planning Act* 2017 that this anomaly was corrected, some 13 years after the case itself. The potentially different treatment of commercial claimants under phase 1 and phase 2 of HS2 demonstrates the inconsistency, inequity and potential magnitude of this.

5.1.6 Market value

Market value as the central tenet of most compensation claims suffers from fundamental weaknesses. It does not always recognise losses properly, and it sometimes fails to allow for claimants to reinstate themselves in a similar equivalent position despite the principle of equivalence. For example, residential or commercial property acquired in a low-value area may not easily be replaced in a suitable location, given the rise in values that redevelopment can bring.

Taken together, these six observations all suggest the doubt over the accessibility and intelligibility of our compulsory purchase and compensation code to those most affected by it. Practitioners may be able to discern an answer in the code – but is this because of the code or in spite of it?

The Law Commission's 2004 review called for modernisation and consolidation of the law. Since that time the law has been amended several times, but has not been consolidated – as Lord Carnwath reflected in his foreword to Roots et al's 2018 *The Law of Compulsory Purchase*, where he wrote:

> 'This is far from the comprehensive approach [that] the commission had advocated, and it remains to be seen how far it will have helped to clarify or simplify the law'.

It is suggested that the law might be consolidated and restated for the 21st century, with an unequivocal statement of principle on which compensation should be based. The statement could build on Lord Justice Scott's dictum on equivalence that compensation should place the claimant in the same position as if their land had not been taken as far as money can do so.

Has the time come to recognise that an approach based largely on market values does not always go far enough? Perhaps we could add an overarching requirement that no claimant should be financially, socially or environmentally disadvantaged by the compulsory acquisition of their property? This could take the form of a final test on the adequacy of any compensation award. Financial, social and environmental disadvantage may be challenging to judge, but does that mean we should be deterred from attempting to do so in the interests of wider justice and fairness?

We have seen that the law on compulsory purchase is far from simply stated. We have also seen that the Law Commission's proposal for modernisation and consolidation has not been implemented. Potential claimants who have no option but to fund themselves when they are first aware of the proposed acquisition of their property are therefore put in a daunting

and complex position. How far do compulsory acquisition procedures rise to the challenge of guiding property owners supportively and sympathetically?

5.2 Administration and dispute resolution

Acquiring authorities, their reasons for acquisition and the practices they follow are many and varied. Quite apart from the 'patchwork of diverse rules', there is no central oversight of acquiring authority practice or supervision of standards beyond RICS' own 2017 Surveyors advising in respect of compulsory purchase and statutory compensation. This document of course has no authority over those who are not RICS members, and privately some commentators have also questioned the extent to which it binds members who are employees of acquiring authorities.

After publication of the document, RICS confirmed that it does bind chartered surveyors employed by acquiring authorities. This might be contrasted with other public-sector activities where authorities wield greater power or responsibility, such as the police service, prisons, hospitals and health services, social services and education: in all these areas, there are inspectorates or other quasi-independent bodies that have the authority and responsibility to exercise powerful oversight.

The denial of property rights may be seen as no less an interference with the rights of the individual than the right to effective and fair policing, medical treatment, education and so on. The only formal opportunity the individual has under the code to challenge the compulsory acquisition of property are the rights to object and to make representations at the earliest stages – rights that are valuable and well exercised – and the ability to take disputed compensation offers to the Upper Tribunal (Lands Chamber) at the very end of the process. The survey carried out for this practice information has already shown the scope for improvements in areas such as communication and helpfulness.

Given the risks and costs involved, though, the tribunal is practically out of reach of most claimants. One barrister who specialises in this area has been quoted as saying that the risk is not worth it unless the difference between the parties' assessment of compensation is at least £250,000. Official figures on the work of the Upper Tribunal (Lands Chamber) are scant, but 2019 Ministry of Justice (MoJ) statistics show that, for the 12 financial years from 2007/08 to 2018/19 inclusive, the tribunal received a total of 9,172 references and disposed of 9,981 cases. This represents a surprising disparity, in that 809 more cases were disposed of over this period than were received, even allowing for the possibility that a backlog may have been inherited from previous years. The average number of references a year is therefore 764, and the average number of disposals is 832.

