Ensuring Tenants' Access to Gigabit-Capable Connections

Response to the questions to the above consultation

We have adapted the numbering within the consultation and provide our response as set out below.

This response is being given on behalf of this firm, Hamlins LLP. We are a firm of solicitors with specialist departments including:

- a Real Estate Dispute Department with solicitors who have had many years and vast experience relating to landlord and tenant disputes, relating to both commercial and residential properties;
- a Real Estate Department which deals also with the sale and purchase of commercial and residential property, and has recently completed on the largest lot (by value) ever sold in a UK auction; and
- a mortgage repossession team who act for a number of high street banks on over 1,000 cases a year.

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

   This may indeed be so, however, in order for the process to be just and fair, bearing in mind the draconian proposals of entering onto someone else's land, obligations on the Operators need to be put in place such as:

   (a) the Operator being required to provide evidence showing that their access requests have been sent to the correct address. This would include, where the Landlord is a company, sending it to their registered office address together with any address provided in the tenant's most recent rent demand. Where the Landlord is an individual, as well as it being the most recent address within a rent demand, the Operator should carry out searches such as a search of the electoral roll;

   (b) the Operator would need to provide evidence that the access requests have been received e.g. where the letter has been sent by Special Delivery or Signed For Delivery, the signed confirmation of receipt;

   (c) where a Landlord is absent, the Operator is to carry out reasonable enquiries to ascertain the whereabouts of that Landlord; and

   (d) where the Landlord is based overseas, as well as complying with paragraph (a) above, the Operator would need to extend any time limit.

2. **To what extent would placing an obligation on a Landlord compliment or undermine the facilitation within the Electronic Communications Code of negotiated agreements between Landlords and Operators?**

By enabling Operators to simply apply for a right of entry, this would be circumventing the Code's requirements that an Operator enters in to an agreement or that the Court makes the appropriate order.

Also, once the Operator has obtained access and carried out the works, there are no proposals with regard to incentivising the Operator to then enter in to negotiations with the land owner and no suggestion made with regard to any damages that the Landowner may have suffered due to the works carried out by the Operator.

The proposed means of access further undermines the Code, as discussed in paragraph 3 below.

3. **Do you consider that 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?**

There is already provision within the Code for the Operator to apply to the first Tier Lands Tribunal. By Regulation 3 (2) of the Electronic Communications and Wireless Telegraphy Regulations 2011, referred to in paragraph 97 of the Code, the Tribunal is required to determine applications for the grant of rights to store apparatus to provide electronic communication networks within six months of receiving the application.

The summary to the Consultation states that Operators have expressed concerns that the application to the Tribunal would be between the period of 7 to 12 months is unfounded and as stated above, there is adequate provision within the Code acquiring the Tribunal to deal with the matter within the set period of time.

Furthermore, the Code having only come in to effect in December 2017, has been around for a relatively short period of time and so we fail to understand what basis the Operators so that only such application to the Tribunal would not be dealt with adequately.

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 and how much time would be appropriate?**

In our view a period of six months would be more reasonable, and where the Landlord is based overseas this should be extended to 8 months. This time period would take into account:

(a) any delays where the Landlord is a large company and so the letter tends to pass between various departments before finally being provided to the correct department;

(b) to seek advice on the request; and

(c) a site visit (if necessary).

5. **What evidence should an Operator be reasonably expected to provide to the Court if they need to enter a property and their inability to contact a Landlord?**

As the proposal is to enter and to carry out works on the Landlord's land, which is, as stated earlier, via a rather draconian method, any evidence should not be "reasonably expected" but the Operator should use his its best endeavours to contact the Landlord (as discussed in paragraph 1 above) and to provide evidence.

Together with the evidence set out in paragraph 1 above, the Operator should show to the Court that it has Code Rights as defined by paragraph 3 of the Code and it satisfies the conditions within paragraph 21 of the Code.

Although not evidence, the Operators should provide to the Court an undertaking that it will carry out any repairs to the Landlord's property within 7 days of notification of the same.

There have been no questions raised in relation to the following but we believe that it is appropriate to mention these, at this juncture:

(a) The type of works should be limited to ones which are not considered to be works of a substantial nature e.g. they should be limited to simply laying a cable over a short piece of land, say, 25 meters and installation of a "receiver". The reasons for this is that works of a substantial nature could cause substantial inconvenience to other tenants for example where the land is a large estate, with estate roads, containing numerous tenants but only one tenant has requested the installation of the cable; and

(b) the proposals should not be in breach of the Human Rights Act.

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

Yes, we would suggest that there should be a prescribed form to ensure that all relevant information is provided such as:

(a) sufficient information to identify the land to include a copy of the Landlord's land registry entry;
(b) setting out the date by which the Landlord is required to respond;
(c) setting out details of what could happen should the Landlord not respond i.e. application to the Court for access;
(d) providing details of the proposed works
(e) providing details of the agreement the Operator would propose to the Landlord, ideally attaching the draft form of agreement.

7. Do you agree the temporary access granted by the Court should be valid until such time as a negotiated agreement, underpinned by the Code, is signed between an Operator and Landlord?

Any such access should be temporary. However, there should be a requirement that the Operator agrees the terms of an agreement within, say, 8 weeks of the Court Order granting the Operator the ability to access the land. No more than 2 weeks thereafter, the Operator must submit to the Court an application that the appropriate agreement be entered into.

8. **Would temporary access granted by the Court provide an incentive for a Landlord to re-engage?**

As once temporary access has been granted by the Court to the Operator, the Operator would then have immediate rights to access the Landlord's land. That being the case, the Operator can effectively go onto the land and carry out its works the day after the Order has been made.

At that stage, no doubt a Landlord will re-engage but the important question at this stage lies with the incentive on the Operator to act reasonably and to conclude an agreement in light of the fact that there would be no incentive for it to do so as it has already carried out its works.

9. **Do you foresee any issues with Operator/Landlord negotiations to take place after the installation has taken place.**

As discussed at paragraph 8 above, there are no incentives for the Operator to re-engage and conclude an agreement once it has carried out its works.

Further, there is no requirement for the Operator to carry out repairs in relation to damages to the Landlord's land and so this could cause delays in concluding negotiations. As proposed in paragraph 5, the Operator should give an undertaking to the Court to carry out repairs within 7 days of notice of the damage.

Dated: 20 December 2018