UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2018] UKUT 0361 (LC)
Case Number: TCR/68/2018

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

ELECTRONIC COMMUNICATIONS CODE – INTERIM RIGHTS - application for full Code rights and interim rights over new site to replace existing site threatened with redevelopment – loss of existing site contingent on planning permission and termination proceedings - whether good arguable case made out – limited rights granted pending planning permission

IN THE MATTER OF A NOTICE OF REFERENCE

BETWEEN:

EE LIMITED AND HUTCHISON 3G UK LTD

Claimant/
Code Operator

and

THE MAYOR AND BURGESSES OF
THE LONDON BOROUGH OF ISLINGTON

Respondent/
Site provider

Re: Threadgold House,
Dovercourt Estate,
Islington,
London N1 3HN

Martin Rodger QC, Deputy Chamber President

Royal Courts of Justice, Strand, London WC2A 2LL
on
19 October 2018

Graham Read QC, instructed by DFW LLP for the Appellant
Jonathan Wills, instructed by Fladgate LLP for the Respondents

The following cases are referred to in this decision:

Canada Trust v Stolzenberg [1998] 1 WLR 547

Cornerstone Telecommunications Infrastructure Ltd v The University of London [2018] UKUT 0356 (LC)

Introduction

1. This is an application by the claimants, EE Limited and Hutchison 3G UK Ltd, under the new Electronic Communications Code ("the Code") introduced by the Digital Economy Act 2017 by the addition of Schedule 3A to the Communications Act 2003. In the language of the Code the claimants are "operators". By this reference they ask the Tribunal to impose an agreement on them and on the respondent, the London Borough of Islington, granting rights on an interim basis over a site on the roof of Threadgold House, a block of flats on the Dovercourt Estate in Islington.

2. The claimants have been represented by Mr Graham Read QC and the respondent by Mr Jonathan Wills. I am grateful to them both for their helpful submissions and for the efficiency with which they have dealt with the application today.

3. In outline, the claimants have an existing telecommunications site on the roof of Leroy House, a building in Essex Road in Islington and only a short distance (about 140m) from Threadgold House. They are required by the owners of Leroy House to remove their equipment from it, and have identified Threadgold House as an appropriate alternative site to which they wish to relocate. Negotiations with Islington had achieved a substantial level of agreement before the new Code came into force on 28 December 2017 but they were never completed.

The reference

4. The claim is in two parts. The claimants first seek the imposition of a long-term agreement for rights under paragraph 20 of the Code to enable them to install electronic communications apparatus on the roof of Threadgold House. Additionally, they seek an order under paragraph 26 of the Code imposing an agreement in similar terms for an interim period lasting until the final determination of the reference. The interim rights agreement would enable the claimants to install and use their apparatus, but would not attract the statutory rights of continuation or the same level of protection against removal as an agreement granted under paragraph 20.

5. The reference was filed on 28 August 2018 and I gave directions on that day to enable the paragraph 26 interim rights issue to be considered at this case management hearing. I indicated that I would determine that part of the reference today if it was possible to do so fairly. That approach is consistent with the intent of the Code, which I will come to shortly, that such applications should be determined without delay and by a summary procedure.

6. Shortly before the hearing, on 12 October 2018, the respondent suggested that a postponement should be ordered to enable the claimant to provide disclosure. That application was refused but the respondent was entitled to renew it today and seek to persuade the Tribunal to adjourn the application. In the event, Mr Wills has invited

me to dismiss the application for insufficiency of evidence rather than adjourning it to allow further documents to be produced.

Interim rights under the Code

7. As this decision is being given orally at the conclusion of argument I am not going to describe the Code or the new regime of Code rights in detail. It is likely to be very familiar to everyone in court this afternoon. (A summary of the main provisions of the Code is included in the Tribunal's decision in *Cornerstone Telecommunications Infrastructure Ltd v The University of London* [2018] UKUT 0356 (LC)).

8. Paragraph 26 of the Code provides that an operator may apply to the court for an order imposing an agreement conferring Code rights on an interim basis on the operator and a site provider. By regulations 3 of the Electronic Communications Code (Jurisdiction) Regulations 2017 references to "the court" include the Upper Tribunal, and by regulation 4 of the same measure proceedings under the Code in England and Wales must be commenced in the Upper Tribunal. The circumstances in which the Tribunal may make an order for what can conveniently be called interim rights are described in paragraph 26(3):

> "The court may make an order under this paragraph if (and only if) the operator has given the person mentioned in sub-paragraph 1 a notice which complies with paragraph 20(2) stating that an agreement is sought on an interim basis, and
>
> (a) the operator and that person have agreed to the making of the order and the terms of the agreement imposed by it; or
>
> (b) the court thinks that there is a good arguable case that the test in paragraph 21 for the making of an order under paragraph 20 is met."

