

# Guide to Part 1 Claims: How you would claim for the effects on your property for a new or altered railway

Land and Property

## Introduction

This guide explains how compensation, often called ‘Part I Compensation’, could be claimed for the effects on residential, agricultural and other property from the use of new railways or alterations to existing railways.

It is not a complete guide to Part I compensation. Please get in touch with us, using the details at the end of this guide, if you have questions about your particular circumstances.

This guide is part of a suite to provide information to landowners that may potentially be affected by the East West Rail Project. This includes where land would be directly required by the project (compulsory purchase and compensation), or where owner-occupiers have difficulty selling their property due to our proposals (Need to Sell Property Scheme and Statutory Blight Notices) or impact on land in the event the project is constructed and comes into operation (Part 1 Claims).

## Key information

As part of our planning process, we would seek the appropriate power for compulsory acquisition of land and property needed for East West Rail. However, before we would compulsorily acquire any land for the railway the project would need to move through a number of development stages and approvals, including a period of public consultation. These are summarised in our document “East West Rail and the Development Consent Order Process”, available on our website [www.eastwestrail.co.uk](http://www.eastwestrail.co.uk).

We know the possibility that we may need to ultimately purchase your land and property may concern you, and we will follow these five principles to seek to minimise the impact on you if you are potentially affected by the project.

- **Keep you updated:** We will keep you updated throughout the project and keep you informed as our proposals develop.
  - **Act with respect:** We will treat you, your land, property and personal data, and third parties acting for you with respect. We will work collaboratively with you and any third parties acting for you.
  - **Minimal land take:** We will discuss our proposals with you, so we understand and manage the potential impacts to you. We aim to minimise the impact our proposals may have on your land and property and mitigate any impacts we cannot avoid where possible.
  - **Fair compensation:** Where we would need to acquire your land for the project, we would compensate you fairly in accordance with the statutory compensation code and we would seek agreements with you.
  - **Dedicated contacts:** Our dedicated, specialist Land and Property team is in place to ensure you have consistent and well-briefed contacts with the project.
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**You should consider taking independent professional advice if your land or property is potentially affected by the East West Rail Project.**

### **What is East West Rail?**

East West Rail is a proposed new rail link, which would connect communities between Oxford, Milton Keynes, Bedford and Cambridge. By making it cheaper and quicker to get around, by making it easier to develop more homes for people and by boosting local economies, the new railway line aims to create a range of opportunities for people right across the area and to help spread prosperity across the UK, by supporting opportunities for economic growth in towns and cities outside London.

The East West Railway Company (EWR Co) is responsible for developing the East West Rail Project and was created to plan a railway with customers and communities at its core. The project is being delivered in stages. Trains are already running between Oxford and Bicester, and we aim to have trains running the full length of the line between Oxford and Cambridge by the end of the decade.

Further information about East West Rail can be found on our website:  
[www.eastwestrail.co.uk](http://www.eastwestrail.co.uk).

### **What is Part I Compensation?**

Under Part I of the Land Compensation Act 1973 (“the Act”) compensation can be claimed by people who own and also occupy property which has been reduced in value by more than £50 by physical factors caused by the use of a new or altered railway.

The physical factors are noise, vibration, smell, fumes, smoke and artificial lighting and the discharge onto the property of any solid or liquid substance.

The cause of the physical factors must be the new or altered railway in use. For example, if a railway is altered, the noise and other adverse effects must arise from the traffic using the altered stretch of rail.

Part I Compensation cannot be claimed for the effects of rail traffic further down the railway line where no alteration has taken place.

Part I compensation is also not payable where part of the affected property has been taken for the construction of the new or altered railway. This is because the effect of the use of the railway on the value of the rest of the property will have already been taken into account in calculating the compensation for the part of the property taken.

Loss of view or privacy, personal inconvenience and physical factors arising during the construction of the railway are also not included under Part I Compensation.

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## **Could you make a Claim?**

### **Residential property**

To claim, you would have to be the owner of the property before the date the railway first came into public use (known as the 'relevant date'). You would also need to still be the owner on the date you claim.

For the purposes of making a claim under the Act, you are the owner of the property if you hold either the freehold or a lease that has at least three years left to run at the date you claim.

