UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2012] UKUT 158 (LC)
UTLC Case Number: ACQ/96/2006

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

COMPENSATION – compulsory purchase – disturbance – claim for temporary loss of profits, extinguishment of goodwill and consequential losses – whether compensation to be based on extinguishment or cost of notional relocation – whether claimant company would have been profitable in absence of CPO and if so to what extent – compensation awarded £72,500.

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN

	SOLARTRACK PLC	**Claimant**
	and	
	THE LONDON DEVELOPMENT AGENCY	**Acquiring Authority**

Re: 42-44 New Road
Dagenham
Essex
RM9 6YS

Before: President and N J Rose FRICS

Sitting at 43-45 Bedford Square, London, WC1B 3AS
on 8-9 and 12-15 March 2012

Neil Cameron QC, instructed by Charles Russell, solicitors, of Guildford for claimant
James Pereira, instructed by Squire Sanders, solicitors, of Leeds for acquiring authority

The following cases are referred to in this decision:
Harvey v Crawley Development Corporation [1957] 1 QB 485
Director of Buildings and Lands v Shun Fung Iron Works Ltd [1995] 2 AC 111
Lindon Print Ltd v West Midlands County Council [1987] 2 EGLR 200
Afzal v Rochdale Metropolitan Borough Council [1980] RVR 165
Optical Express (Southern) Ltd v Birmingham City Council [2004] RVR 106

The following additional cases were also cited:
Mallick v Liverpool City Council (2000) 79 P&CR 1
Pattle v Secretary of State for Transport [2009] UKUT 141 (LC)
TEB Travel v Secretary of State for the Environment, Transport and the Regions [2010] UKUT 30 (LC)
Scotia Plastic Bindings v LDA [2010] UKUT 98 (LC)

DECISION

Introduction

1. On 28 March 2003 Solartrack Plc (Solartrack) transferred land and buildings known as 42-44 New Road, Dagenham, Essex, RM9 6YS (referred to henceforth as 42-44) to the London Development Agency (the LDA) for the sum of £445,000. On 14 October 2003 the LDA made the London Development Agency (Chequers Corner, Dagenham) Compulsory Purchase Order 2003 (the CPO). The CPO was confirmed by the Secretary of State for Trade and Industry on 22 July 2005. It included all the interests in 42-44. On 23 September 2005 Solartrack and the LDA entered into an agreement under which the LDA paid Solartrack £100,000 as an advance payment towards its disturbance costs.

2. Following a hearing of a number of preliminary issues arising from references in respect of the leasehold and freehold interests in 42-44, the President decided on 30 November 2009 that:

> "It is not open to the claimant to seek compensation for the market value of the freehold interest …"(para 59(b));
>
> "The claimant is entitled to pursue a contractual claim for compensation for disturbance, and the claim may encompass losses suffered by Solartrack's associated companies as a result of the acquisition of the freehold interest" (para 59(c)); and
>
> "The reference in respect of the freehold interest (ACQ/96/2006) is to stand as a reference by consent of the claim for compensation for disturbance in consequence of the acquisition of the freehold interest (para 60)."

3. This decision determines the quantum of Solartrack's disturbance claim, following a hearing at which Mr Neil Cameron QC appeared for Solartrack and Mr James Pereira of counsel appeared for the acquiring authority. Closing submissions in writing were filed by the acquiring authority on 30 March 2012 and by Solartrack on 13 April 2012.

4. Mr Cameron called three witnesses of fact, namely two directors of Solartrack, Ms Petra Elyse Pipkin and Mr Anthony Leslie Pipkin, and Mr Leo Dunne, who between July 1997 and September 2004 was employed as an investment manager by London Ventures (Fund Managers) Ltd (LVFM). Solartrack's directors were referred to in evidence as Petra and Anthony respectively and we do the same in this decision. Mr Cameron also called two expert witnesses, Mr Chris Clements FCA, BA, MCI Arb, MEWI, MAE, a partner at Grant Thornton UK LLP, and Mr James G Winbourne BSc (Hons), PG DIP. PVL, MRICS, principal of Winbourne Martin French, chartered surveyors.

5. Mr Pereira called two witnesses of fact, Mr Steven Kidd, who was employed as a development manager with LDA from January 2003 and is currently LDA's head of land acquisitions, and Mr David Rooke, who was employed as a business development manager at Gateway to London between 2003 and January 2012. In addition Mr Pereira called expert evidence from Mr Colin

Cottage BSc (Hons), MRICS, IRRV, a Member of Glenny LLP, chartered surveyors and property consultants, and Mr David Epstein FCA, CTA, MAE, MEWI, a consultant in forensic accounting at Kingston Smith LLP.

Factual matters

6. The evidence shows the following about Solartrack and the events leading up to the acquisition of its premises.

7. Solartrack Ltd was incorporated on 3 June 1982. It was registered as a public company on 12 August 1988. Anthony has always been the driving force behind the company. By June 1982 he had had over 23 years commercial experience in the manufacture and worldwide distribution of fashion textile products.

8. Solartrack designed, manufactured, imported, distributed and installed a range of electronic security and safety equipment and leisure related electrical and health products. Products included alarms for motorcycles, cars, caravans and premises; vehicle reversing and recording systems; security accessories; electric bicycles and heart rate monitors. Anthony's previous manufacturing and commercial experience meant that Solartrack was in a position to benefit from his extensive contacts in the Far East, many of which had resulted from a chance introduction to the niece of Deng Xiaoping, leader of the Communist Party of China. The advantage of these contacts was that he was able to access the emerging technologies and trends and procure components competitively, so that his company's products could be produced more cheaply than if they had been wholly manufactured and produced in the United Kingdom.

9. Solartrack had its own in-house design and development team. From 9 April 1998 until 2008 its design process was audited annually as part of the company's ISO 9001 accreditation with ISOQAR, a quality certification body.

10. Anthony's daughter, Petra, joined Solartrack in about 1992. Her initial roles were focused on sales, marketing and quality analysis, putting in place the formal systems and quality processes, including the ISOQAR quality standards. She was tasked with developing the leisure side of the business, and was appointed as secretary and director of Solartrack Leisure Limited on 3 May 1994 and secretary and director of Solartrack Plc on 31 August 1994. Another company, Solartrack Installations Limited, was incorporated in January 1996. That company installed and maintained security solutions to commercial and residential premises and installed security systems to customer's vehicles at Solartrack's premises. Solartrack had a large secure rear car park, with undercover shelter, external power and lighting for all weather installations.

11. Solartrack Plc, Solartrack Leisure Ltd and Solartrack Installations Ltd were originally incorporated as separate businesses with common majority shareholders. Each of these businesses shared common central costs. In or around 1999 it was decided that Solartrack Plc would become the main operating company of the Solartrack group of businesses. Thereafter Solartrack Leisure

and Solartrack Installations functioned as divisions of Solartrack Plc. The claim for disturbance extends to these two divisions.

12. 42-44 is situated on the south side of the road (A1306) at the corner of its junction with Chequers Lane, approximately 1 mile south of Dagenham's main retail area in The Heathway. The property formed part of a parade of buildings extending eastwards from Chequers Corner. Other properties included in the CPO comprised a mix of tertiary shops, flats and offices as well as two guest houses, a snooker hall and nightclub. To the east of the CPO land was a Dagenham Motors car dealership and to the south the Ford motor works and the industrial area of Dagenham Dock. To the west of Chequers Lane lies Merrielands retail park.

13. The area to the north of New Road is predominantly residential in nature, with a high proportion of local authority, or former local authority owned housing. Immediately to the northern side of New Road, facing the CPO land, is a secondary shopping parade known as Chequers Parade, which extends westwards along Goresbrook Road from the junction between The Heathway and New Road. A second shopping parade known as Princess Parade is situated a short distance to the east of the junction of New Road and Ballards Road.

14. Although most of the buildings that stood on the CPO land have now been demolished, at the date the LDA acquired the freehold interest in 42-44 and for more than fifteen years before that date the CPO land presented an unattractive façade to New Road, with many of the buildings in a poor state of repair. The parade was also characterised by a high proportion of vacant premises with a number of retail units in particular having been empty for many years. 42-44, on the other hand, had been maintained in good order.

15. Until 1999 New Road formed part of the route of the A13 trunk road. However in December 1999 the upgrading and re-routing of the A13 to the south of its traditional position between the M25 and Barking was completed. The new A13 now passes across Rainham Marshes and Ford motor works to the south of the CPO land, although it can still be accessed from New Road and Goresbrook Interchange approximately 0.3 miles to the west.

16. 42-44 comprises two adjoining brick built office buildings, originally constructed in the inter-war period. 42 was historically occupied as bank premises and had a basement, whilst 44 had been the office of an insurance company. Dagenham Dock and Dagenham Heathway underground stations were within walking distance.

17. Pedestrian access from front and rear elevations was provided to both buildings and each had a clearly defined independent frontage. This and their internal layouts enabled them to be occupied either as a single combined unit or individually. At ground floor level the property had large picture windows, set within timber frames to its front elevations. Natural illumination was provided to the rear extensions by metal framed skylights. Internally the property provided basic but serviceable office accommodation, divided by blockwork partitions and with mainly suspended ceilings. The second floor had historically been used as living accommodation. To the rear of the property was a secure, concrete surfaced car park accessed via an unmade and poorly maintained service road that

ran to the rear of the CPO land. The property had central heating, computer and telephone cabling, a goods lift, two purpose built basement storage rooms and dedicated space for the design, processing, assembly, exhibition and storage of electronic products, together with retail and trade sales, administration office and meeting rooms. There was a kitchen and male and female toilet facilities on each floor.

18. Solartrack went into occupation of an area comprising the ground floor, rear extension and basement of 42 on 28 June 1983, pursuant to the terms of an underlease dated 25 March 1983. The freehold of 42-44 was acquired on 19 May 1997 from the Liverpool and Victoria Friendly Society. Solartrack then utilised the majority of both buildings for its existing and potential future requirements, with parts being sub-let from time to time.

19. The net internal floor areas of 42-44 are as follows:

Basement	318 sq ft
Ground floor	2,442 sq ft
First floor	1,147 sq ft
Second floor	1,009 sq ft
	4,916 sq ft

20. In 1998 Anthony decided to seek outside investment to assist the future development of Solartrack's business, and with a view to this he approached Mr James Orman, director of LVFM. In a letter to Anthony dated 13 July 1998 Mr Orman suggested that Anthony should get in touch with Business Link London East, and he did so. At their suggestion, in August 1998 he instructed Mountwood Consultants to prepare a Strategic Business Plan for his company covering the period 1998-99. The Plan was prepared in the latter part of 1998 and took into account the trading figures up to and including the year ending September 1998. It reviewed the past trading of the company by business area, and it identified matters that needed to change if the business plan's hopes and intentions were to be realised. We refer in our conclusions below to particular parts of the business plan.

