

TRANSPORT AND WORKS ACT 1992

PUBLIC INQUIRIES AND HEARINGS

COSTS AWARDS

A GUIDE FOR APPLICANTS AND OBJECTORS

Department for Transport

December 2007

Important note: This guidance gives advice only and has no legal force. It is intended mainly for applicants or objectors who are not professionally represented. A fuller statement of the Secretary of State's policy on awards of costs is given in the Department of Transport Circular 3/94 on "Awards of Costs in Applications Proceedings under Section 6 of the Transport and Works Act 1992", issued in August 1994 and available from the Stationery Office. That Circular provides further advice for those who, after reading this pamphlet, think they may wish to apply for their costs, or may be at risk of having costs awarded against them.

INTRODUCTION

This pamphlet has been prepared by the Department for Transport in respect of applications made to the Secretary of State under section 6 of the Transport and Works Act 1992 ("TWA" or "the Act"). It explains how one party in the TWA process may have to pay another party's costs in cases where an inquiry or hearing is held. The guidance also applies where a TWA application is to be decided by Welsh Assembly Government.

The pamphlet is relevant both to those wishing to apply for an order under section 6 of the Act, and to those wishing to make representations about such an application.

Parties to inquiries or hearings held into TWA applications are normally expected to meet their own expenses. But the applicants or any other parties to the application (such as objectors) can apply for costs if they consider that any party has behaved unreasonably and has caused expenses to be incurred unnecessarily as a result. Cases where an inquiry or hearing has to be cancelled because an application or objection is withdrawn are also covered by this guidance.

This pamphlet explains how the question of costs can arise, the procedures for applying for costs, and what considerations are taken into account in deciding whether to make an award.

The purpose of costs awards is to introduce a proper sense of discipline in the conduct of all parties involved in the TWA process. The availability of such awards is not intended to deter persons from giving evidence to an inquiry or hearing, nor is it intended as a punishment to those exercising their legitimate rights. Rather it is to ensure that parties behave in a reasonable way that avoids putting the applicant, who has to pay for the inquiry or hearing, to unnecessary expense. Equally, applicants must themselves also act reasonably.

In this guidance, the "applicant" means the person making the "TWA application" (i.e. an application made under section 6 of the Act, for orders relating to transport systems, inland waterways and works interfering with rights of navigation); "statutory objectors" are those persons with a statutory right to be heard, as identified in section 11(4) of the Act (essentially local authorities for areas in which works are proposed to be carried out under the order; and persons affected by proposed compulsory acquisition powers); and "non-statutory objectors" are interested parties not falling within section 11(4) of the Act but who have obtained a right to be heard by serving

an outline statement under rule 6 or a statement of case under rule 7 of the TWA Inquiries Procedure Rules (IPR) or by serving a pre-hearing statement. The "Orders Unit" is the TWA Branch in the Department for Transport which is responsible for processing TWA order applications for guided transport and certain other types of scheme. Its address is Zone 9/09, Southside, 105 Victoria Street, London SW1E 6DT.

Please note that not all TWA order applications are decided by the Secretary of State for Transport, although in some of these cases the Orders Unit handles the processing stage of order applications on behalf of the other Department or on behalf of Welsh Assembly Government. In all cases applications for an award of costs will be handled and decided by the Department (or Welsh Assembly Government) responsible for deciding the TWA order application. If in doubt about who is handling a particular case, please contact the Orders Unit in the first instance.

Q.1 Can costs be awarded only where a TWA application proceeds by a public local inquiry or hearing?

Generally yes. There is no provision for applications for costs to be made where a TWA application proceeds by written representations procedure. However, costs may be awarded where an arranged inquiry or hearing does not proceed due to unreasonable behaviour by one of the parties to the proceedings.

Q.2 What is "unreasonable" behaviour?

"Unreasonable" behaviour can include the way in which one party conducts his or her part in the proceedings, although due allowance will be made for persons who are unfamiliar with the statutory procedures and are not professionally represented. Examples of unreasonable behaviour are:

- deliberately uncooperative behaviour, such as late submission of evidence, which causes an inquiry or hearing to be adjourned or unnecessarily prolonged;
- failure, without good reason, to attend or be represented at an arranged inquiry or hearing.