In addition to being the owner, you would also need to occupy the property as your home at the date you claim. The exceptions to this are where you have let the property to someone else or there is another legal reason preventing you from occupying, for example, there is a court order in place which removes your right to occupy the property.

### **Agricultural unit**

You would need to be the owner and the occupier both before the new or altered railway first came into public use and at the date you claim. You would need to occupy the whole of the unit and own the freehold or a lease with at least three years left to run in the whole or any part of the unit at the date of claiming.

### **Other non-residential property**

Owners of other non-residential property, such as small business premises, would be able to make a claim provided that the property does not have an annual rateable value above a set amount. At the time of publication, that amount is: £36,000, but please note it may change from time to time. The rating office at your local council would be able to tell you the annual rateable value of your property.

You would need to be the owner and the occupier both before the new or altered railway first came into public use and at the date you claim. You would need to occupy the whole or substantial part of the property and own the freehold or a tenancy with at least three years left to run at the date of claiming.

### **Could you claim if only part of your property is residential?**

Where a property has more than one use, for example, a shop with living accommodation above, then you could claim for the living accommodation. You may also be able to claim for the business part of the property provided that business part has an annual value of not more than £36,000, but please note it is varied from time to time.

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### **Could you claim if you transfer ownership of your property to another family member and continued to occupy it?**

Although your occupation of the property has continued, you would still need to satisfy the ownership requirements described earlier in this section. So, if you transferred the property to a family member before you claimed, you would not be eligible for Part I compensation. The family member to whom the property was transferred may be able to claim, providing the transfer took place before the date the railway first came into public use. He/she would also need to occupy the property unless they do not have a legal right to do so, as described earlier in this section.

Whether a legal right exists would depend on the terms under which the previous owner continues to occupy the property. An informal arrangement where there is no tenancy agreement in place would mean a claim would be unlikely to succeed.

### **Could you claim if you inherited your property after the railway first came into public use?**

Yes, provided the person from whom you inherited the property was the owner before the date the railway first came into public use. Also, at the date you claim, you must also be the owner of the inherited property. Ownership does not pass by inheritance immediately on the death of the previous owner. Further, being named as a beneficiary in a will does not mean that ownership has transferred. You are the owner only when the legal title of the property has passed to you. You must also occupy the inherited property at the date you claim, if you have a right to do so, even if you still have another property to live in.

### **Could the personal representatives (executors/administrators) of a deceased person make a claim?**

No. They obtain legal title by operation of the law and not by inheritance. As they have not inherited, they cannot take the benefit of those provisions described above.

### **When could you claim?**

The first day for claiming compensation would be a year and a day after the new or altered railway first came into public use (known as the 'first claim day').

We would not be able to accept claims made before the first claim day, except when you were selling your property or granting a lease. It would be important that you claim as early as possible after the first claim day. Your right to compensation may be lost if your claim was not made and settled within the six years following the first claim day. Claims made after those six years would not be accepted as provided by the Limitation Act 1980.

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## **Selling your property before the first claim day**

Normally, claims cannot be made during the 12 months between the new or altered railway first coming into use and the first claim day. However, if you were selling your property or granting a lease during that period, you could lodge a claim with us but you would need to do so after exchanging contracts to sell and before completing the sale or granting the lease. We would not negotiate your claim or pay any compensation before the first claim day.

Your claim may not be accepted if, while waiting for your property to be sold, you move into another before the date of your claim. This would be because you may no longer be able to meet the occupancy requirement.

## **How would you make a claim?**

You would be able to make a claim yourself or ask someone to do this for you. Anyone could act for you but most people prefer to use a professional property valuer or an agent that specialises in Part I claims to prepare and negotiate the claim on their behalf.

**The legislation and case law for compulsory acquisition and compensation is complex. We recommend that you should seek independent professional advice before making a claim.**

## **Making a claim yourself**

Forms for making a claim would be available from us, should the project go ahead. In the meantime there is a model form on the Government website here:

[www.gov.uk/government/publications/part-i-claims-claim-for-compensation-form](http://www.gov.uk/government/publications/part-i-claims-claim-for-compensation-form)

We would recommend that you kept a copy of your completed claim form. Using a type of postal delivery that provided you with proof of posting would be advisable in case your claim did not reach us and we would need to be sure that a claim was, in fact, made.

