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December 2018

**The British Property Federation:**

1. The British Property Federation (BPF) represents the commercial real estate sector to government and relevant regulatory bodies – an industry with a market value of £1,662bn and which contributed more than £94bn to the economy in 2014. We promote the interests of those with a stake in the UK's built environment, and our membership comprises a broad range of real estate owners, managers, developers and supporters.
2. We are delighted to respond to this consultation and would welcome the opportunity to work further with the Department to ensure the proposals deliver for tenants and property owners.
3. Should you require any further information on any aspect of this submission please contact Laurence Raeburn-Smith (Policy Officer) on either [lraeburn-smith@bpf.org.uk](mailto:lraeburn-smith@bpf.org.uk), or 020 7802 0121.

**Question 1: Would the placing of an obligation on landlords in the manner proposed encourage more landlords to respond to requests sent by operators?**

4. The BPF believes the primary issue here is one of a poor relationship between landlords and operators.
5. Some operators have been abusing the already substantial powers they have been granted under the ECC and this has been met with resistance from landlords. Placing an obligation in the manner proposed could possibly exacerbate this issue and may only serve to further discourage some landlords from engaging.
6. To illustrate, we have seen evidence that the prices operators have quoted landlords for the use of their property under the ECC have been significantly below market rate. In some cases, these prices have been so disproportionately low that landlords have become, quite understandably, unwilling to engage with operators who have quoted such payment terms in their opening communications.
7. We are aware of the following instances where very low levels of Compensation and Consideration have been quoted by operators:
  - *A City of London site with a £32,000 per annum rent was quoted renewal terms by the operator of Consideration of £50 for 10 years and Compensation of £750 for 10 years. This equates to £80 per annum.*
  - *A £12,000 per annum rooftop site was quoted £36 per annum by the operator on renewal.*
  - *A rural site that previously would have generated £3,000 per annum was quoted £50 per annum for a new agreement.*

8. These are dramatic decreases that do not reflect the actual levels of Compensation and Consideration due. Although the onus is on landowners to prove the value of the site, operators are sending out standard levels in, what is at least perceived by landlords, to be an attempt to force the market price down.
9. We have also seen similar issues regarding a lack of flexibility on behalf of operators when it comes to lift and shift provisions. Some operators are being unreasonable in the timescales they are willing to agree, are only willing to temporarily relocate equipment and refuse to serve notice to end agreements. This can halt landlords' ability to carry out essential repair, maintenance and development works.
10. *As an example: An operator at a site in East London had been served notice 19 months ago and was offered both an alternative permanent location about a mile away and a temporary location in the rear car park. The operator agreed to the temporary site. However, despite being served with 19 months' notice, and being offered a site to relocate to immediately, the operator had still not made the temporary site operational nor decommissioned the existing site. The common argument that they had to find an alternative site does not apply here as they were offered an alternative. The above example is a £20m development scheme that is being held up purely by the operator.*
11. These issues are contributing towards a hostile environment between landlords and operators, creating a lack of engagement and collaboration. This is to the detriment of efforts to achieve the shared objective of improved connectivity. We fear that a shift in the balance of power towards operators will lead to further abuse and make these issues worse.
12. More could be done to ensure operators provide considered and realistic valuations and to ensure they operate in a collaborative manner with landlords. Operators could be encouraged to adhere to the OFCOM Electronic Communications Code Code of Practice, which details how operators should interact with landlords.
13. In other cases where landlords are not responding, the BPF have heard evidence from our members that this is likely to be because the ECC is beyond landlord's expertise. Placing an obligation on landlords would therefore likely have very little material impact on response rates. Rather, more can and should be done by the Government and by operators to educate landlords about the ECC.
14. Many of these issues could be addressed by simplifying and standardising the wayleaves that landlords see, as the heterogeneity of them causes confusion, suspicion and a significant time-expense. The City of London have produced an exemplary standardised wayleave template that reflects the provisions in the new ECC, this is however not being used by operators enough.
15. Landlords may also be more likely to respond if the terms set out under the ECC were more flexible. For instance, private landowners should be provided with the option to either accept a Code Powers agreement at a market rent or a non-Code Power agreement at the lower Consideration and Compensation scheme rate. This way, the landowner has the choice to accept a restrictive agreement at a higher rent or can have greater flexibility and control over their land ownership at a lower rate.

**Question 2: To what extent would placing an obligation on landlords complement or undermine the facilitation within the Electronic Communications Code of negotiated agreements between landlords and operators?**

16. Landlords feel telecommunications operators have already used their new ECC powers to drive down market prices for Compensation and Consideration, as outlined in question 1. This has had the effect of undermining the facilitation of agreements under the ECC and we fear giving operators more power will only exaggerate this problem.
17. We advise that Government encourage operators need to adhere to the OFCOM Code of Practice.
18. Another issue of note is that landlords often lack the resources to process many wayleave agreements and find the heterogeneity in those they see confusing and time consuming. This could be addressed by encouraging operators to use standardised wayleaves, such as the City of London's Standardised Wayleave Agreement.

