



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

Case reference : **LC-2024-000071**

Subject premises : **Alder Castle
10 Noble Street
London Ec2V 7JU**

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

Representative : **Osborne Clarke LLP**

**Respondent
(Site Provider)** : **Covent Garden IP Limited**

Representative : **Concorde Solicitors Limited**

Type of application : **Application under paragraph 26(1) of the
Electronic Communications Code**

Date of hearing : **16 July 2024**

Tribunal member : **Deputy Regional Judge Nigel Gravells**

Date of decision : **24 July 2024**

DECISION

Introduction

- 1 This is the Decision of the First-tier Tribunal on a Reference (received by the Upper Tribunal on 7 February 2024 and transferred to the First-tier Tribunal on the same date), including an application pursuant to paragraph 26(1) of the Electronic Communications Code (Schedule 3A to the Communications Act 2003) ('the Code').
- 2 The Claimant is an 'operator' within the meaning of paragraph 2 of the Code. More specifically, the Claimant does not provide an electronic communications network of its own: rather it installs and maintains an infrastructure system (as defined in paragraph 7 of the Code) to providers of electronic communications networks.
- 3 The Claimant seeks interim non-intrusive multi-skill visit ('MSV') rights to assess the suitability of the roof of the subject premises for the installation and operation of electronic communications equipment.
- 4 The Respondent is the registered proprietor of the freehold of the subject premises, registered at HM Land Registry under title number NGL745702. The development was completed in 1999 and comprises approximately of 92,700 square feet of office space arranged across the lower ground, ground and six upper floors.
- 5 The Respondent does not object in principle to the Claimant having the interim rights sought but it does not agree to all the proposed terms of the agreement that the Claimant seeks to have the Tribunal impose upon it.

The legal background

- 6 The Electronic Communications Code regulates the legal relationship between mobile telephone operators (whether providing a phone signal or physical infrastructure) and the landowners on whose land electronic communications equipment is to be placed. The Code provides protection for landowners while seeking to protect 'the public interest in access to a choice of high quality electronic communications services': see paragraph 21 of the Code.
- 7 Code rights are conferred upon operators by agreement with the occupier of land (paragraph 9), and an agreement may be imposed by an order of the Upper Tribunal (paragraph 20). However, paragraph 26 makes provision for interim Code rights, which can only be created by the Tribunal imposing an agreement upon the parties.
- 8 The test that an operator must satisfy in order for the Tribunal to impose an agreement conferring Code rights under paragraph 20 is set out in paragraph 21 of the Code –
 - (1) ... the court may make an order under paragraph 20 if (and only if) the court thinks that both of the following conditions are met.
 - (2) The first condition is that the prejudice caused to the relevant person by the order is capable of being adequately compensated by money.
 - (3) The second condition is that the public benefit likely to result from the making of the order outweighs the prejudice to the relevant person.
 - (4) In deciding whether the second condition is met, the court must have regard to the public interest in access to a choice of high quality electronic communications services.

- 9 For interim rights under paragraph 26 the operator need only show that it has a ‘good arguable case’ that that test is satisfied. In the present case it is not disputed that the Claimant has such a case and the Respondent does not oppose in principle the imposition of an interim Code agreement.
- 10 Interim Code rights can be conferred in the absence of an application under paragraph 20; and they are often sought, as in the present case, as the basis for the operator to carry out the investigation that is needed before deciding whether or not to seek the right to place equipment on the site.
- 11 Such an investigation is known as a ‘multi-skilled visit’ or MSV. It may be a simple visual inspection (as in the present case); or it may involve intrusive works that penetrate the fabric of a building.
- 12 Whether Code rights are sought under paragraph 20 or paragraph 26, the terms on which they are conferred are determined by the Tribunal in light of the provisions of the Code. Paragraph 23 refers to an order under paragraph 20 but with some modifications it also applies to an agreement for interim rights (paragraph 26(4)). So far as relevant, paragraph 23 provides –
- (1) An order under paragraph 20 may impose an agreement which gives effect to the code right sought by the operator with such modifications as the court thinks appropriate.
- (2) An order under paragraph 20 must require the agreement to contain such terms as the court thinks appropriate, subject to sub-paragraphs (3) to (8).
- (3) The terms of the agreement must include terms as to the payment of consideration by the operator to the relevant person for the relevant person's agreement to confer or be bound by the code right (as the case may be).
- (4) Paragraph 24 makes provision about the determination of consideration under sub-paragraph (3).
- (5) The terms of the agreement must include the terms the court thinks appropriate for ensuring that the least possible loss and damage is caused by the exercise of the code right to persons who—
- (a) occupy the land in question,
- (b) own interests in that land, or
- (c) are from time to time on that land.
- 13 In the case of an agreement for interim Code rights under paragraph 26, paragraph 23(3) applies as if the duty to include terms as to the payment of consideration were a power: see paragraph 26(6)(b).