21. On 3 December 1998 HSBC UK Enterprise Fund for Greater London – a fund managed by LVFM – purchased 164,117 ordinary shares in Solartrack for £50,000. At the same time one "A" preference share was issued to LVFM for £1. On 17 August 1999 a further allotment of 234,454 ordinary shares was made to LVFM's nominee in return for a payment of £49,235.34. LVFM also acquired a further 50,000 preference shares at a cost of £50,000. The total number of ordinary shares issued to LVFM represented 30% of the new enhanced number of ordinary shares in the company. Thus, LVFM acquired 15% of the ordinary shares in December 1998 and 15% in August 1999 for a total investment (excluding the preference shares) of £99,235.34.

22. In addition LVFM invested the following amounts in Solartrack, without receiving any shares in return:

13 April 1999	£10,000.00
17 August 1999	£ 764.66
2 June 2000	£15,000.00
7 August 2001	£10,000.00
	£35,764.66

23. LVFM sold back their preference shares to Solartrack between August and October 2003 for a total consideration of £50,000. On 1 November 2004 Solartrack bought back LVFM's ordinary shares for £10,000.

24. News of the potential redevelopment of 42-44 and surrounding premises first entered the public domain in or around the first quarter of 1999, and it was noted in the minutes of Solartrack's board meeting of 18 June 1999. On 29 May 2001 Mr Cottage offered to recommend LDA to purchase the freehold interest in 42-44 for £300,000. The offer was made in a letter to Solartrack's then surveyor, Mr Keith Murray. Mr Murray reported to Anthony in a letter dated 22 June 2001 saying that he believed that the offer from Glenny was totally unrealistic. He was not aware of any suitable replacement property, so that Anthony might just have to carry on with his business operations and, if a suitable replacement property came to the market the discussions with Glenny could be resurrected.

25. Mr Scarth, a senior development manager with the LDA, wrote to Anthony on 27 September 2002 saying that LDA was willing to purchase the property as if the statutory compensation code applied and to pay either disturbance costs or extinguishment payments that would have been payable if a compulsory purchase had been made. In further exchanges of correspondence, Anthony expressed his concern that if the funds from this were insufficient it would not be possible to purchase freehold premises and the company would have to cease trading; he sent a draft disturbance claim totalling £295,500; and he said that the LDA's then valuation of the property, £375,000, was substantially less than Solartrack's estimation of the market value, which was £550,000.

26. Following further discussions, in January 2003 Solartrack agreed the following heads of terms, subject to contract, for the sale of the freehold interest in 42-44. The sale price was £445,000, with completion to take place prior to 31 March 2003. It was agreed that upon completion the LDA would grant Solartrack licence to occupy the property at a monthly fee equating to £5,000 per annum for an initial period of 12 months, terminable thereafter by either party on two months notice. The purchase price was agreed without prejudice to any claim for disturbance compensation. It was also agreed that Solartrack would not object to any CPO that might be made.

27. The property was conveyed to the LDA in accordance with these terms on 28 March 2003. On 2 April 2003 the LDA's agents, DTZ, took possession of 42-44, except for all the ground floor (including the rear extension) and the basement of 42, which Solartrack continued to occupy until they vacated in 2008.

28. On 6 May 2003 Anthony wrote to the LDA advising them that it had not been possible to locate a suitable freehold building of similar size with the funds received from the sale of the freehold

interest. The cost of a move would be £293,443.90, and it would not be possible to fund these from the resources available to the company. Anthony said that the company's auditors and legal advisers had suggested that the only course of action for it was to require the LDA to compensate it for the total extinguishment of the business, and he asked for confirmation that LDA were prepared to enter into negotiations to this effect.

29. Mr Kidd met Anthony at the property on 20 May 2003. Anthony described Solartrack's business and said that he was looking for a relocation property of some 2,000 sq ft close to the company's existing premises. On 5 June 2003 Mr Kidd wrote to Anthony saying that his view was that the LDA could not support a claim for total extinguishment of the business. He said that the business appeared to be viable and was not dependent on its current premises. Anthony replied on 6 June 2003 saying that before he could recommend to the board of directors further negotiations with the LDA on relocation, he required an undertaking that the LDA would pay all of their planned and estimated costs in advance. The current situation was totally unacceptable, and Solartrack's solicitors had been instructed to pursue their claim against the LDA for damages and compensation resulting from extinguishment of the business in excess of £1,000,000. In correspondence and further meetings. Anthony remained adamant that he would have to receive the disturbance compensation before he would consider relocation.

30. The freehold interest in 42-44 had been used by Solartrack as security for banking facilities obtained from Midland Bank/HSBC. Following the sale to the LDA the bank stated that it was no longer prepared to grant overdraft facilities without satisfactory personal guarantees from the directors. These could not be provided in view of Anthony's relatively advanced age. Nor was the bank prepared to continue to provide means of funding such as letters of credit and loan bond facilities. Without these facilities Solartrack had to trade with manufacturers in the Far East using its own cashflow.

31. On 22 April 2004 Mr Kidd – who had taken the matter over from Mr Scarth in January 2003 – asked Mr Rooke to assist Solartrack in relocating its business, because it did not appear to be making any significant progress towards finding suitable alternative premises. On 2 June 2004 Mr Rooke sent Anthony details of eleven properties which he felt might be suitable. He also informed Anthony that Mr Kidd had instructed him to assess his claim for relocation costs, which Anthony had previously estimated at approaching £300,000, and asked for a breakdown of his claim so that he could identify whether the amounts were realistic and reasonably claimable. Anthony provided a breakdown on the same day.

32. On 20 August 2004 Mr Kidd wrote to Anthony saying that he was prepared to recommend that the LDA should pay Solartrack £100,000 as an advance payment in recognition of the likely disturbance items that it would incur. The advance payment of £100,000 was received by Solartrack on 23 September 2005, two months after the CPO had been confirmed.

33. By letter dated 22 January 2008 Hammonds wrote to Solartrack's solicitors saying that the acquiring authority would require possession of 42 before its compulsory purchase powers expired in September 2008. They requested that Solartrack should advise Mr Kidd if it wished to vacate at an earlier date that was convenient to its business, so that arrangements could be made. It appears that that request was not brought to Anthony's or Petra's attention. On 31 July 2008 Hammonds sent Solartrack by fax a "Notice to Give Up Possession" in 14 days, which they said they intended to serve formally within the following 10 days. Solartrack vacated the building at the end of August 2008, although Notice to Treat, Notice of Entry and Notice to Give Up Possession by 22 September 2008 were not formally served until 4 September 2008. Solartrack's business was relocated to Anthony's house, where it continues to operate on a skeleton basis, honouring warranty claims and selling the remaining stock where possible.

Summary of the parties' cases

34. Briefly, the contentions of the parties are as follows.

35. Solartrack says that the intention to make a CPO became public knowledge in 1999 and the shadow which this cast had an adverse effect on its business. The adverse effect started at the very point when the company was attempting to transform its business by implementing a new strategic plan. The prospects for the business were subject to scrutiny and assessment in 1998 and significant growth had been predicted. The shadow of the CPO caused a business which had been predicted to grow at a considerable rate not to do so but to decline.

36. The business was highly dependent upon the skills and commercial contacts of its directors and of Anthony in particular. The shadow of the CPO had a detrimental impact on their ability to contribute to the business. It also resulted in a lack of access to finance. These effects were particularly damaging because they occurred at the very time when the business was undergoing change.

37. Following the sale of the freehold interest in 42-44 in 2003 the banking facilities which were essential to the continued prosperity of the business were withdrawn. The effect of this withdrawal was particularly serious in view of Solartrack's great dependence on developing products which were manufactured on its behalf in the Far East. As a result Solartrack suffered loss by way of lost profits that were likely to have been earned but for the dispossession and the threat of dispossession and the value of the goodwill which was positive in 1998/99 but had been destroyed by 2003. Solartrack also claims compensation for losses of stock, fixtures and fittings which it says were directly associated with its dispossession in 2003 from parts of 42-44; similar losses resulting from its dispossession in 2008 from the remaining parts of 42; redundancy and associated payments; moving and relocation costs and director's time involved in dealing with the effects of the proposed and actual acquisition of its business premises. The amounts claimed for short term loss of profits and loss of goodwill were not quantified exactly, but the overall claim as presented could total up to £1,576,106.91.

38. In reply the LDA argues that Solartrack has not shown that, on the balance of probabilities, the losses claimed were caused by the acquisition of 42-44. It submits that the need for proof of causation is particularly important given that the company was trading poorly prior to any possible influence of the CPO; it had embarked on a course of change compared to its historical business pattern; there is a lack of contemporaneous documentation supporting causation; the credibility and truthfulness of the evidence given by the company's directors needs to be approached with circumspection, and Solartrack's own experts rely upon that evidence in their reports.

39. The LDA's primary case is that Solartrack could and should have relocated its business from at least 2003 onwards. Suitable relocation premises were available and the company knew that it was able to have relocation costs agreed and paid in advance if it chose to follow the advice which it had been given. Its failure to do so was a failure to mitigate its losses. Compensation should therefore be assessed on a notional relocation basis. The only evidence on the quantum of relocation costs was that of Mr Cottage. He assessed these costs at some £66,685 and the LDA submits that this figure should be accepted. Added to this should be one week's net profit from the unadjusted accounts for the year ending 1998; a sum of £3,810. The total compensation should therefore be £70,500.

40. If, contrary to the LDA's primary case, Solartrack could not reasonably have relocated its business, it ought to have extinguished itself in or around April 2003 when its freehold interest in 42-44 was sold, since by then there was no reasonable hope of making a profit. In that case no loss of profit is claimable from that date. Moreoever, the value of the company's goodwill was nil when Solartrack invested in it in 1998. The price paid by LVFM is not to be analysed in terms of the value of goodwill but the value of the company's underlying assets. If that position is not accepted, the LDA submits that there is no evidence to show that the acquisition or threatened acquisition caused any loss of goodwill.

41. The LDA makes the following additional points. There is no reliable evidence to support the claim for loss of rent from the first or second floors of 42-44, or for the losses in respect of fixtures and fittings and other items that are said to have been left behind or disposed of when the LDA took possession of 44 in April 2003. Further and in any event Solartrack failed to mitigate its loss and therefore nothing is claimable under this head. No compensation is recoverable for fixtures and fittings allegedly lost in October 2008; alternatively Mr Cottage's valuation of £3,890.75 should be accepted. No compensation is payable for the alleged inability to sell stock in October 2008, or for redundancy payments or removal costs, since the extinguishment of the business was not caused by the CPO. The claim for losses of stock and redundancies at the date of the hearing is unproven. In any event Solartrack failed to mitigate its loss by relocating or extinguishing the business from 2003 onwards. The claim for directors' time was not attributable to the acquisition of 42-44.

Solartrack's evidence

Petra Pipkin

42. Petra said that one of the advantages which Solartrack enjoyed over its competitors was its in-house design/research and development capability. It worked closely with Far Eastern manufactures

to implement and test design changes. It was highly dependent upon research and development to develop new products, keep up with market technological advance and customer trends, and refining existing product lines and the processes for making them, The majority of the company's R & D was undertaken in-house.