In this case, as the parties have not agreed to the making of an order, I have to be satisfied that the claimants have shown a good arguable case that the test in paragraph 21 for the making of an order under paragraph 20 is met.

9. An order under paragraph 20 imposes an agreement providing for full Code rights. The test for making such an order is in paragraph 21 and comprises two conditions. The first is that the prejudice caused to the relevant person (the site owner and anyone claiming under it) by the making of the order is capable of being adequately compensated by money. The second condition is that the public benefit likely to result from the making of the order outweighs the prejudice to the relevant person. In considering whether the second condition is met, the Tribunal is directed by paragraph 26(4) to have regard to the public interest in access to a choice of high quality electronic communications services. In other words, what underlies decisions by the Tribunal about the imposition of rights under the Code is a concern for the availability of high quality communication services to the public.

10. One important feature of the Code is the obligation it places on the Tribunal to resolve dispute without delay. Regulation 3(2) of the Electronic Communications and Wireless Telegraphy Regulations 2011, referred to in paragraph 97 of the Code, requires the Tribunal to determine applications for the grant of rights to install apparatus to provide electronic communication networks within 6 months of receiving the application. That obligation is imposed in the public interest, rather than for the convenience of operators, and it is not one which the parties are free to dispense with. Nevertheless, having regard to the relevant EU Directives which are the source of the domestic regulation (the Framework Directive 2002/21/EC and the Better Regulation Directive 2009/140/EC), the view taken by the Tribunal has been that the obligation arises in the case of applications concerning new sites, rather than sites over which rights already exist which an operator seeks to renew and which will continue pending the determination of the application. The application in this case relates to a new site on which no apparatus has yet been installed, and the duty to determine the application within 6 months is therefore engaged.

11. On behalf of the claimants, Mr Read QC suggested that in circumstances where the Tribunal is obliged to reach a final decision on a claim within six months, and where a procedure is made available for an operator to obtain interim rights, it must necessarily follow that any claim for interim rights should be determined without delay and significantly within the period of 6 months. Although a claim for interim rights need not always be coupled with a claim for permanent rights, I agree that in enacting paragraph 26 in the light of regulation 3(2) of the 2011 Regulations Parliament must have intended such claims to be dealt with speedily.

12. Mr Read helpfully formulated a number of propositions concerning paragraph 26 from which Mr Wills did not significantly dissent.

13. The first proposition advanced by Mr Read was that paragraph 26 was intended to provide for a summary procedure. Extensive disclosure, is not required nor, ordinarily at least, should the evidence be subject to cross-examination. An application for interim rights should be determined on the basis of the material put before the Tribunal on paper.

14. I agree that generally that is the approach the Tribunal ought to take, provided it is satisfied in any individual case that in doing unfairness will not be caused to a respondent. I would not ordinarily expect there to be cross-examination in these cases. In a summary procedure the extent of disclosure is in the hands of the person seeking an order: the more information that is provided, the more material the Tribunal will have to go determine whether the paragraph 21 tests are satisfied to the required standard. The Tribunal will not generally make assumptions in favour of an operator which is in a position to provide evidence.

15. Mr Read's second proposition was that a hearing of a paragraph 26 application is not a full trial, where the rights of the parties are to be determined on the Tribunal's view of the facts assessed on a balance of probability. The standard of a "good

arguable case" which paragraph 26(3) requires the operator to demonstrate is explained in the decision of the Court of Appeal in the case of *Canada Trust v Stolzenberg* [1998] 1 WLR 547. That case concerned an application for permission to serve a writ out of the jurisdiction and Waller LJ explained that that the relevant question was whether the claimant had established a "good arguable case". Having reviewed a number of decisions he explained their effect at page 555:

> "It is I believe important to recognise that what the court is endeavouring to do is to find a concept not capable of very precise definition that reflects that the plaintiff must properly satisfy the court that it is right for the court to take jurisdiction. The concept also reflects that the question before the court is one which should be decided on affidavits from both sides and without full discovery and/or cross examination and in relation to which therefore to apply the language of the civil burden of proof applicable to issues after a full trial is inapposite."