The factual background

- 14 In November 2022, following an initial MSV in November 2021, the Claimant sought the consent of the Respondent to conduct a further MSV. In February and March 2023 the Claimant requested detailed documentation relating to the subject premises in order to avoid an intrusive survey. Despite a number of chasing emails, the Respondent did not respond to the Claimant's requests.
- 15 On 21 July 2023, in response to an indication by the Claimant's solicitors (Osborne Clarke LLP) that they were minded to initiate proceedings under the Code by serving a paragraph 26(3) notice, the Respondent's agent indicated that the Respondent agreed in principle to a MSV and had appointed Concorde

Solicitors Limited as its representative. Osborne Clarke sought to engage with Concorde's transactional colleagues but Concorde did not respond.

- 16 On 10 October 2023 a paragraph 26(3) was served on the Respondent but again Concorde did not respond.
- 17 On 7 February 2024 the Claimant made the present reference to the Upper Tribunal; and the Upper Tribunal transferred the reference to the First-tier Tribunal under rule 5(3)(k)(ii) of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010.
- 18 On 20 February 2024 the First-tier Tribunal scheduled a case management hearing for 16 July 2024 with an indication that the paragraph 26 application for MSV rights would be determined on that occasion if that proved to be possible.
- 19 The hearing took place by remote video conference. The Claimant was represented by Ms Emer Murphy of Counsel (instructed by Osborne Clarke) and the Respondent was represented by Mr Greville Healey of Counsel (instructed by Concorde).

Determination of the Tribunal

- 20 In determining the issues in dispute between the parties, the Tribunal took full account of the written and oral representations of the parties so far as relevant to the issues in dispute.

Preliminary issue

- 21 On 19 June 2024 the Respondent applied for permission to adduce expert evidence on the amount of consideration payable under the agreement for the MSV rights sought by the Claimant.
- 22 On 24 June 2024 the Tribunal refused that application, noting (i) that the current Reference sought (non-intrusive) MSV rights and (ii) that in such cases the Upper Tribunal and the First-tier Tribunal had consistently made orders for nominal consideration only.
- 23 On 3 July 2024 the Respondent applied for permission to appeal that decision. The Respondent argued –
 - (i) that paragraph 26(4) of the Code provides that paragraphs 24 and 25 (which provide for the payment of consideration and compensation respectively) apply to agreements imposed under paragraph 26 (as they apply to agreements imposed under paragraph 20);
 - (ii) that there is no general principle of law that only nominal consideration is payable for MSV rights under paragraph 26;
 - (iii) that, although nominal consideration may be appropriate in many cases, nominal consideration cannot be determined as appropriate in advance in every case;
 - (iv) that, in accordance with paragraph 24, the Tribunal must determine what amount of consideration a willing operator would pay a willing site provider; and that expert valuation evidence may be necessary to enable the Tribunal to make that determination;