43. Solartrack, said Petra, as well as its investor (LVFM), its bank, tenant and some of its customer base were aware of the proposed CPO part way through the financial year ending September 1999. The business was affected financially from the time the news of the proposed CPO became public. At that time Solartrack had been implementing the recommendations for its planned growth but had to turn from developing the company as planned to dealing with the consequences of a potential CPO. In addition, and more importantly, LVFM was becoming hesitant about fully implementing Solartrack's anticipated financing due to its concerns about the negative consequences that a CPO could bring to the business.

44. LVFM was investing in the whole ethos of the company – not only the existing range of products but the continual ideas and opportunities for new products utilising Solartrack's in-house design capacity and low cost manufacturing opportunities in the Far East. One of the markets identified in the Strategic Plan was the motorcycle market. At the time the Strategic Plan was prepared, Solartrack and its trade mark "Sola-Larm" had a 25% market share of the motorcycle alarm market and Solartrack's nearest competitor Datatool had a 15% share. Solartrack was selling four models of motorcycle alarm and planned to introduce the first scooter alarm for the UK market and a new insurance approved model. LVFM's investment would enable Solartrack to implement a direct sales and marketing presence with advertising in the motorcycle press, stand display attendance at motorcycle exhibitions and dedicated sales and marketing staff.

45. At that stage sales of the motorcycle products in the UK were mainly through a distributor, Motorhaus Marketing. However, in late 1997 or early 1998 Solartrack was informed by a customer that Motorhaus had offered them effectively a copy of the Solartrack alarm under a different brand name, "Acumen". In addition, Motorhaus were not providing the after sales service which this market required. Solartrack was forced to withdraw from the contract with Motorhaus. The Strategic Plan demonstrated that Solartrack could take control of the sales and marketing to customers, a change which would increase profitability substantially in future years. By the time the Strategic Plan was drawn up Solartrack had already started its direct marketing campaign, with over 200 shops agreeing to stock the alarm products, and the number steadily increasing. Solartrack was already exceeding some of the milestone targets in the 'Action Plans' in the Strategic Plan.

46. Petra said that, from 1998, the company increased its sales and marketing capability. New databases were constructed and purchased, new sales staff and agents engaged, corporate rebranding was undertaken along with launching a range of new product brochures, point of sale equipment, advertising and promotion. In conjunction with this Solartrack upgraded the management information and accounting system.

47. Solartrack's premises were central to the investment by LVFM. The premises provided ample space for expansion. More importantly, Solartrack owned the freehold interest. The building offered

sufficient equity to guarantee Solartrack's banking facilities for loan bonds and letters of credit. These were crucial to the company at a time when the business was on a planned strategy of growth. Although Solartrack's manufacturing costs were low (as it was manufacturing products in factories in the Far East using Anthony's contacts), there was an inevitable delay between the design being undertaken, the goods being manufactured and delivered to Solartrack ready for assembly, testing and ultimately distribution to customers. Solartrack relied heavily on its banking facilities to bridge the gap between paying for the manufacturing of the products and receiving payment from the eventual customer. Furthermore the freehold equity provided the opportunity to access future development funding through the mortgaging of this interest.

48. After articles started appearing in the press, it was clear that the possibility of a CPO had increased the risk profile of the investment in Solartrack, creating a degree of uncertainty for LVFM. Solartrack were told by Mr Orman that the CPO could potentially go on for a number of years, although neither Anthony nor Petra had any experience of CPOs.

49. Petra said that LVFM quickly concluded that the LDA were not willing to enter into reasonable negotiations, were prolonging the timescale for the settlement of the compensation payments, and then offered a sum to acquire the freehold interest which was substantially less than the cost of acquiring a similar replacement building. Solartrack continued to attend meetings with the LDA and also with LVFM, to try and push along the negotiations.

50. During this time new products, some of which had been part of the 1998-1999 Strategic Plan and were being developed, but which required a substantial investment, were suspended pending the outcome of the CPO. These included the cycle computer, wrist watch heart rate monitor, in car entertainment system, ozone water sterilising equipment, digital language laboratory, GPS vehicle tracking and health drinks. In the course of cross-examination Petra agreed that changes were needed to Solartrack's operations from 1998 onwards if the company was to return to profitability.

51. Solartrack's business, said Petra, was detrimentally affected as a consequence of the publicity surrounding a potential CPO. The Strategic Plan had set the business on a course of expansion from 1998 that from early 1999 began to need more significant development funding. The uncertainties surrounding a potential CPO created concern on the part of LVFM as to the negative financial impact this might have on Solartrack's business.

52. The Strategic Plan was produced in the last quarter of 1998 with an expectation that funding for the envisaged growth would follow and allow Solartrack to meet the Strategic Plan. However, LVFM's second tranche investment was not received until August 1999, delaying the original expected plans for turnover growth for the 1998/99 financial year. No further funding was received from LVFM after 7 August 2001. By that time LVFM had made a total investment in Solartrack of £185,001.

53. The delay and ultimate cessation of development funding created an inability for Solartrack to both market and promote the new products it had developed as a result of the Strategic Plan and further develop the new range of products planned. Successful research and development, whether

of existing products or new products, required long term planning, funding and a stable environment where staff felt confident in the future of their company. The various stages of the design process could take 3-4 years from the original conception to bringing the product to market. Even the company's existing products were being continually improved, requiring continued funding and resources. With any new product development this process would involve substantial investment, not only in the design and manufacturing process, but also with packaging, point of sale material, advertising and publicity.

54. The information being published on the proposed scheme confirmed that the premises occupied by Solartrack formed part of the area which would need to be demolished in order to make way for the regeneration project. The constant threat of pending demolition of the building, subsequently the "Acquired by the LDA" signs appearing on 42-44 and neighbouring properties and the demolition of the whole retail parade up to 42-44, together with the uncertainty of where the company would be continuing to operate, made it difficult for Solartrack or LVFM to justify dedicating substantial amounts of money to advertising and promotion.

55. The nature of Solartrack's business required it to provide warranties for its products. Typically warranty periods ranged from one to two years. In addition, all installation work was covered by a warranty. Therefore during the shadow CPO period, the adverse publicity and rumours created uncertainty with customers as to if and where Solartrack would trade in the future, and whether Solartrack could honour those warranties. Customers when buying products would expect them to last for considerably longer and would want to know that Solartrack would be available for servicing and support.

56. The very fact that the company's premises were to be demolished would have been a disincentive for a prospective customer when considering Solartrack as a reliable long-term supplier and service provider. Furthermore, the shadow of the CPO caused staff uncertainty and fear for the long term future of their employment with the company at a crucial time, when it needed all staff actively to work together to fulfil the growth strategy as outlined in the Strategic Plan.

57. The difficulties in obtaining information and guidance regarding the protocol of a CPO, the delays regarding the sale of the freehold and the difficulties in securing an alternative property all took up a significant amount of time and adversely affected the planned growth of the business and ultimately the decision by LVFM to withdraw funding.

58. A consequence of the sale of the freehold was that its former banking facilities were no longer available to Solartrack. This meant no longer having access to funding such as letters of credit and loan bonds. These were essential for the manufacturing process when implementing orders with overseas producers. The Far East manufacturers needed the certainty of payment (provided by loan bonds and letters of credit) before commencing tooling and product manufacture. Without these facilities Solartrack could only trade with these companies utilising its own cashflow. Furthermore, from the proceeds received from the sale of the freehold Solartrack had to settle its overdraft and mortgage with the bank and repurchase the LVFM preference shares. From 2003 onwards Solartrack's turnover and cashflow were significantly strained. Funds were very limited, restricting

stock replenishment, sales and promotion activities and the development of new products. Management time and costs incurred as a result of CPO related activities presented an additional burden on the company's finances. Although Solartrack did not pay any rent to the LDA for the part of 42 it still occupied, the company was in a very difficult financial position. Of the balance of the sale proceeds remaining (after repayment of the overdraft, mortgage and tax liabilities), £50,001 had to be allocated for payment to LVFM for their preference shares, and the remainder had to be used to enable the company to continue to trade (wages, outstanding stock orders and other usual trading costs). Following the sale of the freehold, monies in the bank had to be used to fund trading activities with the Far East, but the sums available were ever decreasing, and that created increased difficulties. No dividends were paid to the shareholders following the sale, and the pressures to try and reduce costs increased.

59. During this time Solartrack sought on many occasions financial compensation towards its relocation expenses and disturbance losses. Although eventually in 2004 an advance payment was recommended, it was not received within a reasonable period of time.

60. Petra said that Solartrack always intended to relocate the business. She believed the company started looking at properties in about February 2000 and possibly even earlier. One of the main issues that the company faced was the price to be paid by the acquiring authority for the freehold. Anthony had been in correspondence with the acquiring authority (and its representative, Glenny) from around the beginning of 2001 in relation to a relocation of the business. As acknowledged by the acquiring authority in their letter of 27 September 2002, the price they would pay to acquire the freehold of Solartrack's premises recognised that freehold properties of a similar size might be more expensive in other areas.

61. As a result of having to dedicate substantial time to seeking suitable alternative premises and dealing with the issues relating to the acquisition of their building, Anthony and Petra were no longer able to devote all of their time to the business. It became increasingly difficult for Anthony to travel to the Far East as he was key to the negotiation of the above issues. Furthermore, expenses associated with the CPO represented a new drain on cash flow.

62. One of the principal difficulties in relocating was the apparent refusal of the acquiring authority to agree to fund the relocation costs, or provide clear guidance as to the reimbursement they would provide. Anthony was originally negotiating with Mr Scarth, and they had been discussing potential relocation costs. Anthony's main concern was that Solartrack was simply not in a position to fund the substantial relocation costs itself, and certainly not without some form of assurance that, if it did so, the costs would be met promptly by the acquiring authority once they had been incurred.

63. Petra estimated that, commencing in around 2000, she and Anthony spent in excess of 200 hours per year each searching for and viewing premises, with a view to ascertaining whether they would be suitable for a relocation of Solartrack's business. Between 2000 and 2008 she probably viewed and gave consideration to over 250 properties. The criteria of the type of property being considered changed over this period as the company's financial circumstances deteriorated. As the financial position worsened over time, non-comparable properties were considered.

64. When the freehold of Solartrack's premises was sold to the LDA in March 2003, the bank withdrew the overdraft and trading facility and the mortgage was redeemed. Tax on the disposal further reduced the amount of funds available for relocation. The loss of the freehold impaired the trading operations of the business. Furthermore, when looking for new premises, it was necessary to take into account that, without a freehold, there would potentially be no overdraft or other financing facilities.

65. Solartrack gave consideration to acquiring both freehold and leasehold properties. One of the difficulties with leasehold properties at that time was that many landlords were seeking tenants on twenty year leases with five yearly upward only rent reviews, and also seeking personal guarantees from directors. Neither Petra nor Anthony was in a position to give personal guarantees to the end of the term of a lease, especially in circumstances where the acquiring authority was denying any entitlement to compensation and would only approve relocation costs after they had been incurred.

66. Following the sale of the freehold to the acquiring authority Solartrack continued to trade from the ground floor, basement and rear extension of 42. After the withdrawal of funding from LVFM and the company's banking facilities, funds were limited and Solartrack had to concentrate on maintaining the product life cycle of existing products (with the exception of the electric bicycle) and the redesign of existing products to meet newly emerging markets such as caravan alarms. Products requiring significant investment could not be developed. Solartrack was forced to stop importing and redesigning the electric bicycle as a result of the move into 42, as there was not enough storage, servicing, assembly and packing space. Furthermore electric bicycles were capital intensive at a time when the company's finances were restricted as a consequence of the CPO.