The MoJ provides no breakdown of the subject matter of these references, and it was beyond the resources of this project to explore this further. However, we do know from the tribunal's own website that over the period 1 January 2018 to 31 December 2019, 14 judgments were handed down that were coded as compensation. Two were claims against the Coal Authority for mining subsidence, three were against local authorities, and five involved the Department for Transport in one way or another, whether in the form of the

Secretary of State, Network Rail or Highways England. Three of the judgments were appeals over certificates of appropriate alternative development, where significant amounts of compensation would turn on the outcome; for instance, the tribunal made an award of £8.1m for the acquisition of a waste transfer station. A very small number of the claims – between two and four, depending on the classification – were about the technicalities of a valuation for compensation purposes.

These figures might be taken to suggest that there is not much call for the tribunal to settle disputed compensation claims, but comments from those interviewed during this study and other anecdotal evidence suggest otherwise. The tribunal is a respected forum for the settlement of disputes involving larger claims that may involve complex matters of interpretation and application. There is, however, a problem with smaller and simpler disputes, as the tribunal is not seen as a realistic or accessible place to settle these, despite the introduction of its simplified and written procedures and its willingness to sit as an arbitrator.

There thus needs to be a more accessible and economical forum to resolve differences quickly and amicably that is available throughout the process of expropriation and compensation. This would support the ultimate role of the tribunal at the very end of the process in settling the more complicated or intractable problems. RICS has enabled access for claimants, acquiring authorities and their representatives/agents to its dispute resolution service – a move that should be welcomed and supported by claimants' advisers, and particularly by acquiring authorities.

RICS has recently launched a CPO alternative dispute resolution (ADR) service that will draw on other conflict avoidance and early intervention initiatives developed by the organisation for the construction and commercial property sectors. This new service should be welcomed and supported.

Practitioners facing difficulties with CPOs might also be encouraged to take more imaginative ADR approaches without recourse to external bodies and procedures; for example, a review by a third valuer with no direct interest in the matter. There is some evidence emerging from practice, particularly among utilities, that approaches have been used and do work, for example the appointment of an independent surveyor to impartially review the positions set out by both parties. The benefits are not yet widely known or appreciated. Examples of good practice should be identified and shared.

5.3 Governance

The preceding discussion about the administration of compulsory purchase and compensation points to a wider question of governance; that is, the framework in which responsibility and accountability for compulsory purchase are exercised, with particular regard to standards of practice, efficiency, equity and accountability in public administration. Who now oversees the effective use of compulsory purchase laws, which after all allow the denial of a fundamental freedom?

We have already seen that compulsory purchase powers lie in a plethora of statutes and with a multitude of acquiring authorities. Other than the advisory role adopted by the now Department for Levelling Up, Housing and Communities (DLUHC) – seen through such publications as the government guidance on compulsory purchase and the Crichel Down Rules – there is no obvious body with an overarching and continuing duty of oversight and accountability on the use of compulsory purchase powers, above and beyond the role of individual government departments themselves.

The difficulties caused by this lack of oversight are illustrated by occasional interventions from bodies that sit on the fringes of compulsory purchase.

- The Parliamentary and Health Service Ombudsman (PHSO) reported on complaints about HS2 in 2015. The House of Commons Public Administration and Constitutional Affairs Committee published a follow-up report in 2016.
- The Independent Complaint Assessor (ICA) in 2016 published an Independent Review of a complaint by Mrs Elaine Loescher and Mr Jonathan Loescher against High Speed Two Ltd (HS2 Ltd).
- The PHSO issued another report in 2020, in which it has made findings of maladministration against HS2 in its treatment of a Mr and Mrs D.

These four reports all found or endorsed findings of poor management and maladministration. Although HS2 was the subject of all four, the findings are echoed in *Forman's Games*, a 2016 book that draws on author businessman Lance Forman's personal experience of site clearance for the London Olympics. His experience echoes that of Mr and Mrs Loescher and the residents considered by the PHSO report.