- (v) that in the circumstances of the present case – an application for MSV rights over a high-quality office building in the City of London valued at over £100m – it is not credible that the building owner would be willing to allow a third party to access the building on multiple occasions over a six-month period for nominal consideration.
- 24 On 5 July 2024 the Claimant made representations opposing the application. The Claimant argued –
- (i) that, while the Claimant acknowledged that compensation is payable to the Respondent in respect of costs reasonably incurred in contracting with the Claimant, the Respondent’s request for consideration is inconsistent with the spirit of the Code and, in particular, the imposition of agreements for MSV rights;
 - (ii) that the Claimant simply wishes to secure short-term rights to survey the subject premises to assess their suitability for the installation of electronic communications equipment;
 - (iii) that, in imposing agreements for MSV rights, the Upper Tribunal and the First-tier Tribunal have consistently ordered the payment of nominal consideration only – including in the case of high(er) value buildings in central London: see, for example, *Cornerstone Telecommunications Infrastructure Limited v St Martin’s Property Investment Ltd* [2021] UKUT 262 (LC); *Cornerstone Telecommunications Infrastructure Limited v GHS (GP) Limited* (LC-2023-000587);
 - (iv) that, in any event, since the reference must be determined by 7 August 2024 (in accordance with regulation 3(2) of the Electronic Communications and Wireless Telegraphy Regulations 2011) the lateness of the Respondent’s application to adduce expert evidence does not provide (a) the parties with sufficient time to obtain expert reports and to address issues raised by those reports and (b) Counsel with sufficient time to review the reports and address them in skeleton arguments.
- 25 On 9 July 2024 the Tribunal indicated that it would hear summary representations on the issue of expert evidence as a preliminary issue at the hearing on 16 July 2024.
- 26 Counsel for the parties, in their skeleton arguments, elaborated on the parties’ representations.
- 27 Mr Healey, on behalf of the Respondent, argued –
- (i) that the Claimant’s submission as to the spirit of the Code ignores the provisions of the Code, specifically paragraph 26(4), which applies paragraphs 23 and 24 to interim agreements;
 - (ii) that in the cases expressly relied on by the Claimant as establishing the consistent inclusion of nominal consideration in MSV agreements (see paragraph 24(iii) above) the parties agreed the payment of nominal consideration; and that neither case establishes any principle of law regarding such consideration;
 - (iii) that the Respondent should be permitted to rely on expert evidence as to the market value of the grant of MSV rights over the subject premises.

28 Ms Murphy, on behalf of the Claimant, argued –

- (i) that permission to appeal the Tribunal’s decision to refuse the Respondent’s application to adduce expert evidence can only be granted if the appeal has a real prospect of success and/or there are exceptional reasons for permitting the appeal to proceed;
- (ii) that permission to appeal case management decisions is granted more sparingly as higher courts and tribunals will not lightly interfere with such decisions;
- (iii) that the Respondent’s appeal has no real prospect of success and there are no exceptional reasons for permitting the appeal to proceed –
 - (a) the decision appealed against is a case management decision;
 - (b) the application to adduce expert evidence was made ‘at the eleventh hour’;
 - (c) the admission of expert evidence at a late stage would seriously prejudice the Claimant and would make it difficult, if not impossible, to meet the statutory deadline for determining the reference;
 - (d) the First-tier Tribunal is bound by decisions of the Upper Tribunal, which determine (i) that nominal consideration only is payable for MSV agreements: see *Cornerstone Telecommunications Infrastructure Limited v St Martin’s Property Investment Ltd* [2021] UKUT 262 (LC), *Cornerstone Telecommunications Infrastructure Limited v Hackney LBC* [2022] UKUT 210 (LC); (ii) that expert evidence is inappropriate in applications for MSV rights: see *Cornerstone Telecommunications Infrastructure Limited v St Martin’s Property Investment Ltd* [2021] UKUT 262 (LC) at paragraph [33] and see also the decision of the Court of Appeal in *Cornerstone Telecommunications Infrastructure Limited v University of London* [2019] EWCA Civ 2075 at paragraph [60];
 - (e) in accordance with the objectives of the Code, applications for MSV rights should be determined quickly, cheaply and without extensive evidence: see *Cornerstone Telecommunications Infrastructure Limited v (1) Central Saint Giles General Partner Limited (2) Clarion Housing Association Limited* [2019] UKUT 183 at paragraphs [3]-[4], *Cornerstone Telecommunications Infrastructure Limited v St Martin’s Property Investment Ltd* [2021] UKUT 262 (LC) at paragraph [44];
 - (f) the refusal to permit expert evidence at this stage is consistent with the overriding objective of enabling the First-tier Tribunal to deal with cases fairly and justly, proportionately and without delay: see rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013;
 - (g) there are no exceptional circumstances identified in the Respondent’s application for permission to appeal.