67. Mindful that it had to continue to honour warranty claims, pay staff wages and meet any additional ongoing liabilities (including funding the claim against the acquiring authority), the business continued to run at a substantially reduced level. It still had remaining stock which it had attempted to sell to mitigate losses, but this in itself involved issuing warranties for a period of between one and two years from the date of purchase.

68. Petra produced a schedule of fixtures and fittings which she said were left in 44 following the dispossession in 2003, together with a schedule of fixtures and fittings which were still being used by Solartrack following the move to 42 and which were not retained by the company following the dispossession in 2008. She also produced a schedule of the stock losses which she said had resulted from the move from 42. This included the stock which she said the company was unable to sell prior to vacating the premises, and which remained in Solartrack's possession. She said that it was only viable to undertake servicing and warranty in-house while selling existing stock, as any third party would charge a premium to provide this service and would not have the knowledge of Solartrack's product range to be able to support sales.

69. Petra provided details of the following key products from which she said Solartrack was unable to benefit financially because of the adverse effects of the proposed CPO: electric bicycles; heart rate monitors and cycle computers; health drinks; motorcycle products; reversing systems; CCTV and in-

car entertainment; vehicle security; caravan, motorhome and holiday let security; property security installations; sterilisation ozonisers; digital language laboratory and other miscellaneous sales.

70. In the course of cross-examination Petra accepted that she had been aware of, and was happy with, the evidence given on behalf of Solartrack at the preliminary issues hearing.

Anthony Pipkin

71. Anthony stated that he believed Petra's lengthy witness statement to be accurate and emphasised the advantages of 42-44 for Solartrack's business.

72. He said that he had personally conducted the negotiations for the sale of the freehold interest to the LDA and had been concerned that the sums offered were substantially less than the cost of acquiring a similar replacement building. In a letter dated 27 September 2002, Mr Scarth had indicated that the LDA would be willing to treat discussions as if a CPO had been made, and to pay the majority of the disturbance claim if it would assist Solartrack in acquiring an alternative property. The offer was subsequently withdrawn after Mr Scarth was replaced by Mr Kidd.

73. On 7 January 2003 Mr Cottage confirmed that LDA would offer £427,500 for the freehold interest, and that this figure had been arrived at on the basis of a price per square foot which had been agreed with the Transport and General Workers Union (TGWU) for their building, which was adjacent to the premises occupied by Solartrack. He was told that deals on eight properties had been agreed and given the impression that he was being unreasonable in not agreeing to settle at the same level of value as had been accepted for other properties. He was also informed that in the event of no agreement the matter would be referred to the Lands Tribunal and he would probably receive considerably less for his company's building. He therefore decided to sell the property for £445,000, equivalent to approximately £90 per square foot. It subsequently emerged that the TGWU building had not been sold at the price stated. The property was still occupied by the TGWU.

74. Anthony said he believed that LVFM's decision to invest in Solatrack was driven by a recognition that the company had the following strengths: a proven ability to manage a profitable business over many years; an extensive range of electronic security products, including the UK's leading market share in motorcycle security alarms; a unique ability to produce new products from a market that did not have general 'open access' to Western companies at that time; and a freehold property used to guarantee the company's trade banking facilities.

75. He said that the growth plans envisaged by Solartrack and LVFM at the time of the initial investment in December 1998 were frustrated when news of a potential CPO became public knowledge during the early part of 1999. LVFM's second tranche investment was not received until August 1999, delaying the original expected plans for turnover growth for the 1998/1999 financial year. The uncertainties surrounding a potential CPO created a concern on the part of LVFM about the negative financial impact this might have on Solartrack's business. The delay and ultimate cessation of development funding created an inability for Solartrack to market and promote the new

products it had developed as a result of the Strategic Plan and further develop the new range of products planned, leading to damaging losses being sustained by the business.

Mr Dunne

76. Mr Dunne said that LVFM managed one of a number of venture funds set up as part of an initiative by Midland Bank to create regional venture capital funds to provide funding and support to small businesses. The funds were looking for small companies and businesses with high growth potential, which would be capable of producing a commercial venture capital return for investors.

77. LVFM was the authorised and appointed manager of the Midland Enterprise Fund for Greater London (MEFGL). It was set up to provide funding to businesses in the thirty three London boroughs, which included Barking and Dagenham. LVFM had a general partner company called London Ventures (General Partner) Limited. FSA regulations provided that only the regulated fund manager (that is LVFM) could make an investment, but the general partner and in particular its experienced board of directors operated as a control, to ensure that LVFM was performing as it should.

78. Mr Dunne joined LVFM in July 1995 on a six month secondment from Midland Bank. The secondment was extended to last for a period of two years. When it came to an end in about 1997 HSBC was in the process of taking over Midland Bank, and instead of returning to the bank Mr Dunne elected to stay with LVFM. According to Mr Dunne's understanding when HSBC took over Midland Bank they did not have the same level of interest in the regional funds. Shortly thereafter, funding in the region of £20 million was secured from the European Bank and invested across the various regional funds, with the LVFM fund totalling £6.4m. LVFM was owned by Mr Orman and run by Mr Orman and Mr Dunne working together. This included any decision making in relation to funding and investments.

79. Mr Dunne said that LVFM'a approach to investment in a company was to ask, based on financial projections for the business, what level of stake was necessary to provide them with a return of at least 65% IRR over 5 years. He agreed that the sort of investments made were high risk, with high rewards if successful. Some would succeed and some would fail, and in fact very few achieved their initial business plan.

80. Mr Dunne said that one of the main attractions of Solartrack was the fact that Anthony had long standing and strong contacts in the Far East. At that time, China and the Far East were not "open" like they are now. Having strong contacts in the Far East was a huge asset to the company; it meant that Solartrack could manufacture products in China and the Far East at a reduced cost, and the products could then be imported to the UK. This set Solartrack apart from its competitors and gave it a very real advantage. Part of Solartrack's value was that Anthony was able to source products that he liked from the Far East and China, being them back to the UK, do some bench work in Dagenham to ensure that the products could fit with the UK market, carry out testing on the products, and send them back to be manufactured to his specifications in China.

81. Mr Dunne added that one of the other strong attractions of Solartrack was the premises it was occupying. They were ideal for the company's existing and future needs and the freehold interest provided security for the company's finances. Solartrack had sufficient equity in the premises to guarantee its banking facilities. The mortgagee (HSBC) was not therefore relying only on the trading performance of the company to provide banking facilities. Mr Dunne said that it was unusual for LVFM to be approached by a company with an asset such as a property; generally, LVFM was approached by small companies without any assets.

82. The existence of the banking facility was very important to LVFM. The nature of Solartrack's business meant that where goods were being manufactured in China there would be a delay between the goods being manufactured and reaching the UK, delivered to Solartrack, sold to customers, and paid for. Solartrack therefore needed substantial banking facilities in order to bridge the gap between the goods being ordered in China and paid for by the customers in the UK. As during the mid to late 90's China was not as open as it is now, the property was essential to the company on the basis that HSBC were also providing import bonds, guarantee bonds, letters of credit and general trade finance facilities, secured on the property. This meant that Solartrack did not have to pay for the goods until they reached the UK, but at the same time the Chinese manufacturer was guaranteed payment. LVFM would not have been in a position to fund this.

83. Mr Dunne said that he did not consider that an investment in Solartrack as a business would have been viable without the banking facilities which were linked to the property it was occupying. As with most of the companies in which LVFM invested, Mr Orman and Mr Dunne attended Solartrack's board meetings. It was usually a condition of the investment that they would be able to do so. This provided them with the opportunity to be involved at board level in the company in which an investment had been made, and to monitor progress on a continuing basis. It also provided them with the opportunity to verify that financial projections were (or were not) being met, and to then evaluate the need and/or merit of any further investment and any further action to be taken to ensure compliance with conditions of investment.

84. Mr Dunne said that by the time the property was sold in March 2003 additional debts had been incurred as the business had suffered due to the uncertainty caused by the CPO. Once the mortgage, bank facilities and trade debts had been paid off following the sale of the property, Mr Dunne did not think that the balance of available funds would have been sufficient to repay LVFM's investment. LVFM would not have invested in Solartrack as it did if it had known about the impending CPO before the first investment was made. Mr Dunne would certainly not have agreed to invest in the business in 2003/4 given the decline since 1998

Mr Clements

85. Mr Clements said that he had been instructed to prepare an expert accountancy report calculating Solartrack's loss of profits, goodwill and extinguishment claim following the CPO. Supporting accounting information was only available from the year ended 30 September 2001 onwards and some of this information might have been lost during Solartrack's move in 2008. As a result he had placed reliance on the witness statements of Petra and Mr Dunne, in addition to the

limited documentation that was available. The books and records of Solartrack were maintained on an accounting system which was not capable of producing much of the information he had requested, such as a breakdown of customers for each year since 1996 into market areas.

86. Mr Clements explained that he was not an expert in any of the products or markets referred to in the Strategic Plan. He produced a detailed analysis of Solartrack's financial results during the three years to 30 September 1998, the budgeted figures in the Strategic Plan for September 1999, and the actual figure for September 1999. He summarised the results as follows:

	Actual	**Actual**	**Actual**	**Budget**	**Actual**
Year ended 30 September	1996	1997	1998	1999	1999
	£	**£**	**£**	**£**	**£**
Turnover	426,114	456,967	371,081	522,202	315,782
Gross profit	180,306	229,348	209,843	290,137	171,277
GP margin	42%	50%	57%	56%	54%
Expenses & Other	(158,174)	(208,768)	(226,036)	(284,749)	(250,534)
Net profit/(loss) before tax	22,132	20,580	(16,913)	5,388	(79,257)

87. Mr Clements said that the decline in 1999 appeared to be the result of various factors, namely the delay in the second tranche of the investment from LVFM; the loss of Motorhaus Marketing; delay in products coming onto the market; the CPO's impact on LVFM, the bank and customers; and directors' time being focused on dealing with the impact of the CPO instead of growing the company as planned.

88. Mr Clements prepared his estimate of loss of profits on the assumption that Solartrack's business was significantly impacted by the CPO from around early 1999. The business suffered a loss of profits from that time and, more significantly, from 2 April 2003 when possession of part of the property was taken. Mr Clements assumed the average profits or losses over the three years ended 30 September 1998 were representative of the level of profits that would have been earned between 1 October 1998 and 3 October 2008, but for the CPO. This average included a year that had been adversely impacted by external factors and he considered that it provided a reasonable estimate of the likely level of ongoing profits. It would not be appropriate to exclude less profitable years, as it was likely that the business would be impacted by a variety of internal and external factors over the period being considered.

89. Mr Clements said that, although profits dipped in 1998, Solartrack expected a recovery as it had accepted the losses associated with Motorhaus Marketing in 1998 and was developing a strategy to recover this market area which, at that time, made up the majority of the company's turnover.

