

## Your response

Question	Your response
<p><b>Q1. Do you have any comments on our proposals relating to improving the clarity of the Code of Practice?</b></p>	<p>█ agree with Ofcom proposals to improve the clarity of the Code of Practice (COP). █ were an active participant in the NCA workshops that led to its recommendations to Ofcom, and we believe that the adoption of the majority of these proposals by Ofcom will help to align the Code of Practice with the way in which industry works, and bring greater clarity.</p>
	<p>More specific points:</p> <p>A2.25 The COP refers throughout to "a court" and of course in most instances, certainly in England, Wales and Scotland, the Code disputes at least at first instance generally sit with the Tribunals. We appreciate the COP is adopting the same wording as used in the Code but many smaller site providers may well not appreciate that "court" also means/includes "tribunals" and it might be helpful to amend the wording for example at A2.25 to read <i>"..to the relevant court or tribunal"</i>.</p> <p>A2.39 - Typo "In the absence of terms being agreed between the parties, <del>Parts</del> Parts 4, 4A and 4ZA..."</p> <p>A2.50 (d) – the reference to damage being caused by the Operator should be clarified as follows "Any damage caused <u>to the Site Provider's site</u> by the Operator during routine access..."</p> <p>A2.69 – delete as typo/erroneous reference.</p>

**Q2. Do you have any comments on our proposals relating to including legislative changes in the Code of Practice?**

■■■■ supports the changes made to the Code of Practice to include changes to the legislation flowing from TILPA and PSTIA. We note, however, that the proposed amendments do not include anything on ‘the handling of complaints by operators’ required by PSTI Act para 70, and in this regard we support the recommendations of the NCA for ‘Handling of Complaints’:

- *“Operators must publish a complaints handling procedure, which should include relevant contact details and target timescales for response, available on their website, for escalation of any failure to comply with the terms of this Code of Practice. Operators should include a link to this complaints handling process in key correspondence, including notices. On request a written copy of the complaints handling process should be made available to Site Providers and their advisers.*

*When making a complaint, details should be set out clearly, with site reference and/or location information, and the specific terms of the Code of Practice that have not been complied with.*

- *Operators should deal with such complaints in a timely and professional manner and confirm the outcome of the complaint to the complainant”.*

**Q3. Do you have any comments on our proposals relating to the definition of ‘Site Provider’ in the Code of Practice?**

We agree with the proposal to use the term ‘Site Provider’ and consider that this will provide greater clarity for readers of the Code of Practice. For clarity we suggest the following amendment:

*"For the purposes of this Code of Practice, we use the term "Site Provider" (as defined in paragraph 30(1) of the Code) wherever a reference is applicable to a Landowner or ~~and~~ an Occupier, or both."*

**Q4. Do you have any comments on our proposals relating to contact information in the Code of Practice?**

We support proposals for the Operator and Site Provider to provide contact details and to ensure that these are up to date. Communications is key to successful operation of the Code and the ability to reach the relevant person is essential.

**Q5. Do you have any comments on our proposals relating to professional fees in the Code of Practice?**

■■■ supports the alternative wording proposed by Mobile UK and the Mobile Infrastructure Forum:

*“Potential Site Providers should be advised that they are responsible, in the first instance, for meeting their professional representatives’ reasonable costs (per RICS guidance). Operators will reimburse a site provider for their reasonably and properly incurred professional costs within pre-agreed parameters.”*

The term ‘policy’ might be taken to imply a weighty formal document, when, in practice, the operators’ approach to professional fees is not structured as a ‘policy’ as such, but typically the operators ‘approach’ to fees is generally covered in an introductory letter to prospective site providers.

Further to this we suggest that a clarification is made to reflect recent case law in (*EE Ltd and Hutchison 3G UK Ltd V The Mayor and Burgess of the London Borough of Islington*) that *“the recoverable fees are those incurred in seeking to agree terms for a code agreement, and do not include costs incurred in resisting the imposition of the agreement in principle, or in attempting to compromise the reference itself”*

**Q6. Do you have any comments on our proposals relating to responding to a request for access in the Code of Practice?**

Obligations of the Site Provider to respond in a timely manner: the proposed Code of Practice does state at the end of A2.25 that an application to court may have cost consequences for the Site Provider. However, the Code of Practice could state more clearly that *“In awarding costs in any application to the court, the behaviours of both parties will be taken into consideration by the relevant court or tribunal and a repeated failure of Site Providers to respond to a request for access in a timely manner may lead to an award of costs against the Site Provider”*.

<p><b>Q7. Do you have any comments on our proposals relating to electromagnetic fields exposure in the Code of Practice?</b></p>	<p>█ shares the concerns expressed in the Mobile UK / Mobile Infrastructure Forum response in respect of EMF. In summary, the operator is required by its licence conditions to comply with public exclusion limits set out in the ICNIRP guidelines. This is today fulfilled by a process of self-certification and, indeed, a statement of compliance is often included in planning applications. However, there should be no inference in the Code of Practice that this is a matter for the landlord to police and we recommend that A2.42 should be deleted.</p> <p>We concur with the principles that UK law places duties on all employers to manage risks relating to work and the workplace including any risks related to EMF exposure; and that the operator and site provider will cooperate to manage any EMF risks; with the operator providing the information that is needed such as site drawings of occupational workers exclusion zones.</p>
<p><b>Q8. Do you have any comments on our proposals relating to the sharing and upgrading of apparatus in the Code of Practice?</b></p>	<p>Whilst we support the proposals on sharing and upgrading in principle, we suggest that Ofcom should clarify that para 17 rights are a ‘floor not a ceiling’ – in line with the recent case <i>Cornerstone v London &amp; Quadrant Housing</i>, where the Upper Tribunal confirmed that depending upon the type of apparatus and circumstances, para 17 conditions “<i>..is intended to reflect the lowest common denominator for sharing and upgrading, a floor rather than a ceiling</i>”.</p>
<p><b>Q9. Do you have any comments on our proposals relating to ADR in the Code of Practice?</b></p>	<p>█ supports the ADR principles included in the Ofcom proposals.</p>
<p><b>Q10. Do you have any overarching comments on our proposals for the Code of Practice (included in its entirety in Annex 2 above)?</b></p>	<p>█ considers that the draft Code of Practice should serve well to ensure that the government’s policy objectives to promote better connectivity are delivered more smoothly, and will help to improve operator and landlord communications and engagement in this regard.</p>

Please complete this form in full and return to [ECCCOP@ofcom.org.uk](mailto:ECCCOP@ofcom.org.uk).