The concept of a good arguable case was said to reflect "that one side has a much better argument on the material available".

16. I accept that the intention of Parliament in adopting the Law Commission's recommendation that the *Canada Trust* standard be applied was that on an application for interim rights an operator does not have to establish on the balance of probability that the paragraph 21 conditions are met, but must establish a good arguable case. That case need not be free of all doubt or uncertainty at this stage but it must be a case which is more than simply arguable. It must have a certain amount of strength and persuasiveness about it.

17. Mr Read's third proposition was that the Tribunal should be astute to prevent respondents from circumventing the paragraph 26 process by delaying tactics or by identifying specious arguments intended simply to achieve a ransom position. The Law Commission had specifically identified delay as a vice of the procedures under the old Code and had intended paragraph 26 as a remedy. Mr Wills did not dissent from Mr Read's general proposition but disputed any suggestion that his clients sought to use delay as a tactic. I do not think the respondent is trying to delay these proceedings for the sake of it, and it is quite understandable that it would have liked to be in a position to deploy a fuller case than has been possible at this interim stage.

18. Mr Read's fourth proposition was that paragraph 26 provides protection to the site owner by the limits placed on interim rights. They will last only until the expiry of the period for which they are granted, usually until the determination of the paragraph 20 application which they support. They do not enjoy the same restrictions on rights of removal or the requirement of prolonged notice of termination which full Code rights attract.

19. That is uncontroversial. The summary nature of proceedings under paragraph 26, and the relatively modest standard of proof, are balanced by characteristics of the rights themselves which minimise the risk to a site owner and mean that the

consequences of their imposition are not as serious or lasting as in the case of full Code rights.

20. Mr Read then submitted that on a contested hearing of a paragraph 26 application all that had to be shown was a good arguable case that the paragraph 21 conditions were met. He acknowledged that the Tribunal has a discretion but that discretion has to be exercised judicially.

21. As a sixth proposition Mr Read submitted that certain matters will be irrelevant to the exercise of the Tribunal's discretion. One of those was said to be the positions which parties may have taken in negotiations. I am not sure I agree. If a party has shown itself willing in principle to accept the installation of equipment on its land that may be relevant to the exercise of the paragraph 26 discretion. The Tribunal will have greater confidence in imposing an agreement where it is apparent that the rights sought are not objectionable to the site owner in principle, subject to appropriate financial terms. Each of these cases is going to require consideration of its own facts and I would not accept the proposition that how the parties have behaved towards each other in negotiations is necessarily irrelevant.

22. Mr Read also suggested that it was irrelevant whether there was or was not a degree of urgency. Mr Wills submitted that the evidence in this case does not establish that the claimant has an urgent requirement to begin work on Threadgold House such that a summary determination is appropriate. Mr Read suggested that the question of urgency went to the exercise of the Tribunal's discretion. Clearly if an operator has a pressing need for access to the only site capable of meeting an immediate demand the Tribunal will bear that in mind and give it greater weight than where the public's requirements for communication services are adequately satisfied by existing facilities. In an appropriate case urgency might go both to the question of public benefit and how it weighs in the balance and to the exercise of the Tribunal's discretion.

The evidence

23. Mr James Allerton is the claimants' estates manager and made two witness statements in which he provided evidence about an agreement between the claimants and Workspace 14 Ltd, the owner of Leroy House, in February 2015 permitting the use of those premises for the claimants' apparatus. Mr Allerton did not exhibit the agreement and we know very little about it other than that we are told it contained a provision entitling the landlord to terminate if it wishes to undertake a redevelopment.

24. Workspace 14 is said to have made an application for planning permission to redevelop Leroy House in 2015. That application was refused in July 2016 apparently on grounds of the building's proximity to a conservation area and a Grade II listed church (the concern appears therefore to have been about the design of the building rather than the principle of a replacement building on the site). Workspace amended

and resubmitted its planning application in April 2018, but no further details of the progress of the application were provided by Mr Allerton in his witness statement.

25. Mr Allerton said that notice had been served by Workspace 14 in August 2015 to terminate the Leroy House agreement on 31 August 2016. The landlord's intention was to demolish the building or to redevelop it sufficiently that the retention of the claimants' equipment on the roof would not be possible. A counternotice was served by the claimants under the old Code and possession proceedings had been commenced by Workspace 14 seeking the claimants' removal from the roof of the building. Those proceedings had been stayed by agreement between the parties and it had been agreed that the claimants would leave by 31 January 2019.

