



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

Case Reference : **BIR/00CN/EOM/2025/0012**

Property : **Romford House, Romford Road Warsash,
Southampton SO31 9GZ**

Claimant : **Jane Amanda Cox**

Representative : **Jenny Cox (authorised lay representative)**

Respondents : **EE Limited and Hutchison 3G UK Limited**

Representative : **Winckworth Sherwood LLP**

Application : **Electronic Communications Code
Part 12, Paragraph 79**

Date of Order : **10th February 2026**

ORDER

UPON reading Claimant’s application for a protective costs order and/or costs-capping order dated 21st January 2026 and application for extension of time dated 28th January 2026.

AND UPON considering Respondent’s Response dated 5th February 2026

ORDER

1. The application for a protective costs and/or costs-capping order is refused.
2. Time for parties to comply with paragraph 7 of my Directions made on 14th January 2026 is extended from 17 February 2026 to 17 March 2026.
3. Time for parties to comply with paragraph 8 of my Directions made on 14th January 2026 is extended from 10 March 2026 to 7 April 2026.

D Jackson
Regional Judge

REASONS

The costs application

1. The costs application is made in the interests of justice. The Claimant argues that there is no equality of arms. The Respondent is represented by specialist solicitors and counsel. The Claimant is represented by a family member and does not have the financial resources to obtain specialist advice.
2. The Claimant is now seeking statutory assistance from OFCOM under s.119 Communications Act 2003.
3. The Tribunal has previously directed that the proportionate manner in which to case manage this application is to determine the First Condition on Paragraph 79(4) of the Code as a preliminary issue:

“The first condition is that the apparatus appears materially to prejudice the objector's enjoyment of, or interest in, the land by reference to which the objection is made.”

4. As far as I am aware this will be the first time that Paragraph 79 has been the subject of judicial determination and this case is therefore of potentially wider significance.

5. The Claimant has sought to conduct proceedings proportionately and consented to a determination without a hearing. However, the Respondent has not consented to proceeding without a hearing under FTT Rule 31.

The Tribunal Procedure Rules and the Code

6. Rule 13(1)(d) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides that the Tribunal may make an order in respect of costs:

“in proceedings under Schedule 3A to the Communications Act 2003 (the Electronic Communications Code) including proceedings that have been transferred from the Upper Tribunal.”

7. Paragraph 96 of the Code headed “Award of costs by Tribunal” provides:

(1) Where in any proceedings a tribunal exercises functions by virtue of regulations under paragraph 95(1), it may make such order as it thinks fit as to costs, or, in Scotland, expenses.

(2) The matters a tribunal must have regard to in making such an order include in particular—

(a) The extent to which any party is successful in proceedings, and

(b) any unreasonable refusal by a party to engage in alternative dispute resolution.

Tribunals Courts and Enforcement Act 2007

8. Section 29 provides:

(1) The costs of and incidental to—

(a) all proceedings in the First-tier Tribunal, and

(b) all proceedings in the Upper Tribunal,

shall be in the discretion of the Tribunal in which the proceedings take place.

(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.

(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.

9. The 2007 gives the Tribunal unfettered discretion and full powers in respect of costs. The Tribunal Procedure Rules 2013 provide for the making of an order in respect of costs in proceedings under the Code. Paragraph 96 of the Code provides that the Tribunal “may make such order as it thinks fit as to costs”.

10. Paragraph 96(2)(a) of the Code provides that the Tribunal must have regard to “*the extent to which any party is successful in proceedings*”. I do not agree with the

Respondent that Paragraph 96(1) is a backwards-looking power to be invoked only once the outcome of proceedings has been determined and the successful party identified. Paragraph 96(1) is drafted in the widest possible way. The Tribunal may “*make such order as it thinks fit*”.

11. Clearly the Tribunal Procedure Rules do not make any express provision for protective costs orders or costs-capping orders. However, “*in proceedings under the Code*” the Tribunal “*may make such order as it thinks fit as to costs*”. In my judgement the wording of Rule 13(1)(d) when read together with Paragraph 96 is wide enough to encompass the making of a protective costs order.

Prospective, pre-emptive or protective costs order

12. The Tribunal’s power to make a costs order derives from section 29 of the Tribunals Courts and Enforcement Act 2007. The power of the Courts to award costs is set out in section 51 of Senior Courts Act 1981. The two regimes are entirely separate. Nevertheless, I have been assisted by consideration of the authorities set out at 9A-202 of the White Book.
13. The courts have made prospective/pre-emptive or protective costs orders in favour of trustees, beneficiaries, insurance policy holders and in trust and trust-related circumstances. In exceptional circumstances, pre-emptive costs orders have been granted in “public interest challenge” cases.
14. The reference has been made by an individual Claimant and not on behalf of a wider group. This is not a public interest challenge case. The first condition in Paragraph 79(4) relates to “*the apparatus*”, “*the objector*” and “*the land*”. The focus is on material prejudice to the objector’s enjoyment of their property. Essentially this is a dispute about interference with private property rights and not the wider public interest.
15. The application for a prospective, pre-emptive or protective costs order is refused.

Cost capping orders

16. Costs capping orders are entirely a creature of the Civil Procedure Rules (see CPR 3.19 and commentary in the White Book at 3.19.1). There are no equivalent provisions in the Tribunal Procedure Rules.
17. I am not satisfied that there is a substantial risk that costs may be disproportionately incurred. Any risk can be adequately controlled by the exercise of the Tribunal’s case management powers in accordance with the overriding objective set out in FTT Rule 3(2):
 - (a) *dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;*
 - (b) *avoiding unnecessary formality and seeking flexibility in the proceedings;*
 - (c) ...
 - (d) *using any special expertise of the Tribunal effectively; and*

(e)...

18. The risk of costs being disproportionately incurred can also be controlled on summary or detailed assessment of costs under FTT Rule 13(7). Where assessment is to be on the standard basis the practice of this Tribunal is to apply CPR44 by analogy:

(1) the Tribunal will not allow costs which have been unreasonably incurred or are unreasonable in amount.

(2) the Tribunal only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred.

19. The application for a costs capping order is refused.

Extension of time

20. The Respondent does not object to the request to extend time as the application does not imperil the trial date which has yet to be fixed.