

**Subject:** PERSONAL COMMENTS TO DISCUSSION PAPER ON COMPULSORY PURCHASE ( PAPER 159 ) ; QUESTIONS 158 & 159-- ( ADR )

## **1. ADVANTAGES & DISADVANTAGES OF ADR v LTS**

Some of these are dealt with in the CPA response to Q.144 ; the length of time for LTS cases, high cost, the engagement of Counsel, and the risk of the claimant losing and resultant cost. There is the perception it is a potentially intimidating forum even prior to the case getting there ; as a result many claimants will not be prepared to go down that route and simply settle. Accordingly justice is denied. I spoke at our first CPA Scottish Conference on the subject of ‘Access to Justice ‘ in conjunction with Lord Dervaird and Andrew Mackenzie, CEO of the Scottish Arbitration Centre.

My own view is that Arbitration is a better alternative route, with a single Arbitrator appointed by the RICS or the Scottish Arbitration Centre. In saying that I still consider that major cases should still be dealt with by the LTS as an Upper Tribunal. An Arbitrator as the ‘Lower Tribunal ‘ could conduct less major cases aided by the Arb. ( S ) Act 2010. The procedure would be speedy, much less expensive, and more ‘user friendly’.

I do not consider Mediation appropriate. Nor Adjudication. Expert Determination has often been suggested, but the Arbitration ( S ) Act 2010 does not apply to Experts and there is no right of appeal. Using Arbitration is easily the best route, with appeals to the Lands Tribunal a possibility worthy of consideration.

## **2. EVIDENCE OF COSTS IN ADR v LTS**

Clearly the evidence of Costs of ADR in Compensation Cases is not readily available, since these are exclusively dealt by LTS. My experience is normally in the field of Rent Review Arbitration, though often the Rentals themselves can be sizeable, over £1m pa ; occasionally over £2m pa.

The Costs of dealing with an Arbitration at those levels could involve an Arbitrator’s Fee of say £25k ; normally Hearings are not required, but when they are, many involve only the Surveyor for each side ( adopting the role of Expert Witness or Surveyor Advocate ). Rarely is legal input required, and very very rarely Counsel. The whole procedure is much less formal before 1 Arbitrator,( normally documents-only procedure), than before the Lands Tribunal. The very phrase ‘Lands Tribunal for Scotland’ is sufficient to strike fear into most claimants and hence the tendency to settle. This is a little unjust since I know certain Members of LTS well—they are highly experienced and carry out a first class role ; but LTS better suited to major cases only.

Indeed if some of the other responsibilities are transferred to the LTS as suggested in the Consultation Paper, then that would sit well with their role as an Upper Tribunal and allow the run of the mill cases to be allocated to separate Arbitrators.

## **CLOSING COMMENTS**

**I have kept my comments succinct and hope they are of assistance. I have already attended 2 sessions at your offices over the past year or two, and perfectly happy to attend again if it would assist.**

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