

Statement on Ofcom's consultation on its review of the Electronic Communications Code: Code of Practice

Introduction

1. The Country Land and Business Association (CLA) represents around 27,000 landowners and rural businesses in England and Wales. Many of our members have installed either fixed line or mobile electronic communications apparatus on their land and they all operate rural businesses that are dependent on connectivity. They have a clear interest in the outcome of Ofcom's review of the telecommunications Code of Practice as it affects the relationships between site providers and operators in rural areas.
2. The CLA is also a founder member of the National Connectivity Alliance (NCA) and is an independent member of the NCA Secretariat. We have played a key role in the development of the NCA's review document to Ofcom on the Code of Practice.
3. Rather than commenting directly on each of Ofcom's consultation questions, the CLA wishes to make a statement that addresses the NCA paper and the Ofcom consultation document.
4. Our statement relates to the present situation in the marketplace and the ongoing deployment of digital infrastructure across the country, the importance of the Code of Practice in the relationships between site providers and operators, and the role of the NCA in developing additional guidance to assist the negotiating process and delivering the Code of Practice framework.

2017 Ofcom Code of Practice

5. When Ofcom drafted the original telecommunications Code of Practice following the Digital Economy Act, the CLA was a key part in the ad hoc review group that provided guidance to Ofcom. As a result of the changes introduced to the Electronic Communications Code, the relationship between site providers and operators fundamentally changed regarding access to land.
6. The change in calculating the market value from being based on the value to the operator to the value to the site provider has led to a substantial reduction in rental values. This has reduced the, much relied upon income to micro and SME business on whose that this infrastructure is placed with limited ability to seek removal, and the new rates offer little incentive to encourage the acceptance of more apparatus. According to CLA members with mobile masts on their land, where the lease has been renegotiated, we have seen a 70% reduction in rental value. In addition, the shift of the Code in favour of operators has led to increased tension between site providers and operators, leading to delays in code agreements and deployment.
7. The Code of Practice is intended to assist in developing transparent negotiations and relationships. Evidence that we have received points to a failure of the Code of Practice. We believe that the current review should present an opportunity to redress the imbalance which has resulted from the reforms in 2017.

The role of the NCA in underpinning the Code of Practice framework

8. It needs to be recognised that the Code of Practice is a high level document setting out the principles of the relationship between site providers and operators. It is not intended to provide the detail of how this relationship develops and evolves. That is the role of the telecoms industry. We have recognised that the problem in 2017 was that there was no representative body to fill a void and that could rebalance relationships. That is no longer the case with the formation of the NCA.
9. It is important that there is consistency in the Code of Practice. The Product Security and Telecoms Infrastructure (PSTI) Act 2022 introduced several significant changes regarding the sharing of electronic communications apparatus to speed up fixed line deployment. The proposed change in the Code of Practice to cover additional access agreements between site providers and infrastructure providers only allows for agreements under the land. However, in order to ensure equal treatment the Code of Practice needs to also cover additional access agreements for the sharing of apparatus on and above the land. Therefore, we recommend that the present draft Code of Practice be amended to reflect the need for consistency.
10. Nevertheless, it will be the responsibility of the telecoms sector to provide the necessary guidance to effectively deliver the Code of Practice. To this end, the CLA has been involved in discussions with fixed line alternative network providers to agree protocols on access arrangements where apparatus is being shared. This is in addition to revisions to the rural wayleave framework that considers the changes made by the PSTI Act 2022.

Concluding remarks

11. The CLA supports the need for a Code of Practice in setting the principles for relationships within the telecoms sector. We support the proposed changes by Ofcom in the consultation, subject to ensuring that the Code of Practice is consistent so that it can be delivered effectively.
12. We also wish to stress the Code of Practice must be supplemented by detailed guidance that can provide the basis for improved relationships within the telecoms sector. That is the responsibility of the industry itself to ensure that all involved are aware of their rights and responsibilities. Whilst the Code of Practice must remain as a vital high level strategic framework, the role of the NCA in developing a series of protocols to deliver that framework will be just as important.

For further information please contact:





Important Information. No responsibility for loss occasioned to any person acting or refraining from action in reliance on or as a result of the material included in or omitted from this publication can be or is accepted by the author(s), the CLA or its officers or trustees or employees or any other persons. © Country Land & Business Association 2021. All rights reserved. No part of this publication may be reproduced or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, or stored in any retrieval system of any nature without prior written permission of the copyright holder except as expressly permitted by law.