More widely, comments from a range of practitioners also reflect these concerns, even though we must acknowledge that we are far more likely to hear about bad experiences than neutral or better schemes. Does this constitute effective oversight? References to the PHSO must be made through an MP, and even then the ombudsman is set up to deal with individual grievances rather than exercise broad strategic oversight. A complainant must be very determined indeed to see a PHSO reference through to a conclusion, not least in having to navigate internal complaints procedures in the first place.

The ICA report acknowledged the difficulty the assessor had in dealing with compulsory purchase and compensation matters. It is also clear from the PHSO and parliamentary committee reports that most aspects of procedure and compensation had to be taken on trust by the participants. In short, there is no independent public body that has an informed oversight of compulsory purchase, let alone one with powers of intervention and a responsibility to report at a high level. This is a vacuum that might be filled if the imbalance of power between acquiring authorities and claimants is to be corrected.

Examples can be found in other fields of organisations that act as a corrective where such imbalances exist. The Groceries Code Adjudicator is one such example, and its scope has recently been extended along the food supply chain by Parliament. The Office for

Environmental Protection now established under the Environment Act 2021 may be seen as a similar measure.

Is there a case for a new Commissioner of Compulsory Purchase, with powers akin to some of the main inspectorates in social services and education, for example? All authorities wishing to use their compulsory purchase powers could be required to register with this commission, and in doing so would undertake to abide by a code of good practice in the exercise of their powers. This code could be established, maintained and reviewed from time to time by the commissioner.

The commissioner could also be empowered to review specific schemes and authorities, with the resources to maintain a rolling programme of such work. Review of individual schemes could usefully look at the whole process to include any lessons to be drawn from comparing land purchase budgets with actual outcomes. Currently, there is no evidence that such reviews are routinely or even occasionally undertaken.

An independent commissioner could report annually to Parliament. A key part of this report would be guidance on good practice and lessons learned from regular reviews initiated by the commissioner, from compulsory purchase schemes more generally and from any complaints with which the commissioner had dealt. Sanctions available to the commissioner could be a power to issue advisory notices and cautions, to place authorities under supervision, and ultimately to restrict or limit the activities of an acquiring authority. There is also clearly scope for a new commissioner to work closely with organisations such as RICS, particularly if the intention is to promote the RICS ADR service.

It may also be appropriate for the commissioner to take a direct role in dispute resolution, although its independent stance may best be preserved by taking no more than a reporting oversight on disputes; perhaps by obliging acquiring authorities to report within a given timescale on their use of complaint procedures, references to the Upper Tribunal (Lands Chamber) and their outcomes – rather than simply judgments – and the use and outcomes of ADR procedures.

It may be that elements of the commissioner's work could be combined with the consolidation and modernisation of legislation on compulsory purchase and compensation. For instance, the commissioner could be given a general enabling power to make regulations for all aspects of compulsory purchase and compensation, albeit subject to strict parliamentary supervision.

The creation of an independent commissioner could tackle a number of problems and issues with our current system of compulsory purchase. It would also show international leadership in this vital area.

5.4 Improving practice, improving the practitioners

The survey showed that practitioners on both sides of compulsory purchase take a fairly dim view of each other. Why are standards not higher? A number of points have been advanced during discussions with practitioners, but it might help to start with the initial education

of valuers. Most respondents to the survey were chartered surveyors. They will therefore have satisfied RICS of their professional competence through, in most cases now, the organisation's Assessment of Professional Competence (APC).

Most chartered surveyors will have studied on a recognised degree course at an RICS partner university. To what extent will they have studied compulsory purchase as undergraduates or postgraduates? The answer will vary from one course and university to another.

For the purpose of this practice information, 23 accredited courses at 13 universities were reviewed; four were postgraduate, the rest undergraduate. Of the 13 universities, five clearly covered compulsory purchase somewhere in one or more of their courses. From the online prospectus and module information reviewed, only two courses had obvious and significant final-level content. Another eight courses clearly had less significant content; that is, it was below final level, less than half a module in extent, or both. In at least one case, even the module that offered significant content was optional.

How far, then, is the designation MRICS a sure indication that a practitioner has studied the law and theory of compulsory purchase, or been assessed in its practical application? For some, the answer will at best be limited.

