

**LANDS TRIBUNAL FOR NORTHERN IRELAND**  
**LANDS TRIBUNAL & COMPENSATION ACT (NORTHERN IRELAND) 1964**  
**LOCAL GOVERNMENT ACT (NORTHERN IRELAND) 1972**  
**LAND ACQUISITION AND COMPENSATION (NORTHERN IRELAND) ORDER 1973**

**IN THE MATTER OF A REFERENCE**

**R/15/2005**

**BETWEEN**

**SEAN TREACY – CLAIMANT**

**AND**

**DOWN DISTRICT COUNCIL – RESPONDENT**

**Re: Lands at Killough Port and Harbour, Killough, Co Down**

**Lands Tribunal - Mr M R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAVI**

**Background**

1. The Claimant seeks compensation for the compulsory purchase by vesting, in 1982, of land at Killough Harbour for the purposes of repairing and maintaining the pier. In addition to issues in regard to title and other matters, there is an issue as to whether the claim for compensation is statute barred by reason of Article 4 of the Limitation (NI) Order 1989 which provides:  
“Subject to Articles 5, 7 and 9, the following actions may not be brought after the expiration of six years from the date on which the cause of action accrued-  
...  
(d) an action to recover any sum recoverable by virtue of any statutory provision ... “
2. The parties have now agreed that the limitation point be dealt with as a preliminary issue.

**Procedure**

3. Mr Gareth Purvis BL instructed by Jones & Co, solicitors appeared for the Claimant. Mr Mark T Horner QC instructed by the Legal Services Department of Belfast City Council, appeared for the Respondent.
4. The parties prepared a short Statement of Agreed or Assumed Facts. At an oral Hearing the Tribunal also received evidence that there was an attempt to settle the matter in 2007.
5. Some time after the oral Hearing, in connection with an entirely different matter, the Tribunal's attention was drawn to one of its previous decisions in which limitation was one of the issues

(S D Bell & Co Ltd v The Department of the Environment for Northern Ireland [1988] R/1/1987).

The Tribunal referred the parties to the decision and received a further written submission from the Respondent.

### **Position of the Parties**

6. The parties accepted that Article 4 of the Limitation (NI) Order 1989 is the same as Section 9(1) of the Limitation Act 1980, the English equivalent to the Northern Ireland Statute.
7. In his skeleton argument Mr Purvis BL relied on the Claimant's date of knowledge of the Vesting Order. But, correctly in the view of the Tribunal, he did not pursue the point.
8. Mr Horner QC suggested that the decision in S D Bell & Co Ltd [1988] is wrong and the limitation period runs from the date the Vesting Order became operative, not from when the amount of the claim has been quantified by the Tribunal, or otherwise.
9. It was not suggested that the 6-year limitation period in these circumstances was of itself a breach of the European Convention on Human Rights. The Convention recognises the need for reasonable time-limits on the pursuit of claims. See e.g. Bhattacharjee v Blackburn with Darwen Borough Council [2002] RVR 55 LT and Stubbings v United Kingdom (1966) 23 EHRR 213.
10. Mr Purvis BL suggested that there has been a waiver by the Respondent and to allow them now to take the limitation point would be inequitable. Mr Horner QC suggested that there had been no waiver and there was nothing in this case that would make it inequitable for the Respondent to do so.

### **Agreed or Assumed Facts**

11. The Statement of Agreed or Assumed Facts included the following:
  - In 1982/1983 the District Valuer acting on behalf of the Respondents attempted but failed to contact the Claimant;
  - On 28<sup>th</sup> February 2005 the Claimant made a reference to the Lands Tribunal through his then solicitor;
  - On 14<sup>th</sup> March 2005 the Lands Tribunal put the Respondent on notice that a claim had been lodged;
  - On 6<sup>th</sup> April 2005 the matter was first mentioned before the Tribunal and the limitation issue was raised:

“Mark Horner QC ... also confirmed that the issue of time limitation for submission of a claim for compensation would have to be explored”;

- There was subsequent contact between the parties' representatives both in connection with production of documents and otherwise;
- The case was listed for hearing on both limitation and other issues on 22<sup>nd</sup> September 2006 but did not proceed; and
- On 17<sup>th</sup> October 2006 and 2<sup>nd</sup> August 2007 correspondence from the Respondent's solicitors made clear that limitation was a live issue.