**You would need to provide all the information asked for on the claim form.**

You would need to be sure you are the owner of either the freehold or a lease with at least three years left to run and that you could prove this. If you do not occupy the property, you would need to show that you do have a legal right to do so. For example, if the property is let, we may ask to see a copy of the tenancy agreement.

Details of joint owners would need to be included in the claim. People with a different interest to yours in the property would need to submit their own, separate claim. For example, if they are the owners or long-term tenants of a different part of the same property, you would not be able to claim for them.

You should also tell us about any changes relating to your claim, including your contact details.

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## **Using an agent to act on your behalf**

It is quite possible that one or more agents offering to act on your behalf may approach you. It is not unusual for such approaches to be made well before the first claim day or even before the new or altered railway scheme has opened for public use.

We would only accept only one claim on your behalf. The settlement of your claim may be delayed if you or any other person you have authorised makes further claims on your behalf. This is because we would need to clarify which agent would be representing you.

We would ask you to say whether you would like us to pay the fees directly to the agent or to you so that you could arrange for your agent to be paid.

We would have no authority over the agent you employ or any responsibility for their actions or conduct. This would include the terms of any contract or agreement between you and your agent, the content of your agent's literature and the way in which your agent may ask for payment of fees from you. We would not be able to comment on the terms of an individual contract or agreement, which would be private matters between you and your agent. For these reasons, it would be important that you are clear about the contractual arrangements which you enter into with your agent, and which could be legally binding. You should also be clear about what your agent would actually do on your behalf and what payments and other costs you may be asked to meet. This would include any charges if your claim was not successful or if you chose to no longer employ the agent. It would also include any other payments, in addition to the fee we would repay.

## **How would your claim be dealt with?**

We would write to tell you we had received your claim form. It would be important that you, or your appointed agent, contact us if you did not receive an acknowledgement letter within six weeks of your claim being sent to us.

Your claim would be checked to see that all the necessary information had been provided. Other checks would be carried out to establish that your claim was valid.

Once our initial checks were successfully completed, we would then ask one of our valuers to contact you, or your appointed agent, to discuss your claim and negotiate the amount of compensation. However, the discussion or negotiation of any amounts payable would neither constitute an acceptance of your claim nor an offer of compensation. The valuer would report to us when the negotiations have been completed to help us to decide the final validity of your claim.

Whether you used an agent or acted for yourself, it would be important that you did not enter into any financial commitment in the hope that you would receive compensation. This would be because:

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- Something may arise during the processing of your claim that could lead it to being rejected.
- The amount of compensation offered to you may be less than you claimed or no compensation would be offered to you if your property has been devalued by less than £50.
- If your property is mortgaged, we would be required by law to offer the compensation to the mortgage lender to reduce the amount you owe them. They may decide not to accept the compensation and it would then be paid to you.

### **How would compensation be worked out?**

Our valuer would assess the impact of physical effects arising from the railway in use on the value of your property, based on property prices current on the first claim day.

If you sell your property or grant a lease before the first claim day, your compensation would still be assessed on the basis of property values applying at the first claim day. Although the new owner may have altered the property by then, its condition would be assumed to be as it was on the date you claimed.

The compensation would be assessed based on the amount of rail traffic using the new or altered railway at the first claim day. Account would also be taken of any future increase in rail traffic which could reasonably be predicted at the first claim day.

We may well have already undertaken to provide noise insulation for your property or pay a grant towards its installation. If so, the benefit of the insulation would be taken into account and it would be assumed for valuation purposes that it had been installed. If we had carried out other works as part of the railway scheme, such as noise barriers, the benefit of those works would be taken into account.

If an amount of compensation has not been agreed or our valuer recommends that no compensation is payable, we would write to tell you that and inform you no further action would be taken. If you disagreed with our decision, you may refer your claim to the Upper Tribunal (Lands Chamber) for determination.