One interviewee made the interesting observation that we should not expect practising valuers to have a full appreciation of all the intricacies of compulsory purchase law and practice. The local knowledge of markets that a claimant's valuer offers may be more important to the preparation of a successful and well-founded claim than any amount of compulsory purchase knowledge and experience.

This view was complemented by the suggestion that a full understanding of compulsory purchase matters should definitely be the province of acquiring authorities' valuers and representatives, and that they should see part of their role as guiding claimants' valuers through the steps and requirements of a valid claim. This would allow the claimant's valuer to concentrate on what they know best: local market data and its application.

This observation is also reflected to some extent in *Surveyors advising in respect of compulsory purchase and statutory compensation* paragraph 7.4, which perhaps deserves wider recognition.

> 'A compulsory purchase or statutory compensation specialist, working with a local surveyor who knows the property and business well, may not be double counting and can frequently help identify issues to be addressed. The addition of other specialisms such as minerals, planning, forensic accounting (and many others) can be invaluable. Such an approach should be discussed at an early stage'.

Compulsory purchase procedure places the onus on the claimant's valuer to formulate a claim for compensation to which the acquiring authority can respond. Perhaps this presumption could be reversed, with the onus instead placed on the acquiring authority's valuers to make a reasonable offer, based on their analysis of the market value of the

property they are acquiring and a shared analysis of comparable transactions available to them. This may also avoid considerable duplication of effort.

For example, a scheme involving ten separate claimants who appoint ten different valuers to negotiate with the one acquiring authority valuer. How much more efficient would it be if the one acquiring authority valuer compiled a comprehensive set of comparables on which to base fully reasoned offers, instead of ten separate claimants' valuers all duplicating each other's work in order to prepare their claims? It is after all the acquiring authority that initiates the purchase, and would therefore in a similar transaction be the party that made the opening offer.

Clearly there would still be an onus on the claimant's valuer to test the acquiring authority's valuation, but early disclosure and sharing of comparable data could go a long way to fostering an atmosphere of professional cooperation and mutual respect. Other aspects of the claim such as disturbance could not be handled in this way, but they would emerge later in any case. An agreed approach to the establishment of market values may also help to ensure that advance payments are based on realistic estimates.

Another difficulty in practice is the assessment of severance and injurious affection. The need for doing so arises from the fact that acquiring authorities feel obliged to take no more land from claimants than they require, with fallback provisions that enable property owners who feel their land suffers material detriment to demand that all their property be purchased. Yet most claimants never purchased their properties in small bits and pieces, but rather as a whole. There is therefore a proposition to be made that acquiring authorities should expect to buy the entirety of any property from which they require land for their scheme. Equity would nevertheless demand that a claimant should have an absolute right to serve a counternotice to stipulate that only the required part should be taken.

This different approach could have several advantages. The overall task of valuation is made easier if as many claims for severance and injurious affection as possible are removed. It would also help to manage expectations in this area, with those feeling most adversely affected able to exercise their choice to move immediately, while those who do not feel so adversely affected could claim compensation – an expectation that would therefore have been informed by the original choice to stay or go. It is emphasised that any change of the type envisaged here would be on the understanding that the claimant retained the absolute right to require only that part of the property included in the confirmed order be purchased.

While it might be feared that this proposal would add substantially to the cost of acquisition, in the long run the land not required would of course be available for subsequent disposal, at a time when there may be a number of potential bidders who have remained in the area and are now looking to spend their compensation money on replacement plots.

This study found for instance one property that had been acquired in its 35ha entirety in 2003 for £430,000. Various disposals of parcels not required took place in 2017, raising £313,000. This meant that the acquiring authority had acquired the 13ha it required for a net cost of £117,000, or about £9,100/ha. The going rate for similar land acquired under this scheme was about £15,800/ha.

Looked at another way, the total realised by the acquiring authority was £514,800, representing £313,000 from land disposals, with the value of land retained at £9,100/ha amounting to roughly £201,800. For an outlay of £430,000 made 14 years previously, a gain of £84,800 has been achieved. This may be more practicable in some situations than others, and the ability to be flexible in discussions between the parties or the use of discretionary policies can all be effective in practice. The example here was a small farm, and the land and buildings continued to be put to a similar use, having also earned a rent since they were owned by the acquiring authority.

