**Submission on Class 3 Compensation Practice Note**

1. Should matters in the LVC List be divided into two streams (one estimated to be less complex and requiring less time and procedural complication compared to the other)?

This is a very worthwhile proposal. Currently the one size fits all approach results in the more complex stream not fitting into the current template directions.

If there was to be such a division, what should be the prima facie criteria to be applied to determine to which stream a particular matter should be assigned?

I suggest Less Complex Stream include any matter which meets one of the following criteria:

* Where there has been a whole acquisition of a residential property; or
* Where there has been a partial acquisition of a residential property; or
* Where the VG determination is less than $2m.
1. If there were to be two streams, should determination of the appropriate stream assigned be agreed between the parties prior to the first return date and reviewed (or determined if there was no agreement between the parties) by the LVC Judge at the first directions hearing?

Yes.

1. If there were to be two streams, how soon after the first return date would it be appropriate to schedule a conciliation conference for less complex matters?

6 weeks is suggested as an appropriate time period, given the suggestion below that formal expert reports need not be exchanged.

1. If there were to be two streams, would it be sufficient to mandate, for the less complex matters that the documentation for the conciliation conference ordinarily be confined to position papers exchanged by the parties prior to the conciliation conference?

Yes.

1. If the documentation is so confined, should there be an appendix to the Practice Direction providing guidance as to length, structure and content of such position papers (including, for example, requiring the parties’ valuers to deal with no more than what they regarded as their three best comparable sales)?

Yes. Position papers need to strike a balance between enough detail to understand the other's position, but without being exhaustive and a mini valuation. I would suggest they be no more than 5 pages in length. In addition, no more than 5 comparable sale should be provided.

1. If there were to be two streams, would the present standard directions timetable remain appropriate or should it be changed:
	* to specify that the conciliation/mediation conference should happen at a point in the timetable earlier than the present 16 weeks after the first directions hearing as contemplated by (3)?

For the less complex stream, the standard directions should be amended to simplify the process and remove the requirement for exchange of expert evidence and joint reports prior to conciliation/settlement conference. For the complex stream, subject to comments below, the current standard directions also need to be amended to incorporate case management and other matters.

* + to require the parties to attend the first directions hearing prepared to discuss with the LVC Judge the expected length of the hearing if the matter does not settle, with a view to taking hearing dates at that time, rather than waiting until the second directions hearing?

The length of the trial if the matter does not settle may not always be reliably known by the first directions hearing. This is because no evidence will have been prepared and the issues in dispute will not have been fully identified. It is suggested that hearing dates be settled at the second directions hearing to avoid having to adjust hearing dates and times. Also, the s34 conference will assist in clarifying how long the trial may take and so the parties will be able to more reliably estimate the length of the hearing for both streams.

1. If the timing of the settlement/conciliation conference is brought forward to a point earlier in the timetable in Schedule A, should it be mandated that the matter return to the LVC List the Friday following an unsuccessful s 34 conference?

 Yes, this is an excellent suggestion.

1. The current Practice Note does not specify that the parties should settle and file an agreed bundle of documents. Is it appropriate to incorporate such a requirement in the timetable and, if so, at what point?

Perhaps at the pre-hearing mention, or if that is dispensed with, 7 days before the hearing.

1. The current Practice Note specifies that the Applicant’s lay evidence is to be filed and served within one week of the First Directions hearing and that the Respondent’s lay evidence in reply be filed and served by the end of the following week (Schedule A(1) and (2)). Does this remain appropriate timing and, if not, what alteration should be made to the timetable in Schedule A?

The current timing is not really practical. It is suggested that for the less complex stream, 14 days be provided for the respondent and another 14 days for the applicant. For the complex stream, it is suggested 4 weeks for the respondent and 4 more weeks for the applicant.

1. For matters that are to be significantly contested, is there a potential role for case management by the trial judge at a time earlier than the presently scheduled pre-trial mention?  If so, should this be in lieu of, or in addition to, the pre-trial mention?

It is suggested that for the complex stream, case management should be the norm rather than the exception (subject to this not imposing an onerous workload for the Court). Perhaps case management should be considered at the second directions hearing after the unsuccessful s34. Parties may wish to opt out of case management but should be required to explain to the court why they prefer this option as why it will promote just, quick and cheap resolution.

1. Does a pre-trial mention remain necessary or, for example, could the provision of the various documents presently provided at the pre-trial mention be dealt with by the requirement to file and serve them at a specified time?

For the less complex stream, it could be dispensed with and replace by a requirement to file and serve the documents by specified times.

1. Would there be utility in the respondent providing a short statement of those matters respondent proposes should be uncontested for the trial and, if so, what would be the appropriate timing for such a document?

Points of claim and defence should already deal with what is agreed between the parties.

1. Should there be a mandated form for a joint table of s 59(1)(f) claims setting out the amounts claimed, the basis for each and, if disputed, the reasons for rejecting the item?

A table that amalgamates the schedule of disturbance costs of each party is worthwhile. The applicant should prepare the table, complete their section and provide to the respondent for it to complete and filing with the Court.

1. When should the necessity for and scope of a site and comparable sales (and any other relevant issues) inspection be identified?

7 days prior to the hearing.

1. What other changes might be considered to the Class 3 Compensation Claims Practice Note?

Clause 16(a) appears to be of little utility. Either this should be deleted or the timing for this requirement be deferred until the exchange of position papers ahead of the section 34 conference.  The VG plays no role in the proceedings and an acquiring authority is not permitted to use the VG's valuers in litigation. Accordingly, an acquiring authority cannot adopt or "accept" the Valuer General's position unless its valuer completely agrees with the VGs valuation. As the valuation position of the acquiring authority will not be known until inquiries are made, the default position is typically a negative. Thus the requirement in clause 16(a) is not aiding the just, quick and cheap resolution of the matter.

Clause 34 may need some further consideration.  Avoiding slippage is critically important, but an affidavit does impose considerable cost. Perhaps the party in breach or the legal practitioner for that party should be required to provide a document to the LVC List Judge which explains the reasons for the slippage and be ready to answer questions.

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