90. Although the Strategic Plan showed potential annual turnover of £2.5m within five years, Mr Clements did not think it appropriate to use the figures in the Plan in the absence of strong evidence to support them. In his view it would be more reasonable to assume that, but for the CPO, profits would have remained at the level of average profits in the three years to 30 September 1998. On that basis he calculated the decline in profits between 1 October 1998 and 30 September 2008 at £561,717, as follows:

Year ended 30 September	Actual net profit/(loss) before tax (adjusted)	Projected net profit/(loss) before tax but for the CPO	Decline in profits
	£	£	£
1999	(78,257)	11,506	89,763
2000	(78,626)	11,506	90,132
2001	(6,160)	11,506	17,666
2002	(3,726)	11,506	15,232
2003	(104,718)	11,506	116,224
2004	7,569	11,506	(3,937)
2005	(74,972)	11,506	86,478
2006	(38,023)	11,506	49,529
2007	(13,914)	11,506	25,420
2008	(55,827)	11.506	67,333
	(446,654)	115,063	561,717

91. This assessment represented the total shortfall in profits compared with the level earned in the base period (1996-1998). Whilst a proportion of this shortfall was attributable to factors other than the CPO, Mr Clement said that it was not possible to assess, with any degree of accuracy, the proportion attributable to the CPO and the proportion to other factors. He therefore left the decision as to how much of the shortfall was attributable to the CPO to the Tribunal.

92. Mr Clements also considered the loss of goodwill (which could be thought of as the loss of future profits) incurred by Solartrack when possession of the remainder of its property was taken on 3 October 2008. He recognised that valuing a privately owned business was always difficult when the business was in the development stage and projecting growth. This was because it was necessary to make a judgment as to the level of growth that was achievable. Both the likely level of growth and the level of risk associated with the business would be significant factors in determining the appropriate multiplier. In the case of Solartrack, however, Mr Clements considered he was fortunate in that various transactions had taken place in the company's shares, and these could be used to give an indication of what the business was worth on the open market to a third party investor.

93. Mr Clements valued the goodwill of Solartrack on the following dates: 3 December 1998 and 17 August 1999, when LVFM invested in the company's shares; 2 April 2003, when Solartrack was forced to vacate a proportion of its premises; 7 August 2004, when LVFM withdrew its support and sold its shares back to the company; and 3 October 2008, when the remaining portion of the premises was taken.

94. In connection with the valuations at 3 December 1998 and 17 August 1999 Mr Clements relied on a letter written by Mr Orman to Solartrack on 23 November 2007. In that letter Mr Orman said that his fund's investment of £185,000 in return for a 30% equity stake resulted, after applying a minority holding discount of approximately one third, in a valuation of the entire business at the time of the investment of £925,000. Mr Clements said that this provided a good indication of what LVFM considered the value of Solartrack to be when it first invested in the company. (Mr Orman was not called to give evidence. His colleague Mr Dunne, who was, said that he did not recall Mr Orman's valuation of £925,000 as having been carried out at the time the investments were made).

95. Mr Clements prepared his own valuation of the company, based on the sums invested by LVFM in December 1998 and August 1999. He used the investment of £50,000 for 15% of the ordinary shares in Solartrack on 3 December 1998 to show that LVFM placed a value on the business as a whole of some £497,552, assuming they had applied a discount of 33% to reflect the fact that they were buying a minority holding. Mr Clements said that, whilst he would normally expect a higher discount than 33% for a 15% interest, it seemed clear that LVFM were aware of the security afforded by the company's freehold property, and also that they intended to increase their investment to 30%.

96. Mr Clements analysed LVFM's second investment in Solartrack in August 1999 to suggest that the fund had then placed a value of £539,904 on the business as a whole, including the £50,000 paid for preference shares. Again, he made a discount of 33% for the minority holding when arriving at the value of the company's ordinary shares.

97. From the total (enterprise) value of Solartrack's business, Mr Clements deducted £298,642 in respect of Solartrack's net assets to arrive at the following values for goodwill:

	LVFM	**Mr Clements**	
	3 December 1998	**3 December 1998**	**17 August 1999**
Company value	£925,000	£497,522	£539,904
Net assets	<u>£298,642</u>	<u>£298,642</u>	<u>£298,642</u>
Value of goodwill	£626,358	£198,880	£241,262

Mr Clements left it to the Tribunal to decide which of these three goodwill valuations was most appropriate.

98. Mr Clements also considered the actual value of Solartrack's goodwill as at 2 April 2003, 7 October 2004, and 3 October 2008. On each occasion his opinion was that the business had no value in excess of the net value of its assets.

99. Mr Clements then considered the loss of goodwill as a consequence of the CPO in April 2003, October 2004 and October 2008. In view of the subjectivity involved in seeking to project the likely level of growth and profits, he considered that a reasonable approach would be to assume that the value of the business at 3 December 1998/17 August 1999 – that is, the dates of LVFM's investments in the company's shares – would give a reasonable approximation to the value of the business at the three later dates, but for the CPO. In each case he assessed the loss of goodwill at between £626,358 (based on Mr Orman's letter) and £241,262 (based on his own analysis of LVFM's second investment on 17 August 1999). As with the loss of profits, Mr Clements left it to the Tribunal to decide what percentage of the fall in the value of the business was attributable to the CPO and what was attributable to other factors.

Mr Winbourne

100. Mr Winbourne was instructed by Solartrack in June 2006, although he had been advising owners of other properties affected by the CPO since Spring 1999. He said that, by the time he was instructed most of the buildings to the west of 42-44 were vacant as a result of the CPO and had been vandalised. In his opinion

> "an outstanding business disturbance claim looked from the outset to be large and about £600,000 superficially and only £100,000 had been paid in advance in 2005 under the Land Compensation Act 1961 as an advance payment towards disturbance and removal, which normally follows a Notice to Treat. However, removal had not come about, as the sum was clearly insufficient and below all estimates for relocation obtained by Solartrack. In addition to this, the advance payment was agreed over a year prior to funds being received.
>
> In view of this, we advised urgent reference to the Lands Tribunal and instructions followed."

101. Mr Winbourne said that he relied on the evidence of Petra and Anthony in respect of what was happening on the ground at the relevant time and on the correspondence between Solartrack and the LDA and their agent, Glenny. He relied on Petra's factual evidence in respect of the partial extinguishment and disturbance which occurred in April 2003. He had, however, been able to reconstruct a schedule of losses on forced sale, or removal of fixtures and fittings and equipment and stock.

102. As far as the valuation of Solartrack's business before the scheme was concerned, he considered that the best evidence was provided by LVFM's investment in December 1998 and he thought that Mr Murray's letter to Petra in 2001 showed the acquiring authority's suggestion that Solartrack was unwilling to relocate and mitigate its loss was wrong. He also drew attention to Anthony's letter to Mr Kidd dated 6 May 2003. He said this showed that, contrary to the acquiring authority's suggestion that the business should have been extinguished in 2003, that had indeed been Solartrack's desire at that time.

103. Referring to Solartrack's move to the ground floor and basement of 42 in 2003, Mr Winbourne said that this coincided with a steep drop in turnover and a substantial loss. One of LDA's arguments was that the company should have moved to an alternative property, but no suitable property was available, particularly since the compensation packages which had been offered in advance of the CPO were clearly inadequate.

104. In the absence of the CPO Solartrack would not have sold the freehold interest in 42-44, its overdraft facilities would not have been cancelled and its expansion programme would not have been adversely affected. Mr Winbourne said that the

> "ensuing events are as a result of the LDA's intransigence in dealing with compulsory purchase claims and accepting that cause and effect can be more damaging than can be assessed easily for ordinary budgetary purposes."

105. Mr Winbourne said that the scheme had originally been promoted by English Partnership in association with various Ford interests. When Ford announced that it was scaling back work at Dagenham the proposed redevelopment was taken forward by the LDA. The occasions when funds were available for advance acquisition, therefore, were far from clear.

106. The disturbance claim put forward by Mr Winbourne excluded loss of profits and goodwill. It was broken down as follows:

(i)	Loss on forced sale of fixtures and fittings at 28 March 2003		£ 8,092.50
(ii)	Loss of rent from second floor of 42-44 as a result of blight		£29,825.00
(iii)	Management time - £16,000. Subsequently reduced to	£ 2,400.00	
(iv)	Loss on dispossession in October 2008:		
	(a) items left at No.42		£46,994.68
	(b) redundancy costs - £62,701.31. Subsequently reduced to		£62,262.67
(v)	Moving and relocation costs		£ 3,126.86
(vi)	Stock losses on dispossession in October 2008 and at the hearing date		£ 73,855.99
			£226,557.70

Acquiring authority's evidence

Mr Rooke

107. Mr Rooke said that he had been employed by Cumbria Inward Investment Agency between 1998 and 2003. During that time he was responsible, among other things, for relocating a significant number of UK and international businesses. In 2003 he joined Gateway to London (GTL) whose primary role was to offer property relocation advice and assistance, mainly to companies based in the East London area. GTL was introduced to companies through referrals from property agents, local

authorities, and bodies like the LDA or other business support agencies such as Business Link. GTL did not charge for its services. It bridged the gap between the public and private sectors.

108. Mr Rooke contacted Anthony at some stage between 22 April 2004, when he was first approached by Mr Kidd, and 12 May 2004. His meeting with Anthony lasted about an hour, a typical duration for a first appointment with senior management of a company. The purpose of the meeting was to gain an understanding of the business and to identify the relocation criteria. Mr Rooke said that he had been unable to detect any real desire by Anthony to develop the business. Although Anthony was very negative, he did not refer to any effects on his business caused by the actions of the LDA. In Mr Rooke's opinion, Anthony was more concerned with securing the highest amount of compensation than in channelling his energies into finding a suitable property to which to relocate.

109. On 2 June 2004 Mr Rooke sent Anthony an e-mail containing details of eleven properties which he felt might meet the criteria for relocation. He also asked Anthony for a breakdown of his claim for £292,000 relocation costs. Mr Rooke was surprised by Anthony's response, which was to send on the same day a breakdown of the claimed costs with supporting information, but to provide no comments at all on the suitability or otherwise of the eleven identified properties.

110. On 10 August 2004, following a telephone conversation with Anthony, Mr Rooke told Mr Kidd that, unless Mr Kidd was prepared to pay a considerable amount to Solartrack, Anthony would not even entertain the idea of relocation.

111. Mr Rooke said that the figure of £150,000 which he recommended Mr Kidd to pay by way of advance disturbance compensation on 2 June 2004 was put forward on the basis that Anthony had told him that the customer base of the business was approximately 100,000 and that the property to which Solartrack would eventually relocate would not have a telephone system, computer network or security system adequate for the company's needs.

112. On 29 March 2006 Mr Rooke's file for Solartrack was officially closed as an abandoned project. By then Mr Rooke said that he had formed the view that relocation was not going to happen because there had been no feedback whatsoever from Anthony.

