



Ensuring tenants' access to gigabit-capable connections

Department for Digital, Culture, Media and Sport (DCMS) Consultation

Date: 13 December 2018

Introduction and context

The CLA represents 30,000 landowners across England and Wales, all of which have an intrinsic interest in ensuring that telecommunications is made available to all, irrespective of their location. We have been firm in our objective that, if rural businesses are to act as an economic driver in the post Brexit era, they must be given the right tools. This includes the provision of up to date telecommunications.

But we are also clear that landowners have a responsibility to ensure that provision is made for all to have access to a suitable connection. This also extends that responsibility to ensuring that tenants have access to effective and suitable telecommunication connections. As far as the CLA is concerned it is important to create a fair and equitable balance between the public interest and the rights of landowners.

Our comments address each of the questions raised in the consultation.

The policy proposals

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

Whilst the CLA accepts that landlords should have an obligation to allow for easier access for operators, it should be stressed that this is already a key element of Ofcom's Code of Practice that was negotiated with the industry to assist the implementation of the Electronic Communications Code. The very fact that this issue is being raised suggests that the Code of Practice, being a voluntary agreement, may not be very effective.

This also raises the issue of the process of engagement. Whilst we recognise and accept the need for landowners to engage with operators, whether fixed line or mobile, the actual process itself is too complex and often frustrating for landowners. It is simply unacceptable for infrastructure providers to claim that landowners are failing to engage. Rather, the failure of infrastructure providers to understand landowners leads to difficulties in engagement which simply would not exist if there was greater dialogue through a more inclusive relationship. Attempting to use the Code to pressure landowners into signing agreements is counter-productive which will, ultimately, lead to significant problems and market disruption that we are seeing today.

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?

We do not believe that an obligation would either complement or undermine the Code facilitating agreements. In a sense, the inability of a provider in making contact with a landlord and engaging in a process is very much at the start of engagement. Our concern relates to the failure of the process itself. We are aware of evidence that providers are finding it difficult to contact landlords in the first instance, although we stress that this tends to be more an urban, rather than a rural, issue. However, it is incumbent on both parties to make initial engagement as easy as possible.

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?
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, how much time would be appropriate?

We agree that the use of the courts seems a viable solution and that the two month period is sufficient.

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?

We believe this to be the crux of the issue. At present, there is no formal process through which operators and providers adhere. Ofcom's voluntary Code of Practice sets out the behaviour to be expected of both parties. What is clear is that this is not being used as it should. The CLA has made it clear before that the Code of Practice has to have legal effect. If this was the case, the need for primary legislation would be redundant.

We are also of the view that the industry and government must begin to discuss the creation of a formal method of engagement in order to ease the process. We accept that the present situation has to be improved significantly but we are concerned that Government is seeking to pursue a legislative route which may, in fact, be unnecessary. In order to assist the policy process, the CLA will seek to agree a protocol for the engagement process between landowners and industry regarding connectivity in rural areas.

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

We are not entirely convinced that this solely relates to the right of a tenant requesting a communications service but, rather, the failure of the engagement process to bring both parties together. In the event of an absentee property owner, the same situation occurs, with regard to the ability to provide a communication service, irrespective of whether a tenant is involved or not. Certainly, the tenant should have the right to request a connection but this does not alleviate the issue of an absentee landlord.

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?

The CLA is concerned by Government's proposal to extend the period of temporary access. The courts should only be used to grant access to the landlord. Once that has been achieved, the authority of the courts should come to an end. It is not a matter for the court to engage in the negotiation process between a landlord and an operator. The Code makes it very clear that in the event of a failure to come to a Code Agreement a provider can seek a court-imposed agreement. The change proposed directly places the court within the negotiating process, a role it should not, nor is intended to, play. Such a change to the Code significantly alters the dynamic of the negotiating process given that this should be conducted on the basis of seeking an agreement between a willing seller and a willing buyer, as stated in paragraph 24 of the Code. In effect, we believe that the proposed change undermines the Code.

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

By the very fact that the CLA drafted, with others, the statement on behalf of the industry urging all parties to engage in the negotiating process, we have made it clear to our members that it is in their own best interests to seek agreements with providers and operators. There is already sufficient legal redress available to operators and providers within the current Code. If the principle of effective engagement, through a transparent process, can be enforced, this will go some way to encourage landlords to re-engage. However, it is also the case that, for mobile network operators, the initial offer for a site payment, whether on a renegotiated lease or a greenfield site, has to be realistic. At present, this is not the case which has led to a fragmented structure.

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

This is very much dependent on the type of connection made. In the event of a fixed line installation, it is very likely that contact between the landlord and operator will be limited to maintenance issues. The level of access required should be set out clearly in the Code agreement.

However, for mobile installations, it is far more likely that there will need to be greater communication between the landlord and operator on the basis that maintenance will be required on an ongoing basis. Again, this should be set out clearly in the Code agreement.

When it comes to issues of potential redevelopment of the site the Code is very clear regarding the amount of notice required and the date upon which any redevelopment can take place, for mobile at the end of the lease. However, it is incumbent on both parties to ensure that there are adequate provisions put in place through the Code agreement to ensure that in the event of redevelopment any re-siting of equipment is achieved through mutual agreement.

Concluding remarks

It is important to stress that the CLA understands the issues that have been raised by DCMS with regard to the right of tenants to a communications service. As stated above, we are aware of the problem of absentee landlords and the difficulties this presents for operators and providers. However, we are also aware that this is very much due to the lack of a clear process of engagement between operators and landlords, where there are often conflicting issues and a lack of clear communication. As we have said in our response, the CLA will seek to develop and agree a protocol between its institutional landowners and estates and operators in order to put in place a more robust and effective process of engagement and rollout.

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