26. The formal position taken by the claimants in the proceedings over Leroy House has been to challenge the validity of the landlord's notice exercising the right to break clause. They are said to have put Workspace 14 to proof that it had the necessary settled intention to redevelop the building at the relevant time. I cannot speculate about the likelihood of success of that defence but given that the claimants have already agreed in principle that they will vacate by 31 January 2019 it is not difficult to infer that they do not have much confidence in it.

27. The possession proceedings were in abeyance until the consensual stay expired on 30 August 2018. The landlord's solicitors are said to have invited the Central London County Courts to list the matter for a case management hearing, but no date has yet been obtained. It is a matter of speculation when a hearing might take place and when any final determination of those proceedings might be achieved, but the claimants have clearly been stung into bringing these proceedings by the renewal of the threat to their position at Leroy House.

28. Mr Allerton said that the claimants have a number of other agreements with Workspace 14 and do not want to disrupt their relationship by insisting on their strict rights at Leroy House if they do not have to. The claimants have therefore been seeking to agree that they will have an adequate period within which to remove their equipment, but Workspace's solicitors want to press ahead with the court proceedings. That approach is not necessarily inconsistent with a willingness to reach an agreement to allow time for an orderly departure by the claimants but it does suggest that a certain amount of urgency is now being exhibited by the landlord in the proceedings.

29. The desire for a seamless transition from their Leroy House site to a new site at Threadgold House is the driver for the claimants' application for interim rights. To achieve a complete removal by January 2019 Mr Allerton said that the claimants would have needed to begin decommissioning their equipment at Leroy House by the end of September 2018 at the latest, but that had not yet happened. He explained that it is likely to take 4 months fully to decommission the Leroy House site, which may require the use of a crane and temporary road closures. He also considered that 4 months was the likely installation period for the replacement equipment on the roof of Threadgold House or any other alternative site. On that basis he invited the Tribunal

to assume that the claimants will need 8 months to make alternative arrangements before the date on which they are eventually required to vacate Leroy House, and that those alternative arrangements must begin with them obtaining rights over Threadgold House.

30. It seemed to me that there was likely to be room for some truncation of the period described by Mr Allerton as the planning and preparation for decommissioning may overlap with the period required for installation. In any event, from the perspective of the public interest in maintaining electronic communication coverage what matters is how long it takes to install new equipment at Threadgold House, which the evidence suggests is four months. Any subsequent delay in the claimants removing their equipment from Leroy House does not weigh significantly in the balancing exercise and can be left to be resolved between them and their landlords.

31. Evidence was also provided by Mr Paul Ferrari, the claimants' acquisition project manager, about the suitability of Leroy House itself. It had been identified as a suitable replacement site as early as 2016, and Mr Ferrari explained that negotiations before the new Code came into force had dragged on because the parties could not agree the appropriate consideration for the rights which the claimants sought under the old Code.

32. Evidence on behalf of the respondent was given by Mr Mark East in a witness statement of 17 October. Mr East goes into some detail about the negotiations before the reference and the effect of his evidence is that by the middle of this year the parties had agreed terms for a Code agreement in relation to Threadgold House other than in relation to compensation and consideration. I infer from Mr East's evidence that the respondent has no objection in principle to the presence of electronic communication apparatus at Threadgold House. It hosts similar apparatus, including that of the claimants, at a number of other buildings, including blocks of flats. The issue separating the parties concerns financial terms.

33. In this case there has been some reluctance on the part of the claimants to provide documents which must be readily available to them and which would usefully have informed the Tribunal's decision. It would have been helpful, for example, to know in more detail the extent of the claimant's rights in relation to Leroy House, a gap which could easily have been filled by putting the relevant agreement in evidence. The suspicions of the respondent has been that something important has been kept from them. It is within the power of claimants in these cases to allay such suspicions by providing a modest amount of additional information which will put the Tribunal and the respondents more fully in the picture.