29 It is appropriate to comment on the Respondent’s argument based on paragraph 26(4) of the Code. The Respondent’s representations on the preliminary issue omitted to refer to paragraph 26(6)(b), which provides that, in the case of an

agreement for interim Code rights under paragraph 26, paragraph 23(3) applies as if the duty to include terms as to the payment of consideration were a power.

- 30 In the view of the Tribunal, the exercise of that power to order non-nominal consideration may well be appropriate where the interim agreement imposed by the Tribunal is for *continuing* Code rights granted prior to, and in anticipation of, a paragraph 20 agreement. However, the inclusion of free-standing MSV agreements within paragraph 26 was only explicitly recognised by the Upper Tribunal and Court of Appeal in *Cornerstone Telecommunications Infrastructure Limited v University of London* [2019] EWCA Civ 2075. The substance of the latter type of interim agreement is very different and that difference may be seen to be reflected in the consistent practice of both the Upper Tribunal and the First-tier Tribunal in such cases to order nominal consideration only.
- 31 Having read the representations of the parties and the skeleton arguments of Counsel, the Tribunal finds the arguments made by and on behalf of the Claimant more persuasive.
- 32 The Tribunal therefore determines that it will not review its decision to refuse permission to adduce expert evidence and refuses permission to appeal that decision.

The terms in dispute

- 33 By the time of the hearing the terms in dispute were limited to (i) the consideration payable by the Claimant to the Respondent, (ii) the extent of the MSV site and (iii) the owner fees payable by the Claimant to the Respondent
- 34 In accordance with paragraph 23 of the Code (as applied to agreements for interim rights by paragraph 26(4): see paragraph 11 above), the Tribunal is of the view that the terms of the agreement imposed on the parties should be as concise and straightforward as possible, consistent with achieving two principal objectives - first, the agreement must provide for the non-intrusive MSV rights sought by the Claimant; and, second, the agreement must provide appropriate protection for the Respondent.
- 35 The Tribunal appreciates that the subject premises comprise a high-quality, high-value office development and that the Respondent is rightly concerned with ensuring that appropriate safeguards are in place in order to protect the building and its occupiers. Nonetheless, the Tribunal is of the view that the Respondent overstates the actual and potential risks and financial burdens that might be created by a non-intrusive MSV agreement. Objectively, a non-intrusive MSV is a 'light touch' survey (involving the gathering of information and the taking of photographs, measurements and recordings); and some of the terms proposed by the Respondent are unnecessarily restrictive and/or burdensome. To that extent they are not 'appropriate' for the purposes of paragraph 23(1) of the Code in the context of a non-intrusive MSV agreement.
- 36 Applying the above principles, the Tribunal determines that the terms proposed by the Claimant are to be preferred over the corresponding terms proposed by the Respondent. The terms proposed by the Claimant have been held to be appropriate by the Upper Tribunal in a number of recent non-intrusive MSV cases comparable to the present case. The Tribunal is satisfied that those terms meet the principal objectives identified in paragraph 34 above and determines

that they are the appropriate terms to be included in the agreement imposed by the Tribunal in the present case.