12. At the Hearing the Tribunal also received evidence that there was contact between the representatives of the parties in an attempt to settle the matter in 2007.

## **Discussion**

### ***Limitation***

13. The cases in England and Wales are helpfully discussed in Denyer-Green: *Compulsory Purchase and Compensation* 8<sup>th</sup> Ed 2005; *The Encyclopaedia of Compulsory Purchase and Compensation* (Looseleaf) and/or McGee: *Limitation Periods*, 5<sup>th</sup> Ed 2006.

14. A Vesting Order becomes operative one month after publication of notice that it has been made or, in the case of registered land only, the date on which the order is lodged with the Registrar of Titles, whichever is the later. See Schedule 6 to the Local Government Act (NI) 1972.

15. In S D Bell & Co Ltd [1988] the Lands Tribunal concluded:

“Under the Statute of Limitations (Northern Ireland) 1958, Section 8 an action to recover any sum recoverable by virtue of any enactment is barred after the expiration of six years from the date on which the cause of action accrued.

But a sum of compensation is not recoverable until the amount is fixed either by agreement between the parties or by an award of the Lands Tribunal in default of agreement. The English decision of Turner v Midland Railway Co [1911] 1 KB 832 is clear authority.”

16. In Turner v Midland Railway Co [1911] Ridley J. had said

“Mr Danckwerts has not convinced me that the Statute of Limitations applicable to this case is the 3 & 4 Will. 4, c 42, under which the period of limitation would be twenty years instead of six. I think that we ought to hold the case to fall within the statute of James I. The effect of work being done under the authority of a statute is that any cause of action in respect of damage caused by the execution of the work is prevented from accruing, the work being made lawful. And even though the statute may incorporate s. 68 of the Lands Clauses Act, that will give no cause of action in respect of the damage. That section gives, not a cause of action for a wrong, but compensation for damage by a lawful act. At the date, therefore,

of the execution of the work, and down to the time of the arbitrator's award, there is no cause of action at all to which the Statute of Limitations can apply. But on the making of the award a cause of action, in my opinion, for the first time arises. The action is founded on the award and on the award alone, and it is from the date of the award that the statute runs."

17. Avory J. said

"I am of the same opinion. I agree that there was no cause of action till the award was made. The statute which empowered the defendants to do the work did not give rise to any cause of action. The defendants in doing the work did something which they were authorized to do. All that s. 68 gave was a right to compensation, which is a very different thing from a cause of action. But until the amount of that compensation was ascertained by the award no action could be brought. With regard to the period of limitation Mr Danckwerts says that the period applicable is twenty years. With that I cannot agree."

18. Accordingly, when the decision was given in S D Bell & Co Ltd [1988] no contrary argument was put forward to the submission on their behalf that the cause of action did not accrue until the sum of compensation was quantified; and there was a general belief that, in practice, there were no time limits in respect of a reference to the Tribunal in compulsory compensation cases.

19. Some time after the S D Bell & Co Ltd [1988] decision, in Hillingdon London Borough Council v ARC Ltd (1998) 1 WLR 174, at first instance, Deputy Judge Stanley Burnton QC considered Turner v Midland Railway Co [1911]:

"It is widely assumed on the basis of the decision of the Divisional Court in Turner v Midland Railway Co (1911) 1 KB 832, that no limitation period is applicable until the amount of compensation has been agreed or determined."

20. He questioned that assumption and analysed the various authorities in very considerable detail. He rejected the proposition that Turner v Midland Railway Co created a binding authority:

"Given the concession by the appellant that the appeal had to fail, I am not sure that the judgements in *Turner's* case are binding authority. But, in any event, it is impossible to understand them without appreciating the provisions of the Statute of Limitations then in force. Section 3 of the Statute of Limitations 1623 imposed a limitation period of six years for, among other things, "all actions of trespass ...all actions ... upon the case ... all actions of debt grounded upon any lending or contract without specialty." Once the court had decided that the plaintiff's claim did not come within the Civil Procedure Act 1833, debt was the only head under which her cause of action could come. There was no equivalent of section 9 of the Act of 1980. Compensation for a lawful act, as Ridley J. put it, was not a

cause of action for the purposes of the Statute of 1623. As Avory J. put it: “All that section 68 gave was a right to compensation, which is a very different thing from a cause of action.” The causes of action to which Avory J. was referring were those set out in the Statute of Limitations 1623. A debt is necessarily a liquidated sum. It followed that there could be no completed cause of action, among those set out in the Statute of Limitations 1623, until the compensation was quantified.

