



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **LC-2023-000521**

Subject property : **Telecommunications Site near
Totties Farm
Hever Road
Edenbridge
Kent TN8 5DJ**

**Claimant
(Operator)** : **Cornerstone Telecommunications
Infrastructure Limited**

Representative : **DAC Beachcroft LLP**

**Respondents
(Site Provider)** : **Christopher George Manwaring
Alan Richard Gould
Alexander Charles George Denniss
Calcutt
Jeremy Simon Kenneth Calcutt**

Representative : **Alan Gould**

Application : **Electronic Communications Code**

Tribunal member : **Deputy Regional Judge Gravells**

Date of decision : **7 October 2025**

DECISION AND ORDER ON COSTS

Introduction

- 1 Following a reference to the Upper Tribunal (subsequently transferred to the First-tier Tribunal), by Decision and Order dated 16 May 2025, pursuant to paragraphs 34(6) and 35(2A)(a) of the Electronic Communications Code (Schedule 3A to the Communications Act 2003), the First-tier Tribunal (i) ordered the termination of the existing agreement between the parties and the imposition of a new agreement and (ii) determined the interim site payment payable by the Claimant to the Respondents.
- 2 The parties were invited to make representations on the issue of costs and this is the Decision of the Tribunal on that issue.
- 3 The Claimant seeks an order that the Respondents pay the Claimant's costs of the reference, summarily assessed on the indemnity basis in the sum of £69,207.50. The Respondents seek to refute the factual basis of the arguments made in support of the Claimant's claim; and they claim their own costs in the sum of £17,933.00.

Representations of the parties

Representations of the Claimant

- 4 The Claimant seeks an order that the Respondents pay the Claimant's costs of the reference, summarily assessed on the indemnity basis in the sum of £69,207.50.
- 5 Mr Tipler, on behalf of the Claimant, argues -
 - (i) that the Claimant has been resoundingly the successful party on the issues in the claim;
 - (ii) that the Respondents have not conducted the claim in a manner consistent with their duty to help the Tribunal to deal with the case fairly and justly; and
 - (iii) that at trial the Claimant has beaten a settlement offer made to the Respondents before the proceedings were commenced.

Success

- 6 Mr Tipler argues that the Claimant obtained an order for renewal on the terms proposed by the Claimant, subject to concessions made in an attempt to resolve the matter outside the Tribunal. He notes that the Tribunal (i) rejected the Respondents' strike-out application, (ii) rejected three preliminary issues raised by the Respondents and (iii) accepted the Claimant's arguments (and rejected the Respondents' arguments) on the four particular issues identified in the Tribunal's Directions dated 26 September 2024 which remained live at the hearing.

Conduct

- 7 Mr Tipler argues that the conduct of Mr Gould, who largely represented the Respondents, had been 'regrettable'. Following the expiry of the existing agreement between the parties, Mr Gould had taken several steps which the Tribunal described as 'negative'. Mr Tipler argues that Mr Gould (i) had delayed, (ii) had taken hostile steps to restrict access to the telecommunications site, (iii) had repeatedly made unsubstantiated allegations that the telecommunications apparatus was installed in the wrong location, (iv) had made a reference to an arbitrator, who commented that Mr Gould's arguments 'contained little merit', (v) had apparently continued to dictate the Respondents' approach to

negotiations even during a brief period when solicitors and surveys were appointed, (vi) had failed ever to set out a single coherent or consistent statement of case; and (vii) had repeatedly failed to engage with the Tribunal's Directions.

Offers to settle

- 8 Mr Tipler argues that, despite a number of offers made by the Claimant, the Respondent had failed to engage with the Claimant. Ultimately, the new agreement ordered by the Tribunal was substantially on the terms proposed by the Claimant in December 2022 but with significantly less advantageous financial terms for the Respondents.

Order sought

- 9 Mr Tipler seeks costs assessed on the indemnity basis.
- 10 He referred to the decision of the Upper Tribunal in *EE Limited and Hutchison 3G UK Limited v Trustees of the Meyrick 1968 Combined Trust* [2020] UKUT 0105 (LC), where the Tribunal stated (at paragraph 44):
- We agree with the Respondents that the fact that the Claimants had a resounding success does not of itself justify the award of indemnity costs. There must be something extra, in terms of unreasonable behaviour to a high degree and/or in the general circumstances of the case, that takes the conduct of the respondents out of the norm.
- 11 Mr Tipler argues that that test is satisfied in the present case: Mr Gould (i) had failed in his duty to assist the Tribunal, (ii) had attempted to pre-empt the Tribunal's jurisdiction by initiating a second arbitration and (iii) had failed to accept materially more advantageous offers to settle but had continued to oppose the claim all the way to a full hearing.
- 12 Mr Tipler argues that the costs claimed are reasonable (and proportionate) given the difficulties created by Mr Gould's conduct of the matter.

Representations of the Respondents

- 13 Mr Gould, on behalf of the Respondents, submitted a brief statement. Unfortunately, despite purporting to be a response to the Claimant's representation of costs, that statement does not address any of the Claimant's submissions. Rather, Mr Gould revisits various historic matters that have been resolved or which have ceased to be relevant; and he continues to argue that any new agreement should have been based on a different template.
- 14 Mr Gould provides a breakdown of the Respondents' costs: solicitor's costs of £7,218.00, surveyor's costs of £4,749.00 and his own costs of £5,966.00, which together total £17,933.00. However, apart from providing those bare figures, Mr Gould makes no substantive submissions.

Discussion

- 15 In determining the parties' respective applications the Tribunal has given full consideration to their written representations.
- 16 The Tribunal accepts the arguments of Mr Tipler, on behalf of the Claimant, summarised at paragraph 5 above.
- 17 The Tribunal therefore (i) dismisses the Respondents' claim for costs and (ii) determines that the Respondents should pay a contribution towards the Claimant's costs.

- 18 The remaining issue is whether those costs should be assessed on the indemnity basis or on the standard basis.
- 19 The Tribunal notes the decision of the Upper Tribunal in *EE Limited and Hutchison 3G UK Limited v Trustees of the Meyrick 1968 Combined Trust* and the statement at paragraph 44 (see paragraph 10 above). In summary, the award of costs on the indemnity basis is exceptional and requires that the conduct of paying party is 'out of the norm'.
- 20 In determining whether the threshold was met in that case, the Upper Tribunal seems to have attached significant weight to the Respondents' deliberate misrepresentation of evidence and their 'cynical conduct with mischievous intent'. That might suggest that the threshold for awarding costs on the indemnity basis involves, if not actual dishonesty, conduct that borders on dishonesty. While Mr Gould's conduct in the present case might fairly be characterised as intransigent and misguided, the Tribunal is not persuaded that it could be regarded as (bordering on the) dishonest.
- 21 In any event, the Tribunal is not persuaded that Mr Gould's conduct was 'out of the norm'.
- 22 The Tribunal therefore determines that the costs should be summarily assessed on the standard basis and not on the indemnity basis.
- 23 In the view of the Tribunal some of the costs claimed by the Claimant are unreasonable and disproportionate: for example, work on documents (preparation of claim pack, barring order applications, witness statements); counsel's fees for barring order hearing; witness of fact expenses. The Tribunal determines that the appropriate order is that the Respondents should pay a contribution of £20,000.00 towards the costs of the Claimant.

Order

- 24 The Tribunal orders that the Respondents shall pay a contribution of £20,000.00 towards the Claimant's costs.
- 25 Payment shall be made within 28 days of the date of this Decision.

Appeal

- 26 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 27 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 28 If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- 29 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

7 October 2025

Professor Nigel P Gravells
Deputy Regional Judge