37 The terms in dispute are considered in turn.

Definition: consideration

- 38 As will be apparent from the above discussion of the preliminary issue, the Claimant argued that the consideration payable by the Claimant to the Respondent should be nominal consideration of £1.00. The Respondent argued that the consideration should be substantial; and, while reluctant to propose a precise figure (in the absence of expert evidence), Mr Healey indicated a figure of £5,000 to £10,000.
- 39 Ms Murphy, on behalf of the Claimant, relied on the decisions of the Upper Tribunal and the First-tier Tribunal, which have consistently ordered nominal consideration as appropriate consideration in MSV agreements.
- 40 Second, she submitted that the figure suggested by the Respondent (indeed any substantial consideration) would be wholly disproportionate to the value of the MSV rights granted to the Claimant by the proposed agreement. Pursuant to the proposed MSV agreement, the Claimant would make a very limited number of visits of short duration to the subject premises to take photographs and measurements in order to assess the suitability of the premises for the installation of electronic telecommunications equipment. Although the proposed duration of the agreement is six months, the provision for risk assessment and method statements (RAMS) and the relevant procedures and timescales severely limit the possible number of visits. She likened the Respondent's proposal for substantive consideration to a landlord charging a prospective tenant to look around the premises.
- 41 Third, she submitted that the proposed nominal consideration had to be viewed in the context of the agreement as a whole; and that other terms in the proposed agreement provided for the Claimant to pay compensation to meet reasonable costs and expenses incurred by the Respondent.
- 42 Fourth, she submitted that the downgrading by paragraph 26(6)(b) of the consideration provision in paragraph 23 from a duty to a power reflects the fact that many agreements for interim Code rights should not include payment of (non-nominal) consideration.
- 43 In summary, Ms Murphy submitted that the payment of nominal consideration for the proposed MSV agreement was appropriate for the purposes of paragraph 23 of the Code.
- 44 Mr Healey, on behalf of the Respondent, submitted that, in determining any consideration payable by the Claimant for the proposed MSV rights, the Tribunal should attach weight to the fact the subject premises comprise a high-quality office building in the City of London, which is worth in excess of £100 million and which is currently undergoing a £13 million programme of interior and exterior works.
- 45 Second, he submitted that, although the *duty* of the Tribunal to include terms as to the payment of consideration in an agreement under paragraph 20 of the Code is replaced by a *power* to include such terms in a paragraph 26 agreement, the

Tribunal would be improperly fettering its discretion in relation to that power if it ordered nominal consideration without taking account of expert evidence.

- 46 The Tribunal finds the arguments made by Ms Murphy on behalf of the Claimant more persuasive. First, the Tribunal finds that, in the context of the proposed MSV agreement as a whole, the value of the MSV rights to be granted to the Claimant is nominal only. Second, the Tribunal finds that the quality and value of the subject premises does not affect the value of the limited range of rights granted by a non-intrusive MSV agreement. Third, the Tribunal does not accept that a determination based on those findings - that nominal consideration is appropriate in the present case - constitutes an improper fettering of the Tribunal's discretionary power to include terms as to the payment of consideration.
- 47 The Tribunal determines that the MSV agreement to be imposed on the parties should make provision for nominal consideration only.
- 48 The Tribunal notes that the figure for consideration tentatively proposed by Mr Healey far exceeds the indicative figure for consideration payable even for full Code rights in paragraph 20 agreements – as confirmed by the Upper Tribunal in *EE Limited and Hutchison 3G UK Limited v Affinity Water Limited* [2022] UKUT 8 (LC) at paragraphs [31]-[34].