“However, a right to compensation may be a right to a “sum recoverable by virtue of [an] enactment” within the meaning of section 9 of the Limitation Act 1980 and, if it is, there is a cause of action for the purposes of section 9 of the Act of 1980. *Turner’s* case cannot be authority on this question, since there was no such provision when it was decided.”

21. In regard to when the Defendant’s cause of action accrued or will accrue, he concluded:

“It is true, of course, that compensation is not quantified until agreed or awarded. However, many of causes of action accrue before the Plaintiff is able to quantify his claim, and before his specific figure is agreed or determined for it. The authorities for which I have referred make it clear that a “sum recoverable by virtue of any enactment” need not be liquidated or quantified.”

22. The Court of Appeal in England heard the appeal ([1998] 3 WLR 754) in March 1998. The Court determined that:

“a cause of action could accrue in respect of a right to payment of a sum pursuant to a statutory obligation even though one of the elements of the claim or cause of action might have to be determined otherwise than by a Court of Law; that the right to compensation for the compulsory purchase of an interest in land which arose at the date of entry by the acquiring authority was an immediate right which, in the absence of agreement, could only be enforced at the suit of the Claimant by initiating proceedings for the quantification of the sum due by the Lands Tribunal; such exercise of quantification was in reality an action to recover a sum of money, namely the amount of the compensation due to be assessed by the Lands Tribunal, and as such was subject to the limitation period laid down in Section 9 of the Limitation Act 1980; and that, accordingly, the Defendant’s claim having been submitted to the Lands Tribunal more than six years after the Council’s entry on the land, was statute barred.”

23. Potter LJ at paragraph 30 said:

“Thus it seems clear that the cause of action may accrue in respect of a right to payment of a sum pursuant to a statutory obligation even though one of the elements of the claim or

cause of action may, if disputed, have to be determined by someone other than a Court of Law.”

24. At paragraph 34 he said:

“In substance and effect the proceedings do not differ in any essential manner from any other kind of proceedings in which a claim is made on the party liable, liability is admitted or otherwise established, and proceedings follow when quantum cannot be agreed. Thus, the right or cause of action which arises on entry by the authority may properly be characterised as a right to be paid such compensation as may be agreed or assessed by the Lands Tribunal. To treat the date of agreement or assessment as definitive of the point at which the Claimant’s cause of action arises seems to me to revive by the back door a distinction between debt, damages and other cause of action for statutory sums which Section 2 of the Limitation Act 1939 and Section 9 of the Act of 1980 were intended to eliminate for the purposes of the law of limitation.”

25. He then went on to say that the trend and weight of authority to which he had referred was to be preferred to the observations of the Divisional Court in Turner v Midland Railway Co so far as those observations appear to lead to an opposite conclusion.

26. So, the Court of Appeal in England approved the conclusion that a cause of action did accrue to the Applicant before the sum of compensation was quantified or ascertained and, since then, the Lands Tribunal in England and Wales proceeds on the basis that the cause of action accrues before damages are ascertained or quantified.

27. These authorities are not binding on the Lands Tribunal in Northern Ireland but they are highly persuasive.

28. At the time of S D Bell & Co Ltd [1988] the Lands Tribunal in Northern Ireland did not have the benefit of the later judgement in Hillingdon LBC v ARC Ltd (1998), nor of the subsequent judgement of the Court of Appeal. The Tribunal proceeded on the basis of Turner v Midland Railway Co (1911), which was perceived then to be the correct view by practitioners.

29. The Tribunal is conscious of the importance of consistency in its decisions. However, it now has the advantage of considering the decision in Hillingdon LBC v ARC Ltd. The reasoning is consistent with policy, namely to prevent stale claims, it has been approved by the Court of Appeal and is unaffected by the Human Rights Act (see Bhattacharjee v Blackburn with Darwen BC).