The paragraph 21 test

34. The first paragraph 21 condition concerns the adequacy of money as compensation for any prejudice caused to the claimant by the making of the order. This does not require that the Tribunal undertake an exercise in quantifying

compensation at this stage. I do not need to determine whether the claimant is right that no significant prejudice will be suffered by the respondent, or whether the respondent is correct that the addition of apparatus to the roof of its building will significantly reduce its value and ought to result in significant compensation. What matters is whether the type of prejudice that will be suffered is such that money will not be provide adequate compensation. It may be better not to speculate on what type of prejudice would be incapable of adequate compensation by money and to leave it to individual cases to provide examples, but there may be cases in which aesthetic or personal considerations meant that compensation for any diminution in financial value did not provide adequate recompense for the prejudice that the building owner might suffer.

35. There seems to be nothing in this case which is incapable of being compensated in money in principle. The fact that the parties were negotiating for the imposition of rights in return for an appropriate payment, and fell out only over the amount of that payment seems to me to be an indicator that money is capable of compensating the respondent. Mr Wills candidly acknowledged that the Tribunal could safely accept that in this case the first condition was satisfied to the required standard.

36. As to the second condition I have already explained what the claimant's position is. Their concern is that if they are required to remove from the roof of Leroy House before they have had sufficient time to decommission their equipment and install replacement apparatus at Threadgold House, their customers will suffer a loss of coverage for electronic communications in the vicinity of Leroy House. It was not suggested that the threatened deterioration was inevitable if interim rights were not granted, but there was said to be a risk that it will be forced out of Leroy House before it is ready with a replacement site at Threadgold House unless it is able to get onto Threadgold House and begin making its preparations and installing its apparatus before the final determination of its paragraph 20 application in January or February next year.

37. The delay in obtaining access (assuming the paragraph 20 application succeeds) will not be great, as there are only three or four months before the Tribunal is required by law to reach a determination on the claim for full Code rights. Nevertheless, as Mr Read submits and I accept, if this corner of Islington loses the mobile phone coverage provided by these operators, no matter how short the period that inconvenience is sustained for, it is likely to be regarded by the public as an unacceptable break in a service they expect to be available to them at all times. It would be damaging to the public interest identified in paragraph 21. So I accept that there is a risk.

38. The risk is not possible to quantify. Its contingent on a number of matters which are unknown. The first of these is planning permission being granted for the demolition or alteration of Leroy House. I do not know whether planning permission is likely to be granted. The claimant's say in their evidence that Workspace is confident of obtaining planning permission and it is difficult to see in principle why a

central London building ought not to be capable of being demolished and redeveloped. But nevertheless the timing is uncertain. I am told that a decision is expected sometime in October (we are in the middle of October and no decision has yet emerged). It may be that no decision will be taken even by January or February. I simply do not know.

39. The risk is also contingent on the time it takes the landlord to be ready to start work at Leroy House. The claimants have rights at Leroy House and could in principle push the landlord to the limit by taking full advantage of them. If they adopted an uncompromising position they may be able to stave off any risk of being required to vacate Leroy House until well after January or February 2019. They might even be able to stave it off until November, which would allow the time them the 8 months they say is necessary both to decommission and to install new equipment. Once again that is a matter of speculation and it is possible that the claimants will be required to leave Leroy House much earlier. Moreover I do not think the Tribunal should approach an application for interim rights on the basis that a Code operator should be required to extract the maximum advantage from the rights it may enjoy elsewhere. In normal commercial negotiations one would expect Code operators to seek to reach agreement with landlords. There is a public benefit in parties reaching agreement and not insisting that a dispute be determined by a court simply to gain time. I do not expect the respondent to forego a sensible commercial approach, which would be to begin work at Threadgold House, complete it in an orderly manner and then decommission at Leroy House all within a timescale agreed with the landlord.

40. For the respondent Mr Wills identified three aspects of prejudice which an order may cause to it. He did not suggest that these were incapable of compensation in money, but nevertheless argued that they outweighed the public interest in this case.

41. First Mr Wills said that it was prejudicial simply for an agreement to be imposed on a site owner on terms which it would not willingly have accepted. I agree that any property owner who is deprived of the right to do as they wish with their own property and made to accept a price that is lower than they would like (possibly substantially lower than they would like) can be said to have sustained an infringement of their property rights which is prejudicial. But the whole premise of the Code is that there is a need, in the public interest, to impose agreements on unwilling parties in return for consideration which Parliament has deemed to be adequate notwithstanding that it is may be significantly lower than would result from an unrestricted commercial negotiation. In my judgment the inability of the respondent to obtain a higher price cannot be regarded as prejudice entitled to weight in the statutory balancing exercise required by paragraph 21.