Definition: MSV site

- 49 The Claimant proposes a definition similar to that included in many previous MSV agreements imposed by the Upper Tribunal and First-tier Tribunal –
- ‘such parts of the rooftop, communal areas and service areas of the [Respondent's] Property, including the electrical intake room and risers, as are not in the possession or occupation of any tenant and as are reasonably required for the MSV by the [Claimant], excluding stair cores 2 and 3 as shown for identification purposes only in the annexed plans’.
- 50 The Respondent proposes a definition in the form of a finite list of areas of the subject premises: ‘(i) the rooftop; (ii) the HV/LV room on the roof; and (iii) the main core including the lifts and risers’.
- 51 Ms Murphy, on behalf of the Claimant, submits that the narrower definition proposed by the Respondent could potentially frustrate the purpose of the MSV agreement (to provide access to assess the suitability of the subject premises for the installation of electronic telecommunications equipment) and could mean that the Claimant would be required to seek a further agreement that included access to other parts of the building.
- 52 Contrary to the Respondent's argument that the Claimant's proposed definition is unclear and imprecise and would allow unnecessary and inappropriate access to parts of the subject premises, Ms Murphy submitted that the opening restricted list of areas together with the cumulative qualifications and exclusion (and other provisions in the proposed agreement requiring compliance with the Respondent's reasonable requirements concerning access) are appropriate to meet the principal objectives identified in paragraph 34 above.
- 53 Mr Healey, on behalf of the Respondent, argued that the Claimant should have used the planning documents made available to the Claimant to identify the precise areas to which access is required; but that the Claimant had failed to adopt

that approach. In response, Ms Murphy pointed out that the documents did not provide some essential information required by the Claimant such as cable routes within the subject premises.

- 54 The Tribunal finds that the definition proposed by the Claimant provides the flexibility required to enable the Claimant effectively to exercise its proposed MSV rights and in its terms protects the Respondent from unnecessary and inappropriate intrusion. In particular, the Claimant is only permitted to access those areas of the subject premises *as are reasonably required for the MSV*.
- 55 The Tribunal therefore determines that the definition of MSV site proposed by the Claimant is appropriate and should be included in the agreement to be imposed on the parties.

Owner fees

- 56 The remaining terms in dispute relate to the level of fees payable by the Claimant to the Respondent in respect of (i) attendance of the Respondent's Technical Manager at visits by the Claimant, (ii) the Respondent's internal and administrative time in procuring and providing documents and (iii) the Respondent's internal and administrative time in relation to the RAMS.

(i) Attendance of the Respondent's Technical Manager at visits by the Claimant

- 57 The Claimant proposed figures of £220 per day for a visit of four hours or less and £440 per day for a visit of more than four hours – in line with the figures adopted the Upper Tribunal and First-tier Tribunal in comparable cases but uplifted for inflation.
- 58 The Respondent proposed the higher figures of £400 and £800 respectively on the basis that technical personnel will charge more for providing supervisory services in a high-quality, high-value building. Mr Healey further submitted that the administrative burden imposed on the Respondent's management and security teams for supervising each visit will be greater (notwithstanding that the subject premises have an on-site management team and 24-hour security services).
- 59 In *Cornerstone Telecommunications Infrastructure Limited v St Martin's Property Investment Ltd* [2021] UKUT 262 (LC) the Deputy Chamber President stated (at paragraph [30]) -

Under paragraph 84(2)(a) of the Code a site provider has the right to compensation for expenses which it has incurred including reasonable legal and valuation expenses. Where a building is of a sensitive nature or has a restricted access policy such compensation may well include the cost of the building owner supervising access. ... But generally for a site provider to incur the costs of arranging professional 'supervision' of other professionals does not seem to the Tribunal to be necessary or appropriate. A building owner is obviously entitled to witness what goes on in the building and to accompany and observe any visitors to the building, including while they carry out their surveys and investigations, but that does not mean that the operator should be expected to write a cheque to a specialist telecommunications agent who may have no relevant experience of the technical matters which are being investigated. The Tribunal has generally lent against the imposition of terms in agreements requiring the payment of professional fees in such circumstances, while permitting the recovery of the reasonable expense of a security guard to accompany contractors around a building or the expense of a building manager providing a briefing about access routes or services or unlocking

secure areas where that is necessary. Those sorts of expenses are likely to be modest and ought not to be contentious. If they become contentious then a claim for compensation can be made in respect of them. But in principle, at least where non-destructive investigations are being undertaken, professional supervision of professionals is not something which operators should be expected to pay for.