30. Article 2 of the Limitation (NI) Order 1989 provides that the word 'action' includes any proceeding in a court established by law. The Lands Tribunal is such a court by virtue of Section 1 of the Lands Tribunal & Compensation Act (NI) 1964.
31. The Tribunal concludes that this claim is an action to recover a sum recoverable by virtue of a statutory provision and so the six year limitation period runs from the date upon which the right to compensation (not the right to any particular amount of compensation) accrued, i.e when the Vesting Order became operative.
32. In the present case the Applicant's land was vested in July 1982. Any claim now for compensation is statute barred by reason of Article 4 of the Limitation (NI) Order 1989.

### ***Estoppel or Waiver***

33. The statutory time-limit is procedural and so, after the time-limit, the Tribunal will hear a reference where estoppel or waiver applies. See Co-operative Wholesale Society Ltd v Chester-le-Street District Council [1998] CA 3 EGLR 11.
34. Compulsory purchase compensation negotiations can be lengthy, sometimes for good reasons. The statutory time-limit cannot be varied by the Tribunal. But it may be waived or extended by agreement, or parties may agree the relevance of the limit, or agree to extend it in case negotiations break down. To avoid unnecessary protective References before disputes crystallise, the Tribunal would encourage such agreements. But the Tribunal will always be reluctant to conclude that limitation is not available and will require clear evidence to that effect – any agreement must be clear and unequivocal, and any doubts held by a Claimant that the acquiring authority might rely on limitation should be carefully clarified. See Hillingdon London Borough Council v ARC Ltd (No. 2) [2000] 3 EGLR 97 and Sita (formerly Elenezer Mears (Sand Producers) Ltd) v Surrey County Council [2001] LT RVR 56.
35. There was no waiver by election. Firstly, there was no evidence to suggest that the parties had entered into an agreement under which the limitation defence was or could be waived. Secondly, there was no evidence to suggest that the parties had actually considered limitation and reached a common assumption that it did not apply. Instead once the case was referred to the Tribunal the Respondent promptly and expressly raised the limitation issue to both the Claimant and the Tribunal. That is the time by which the point must be taken and clearly there was no election to waive limitation. This claim was entirely stale and reliance on limitation is wholly consistent with the policy behind the provision. See Sita [2001] and Williams v Blaenau Gwent Borough Council (No. 2) [1999] LT 2 EGLR 195.

36. Before the time-limit there had been no negotiations. After the time-limit and before the Reference was made there had been no negotiations.
37. After the Reference there were negotiations. Mr Purvis BL suggested that as the Respondent had entered into negotiations some 23 years after the Vesting Order and some 2 years after the reference to the Lands Tribunal the Claimant could reasonably assume that the Respondent had relinquished the limitation point; the Respondent had waived its right to raise it and was estopped from doing so. The Tribunal does not agree. Attempts to resolve matters are always encouraged by the Tribunal and should not be held against a party attempting to do so. Long delay by a Claimant certainly should not be held against a Respondent. Negotiations alone do not preclude reliance on limitation and in this case, the Respondent had promptly indicated that it may rely on limitation. When their differences could not be resolved the Respondent triggered actual reliance on limitation. There had been no promise or assurance made to the Claimant that the limitation point would not be pursued if a settlement was not achieved; the Respondent had not changed its position that it may rely on the time-limit. See Hillingdon (No.2) [2000]; Llanelec Precision Engineering Company Ltd v Neath Port Talbot County Borough Council [2001] RVR 36; and Bridgestart (2004) CA.
38. Mr Horner QC suggested that there was nothing in this case that would make it inequitable for the Respondent to be allowed to rely on limitation. The Tribunal agrees.
39. The Tribunal concludes that the facts do not establish an agreement, or conduct, sufficient to amount to estoppel or waiver. The Reference is dismissed.

## **ORDERS ACCORDINGLY**

**19<sup>th</sup> August 2009**

**Michael R Curry FRICS IRRV MCI.Arb Hon.Dip.Rating Hon.FIAMI**

**LANDS TRIBUNAL FOR NORTHERN IRELAND**

### **Appearances:**

**Claimant: Gareth Purvis BL instructed by Jones & Co, Solicitors.**

**Respondent: Mark T Horner QC instructed by the Legal Services Department of Belfast City Council.**