Third-party or contractor claims are another frequent bone of contention. Claimants who remain in a property from which part of the land has been taken can find these to be a source of considerable anxiety and vexation. Acquiring authorities deny responsibility on the grounds that they are not vicariously liable for the unauthorised actions of their contractors, while contractors themselves can prove elusive and evasive, and in extreme cases may even have declared bankruptcy. Carillion was one example encountered during this study.

It would be far simpler and more equitable if the general principles of vicarious liability were reversed in compulsory purchase so that acquiring authorities pick up the bill irrespective of the scope of the authority given to contractors. This would avoid the problem of the contractor going bankrupt, as Carillion did, and it should be easier for an acquiring authority to recover such losses from its contractor than for an individual claimant to do so.

Making acquiring authority valuers responsible for taking a lead in advising on eligibility for compensation may help with another problem that was identified in the survey responses, which also emerged from discussions with claimants: namely, the value of early, well-informed advice for claimants. A problem at this stage is that claimants are not certain of their entitlement to compensation, and they fear that they may be left with significant costs if they consult a solicitor or valuer.

One possible remedy for this would be that each project establishes a small fund from which to make small grants, as of right, to everybody who would be entitled to be notified of a compulsory purchase order. Although rough and ready, these grants could be of a fixed amount irrespective of interest. An allowance of £1,000–£2,000 per entitled party would add little to the cost of most projects, but could go a long way towards establishing good foundations for future dialogue. The DLUHC's recommendation of contributions to professional advice at an early stage deserves greater awareness and wider implementation.

6 Conclusions

The survey provides insights into aspects of compulsory purchase that have been lacking in previous dialogue and research on the topic. There are significant differences between the ways acquiring authority valuers and claimants' valuers view each other's behaviour and competence. Overall, there is also considerable scope to raise the quality of professional practice in the harder technical areas of compulsory purchase law and practice of valuation. More surprisingly, there is also scope to raise the game in softer skills such as timeliness, communication and helpfulness.

The good news is that one of the key ways to extend the capacity of the profession and raise standards is already in place: all of the concerns cited can be addressed through the continuing promotion and enforcement of *Surveyors advising in respect of compulsory purchase and statutory compensation*.

The fragmentary character of the compulsory purchase code itself is more a hindrance than a help to improved practice. The need for a comprehensive, modernised restatement of the code in one accessible document is now an even greater priority than when the Law Commissioners called for this in 2004. If modernising the legislation is beyond our means, then perhaps at least the idea of a more comprehensive overarching code of good practice, as mentioned, could become a priority.

6.1 Continuing the debate

The following further suggestions have been developed by the author and represent his views; they are presented here with the intention that they stimulate debate among stakeholders in the sector. They are presented in the order they emerged, by reference to the earlier material from which they are drawn.

1 A single coherent code, readily accessible by specialist surveyors, other infrastructure professionals and not least property owners and occupiers, is desirable. The Law Commission itself gave this a high priority in 2004. If this is not feasible, the focus could be shifted towards a comprehensive and officially endorsed code of good practice, which might include sanctions for unwarranted breaches (see section 5.1).

2 Acquiring authority valuers and other representatives should aim for the highest standards of timeliness, helpfulness and consistency. Effective communication should be at the heart of all their endeavours, in particular when unpalatable decisions must be conveyed. Acquiring authority valuers should also accept responsibility for explaining compensation entitlements and valuation approaches in a fair, objective and unbiased way (see Tables 10 and 11, and also section 5.4).

3 As outlined in the *Surveyors advising in respect of compulsory purchase and statutory compensation*, claimants' and authorities' valuers should ensure that their valuation

technical ability and their understanding of the broad framework of compulsory purchase matches the broad task at hand. They should also ensure that their approaches and dealings are in the main helpful and consistent. Both this and the previous recommendation would build on the examples of good practice identified earlier in this practice information, and would reflect areas where scope for improvement has been found (see Tables 10 and 11, and also section 5.4).