**Question 3: Do you consider that the use of the courts for the purpose of granting entry to operators where they have been unable to contact a landlord is reasonable? If not, why not?**

19. In some cases, this would provide an effective and appropriate method of last resort.
20. The evidence cited in the consultation document to support this policy however appears to be imprecise and we encourage DCMS to further assess the extent of this problem before deciding on the appropriate policy response.
21. For instance, section 3.9 of the consultation document states that *"The experience of operators during their initial roll-out is that their requests for access to tenanted properties go without any response in around 25 - 40% of cases"*. The 15% margin here is considerable and greater clarity should be given on the extent of landlord absenteeism before a decision is made on a policy solution, to ensure sector support and a proportionate response. Furthermore, section 4.10 states *"One operator provided an example of one city centre deployment where they were able to connect only 30 out of 750 properties in the initial network build plan because of an inability to contact or agree terms with a landlord"*. Contacting a landlord and agreeing terms with a landlord are two very different things. DCMS should not use such evidence as the basis for a policy on combating absenteeism.
22. There is also the question here of what should be deemed reasonable efforts to contact a landlord. As in our answer to question 5, the BPF would expect that operators should have to evidence they have utilised multiple methods of communications on at least 3 occasions before they be allowed to use such a power.

**Question 4: Do you agree that two months is an appropriate amount of time to pass before a landlord is considered absent and an operator can seek entry via the courts? If not, what how much time would be appropriate?**

23. Some larger landlords could reasonably be expected to respond to requests within a two-month window, however, given the complexities of the Code, it is not reasonable to expect all landlords to have responded in that time.

24. Many independent or SME landlords would need far longer to understand, consult and then go through the practicalities of responding to requests from operators, given their understandable lack of knowledge of the ECC and limited resources to deal with requests. It is also reasonable to expect that smaller landlords may be away or unable to answer for such a period.
25. The BPF recommend that DCMS consider different time requirements for different types of landlord. The BPF recommends that small landlords (which we would define in accordance with the definition of a Small Company set out in the Companies Act 2006 as one with a turnover of under £10.2m and less than 50 employees) should be given 3 months before an operator can seek entry via the courts.

**Question 5: What evidence should an operator be reasonably expected to provide to the courts of their need to enter a property and their inability to contact a landlord?**

26. In order to ensure that operators are not able to misuse this new power, the BPF believes they should be made to show they have tried to contact landlords not just on multiple occasions but also through multiple means.
27. We encourage the Department to ensure that operators have made least 3 attempts to contact landlords and that these attempts be shown to be well spaced out over the two-month period set. Smaller landlords especially are unlikely to have staff on site at all times during business hours and could reasonably miss one or two contact attempts.
28. Operators should also be expected to have tried to contact landlords through every available telephone, postal or email address they have available and should evidence their attempts to find contact details. Again, smaller landlords especially could reasonably be expected to miss attempts through just one or two means of communication. The BPF believes it reasonable that operators should have to at least consult the tenant to verify or collect contact details.

**Question 6: Is there a need to define what constitutes a request by a tenant for a communications service?**

29. A clear definition of what constitutes a request by a tenant would be necessary in order to provide all parties with clarity over their obligations, rights, and powers. It is also necessary in order to prevent misuse of powers.
30. A request should include a clear form of consent from the tenant as well as clearly state that it is a communications service improvement that tenants are seeking, as opposed to another service from a landlord.

**Question 7: Do you agree the temporary access granted by the court should be valid until such a time as a negotiated agreement, underpinned by the Code, is signed between an operator and landlord?**

31. The BPF is concerned that an indefinite period of access, valid up until a negotiated agreement, would leave operators with little incentive to productively engage with landlords on a settlement. Operators would continue to enjoy access regardless of their efforts to come to an agreement and without clearly defined terms set out.
32. The BPF proposes that a standardised wayleave, such as the City of London's Standardised Wayleave Agreement, should be considered the fall-back terms upon which such access is granted. Within this standardised agreement, or any comparative policy, DCMS should consider implementing a fair termination clause, so that landlords can require operators to remove telecoms equipment with expediency.
33. There should also be a longer-term time-limit on the access provided by a court so that the same access grant is not used again in the future in spite of a landlord no longer being absent. We also encourage the Department to consider a standardised way in which landlords can be compensated for access granted for the period up until a negotiated agreement is settled.

**Question 8: Would temporary access granted by the court provide an incentive for landlords to re-engage?**

34. Temporary access may encourage some landlords to re-engage but may also push many of those who would have been willing to come to a fair agreement to lose their willingness to engage productively. If a landlord has not engaged because of a poor relationship with operators, granting an operator access without their consent for a temporary period is unlikely to make them more willing to come to a negotiated agreement.
35. The underlying issue that is preventing the rollout of much needed telecommunications infrastructure is a lack of trust between landlords and operators.
36. Some operators have been using their powers to drive down market prices and have been uncooperative when it comes to lift and shift provisions. These issues would be far better addressed by promoting the guidance set out in the OFCOM Code of Practice, which illustrates clearly how operators should be using their powers to engage productively with landlords.

**Question 9: Do you foresee any issues with operator/landlord negotiations which take place after the installation has taken place?**

37. As outlined in our response to question 7, the BPF is concerned that an indefinite period of access, valid up until a negotiated agreement, would leave operators with little incentive to productively engage with landlords on a settlement. The BPF believes that the period of temporary access should include standardised fall-back terms and a clear means through which landlords are compensated their due Compensation and Consideration payments.
38. We are also concerned that these proposals may make the true underlying issue of a lack of trust between operators and landlords worse. If a landlord has not engaged because of a poor relationship with operators, granting an operator access without their consent for a temporary period is unlikely to make them more willing to come to a negotiated agreement. Rather, a

better approach would be to implement measures that enhance the understanding between parties of the ECC and encourage collaborative negotiations, such as promoting OFCOM's Electronic Communications Code of Practice and encouraging the use of a standardised wayleave.

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