Other examples of unreasonable behaviour which may justify an award of costs are given in DOT Circular 3/94.

Q.3 Who can apply for costs?

Applicants, objectors and other parties to TWA application proceedings normally meet their own expenses associated with an inquiry or hearing, although the applicant additionally is expected to meet the administrative costs of the proceedings (including the costs of the Inspector and the venue). However, any party can apply for costs if they consider another party has behaved unreasonably.

Q.4 Are statutory and non-statutory objectors equally at risk of an award of costs against them; and equally entitled to an award of costs in their favour?

Both types of objector are equally at risk of an award of costs against them if other parties incur abortive expense as a direct result of their unreasonable behaviour. Equally, their eligibility for an award of costs in their favour as a result of such behaviour by the applicant is the same.

Statutory objectors whose land or rights in land would be affected by compulsory acquisition powers sought in a TWA application, have an additional entitlement to a costs award if the application for such powers is wholly or partially unsuccessful. Annex 5 to DOT circular 3/94 gives further details.

Q.5 Can costs be awarded against objectors simply for exercising their right to be heard?

No. Costs will not be awarded simply because an objector entitled to be heard has sought such an opportunity. Nor will there be any penalty for requesting a public inquiry instead of an informal hearing.

Q.6 Can parties have costs awarded against them even if they do not ask for an inquiry or hearing?

Yes. If the Secretary of State decides that an inquiry or hearing is required as part of the consideration process for a TWA application, unreasonable behaviour on the part of any of the parties could give rise to the risk of a cost award against that party.

Q.7 Can costs be awarded against a party who decides not to pursue an application or objection?

Yes. Once the Orders Unit has issued **formal notification** of the arrangements for an inquiry or hearing, parties are at risk of an award of costs being made against them if the arrangements have to be cancelled without good reason, as a result of their withdrawal.

Q.8 Can costs be awarded against an objector who is not professionally represented?

Yes. Unreasonable behaviour by an objector, whether or not professionally represented, may result in an award of costs against him or her. Such behaviour would include refusing to co-operate in settling agreed facts, or in supplying relevant information, so that proceedings were adjourned or prolonged unnecessarily.

Q.9 When will costs be awarded?

An award of costs in respect of unreasonable behaviour is always made at the discretion of the Secretary of State, but such an award will normally be made if:

- (i) one of the parties has applied for costs at an appropriate stage (see Q.15);
- (ii) the party claimed against has behaved unreasonably; and
- (iii) this unreasonable behaviour has caused the applicant for costs to incur expense unnecessarily.

Q.10 Apart from for unreasonable behaviour, when else might an award of costs be made?

An award will normally be made, save in exceptional circumstances, to statutory objectors, whose land, or rights in land, is/are affected by compulsory purchase provisions in a TWA order application if their objection to those provisions is sustained by the Secretary of State's eventual decision on the TWA application. Such an award of costs **does not**, of itself, imply unreasonable behaviour by the applicant. Certain conditions must be fulfilled for this eligibility to be confirmed.

Annex 5 to DOT Circular 3/94 contains the details. In such cases, no application for costs need be initiated by the objector. The Orders Unit (or the decision Branch in the relevant Department or Welsh Assembly Government) will write to the parties concerned after the decision on the TWA application is announced.

Q.11 Will an application for costs affect the result of the TWA application?

No. TWA applications are considered entirely on their own merits. The decision on whether to make an order which is the subject of a TWA application will not be affected in any way by the submission of a costs application. The determination of a costs application is an entirely separate matter and is usually taken after the decision has been made on the TWA order application.

Q.12 Does the "loser" in a TWA application case normally have to pay another party's costs?

No. Costs awards do not depend on the outcome of a TWA application. They are awarded generally only where there has been unreasonable behaviour by the party against whom the claim is made. Objectors will not automatically be awarded costs against the applicant if the TWA application is unsuccessful (except where compulsory purchase provisions are rejected – see Q.10); nor will costs be awarded against an objector simply because their objection is unsuccessful.