- 60 In the light of the above statement, the Tribunal determines that the basis for the Respondent's higher figures is misconceived and that the figures proposed by the Claimant are appropriate.

(ii) Respondent's internal and administrative time in procuring and providing documents

- 61 The Claimant proposed the figure of £550 – in line with the figure adopted the Upper Tribunal in *Cornerstone Telecommunications Infrastructure Limited v Hackney LBC* [2022] UKUT 210 (LC) but uplifted for inflation.

- 62 The Respondent proposed the higher figure of £1150 on the basis that the provision of documentation in relation to the subject premises will be a much more complex and onerous exercise than in the smaller residential block involved in *Cornerstone v Hackney LBC*. Mr Healey submitted that the fees proposed by the Respondent represent a reasonable pre-estimate of the burden actually imposed by the MSV in the present case, 'which is obviously going to be greater than that imposed by the MSV in *Cornerstone v Hackney LBC*'.

- 63 The list of documents in the present case is the same as the list in *Cornerstone v Hackney LBC* and many other cases. Moreover, the obligation on the Respondent is to provide the listed documents 'where available to the [Respondent] (for the avoidance of doubt the [Respondent] will not be required to produce any document which is not in existence or in the [Respondent's] possession save, in the case of a document which is not in the possession of the [Respondent], where the document can reasonably be procured by the [Respondent], it will be provided by the [Respondent]'

- 64 In the view of the Tribunal therefore it is far from 'obvious' that the burden on the Respondent in the present case will be significantly greater than in *Cornerstone v Hackney LBC*; and the Respondent provided no evidence to support that assertion.

- 65 The Tribunal determines that the figure proposed by the Claimant is appropriate.

(iii) Respondent's internal and administrative time in relation to the RAMS

- 66 The Claimant proposed the figure of £275 – in line with the figure adopted the Upper Tribunal in *Cornerstone Telecommunications Infrastructure Limited v Hackney LBC* [2022] UKUT 210 (LC) but uplifted for inflation.

- 67 The Respondent proposed the higher figure of £300.

- 68 The arguments of the parties were the same as those made in respect of the provision of documents; and the conclusion of the Tribunal is the same.

- 69 The Tribunal determines that the figure proposed by the Claimant is appropriate.

Transaction costs

- 70 In *Cornerstone Telecommunications Infrastructure Limited v Hackney LBC* [2022] UKUT 210 (LC), Judge Cooke stated (at paragraph [94]) -

The MSV, and the process of negotiation leading up to it, should not leave the Respondent out of pocket; it is well-established that it can expect the Claimant to reimburse the legal and professional fees that it has occurred in the negotiation of the agreement.

- 71 However, in the present case the Respondent does not claim transaction costs because the work undertaken by the Respondent's solicitors was completed by a litigation solicitor; and the fees of a litigation solicitor are not recoverable as transaction costs: see *Cornerstone Telecommunications Infrastructure Limited v Hackney LBC*, at paragraph [95].

Order

- 72 In order to give effect to this Decision, the Tribunal has issued a formal Order pursuant to paragraph 26 of Schedule 3A to the Communications Act 2003, imposing on the parties the Agreement annexed to the Order.

Litigation costs

- 73 In *EE Limited and Hutchison 3G UK Limited* [2022] UKUT 174 (LC) the Deputy Chamber President stated at paragraphs 9-10 –

Where parties have not agreed that there should be no order for costs, the Tribunal's usual order in such cases is that the operator should pay the site provider's costs, which will then usually be summarily assessed. ... The costs incurred by a site provider in a reference made necessary because an operator wishes to have a Code right to undertake a survey ought not in principle to fall on the site provider.

- 74 The parties may make written representations on the issue of litigation costs to be received by the Tribunal **not later than 16 August 2024**.

Appeal

- 75 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.
- 76 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.
- 77 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.
- 78 The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking.

24 July 2024

Professor Nigel Gravells
Deputy Regional Judge