4 Clearer and more consistent guidance on discretionary blight could be formulated for all acquiring authorities. There is currently a hotchpotch ranging from no guidance at all, as is the case with most schemes, to some general guidance for highways formulated in the early 1990s, to the comprehensive suite of schemes operated by HS2 (see section 5.1).

5 An appropriate rate of interest for overdue compensation payments could be set and applied. The government has the power to do this but has been dragging its heels. An appropriate commercial rate of interest to represent the forgone value of delayed payments would act as a useful stimulus for acquiring authorities to pay promptly, and to restore credibility in the compensation code's even-handedness in its treatment of acquiring authorities and the dispossessed (see section 5.1).

6 A new code could rest on a general statement of a principle of equivalence. This might extend Lord Justice Scott's dictum that a claimant should be no worse off than if they had not lost their land, as far as this can be achieved financially. The aim would be to ensure that claimants should not be disadvantaged environmentally, economically or socially by the loss of their property, while accepting the difficulties that this may pose in practice. Therefore, guidance would be needed on the application of this wider test, which could be incorporated into a modernised and coherent restatement of the compulsory purchase code (see section 5.1).

7 ADR could be encouraged at all stages of the compulsory purchase process, to the extent that failure to participate meaningfully could lead to penalties and costs if unresolved disputes have to be taken through formal tribunal or other procedures (see section 5.2).

8 More could be done to identify and share good practice wherever possible. Mechanisms to enable this could be explored and strengthened (see section 5.3).

9 We could consider the appointment of a Commissioner of Compulsory Purchase who has the necessary expertise and authority to oversee good practice. Examples of the commissioner's responsibilities could include the registration of acquiring authorities, a power to sanction those who do not follow good practice guidelines and an obligation to act independently, while directly overseen by Parliament through the mechanism of an annual report and review. The commissioner may also oversee the continuing development of the compulsory purchase code and in particular a code of good practice for acquiring authorities, as well as a regular programme to review lessons to be learned from particular schemes (see section 5.3).

10 Schemes could be reviewed more fully after their completion, with independent inputs from appropriate specialists, to see what lessons can be learned and applied to new

schemes. There is a role for the proposed commissioner in overseeing these studies and providing guidance on their conduct. The intensity and frequency of such reviews would be a matter for ongoing consideration as more evidence from reviews became available (see section 5.3).

11 The surveying profession and in particular the establishments responsible for training and educating surveyors could review the place of compulsory purchase and compensation in the professional curriculum. The subject is conspicuous by its absence from a number of courses for surveyors and valuers (see section 5.4).

12 Valuers at acquiring authorities might be expected to formulate full and fair offers for the purchase of interests, rather than waiting for claims to arrive from claimants' valuers. This would be more positive and proactive, as well as more efficient where, for example, one valuer for an acquiring authority may be dealing with ten or more individual claimants' valuers (see section 5.4).

13 Where only part of a property is required, the starting point for acquisition might nevertheless be the purchase of the entire property. This could only be rebutted at the discretion of the owner, but it would help to manage expectations around severance and injurious affection, and it would remove the stress for owners who are concerned about living alongside public projects in progress or use. Given the sums that may be realised by subsequent disposals of surplus land, this may lead to overall savings in acquisition costs as well (see section 5.4).

14 The general legal principle of vicarious liability could be removed from compulsory purchase. Acquiring authorities would then take full responsibility for the behaviour of their contractors, no matter how egregious this may be. Such a move would bring a welcome discipline to the behaviour and management of contractors and their subcontractors, with any acquiring authority that fails to exercise proper control running the risk of being sanctioned by the proposed commissioner (see section 5.4).

15 Independent professional advice could be funded for all property owners and leaseholders at the earliest stages of the compulsory purchase process to ensure that they are fully informed and advised about to their position. Where it is already available, this should be more widely promoted. This would reduce the fears that arise from ignorance, doubt and uncertainty, and would provide a firmer basis for future relationships with the acquiring authority (see section 5.4).

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Appendix A: Further survey data

This appendix contains detailed survey results and analyses in addition to the information already presented in section 4. The rating scale for the following tables is provided in Table 8.

The following tables show the responses for each element. Each gives the overall distribution and score, as well as showing the responses provided by acquiring authorities and claimants. The former group of respondents are therefore commenting on their opinion of the claimant's representatives, and the claimants on the acquiring authority's representatives.