Mr Kidd

113. Mr Kidd said that the LDA had employed DTZ to collect the keys of 42-44 on 2 April 2003 save for the section which was still being occupied by Solartrack. If, as Solartrack alleged, DTZ had discovered items such as tables, desks, fridges, etc, Mr Kidd said that they would have reported the position to him and consulted him as to the best method of disposing of them. DTZ had made no such report. Furthermore, it was not until some years later that Solartrack claimed that it had been forced to leave behind valuable items which were subsequently disposed of by DTZ. Had that been the true position, given his experience of communicating with Anthony, Mr Kidd would have expected him to make it clear in no uncertain terms that he had suffered a wrong. In any event, if

there had been any items of value in the relevant parts of the building, Mr Kidd would have expected Anthony to take steps to prevent their loss; he had had plenty of time and opportunity to do so.

114. As for the alleged adverse effects on Solartrack of the sale of the freehold in 42-44 in April 2003 and the subsequent reduction in the floor space it occupied, Mr Kidd said that it was Solartrack who wanted to hurry through the sale. The LDA had been dealing with Anthony for some two years, but was in no particular rush to finalise the purchase. It did not need the premises immediately and, while it wanted to acquire the land by agreement if possible, it had no need or desire to dispossess the company by taking over parts of the premises that it was occupying. In fact, the earlier the acquisition, the longer the LDA would need to pay for security and insurance of the property until the scheme was ready to be developed. Indeed, Anthony had threatened that, if the transaction was not completed by the end of March 2003, he would seek to negotiate the agreed price upwards. The haste with which Anthony wanted to progress completion did not suggest that he believed Solartrack would suffer any loss or difficulties from the arrangements that had been agreed.

115. Mr Kidd said that, as a manager of large development projects for the LDA, he always sought to minimise the loss and disruptive effects that the compulsory purchase process could have on businesses. If Anthony had told him that he required the whole of 42-44 from which to operate his business he would have had no difficulty in acceding to such a request. In fact, Anthony did not inform him that he required more space. Accordingly Mr Kidd considered that any losses suffered by Solartrack had been caused by its failure to act reasonably.

116. Before his first meeting with Anthony, Mr Kidd read all the previous correspondence between Mr Scarth and Anthony concerning relocation. This included advice which had been obtained by Mr Scarth to the effect that the relocation costs estimated by Anthony in 2002, totalling £295,500, were not supported by evidence and appeared to be excessive.

117. Mr Kidd said that he was very disappointed following payment of the £100,000 towards relocation, because there did not appear to be any concerted effort then made by Anthony towards relocating his business. Following a meeting with Anthony and his legal advisers on 8 December 2005 Mr Kidd asked Mr Cottage to assist Anthony with his property search. Mr Cottage kept Mr Kidd updated with the relocation process. In August 2006 Mr Cottage informed Mr Kidd that a deal to acquire the leasehold interest in one property had fallen through because it would cost too much to install new toilets and modernise the premises. Mr Kidd observed that Anthony had already received £100,000 from the LDA which he could have used for adaptations of the kind he was considering. If Anthony had had any fears over whether such expense would be compensated by the LDA, then he knew he could contact Mr Kidd at any time to discuss the matter with him. Mr Kidd said that if the modifications were reasonable, and there was nothing to suggest that they were not, he would gladly have sanctioned such expenditure, particularly since Anthony appeared to have found the ideal premises after five years of relocation negotiations.

Mr Epstein

118. In his expert report dated 6 April 2011 Mr Epstein produced a table setting out his assessment of the trading losses made by Solartrack for the years ended 30 September 1995 to 2009 inclusive, as follows:

Year ended 30 September	**Profit/(loss) £**	**Market rent £**	**Adjusted profit/(loss) £**
1995	10,530	(30,000)	(19,470)
1996	24,438	(30,000)	(5,562)
1997	18,591	(30,000)	(11,409)
1998	(13,076)	(32,000)	(45,076)
1999	(82,070)	(38,000)	(120,070)
2000	(78,626)	(38,000)	(116,626)
2001	(6,160)	(38,000)	(44,160)
2002	(3,726)	(38,000)	(41,726)
2003	(106,874)	(38,000)	(144,874)
2004	(27,681)	(12,250)	(39,931)
2005	(77,939)	(12,250)	(90,189)
2006	(42,236)	(12,250)	(54,486)
2007	(63,045)	(12,250)	(75,295)
2008	(102,073)	(13,500)	(115,573)
2009	(76,758)	Nil	(76,758)

These figures ignored the payments made by the LDA for the freehold interest and on account of disturbance compensation.

119. Mr Epstein subsequently accepted that this table over-stated the extent of the adjusted losses in the nine years to September 2003. This was because the market rent adopted related to the whole of 42-44, whereas in fact Solartrack did not occupy the entire building prior to the sale of the freehold. Nevertheless Mr Epstein considered that, assuming Solartrack had been paying a market rent for the use of the premises it occupied and enjoying the benefits of any sub-let parts, the company would have made significant losses in each of the four years before the possibility of compulsory purchase became public knowledge in 1999. He had seen no evidence to demonstrate that this position would have changed, unless a new activity or product was introduced from which the company was able to make sufficient profits to cover the losses on other products.

120. Mr Epstein considered that there were many factors which had a negative effect on Solartrack's turnover and profitability apart from those relating to the proposed compulsory acquisition. These included an existing downward trend in turnover; increased competition; products becoming out of date and of less interest to customers; advances in technology making products less suitable; cheap imports from abroad; business development plans frustrated; new products not fulfilling their potential; reduced expenditure on advertising; security approvals delayed; poor monitoring and control of stocks; new EU legislation and staff changes,

121. Mr Epstein said that he had been unable to obtain from Solartrack an analysis of sales by customer and product type before and after the commencement of the alleged shadow CPO period. There was therefore no measure of the changes in the buying habits of any customer or group of customers based on location, or of customers buying any particular product type. There was no way of knowing what proportion of customers might have been aware of the impending CPO and, of that group, what proportion had decided to take their custom elsewhere. In these circumstances Mr Epstein concluded that the only customers who might have bought a product, but did not do so because of the CPO, were those who visited Solartrack's premises for the specific purpose of seeing who it was that they were buying from and then decided not to buy because of the uncertainty about the company's future. There was no evidence to show what proportion of customers this might have been or, crucially, what proportion of turnover this might have affected. In his opinion, however, the number of such customers was likely to have constituted a very small proportion of the total.

122. In order properly to consider the company's trading history Mr Epstein said that he would have preferred to analyse the sales by customer and product over the periods before and after the CPO, together with the business plan. In the absence of such information he was only able to measure the trend that existed prior to the CPO and make assumptions based on that and on the other events which he had been able to identify.

123. Mr Epstein entered Solartrack's turnover figures for the five years to 30 September 1999 onto an excel spreadsheet. He had selected this period as the first notification of a possible CPO was in April 1999. However, he considered that it was unlikely that dissemination of this information would have had an immediate impact on sales; it was more likely that it would have taken several months to filter through to the proportion of Solartrack's customers who were in Greater London. Mr Epstein also bore in mind that this period included the first six months of LVFM's involvement, which resulted in a significant increase in expenditure on advertising and research and development and legal expenses. The expenditure of the year might therefore not have been typical, but the turnover could have started to reflect some positive effects. By allowing the software to draw a trend line through the turnover figures for those five years Mr Epstein said that he had been able to project the turnover that would have been achieved if the trend was matched on average over the future period. The resulting trend line showed a future decline in turnover. The predicted sales figures were £334,327 (2000), £321,160 (2001), £307,993 (2002), £294,826 (2003), £281,659 (2004), £268,492 (2005), £255,325 (2006), £242,153 (2007), £228,991 (2008) and £215,824 (2009).

124. In order to calculate the difference between the profit that would have been earned on this level of sales and on the actual level of sales, Mr Epstein applied to the projected turnover figures the gross margin earned in each of the relevant years. He produced the following table which showed a total shortfall of £293,838 between the profit based on each of the projected figures for the years 2000/2009 and the actual profit earned.

Year	**Turnover**	**Margin %**	**Projected gross profit**	**Actual gross profit**	**Difference**
2000	334,327	48.53	162,248	145,931	16,317
2001	321,160	46.98	150,880	171,314	(20,434)
2002	307,393	54.01	166,022	186,077	(20,055)

2003	294,826	33.70	99,356	90,433	8,923
2004	281,659	63.92	180,036	142,662	37,374
2005	268,492	71.32	191,488	134,106	57,382
2006	255,325	54.71	139,688	100,652	39,036
2007	242,158	65.53	158,686	89,544	69,142
2008	228,991	40.67	93,130	79,032	14,098
2009	215,824	58.15	125,501	33,446	92,055
Total					**293,838**

125. Mr Epstein observed that Solartrack had a history of substantial trading losses. Moreover, after the repayment of capital to LVFM in October 2004, the loss made in the year ending 30 September 2005 was more than the total paid up capital of the company. In his opinion the company should have ceased trading, probably once the freehold premises were sold, in order to avoid incurring further losses and to mitigate the losses for which it would be claiming compensation. Although it was not possible to define the exact point at which this should have happened, the company should have ceased trading once there was no realistic prospect of making a profit. Mr Epstein said that he had seen no evidence, by way of new products or projects, to demonstrate that there was any reason to continue operation of the company, other than Anthony's claim that the company needed to service the warranties. He did not consider that this was an appropriate reason to continue to trade and incur losses. Consequently, none of the losses incurred after 30 September 2003 could be considered to have been caused by the CPO. The accumulated position between 2000 and 2003 was in fact better than the pre-existing trend and it was only after 30 September 2003 that the financial position deteriorated. If, therefore, there was a reason to continue to trade beyond that date (for which Mr Epstein had seen no evidence), only losses incurred subsequently might possibly be attributable to awareness of the CPO. In that case it would be for the Tribunal to assess what proportion of losses, if any, in excess of those due to the pre-existing trend, might be attributable to the CPO.

126. Mr Epstein disagreed with Mr Clements's calculation of the value of Solartrack's goodwill by reference to the amounts subscribed by LVFM. He said that the amount paid for the 30% equity stake that was acquired was no more than £110,000 He did not agree with Mr Clements's suggestion that this price incorporated a 33% discount to reflect the disadvantages of a minority shareholding. He pointed out that the New Memorandum and Articles of Association of the company which were adopted on the day LVFM made its first subscription conferred on the new investor various rights which would not be normally available to a minority shareholder as compared to the lack of control granted by the Companies Acts. The key protections were: no increase in directors' remuneration without pro rata amounts being paid to minority shareholders; the right to a preferential dividend equal to 5% of profits; the right to veto any further issue of shares and the right to veto 18 specified types of transactions. In Mr Epstein's opinion these rights and restrictions brought the discounted value of a minority interest up to almost the same level as a controlling interest. In addition, LVFM were given the right to buy the shares of the other stakeholders at a price stated, but not less than the amount subscribed for such shares. Mr Epstein considered that this added benefit to LVFM meant that the price paid for the ordinary shares reflected no minority discount. Even if there had been a discount of 10%, the price paid for the shares less the net asset value meant that the amount paid for goodwill had been nil.