### **What will we pay for?**

#### **Successful claims**

If your claim was successful, we would pay:

- The agreed compensation for the decrease in value of your property.
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- Interest on your compensation. This is simple interest payable at a rate of 0.5% below the Bank of England Base Rate, so when this rate is low little or no interest may be paid. It would be calculated from the date your claim was received by us to the date your compensation was paid. If your claim was received before the 'first claim day' because you were selling your property or granting a lease, the interest will be calculated from the first claim day.
- The reasonable fees of your agent (see page 8) for using an agent to act on your behalf). We would ask you to say whether you would like us to pay the fees directly to the agent or to you so that you could arrange for your agent to be paid.
- If our simple ownership check at the Land Registry was unsuccessful, the reasonable costs of a solicitor to prove your ownership of the property, including the cost incurred to retrieve title deeds. Your solicitor would be asked to invoice us for their costs, which would be paid after your compensation has been paid.
- Any other costs for proving title would have to be met by you even if your claim is successful.

We would not pay:

- Any charges your agent may seek from you that are additional to the reasonable fees agreed for the preparation and negotiation of your claim.
- The fees of more than one agent.
- Solicitor's costs that have been unnecessarily incurred for proving your ownership of the property.
- Any charges made by your mortgage lender relating to our legal obligation to offer the compensation to the lender before you.

### **Unsuccessful claims**

If your claim was not successful, we would not pay any:

- Compensation.
- Interest.
- Agent's fees.
- Solicitor's costs.

### **Tips to help your Part 1 claim**

1. Don't delay making your claim – do so as quickly as possible after the first claim day.
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2. Act quickly at all stages in the life of your claim so that it does not become time barred under the Limitation Act 1980.
3. If you are selling your property after the railway has opened and before the first claim day, make sure you claim after exchanging contracts and before completing the sale.
4. Make sure you have an owner's interest in the property at both the date the railway is opened and the date you claim and that this can be verified.
5. Make sure you can verify you are occupying the property where you have a right to do so (as your home for residential property) at the date you claim.
6. Tell us about all other persons who may also have an owner's interest in the property.
7. Keep a copy of your completed claim form and use a type of postal delivery that provides you with proof of delivery in case your claim does not reach us.
8. We would acknowledge all claims. If you did not receive an acknowledgement after six weeks contact us to check we have your claim.
9. If you intend to ask an agent to make a claim on your behalf, be careful to appoint just one agent.
10. Make sure all the information you provide to us is accurate and that you keep us informed of any changes, including those to your contact details.
11. Make sure that you are able to prove your identity. If compensation is payable we would ask for copy documentation confirming your identity before payment is made.

### **What can you do if there is a dispute about your claim?**

We hope we would reach an agreement. But, if we could not, you may refer your case to the Upper Tribunal (Lands Chamber).

The Upper Tribunal (Lands Chamber) is the court of law appointed to deal with this type of dispute. The Tribunal would make the final decision on your claim but you should be aware that it has power to award costs to either party, so it would be wise to take professional advice before referring your claim.

It is important that you make your referral to the Upper Tribunal no later than six years from the first claim day.

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## **The Limitation Act 1980**

A person whose property has been reduced in value by more than £50, by physical factors caused by the use of a new or altered railway would need to, within six years of the first claim day:

- Either agree an offer of compensation made by us or,
- if agreement could not be reached, ask the Upper Tribunal (Lands Chamber) to decide the amount of compensation.

After that six-year 'limitation period', we could no longer be ordered to pay compensation.

## **Who could you speak to if you have questions or concerns?**

Our specialist Land and Property Team are available if you wish to talk about our proposals, tell us your views and also to answer your questions.

- Email us at: [land@eastwestrail.co.uk](mailto:land@eastwestrail.co.uk)
- Call us on: **0330 838 7583**
- Send us a message online at: [www.eastwestrail.co.uk/get-in-touch](http://www.eastwestrail.co.uk/get-in-touch)

If you have issues, concerns or wish to make a complaint please don't hesitate to get in touch so we can work with you to investigate and quickly find a good resolution. You can contact us via the above details.

## **Where can you find further information?**

Visit our website: [www.eastwestrail.co.uk](http://www.eastwestrail.co.uk).

We have created a number of resources to provide further information for people whose land or property would be potentially affected by our project. These can be found on the land and property page of our website: [www.eastwestrail.co.uk/the-project/land-and-property](http://www.eastwestrail.co.uk/the-project/land-and-property). These include guides on:

- Compulsory Acquisition and Compensation
  - Statutory Blight Notices
  - Need to Sell Property Scheme
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