	Number	1	2	3	4	5	Mean
Acquiring authority responses	24	3	8	6	4	3	2.83
Claimant responses	56	6	6	11	19	14	3.52
Total	80	9	14	17	23	17	3.32

Table A1: Technical and legal understanding of the compulsory purchase process and the compensation code

	Number	1	2	3	4	5	Mean
Acquiring authority responses	24	2	4	13	4	1	2.92
Claimant responses	55	14	12	12	10	7	2.71
Total	79	16	16	25	14	8	2.76

Table A2: Timeliness

	Number	1	2	3	4	5	Mean
Acquiring authority responses	23	2	8	7	5	1	2.78
Claimant responses	55	11	8	18	10	8	2.93
Total	78	13	16	25	15	9	2.87

Table A3: Consistency

	Number	1	2	3	4	5	Mean
Acquiring authority responses	24	6	5	4	7	2	2.75
Claimant responses	56	14	6	14	14	8	2.93
Total	80	20	11	18	21	10	2.89

Table A4: Helpfulness

	Number	1	2	3	4	5	Mean
Acquiring authority responses	24	2	10	7	3	2	2.71
Claimant responses	55	7	3	16	20	9	3.38
Total	79	9	13	23	23	11	3.17

Table A5: Technical ability of valuers

	Number	1	2	3	4	5	Mean
Acquiring authority responses	24	2	4	10	7	1	3.04
Claimant responses	56	12	13	13	10	8	2.80
Total	80	14	17	23	17	9	2.88

Table A6: Communication

A.1 Chi-squared tests for significant differences between group responses

The following tables present the results for chi-squared tests where there was a significant difference between the responses from the two groups. Significance for this purpose was taken as a *p* value of no more than 0.05; in other words, the probability of the difference being significant is more than 95%.

Technical and legal understanding of compulsory purchase process and compensation code		Less than satisfactory (rating 1–2)	Satisfactory (rating 3)	More than satisfactory (rating 4–5)	Totals
Observed totals		23	17	40	80
Acquiring authority view of claimants	Observed	11	6	7	24
	Expected	7	5	12	24
	Difference	4	1	–5	–
Claimant view of acquiring authorities	Observed	12	11	33	56
	Expected	16	12	28	56
	Difference	–4	–1	5	–

Table A7: Comparison of acquiring authority with claimant views on technical and legal understanding of the compulsory purchase process and the compensation code; $p = 0.035$. Note: Expected values have been rounded to nearest whole number

Timeliness		Less than satisfactory (rating 1–2)	Satisfactory (rating 3)	More than satisfactory (rating 4–5)	Totals
Observed totals		32	25	22	79
Acquiring authority view of claimants	Observed	6	13	5	24
	Expected	10	8	7	25
	Difference	–4	5	–2	–
Claimant view of acquiring authorities	Observed	26	12	17	55
	Expected	22	17	15	54
	Difference	4	–5	2	–

Table A8: Comparison of acquiring authority with claimant views on timeliness; $p = 0.017$. Note: Expected values have been rounded to nearest whole number

Valuers' technical ability		Less than satisfactory (rating 1–2)	Satisfactory (rating 3)	More than satisfactory (rating 4–5)	Totals
Observed totals		22	23	34	79
Acquiring authority view of claimants	Observed	12	7	5	24
	Expected	7	7	10	24
	Difference	5	0	–5	–
Claimant view of acquiring authorities	Observed	10	16	29	55
	Expected	15	16	24	55
	Difference	–5	0	5	–

Table A9: Comparison of acquiring authority with claimant views on valuers' technical ability; $p = 0.007$. Note: Expected values have been rounded to nearest whole number

The score for consistency was $p = 0.738$ and for helpfulness $p = 0.614$. At $p = 0.16$, the value for communication might be regarded as significant in some social science work involving larger samples than those available here.

Appendix B: Mandatory professional behaviour and competence requirements

Table B1 contains mandatory professional behaviour and competency requirements for compulsory purchase and statutory compensation matters, taken from the current edition of Surveyors advising in respect of compulsory purchase and statutory compensation.