127. As for the claim for management time, Mr Epstein made the following points. No reliable evidence had been produced to demonstrate the amount of time spent or that Solartrack had suffered any loss as a result. No payments had been made to any directors. In any event, the effect of the directors being drawn away from their normal duties would have been reflected in a loss of profits. Thus, any loss by reason of additional time spent by management on matters relating to the CPO would be included in the loss of profits claim. This head of claim therefore amounted to double counting.

Mr Cottage

128. Mr Cottage gave expert evidence on the subject of all heads of claim other than loss of profits and management time. He said that all his dealings with Solartrack in relation to disturbance compensation and potential relocation options had been conducted with Anthony. These discussions had taken place from July 2001 onwards. Anthony had given a number of indications of the level of compensation he might seek between July 2001 and December 2005, when he submitted a detailed compensation claim based on a hypothetical relocation. However, none of these estimates had been based upon relocation to a specific property. He was never told that Solartrack was considering any particular property as a relocation option, although he had been advised on a number of occasions that the company was seeking alternative premises.

129. During a meeting on 8 December 2005 Anthony had said that he was seeking freehold or leasehold premises with a floor area of some 2,000 sq ft. On 7 April 2006 he had said that he would consider retail premises in the London Borough of Havering of about 1,000 sq ft. In May 2006 Solartrack had made a rental offer for 676 Rainham Road South, but this was withdrawn in August 2006 because the cost of installing a toilet block to confirm to current legislation requirements and the costs of modernising the premises were considered excessive. Between August 2006 and the date Solartrack vacated 42 in October 2008, Mr Cottage said that he was not provided with any further evidence that the company was seeking alternative premises.

130. In Mr Cottage's opinion if, contrary to Mr Epstein's view, it had been reasonable for the company to keep trading after the LDA acquired its freehold interest in March 2003, it should have relocated in order to mitigate its loss. The period over which Solartrack might have been expected actively to seek new premises ran from January 2003, when terms were agreed to sell 42-44 to the LDA, and October 2008, when the LDA took possession of the ground floor and basement of 42. Over that period of more than five years numerous properties had come onto the market which Mr Cottage believed would have met the claimant's requirements in terms of accommodation, floor space and location.

131. In regard to the claim for loss on forced sale of fixtures and fittings incurred when the LDA took possession of 44 on 2 April 2003, Mr Cottage made the following points. The fact that no inventory of items of value left on the site had been taken – contrary to the normal procedure in such cases – suggested that no items considered to be of value had been left in the property. In any event, even if the claimant's fixtures, fittings and chattels had been removed from 44, the loss claimed was

avoidable because, if Solartrack had raised the issue with the LDA at the time, a solution to any short term storage requirement could no doubt have been found.

132. The fact that the company had not raised the matter and that no arrangements had been made for the storage of the items claimed suggested that, if they had indeed been removed, the company had not considered them to be of significant value to its business. It had thus suffered no material loss as a consequence of their removal. If on the other hand the items had been important or valuable, Solartrack should have taken reasonable steps to protect them.

133. Mr Cottage gave consideration to the extent of the company's loss assuming the Tribunal found that some loss had been incurred for the reasons suggested. He agreed that Mr Winbourne's methodology of deducting the forced sale (or dealer value) of the relevant items from their value in trading (or value to the business) was correct. However, ten of the items appeared to be fixtures which would have been reflected in the compensation paid for the freehold interest. Moreover, the claim reduced the current equivalent replacement cost of each item by 25% to arrive at the value to the business at the date of the loss. Mr Cottage said that the claim indicated that the company's premises had been fitted out in 1998, suggesting that all the items were at least 5 years old. He considered that, on average, the majority of the items would have had a useful life of approximately 10 years and some of them (such as the fridge) would have had a shorter life span. In Solartrack 2002 accounts fixtures and fittings were depreciated on the basis of a 20% reducing balance and the net book value of all fixtures and fittings (presumably those it retained) was £7,833. Consequently, he felt it would be more appropriate to reduce the equivalent replacement cost by 75% to reflect the value of the items to the business. In Mr Cottage's view the compensation to which the company would be entitled, assuming it were found that it did suffer loss under this head of claim, should not exceed £1,565.

134. Mr Cottage did not consider that the claim for loss of rent was justified. There was no reason why Solartrack would have lost rental income from the first floor. Either it had been in occupation and could not let the space, or Members Only had been in occupation and paid rent until March 2003, when it vacated because it was expanding its business and required larger accommodation. As for the second floor, there appeared to be no reason why this could not have been let. Refurbishment costs would not have been prohibitive even with the prospect of a CPO, illustrated by the fact that Solartrack did eventually undertake the works. The accommodation had not been marketed and it appeared that at some point the company had decided to reserve it for its own future use. Accordingly, any failure to achieve rental income from the second floor was the result either of Solartrack's actions unrelated to the CPO, or a failure to mitigate loss.

135. Mr Cottage's evidence on the claim for loss on forced sale of fixtures and fittings in October 2008 was as follows. Since in his view the company should have mitigated its loss by relocating, there was no reason why any of the items in question could not have been relocated. Furthermore, if Mr Epstein was right that Solartrack should probably have ceased trading in March 2003 as a consequence of the losses it was incurring unrelated to the CPO, then any losses incurred in having to sell or dispose of the items in question would have been incurred in any event. Consequently the claimed losses were not compensatable.

136. In the event that the Tribunal decided that some recoverable loss had been suffered by the company Mr Cottage's evidence was this. Although there was evidence that many of the items had been left at the property, the claimant had failed to clarify what had happened to the items which it alleged had been "scrapped". In some cases the allegation was surprising in view of the nature of the items. In particular he could see no reason why the Toyota Hiace Power Van and Peugeot Partner Van could not have been moved to the new Chelmsford premises either for use or sale at market value. In relation to the items which were abandoned at the property it would seem that the company did not consider them to have any material value, as otherwise it would have sought to sell them for their alleged "dealer value". Six of the items claimed for appeared to be fixtures which would have been reflected in the price paid for the freehold. The claim incorporated adjustments of between nil and 50% from the stated current equivalent replacement cost to reflect their value to the business. The photographs suggested that many items were approaching the end of their useful life, so that adjustments of up to 90% might be appropriate. Assuming the company did suffer loss under this head of claim Mr Cottage considered that it would not have exceeded £8,594.

137. So far as the inability to sell stock was concerned, assuming the business could have mitigated its loss by relocating there would have been no losses under this head of claim, as the stock would simply have been moved in 2008 to new premises and sold from there. If Mr Epstein was right that the company should probably have ceased trading in March 2003, the losses claimed would have been incurred in any event as stock would have had to be sold or disposed of in the same way as it had in the real world. In relation to the claim for stock left at the premises, these items would presumably have been relocated to Chelmsford in 2008 if they had had any value to the business. In relation to the "obsolete stock" there was no evidence to suggest that this would not have become obsolete in any event.

138. Mr Cottage said that the quantum of the overall claim was difficult to understand. He had been advised by Mr Winbourne that the value of the stock when the claimant vacated 42 was circa £90,000. This tallied with the company's accounts which recorded the value of its stock in the year ending September 2008 at £90,196. If that was an accurate valuation of the stock at the date the company was disturbed, it would mean that the company was suggesting that almost its entire value has been lost, even though it had relocated the majority of the stock and continued to sell its products through its website at what was presumably their full market value. It would imply that the company had sold virtually none of its stock through its website since October 2008, which seemed unlikely. Indeed the company's accounts to September 2009, which reflected the year following its move to Chelmsford, recorded a turnover of £57,514 and also recorded the value of its stock at that time at £75,498. The accounts for the year to September 2010 showed the value of the stock as £68,394 and a turnover of £39,275 with £11,272 of purchases. Both sets of accounts had been audited and signed by Anthony.

139. Turning to the claim for redundancy costs, Mr Cottage said that if Solartrack had mitigated its loss by relocating within relatively close proximity to 42-44 there would have been no need to make redundancies. If Mr Epstein was right that the company should probably have ceased trading in March 2003, redundancy costs would have been incurred in any event because of losses which were unrelated to the CPO. No proof of payment of redundancy compensation had been provided and three of the employees in question were still employed by Solatrack.

140. The claim for moving and relocation costs was referred to in para 56(f) of the claimant's statement of case. If Mr Epstein was right about the advisability of ceasing to trade in 2003, no relocation costs would have been incurred if the company had ceased trading prior to relocating. No invoices or other evidence had been provided to support the sums claimed, although considered overall they did not seem unreasonable.

141. In the light of his view that Solartrack could and should have relocated in order to mitigate its loss, Mr Cottage considered that an analysis of the claim which was submitted by the company at the meeting on 8 December 2005, based upon a hypothetical relocation, provided the best available evidence of the claim which the company would have made if it had relocated. It was possible, however, that the company would have minimised its losses by not relocating if the reality was that it should have ceased trading in 2003.

142. Mr Cottage emphasised that he had been unable to undertake the enquiries that he would normally make of the company or its advisers when assessing a claim of this type, as they had been unwilling to discuss the claim with him. Nevertheless he considered that the overall conclusions as to Solartrack's compensation entitlement that he had reached fell within parameters which he would have expected from his experience of dealing with disturbance claims involving small businesses of similar size.

143. Ignoring the elements of the December 2005 claim which related to loss of profit issues, the claim comprised three main elements: product costs (£108,901), operating costs (£42,505.75) and affiliated costs (£66,715). In Mr Cottage's opinion, a reasonable assessment of the various losses which would have been incurred under each of these headings was as follows:

Product costs	**£**	**£**
Certificates issued with security devices	932	
Product manuals	1,000	
Display boxes	3,000	
Brochures and catalogues	1,000	
Advertising	10,000	15,932
Operating costs		
Stationery	2,000	
Telephones	3,500	
IT	5,000	
Fixtures, fittings and signage	10,000	20,500
Affiliated costs		
Security	5,000	
Legal and consultancy	15,000	
Relocating fixtures, fittings and stock	5,000	
Management time	5,000	30,000
Total (including fees)		**£66,432**

The law

144. The legal basis underlying the assessment of compensation is not in dispute. It is as follows:

145. Section 5 of the Land Compensation Act 1961 provides:

> "Compensation in respect of any compulsory acquisition shall be assessed in accordance with the following rules:
>
> …
>
> (2) The value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller might be expected to realise:
>
> …
>
> (6) The provisions of rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land."

146. Any loss sustained by a dispossessed owner which flows from a compulsory acquisition may be regarded as the subject of compensation for disturbance provided that it is the natural and reasonable consequence of the dispossession of the owner provided that the loss is not too remote (*Harvey v Crawley Development Corporation* [1957] 1 QB 485, at 494).

147. In *Director of Buildings and Lands v Shun Fung Iron Works Ltd* [1995] 2 AC 111, at 126 Lord Nicholls identified three guiding conditions:

(i) there must be a causal connection between the acquisition and the loss in question;

(ii) the loss must not be too remote;

(iii) the loss or expenditure must not have been incurred unreasonably.

148. Further, pre-acquisition, or in this case pre-dispossession losses, are recoverable subject to meeting the three tests referred to in the above paragraph (*Shun Fung* per Lord Nicholls at p137-138).

149. Compensation is payable on the extinguishment basis where it is not practicable to relocate the business. It is for the acquiring authority to show that the claimant has acted unreasonably (*Lindon Print Ltd v West Midlands County Council* [1987] 2 EGLR 200).