Q.13 If a costs application against an objector succeeds, will all the TWA application expenses be paid?

No. The amount of costs will depend on what unnecessary expense has been incurred in relation to the inquiry or hearing – for example where an adjournment is caused by unreasonable behaviour by an objector, the award of costs will be limited to the extra costs incurred as a result of the adjournment.

Q.14 Can an award of costs be applied for by, or against, the Secretary of State or a Government Department?

No. This is because DOT Circular 3/94 does not apply to the Crown. Please note that Government Departments cannot be applicants for orders under section 1 or 3 of the TWA, but they may appear at inquiries as "official bodies".

Q.15 How and when should a costs application be made in respect of unreasonable behaviour by another party?

There is no formal procedure or application form. An application for costs should explain why the claimant considers that another party has acted unreasonably, and how that action has caused the claimant to incur expense unnecessarily.

Where an inquiry or hearing is held, the costs application should be made to the Inspector ***at the earliest opportunity during the inquiry or hearing***. This will enable the Inspector to invite a response from the party against whom the costs award is being sought and to consider all the arguments - for the purposes of making a recommendation to the Secretary of State - ideally while relevant events are still

fresh in people's minds. It is, however, open to one party to warn the other party at any time before the inquiry or hearing opens that they intend to apply for costs at the inquiry.

Where an arranged inquiry or hearing is cancelled, an application for costs should be submitted to the appropriate Secretary of State (c/o the TWA Orders Unit at the address given above, ***if*** the TWA order application is/was to be decided by the Secretary of State for Transport). The application should preferably be made immediately, and certainly no later than 4 weeks after receiving confirmation from the Orders Unit (or the relevant decision Branch) of the cancellation of the arrangements.

Where an inquiry or hearing has to be adjourned or aborted, for example because one of the parties fails to appear and it is impracticable for the inquiry or hearing to proceed; or because of the withdrawal of the application at such a late stage that the inquiry or hearing could not be cancelled. In these cases, an application for costs should be made to the Inspector before the inquiry or hearing is closed.

Q.16 Can a costs application be made after the inquiry or hearing has closed?

A costs application in respect of unreasonable behaviour which is made after the inquiry or hearing is closed will **only** be accepted if the party claiming costs can show good reason for not having applied sooner. Such an application should be made to the relevant Secretary of State or to Welsh Assembly Government (c/o the Orders Unit, if the decision on costs is for the Secretary of State for Transport). If it is accepted, the Orders Unit (or the relevant decision Branch) will notify the parties concerned and arrange an exchange of written submissions before a decision is made on the costs application.

Q.17 When will a decision be given on the application for costs?

Normally the decision on whether or not to grant an award of costs in respect of unreasonable behaviour will be made after the Secretary of State has decided the application for the TWA order, which is likely to be some months after the close of the inquiry or hearing. An entitlement to an award of costs in cases of successful objection to compulsory land purchase (see Q.10), will not be known until the Secretary of State has decided the TWA application, so such awards will always follow that decision.

Q.18 Will the Secretary of State decide the actual amount of the award?

No. Where the costs application succeeds, the decision letter will state the extent to which costs are awarded to the successful party. The party awarded costs should then submit details of their costs to the other party, with a view to reaching agreement on the amount. If they cannot agree, either party can refer the case to the Supreme Court for decision by a Costs Officer or Costs Judge. The procedure for applying for adjudication when the amount is disputed is explained in the Appendix to this pamphlet.

TWA Orders Unit

Award of costs:

Local Government Act 1972 - section 250(5)
Transport and Works Act 1992 – section 11(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is in dispute

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment¹. This is handled by:

The Supreme Court Costs Office
Cliffords Inn
Fetter Lane
London EC4A 1DQ
DX 44454 Strand
(Tel: 020 7947 7314).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court². This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL.

You should refer in your letter to section 250(5) of the Local Government Act 1972 as applied by section 11(5) of the Transport and Works Act 1992. You should enclose the original of the order of the Secretary of State awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

¹ The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. You can buy these Rules from Stationery Office bookshops or look at copies in your local library or council offices.

² Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.