42. Secondly Mr Wills noted that the form of agreement which the claimants were seeking to have imposed on the respondent was a lease, and submitted that the creation of a legal estate in a site owner's property was necessarily prejudicial. I do not accept that submission. Any lease which is granted in this case will be for a

period of only a few months, will carry no security of tenure, and will be in return for consideration which Parliament has decided is adequate. Compensation will be payable for any loss suffered by the respondent; if, for example, there is a diminution in the value of the respondent's interest in Threadgold House it will be compensated for it. In those circumstances I do not regard the form of agreement sought by the claimants as a cause of prejudice to the respondents. I would add that I do not intend to indicate that the availability of compensation means that a lease is necessarily the appropriate form of agreement for the Tribunal to impose. It may be sufficient for interim rights to be comprised in a purely contractual agreement and for the claimants to be content with a licence to come on to the respondent's property and undertake works while its entitlement to full Code rights in whatever form is determined.

43. The third type of prejudice which Mr Wills identified arises from the fact that this is a residential building. It is 10 or 11 storeys high and full of flats providing homes for many people. Some are tenants of Islington, some are long leaseholders and all would be prejudice, Mr Wills suggested, by work being undertaken to their building since there would necessarily be noise, some disturbance, some inconvenience. I accept that there is likely to be some noise, disturbance and inconvenience as a result of work being carried out and I take it into account, although there is nothing to suggest that it will be particularly intrusive in this case.

44. My overall assessment at this stage is that there is a good arguable case that the public benefit in reducing the risk of the claimants' electronic communications coverage being lost or compromised in a business and residential neighbourhood (albeit that risk is contingent) outweighs the small amount of prejudice which may be caused on the respondent's side by the imposition of interim Code rights. I bear in mind that that prejudice will be compensated in money which has to some extent to be set off against the weight to be given to it.

45. I am therefore satisfied that the claimants have made out a good arguable case that the paragraph 21 conditions are met, subject to one additional point.

46. If it transpires that planning permission is not obtained for the re-development of Leroy House, so that the removal of the claimant's equipment is not required, the balance of public interest against private prejudice would tip the other way. The claimants would be able to remain in their current location and the public would not be disadvantaged. The grant of planning permission is a matter of record which is readily ascertainable and it seems to me appropriate in this case that an order for the imposition of interim rights should be conditional on planning permission being granted to the owners of Leroy House to enable them to carry out the works of demolition and reconstruction which they propose.

47. While the position in relation to planning permission is uncertain there may be some rights, such as to undertake a non-intrusive survey, which might advance the design of the claimants' intended works and which it would be sensible to allow straightaway. There should be no need for intrusive works, and no requirement for

scaffolding, equipment, cranes, noisy or inconvenient works on the roof of Threadgold House until it is known whether the planning permission is available for the re-development of Leroy House. If planning permission is refused it seems unlikely that the claimants would want to do any significant work. The way to deal with the current state of uncertainty is for the claimant's interim rights to be conditional on the grant of planning permission. I will hear any further submissions either side wants to make about the form of the appropriate order.

48. As to the terms of the agreement, the claimant seeks the imposition on an interim basis of an agreement in the same terms as it seeks under paragraph 20. In principle I do not think that is the right way to go about it. The claimants' proposed agreement under paragraph 20 is an elaborate document, but it need not be if it is only going to be of 3 or 4 months duration. I will hear the parties now or alternatively give them an opportunity to consider between themselves what an interim agreement ought to look like. I consider that in principle it ought to impose no obligations on the site owner other than an obligation not to derogate from the rights which have been granted. It should require no covenants or undertakings from the site owner. It should put the full risk of the operation which the operator wishes to embark on on the operator and none of the risk on the site provider.

49. As far as consideration is concerned, the claimant has pleaded a case for an annual payment of £2,551.77. The respondent suggests that a figure of £12,500 is more appropriate. I will direct that the claimants make payments on account of the final consideration at the rate of £2,551.00 per annum and the Tribunal will determine the appropriate consideration when it determines the paragraph 20 application for full Code rights. If the Tribunal fixes a higher figure it will be payable retrospectively by the operator. I hope I have said sufficient to indicate the Tribunal's thinking on the drafting of the agreement, but I will hear anything the parties want to say about that now.

Martin Rodger QC

Deputy Chamber President

30 October 2018