150. The basis of valuation for business loss is value to the owner of the business. This includes the ability to derive a future profit out of the premises from which the claimant had been dispossessed (*Afzal v Rochdale Metropolitan Borough Council* [1980] RVR 165 at 168).

151. The principle of equivalence, that is to ascertain the full compensation due to the claimant, should be assessed as at the date(s) of dispossession (*Optical Express (Southern) Ltd v Birmingham City Council* [2004] RVR 106 para 115.

Conclusions

152. In our judgment, there is one overriding issue which needs to be resolved before attention is given to the various detailed heads of claim in this reference. That is whether, as Solartrack contends, its business would have developed into a profitable undertaking from 1999 onwards but for the proposed compulsory acquisition of 42-44 or whether, as the LDA argues, it was in a state of decline which would have continued with or without such proposals. Having considered the evidence adduced over the six day hearing we are not persuaded that, in the absence of the CPO, Solartrack's business would have been viable in 1999, when the prospect of a CPO became public knowledge, or in 2003, when the freehold interest was acquired by the LDA, or in 2008, when the company was dispossessed from the premises which it then occupied in 42. Our reasons for this conclusion are the following.

153. We accept the substance of Mr Epstein's analysis of the profitability of the company. While Mr Epstein acknowledged that his estimates of the company's adjusted trading position in the years ending September 1995 to 2003 (para 118 above) overstated the extent of the losses, because the figures deducted for the market rental value of 42-44 included the first and second floors which were not occupied by Solartrack, his figures showed a loss before deduction for rent in every year from 1998 onwards. For the three preceding years, whilst the level of the upward adjustment for rent was not agreed, it is plain that, although a modest profit might have been achieved in 1996, in 1995 and 1997 there would either have been a loss or no more than a very small profit.

154. It is in our view instructive to consider the performance of Solartrack immediately prior to 1999 and the issues facing it which were identified at the time. This is because Solartrack accepts that there can have been no adverse effect on trading from any compulsory acquisition before 1999, as the shadow period had not started at that time. Evidence of the issues facing the company prior to 1999 is to be found in the Strategic Business Plan, which was written in late 1998 by Mountwood Consultants. It is clear from the business plan that Solartrack's two main business areas (motorcycle alarms and car alarms) were in decline. At the same time, new products that had potential for future growth faced stiff competition from existing operators and would need to overcome barriers to their entry into the market if they were to succeed. Thus, turnover in sales of motorcycle alarms, where the company had a large market share, had been declining year on year since 1996. This was in part due to the Motorhaus incident, but that of itself serves to illustrate that even Solartrack's most established products were vulnerable to competition, particularly as Solartrack had no exclusive agreement with its supplier. Moreover, Mountwood identified weaknesses in Solartrack's product offer that needed addressing.

155. The next largest business area by turnover was car alarms. This was identified as a declining market where no further growth was predicted. The vehicle safety area of the business had made a modest contribution to sales. While the plan identified potential in this area, it acknowledged that

Solartrack was a small player in a market where there were already well established competitors, and that its business also faced issues arising from its non-exclusive marketing arrangement with David Horn Communications, through whom some 80% of its products were sold. Of the remaining "other" areas of business identified in the plan, a cycle computer with heart rate monitor was discussed. The plan acknowledged that there was already a crowded market for such items with two dominant brands, and that the market would be very difficult and expensive for Solartrack to enter, with the company being unable to sustain the costs of developing a range of products and the necessary advertising. The plan placed the company's hopes on a cycle computer with heart rate monitor to be sold to Halfords and by mail order, and a wrist watch pulse rate monitor involving entirely new technology. Apart from these items, the only "other" business area appears to have been installations, of which the plan said that the business was very busy and would "strive to achieve" sales of £80,000 in the year ending 1999.

156. The business plan identified various weaknesses in the company and its infrastructure that needed addressing if future growth hoped for by the plan was to be achieved. Among other things, the company needed to develop quickly a creative and successful marketing and sales capability, significantly improve its IT systems, increase staff numbers, and develop its principals' management skills. It is therefore not surprising that, in cross-examination, Petra accepted that in 1998, when Anthony sought a financial investment in Solartrack from LVFM, changes were needed in the company's operations if it was to stem its losses and return to profitability.

157. Mr Dunne agreed that it did not follow from LVFM's investment committee's decision to invest in Solartrack in 1998 that LVFM considered that the company's goodwill was of significant value at the time. Since the company owned significant assets, the transaction would have been favourable to LVFM even if the value of the goodwill was nil. Nor did the decision to invest reflect an expectation that substantial future profits would be achieved. Mr Dunne's evidence was that LVFM priced its investments by calculating, based on the business's financial projections, what level of stake was necessary to provide a notional rate of return of at least 65% per annum over 5 years. He described this as a "high risk, high reward" strategy and acknowledged that very few of LVFM's investments achieved the companies' original plans.

158. The principal evidence in support of Solartrack's claim that its prospects of operating profitably were good was given by Petra. We consider that, for several reasons, the weight to be accorded to that evidence is limited. In cross examination Petra said that she had been aware of the evidence given at the preliminary issues hearing and had been content with it including, specifically, the letter purporting to evidence the transfer of the underlease which the President found to have been fabricated. She made a number of references to LVFM's funding having been delayed or withdrawn, despite Mr Dunne's evidence that the funding had proceeded as planned. In para 159 of her witness statement dated 6 April 2011 she said that after giving up possession of 44 in April 2003 Solartrack was no longer able to import and distribute electric bicycles due to space and financial restraints. That statement was inconsistent with the minutes of the company's board meeting on 30 May 2003, which said that sales for April had been disappointing, exacerbated by the lack of e-bike stock and that a new order for e-bikes had been placed during May 2003.

159. We find that in the absence of the CPO or proposals for a CPO, Solartrack would not have been a profitable or potentially profitable company on 28 March 2003, when it transferred the freehold interest in 42-44 to the LDA. We consider that, in such circumstances, the directors of the company, acting reasonably, would have decided to offer the freehold interest in its property for sale and to extinguish the business, and that this would have taken place either in 2003 or 2004.

160. In the light of those conclusions we consider that Solartrack's claim for disturbance compensation is unfounded. There was no loss or profits, either short-term or permanent, nor did such fixtures and fittings and stock items as were in the company's premises have any material value to the business. We accept Mr Cottage's evidence that Solartrack suffered no loss of rent from the first or second floors of 42-44 as a result of the CPO proposals. We find that the redundancy payments made by Solartrack were the inevitable result of the company's lack of viability and that there is insufficient evidence to support the claim for management time devoted to the CPO and its implications.

161. Notwithstanding these conclusions, the acquiring authority's case throughout has been that Solartrack is entitled to the cost of notional relocation to alternative premises. Mr Pereira invited us to award compensation in the sum of £72,500 on this basis. That figure was consistent with Mr Cottage's evidence and no expert evidence on the question of notional relocation costs was given on behalf of Solartrack. We therefore determine the compensation payable to Solartrack for disturbance in consequence of the acquisition of the freehold interest in 42-44 New Road, Dagenham at £72,500. A letter concerning costs accompanies this decision, which will became final when the question of costs is determined.

Dated 29 June 2012

George Bartlett QC, President

N J Rose FRICS, Member

Addendum

162. We have received written submissions on costs from the parties.

163. The acquiring authority made a sealed offer dated 1 November 2010 for the purposes of section 4 of the Land Compensation Act 1961. The offer was in the sum of £85,000 in settlement of all heads of claim excluding pre-reference costs (which were defined as "all the claimant's legal and professional fees and costs reasonably incurred in preparing the reference prior to the reference"). The acquiring authority also offered to pay statutory interest and all the claimant's reference costs, excluding any such costs relating to the acquiring authority's preliminary issues, which were to be dealt with separately in accordance with the President's determination on the preliminary issues.

164. The acquiring authority made a second sealed offer on 3 March 2011 on the same basis, but increasing the figure of £85,000 to £100,000.

165. Both offers contained a proviso that the sum of £100,000 would be deducted from the offer, being equivalent to the advance payment made by the acquiring authority to the claimant pursuant to the terms of an agreement between the parties dated 23 September 2005. The offers were also subject to the following condition:

> "4.1 If the reference proceeds to trial and the Tribunal determines that the claimant has failed to beat the offer, or the claimant accepts the offer after the relevant period then our client will seek an order, in accordance with section 4(1) of the Land Compensation Act 1961, that your client bears its own costs and pays our client's costs from the expiration of the relevant period until judgment or the date the offer is accepted whichever is applicable. In those

circumstances, we will also seek an order that the LDA's costs are deducted from any sums awarded to the claimant."

166. The expression "relevant period" was defined as "the period of 21 days commencing from the date of receipt of this correspondence." It is not suggested that the claimant has been awarded a sum which beats either of the sealed offers.

167. The claimant submitted that the appropriate costs order was as follows:

(a) the acquiring authority pay the claimant's pre-reference and reference costs up to and including 23 November 2010, being the expiration of the relevant period for the purposes of the first sealed offer.

(b) the claimant is entitled to its costs of the application, made on the first day of the hearing on 8 March 2012, pursuant to the liberty to apply provision of the Tribunal's order dated 13 February 2012.

(c) costs to be subject to detailed assessment if not agreed.

168. The acquiring authority submitted that costs should be awarded as follows:

(a) The sum of £27,500 from the advance payment be offset against the amount that the acquiring authority is bound to pay the claimant in respect of the reasonable legal and professional costs incurred by the claimant prior to 23 November 2010 but only to the extent that those costs:

(i) relate to the preparation, making and conduct of the reference; and

(ii) do not include the costs of and occasioned by the hearing of the preliminary issues for which the Tribunal made an award on 11 January 2010.

(b) The claimant pays the reasonable legal and professional costs incurred by the acquiring authority from 23 November 2010, but excluding the acquiring authority's costs of its application to adduce further expert evidence.

(c) The acquiring authority pays the claimant its costs of the acquiring authority's application to adduce further expert evidence.

(d) Costs to be subject to detailed assessment if not agreed.

169. Neither party submitted counter-representations, although they were invited to do so.

170. In general we accept the acquiring authority's submissions. We do not consider, however, that it is appropriate for the provisions of the agreement dated 23 September 2005 to be incorporated in an order by the Tribunal for the costs of the reference. We therefore order as follows:

1. The acquiring authority must pay the claimant's costs of the reference incurred up to and including 23 November 2010, including all costs reasonably incurred in preparing the reference prior to the reference, but excluding the costs to which the claimant is already entitled pursuant to paragraph 2 of the Tribunal's order dated 13 February 2012.

2. The claimant must pay the acquiring authority's costs of the reference incurred after 23 November 2010, but excluding the acquiring authority's costs of its application to adduce further expert evidence.

3. The acquiring authority must pay the claimant's costs of the acquiring authority's application to adduce further expert evidence.

4. In default of agreement all such costs are to be subject to detailed assessment by the Registrar of the Lands Chamber.

Dated 26 July 2012

George Bartlett QC, President

N J Rose FRICS, Member