Application and principal message	
1	You **must** be able to demonstrate a proper understanding of the statutes, statutory instruments, case law and government guidance in respect of the compulsory purchase code.
2	You **must** ensure you are able to discharge your duties to the required standard and consider all matters material to the instruction.
3	You **must** be aware of the changes in responsibility that will occur should your duties later involve acting as an expert witness, and how that may affect the carrying out of work prior to that change.
4	Where you accept instructions to provide advice in respect of the compulsory purchase code, as soon as you become aware that judicial or quasi-judicial proceedings seem likely you **must** advise your client in writing of your ability or otherwise to comply with the [current edition of] Surveyors acting as expert witnesses.
Duty in providing advice	
5	Where information material to the advice being given is not available, or is not evidenced or corroborated to your satisfaction, you **must** clearly state this to your client and advise what assumptions have been made.
6	You **must** endeavour to establish the material information and collect appropriate evidence during the period of your instruction.
7	You **must** provide your client with balanced and professional advice that seeks to secure an equitable outcome for your client consistent with the requirement to agree fair and reasonable compensation, in accordance with the compulsory purchase code, for a reasonable cost and within a reasonable timescale.
8	On commencement of an instruction, you **must** provide your client with clear advice as to the basis on which, in your opinion relying on the information available, compensation is likely to be assessed in accordance with the compulsory purchase code. If your client is not prepared to proceed on the basis of what you consider to be a reasonable approach to the assessment of compensation, this **must** be identified and resolved.

9	If you identify a material inaccuracy or change your view of a matter material to advice given, you **must** notify those instructing you without delay.
10	Clients (on either side) can, and do, seek to influence surveyors. You **must** demonstrate your professionalism by maintaining a reasonable and balanced approach.
Acceptance of, and changes to, instructions	
11	You **must not** accept instructions to provide advice in matters unless you have the: (a) requisite competence appropriate for the assignment and (b) resources to complete the assignment within the timescale and to the standard required.
12	You **must**, prior to accepting instructions: (a) advise those instructing you in writing that [the current edition of Surveyors advising in respect of compulsory purchase and statutory compensation] will apply, and offer to supply a copy [...] on request (b) ensure there is a written record, held by you, as to the matters on which advice is required, whether such a record is prepared on your initiative or on that of those instructing (c) confirm your terms of engagement to your client and (d) be satisfied no conflict of interest arises and take account of RICS' professional [standards] and [practice information] in respect of conflicts of interest. You **must** report any actual or potential conflict of interest to those instructing you as soon as it arises or becomes apparent. This applies both before and after instructions have been accepted.
13	If your instructions are changed or supplemented, you **must** ensure there is a written record of this held as required in 12(b).
Inspection	
14	Where an inspection of any property is required, it **must** always be carried out to the extent necessary to produce professionally competent advice having regard to its purpose and the circumstances of the case.
15	A suitable record of the size, configuration, relevant features and condition of the property, which is representative of the circumstances at the compensation valuation date, **must** be prepared and where possible agreed with the other party.
Reports	
16	In reporting your advice, you **must** consider all matters material to the instruction.
Fees	
17	Where a basis for calculating fees is proposed, the initiative will usually come from the claimant's surveyor, having received instructions from a claimant. You **must** demonstrate the basis for fees and disbursements is reasonable in relation to the complexity of the claim.

18	When advising claimants, you **must** ensure in all cases the basis on which you propose to charge fees, the arrangements for payment, and any subsequent changes are agreed with your client in writing. This agreement **must** be presented promptly to the acquiring authority.
19	You **must** make clear to your clients, at the earliest opportunity and before time is incurred, that they bear ultimate liability for your fees on the agreed fee basis. You **must** advise your clients that they will be liable for any fees that are not borne by the acquiring authority.
20	You **must** be clear with your clients and advise them when time is to be spent on matters that are not normally borne by the acquiring authority, and do so before that time is incurred.

Table B1: Mandatory professional behaviour and competence requirements expected of surveyors when advising in respect of compulsory purchase and statutory compensation matters. Source: based on the current edition of *Surveyors advising in respect of compulsory purchase and statutory compensation*

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