

Your response

Question	Your response
<p>Q1. Do you have any comments on our proposals relating to improving the clarity of the Code of Practice?</p>	<p>Confidential? – N</p>
<p>The proposal to improve the clarity within the document is welcomed, however it should be noted that the telecommunications industry is complex when you bring together, fixed line, mobile, wholesaler and retailers and attempt to create one simple code to follow when there are differences.</p> <p>There are sections in the Code of Practice (COP) where what has been written is heavily weighted to explain the larger Mobile Other Licensed Operators (MOLO) site requirements. In our opinion this may lead Site providers in essence, to potentially be more reluctant to enter into agreements with Fixed Line Operators (FL Operators) when approached, to allow minimal apparatus to be sited on their land or property.</p> <p>For example, it is understandable when major construction works such as a new mast site or rooftop installations are being proposed, that the site provider has detailed information. Providing all relevant contact names / numbers for the Operator and their contractors before, during and after the works is sensible. However, for Fixed Line (FL) Operators, when the majority of proposed engineering works is attaching a single cable onto a wall, or a pole on land, this level of engagement is onerous and, in our opinion, may be somewhat excessive for these minor works. A one size fits all approach does not seem the way forward, when you consider the vast differences in communications apparatus being considered for both MOLO and FL Operators.</p> <p>It would be simpler and offer greater usability, if the COP could in the schedules describe the different requirements for Survey and Access for MOLO's and FL Operators separately. For example; Schedule A, process for MOLO Site Survey and Access Requirements and Schedule B, process for Fixed Line Operators Site Survey and Access Requirements. The main body of the COP can detail the generic elements that both MOLO' and FL Operators would work too, allowing the schedules to pick up the differences in operating models.</p> <p>The COP would benefit from an "Index" at the beginning of the document, and also a "Glossary of Terms," to explain the different (terminology) used by MOLO and FL Operators. This would help the Site Providers to better understand any potential impact on their land/use of their land to host Electronic Communications Apparatus.</p>	
<p>Q2. Do you have any comments on our proposals relating to including legislative changes in the Code of Practice?</p>	<p>Confidential? – N</p>
<p>The introduction of the Telecommunications Infrastructure (Leasehold Property) Act 2021 (TILPA) and Product Security and Telecommunications Infrastructure Act 2022 (PSTIA) into this COP has little effect on the general code of conduct laid out within this document, however they do add an additional layer of complexity.</p>	

The section “Sharing and Upgrading of Underground Apparatus between Operators” needs to explain the differences between the “Main Operator” (1st Operator) and “Sharing Operator” (2nd Operator) (PSTIA 59 Code Part3 Para 17A) and give clarity on the requirements of both parties. Whilst the main Operator may agree to share their apparatus the onus should be on the Sharing Operator to ensure the Site Provider is notified. The burden on ensuring the conditions is met should also sit with the Sharing Operator. There is also no reference to the prescribed notices under the PSTIA, which will be used by the Operators (main & sharing) to notify site providers of upgrading activities under their land.

The PSTIA was introduced, amongst others, to simplify the process to allow operators to upgrade existing apparatus. It may be beneficial for this COP to include some examples on what is meant by apparatus appearance having more than a “minimal adverse impact” and examples of what is meant by “minimal adverse impact on the land”. In addition, more information is needed to assist site providers on what type of activities could potentially be carried out as part of upgrading electronic communications apparatus.

Openreach continues to be of the view that the PSTIA did not deliver against the stated aims set out in the original Future Telecoms Infrastructure Review (FTIR) published in 2018 and that there are and remain significant barriers which hinder the smooth, efficient, and rapid commercial rollout of full fibre across the UK. These barriers are within the power of government to address.

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

Confidential? – **N**

The only definition of ‘site provider’ in the Code is at Para 30(1) which states:

‘a code right is conferred, or is otherwise binding on, a person (the “site provider”) as the result of a code agreement, ...’

Whilst there is other terminology used throughout the code for such a person, such as landowners (Part 5 (Para 37)) occupiers and persons (Part 2), ‘relevant’ persons (Part 4) and site providers (Part 5 (Paras 30/31)), we believe ‘site provider’ works for the majority who either confer a right or is bound by one.

Therefore, we believe the term works but it is worth noting that there is various other terminology used throughout the Code that perhaps this document would benefit from a separate section detailing a glossary of terms. This would also be useful to reach a “standard language” as each section of the industry use similar wording, but its meaning can vary greatly.

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

Confidential? – **N**

We agree that communications between the relevant parties is an essential part of ensuring the works can be completed in an effective and efficient way.

It should be noted that in certain circumstances the Operator may engage with the Site Provider via their Communications Provider (CP) rather than directly. For example, when arranging initial site surveys, the CP may negotiate the access requirements on behalf of certain FL Operators.

In our opinion the sharing of specific detailed contact information is more relevant to Operators carrying out more intrusive surveys and engineering activities, for example a new installation of a mobile mast. It would be better to distinguish between the different types of survey and the varying engineering activities, and that appropriate information will be provided depending on the complexity of the circumstances. For example, installation of MOLO equipment on a Police Station rooftop would require detailed contacts and access arrangements to be made well in advance of operations. However, installation of simple cable on wall would require minimal interaction with the Site Provider for survey and engineering activity.

Where the FL Operator is acting on behalf of a CP it should be noted that the operators themselves are responding to a service request or fault, which will make use of automated text / email communications with the “customer” and not necessarily the Site Provider. However, MOLO installing a mast, base stations etc are likely to be in direct discussions with the Site Provider, in advance, during and after installation is complete.

The requirements of sharing contact information, especially in relation to MOLO / FL Operators use of 3rd Party contractors/partners, should be based on the complexity of the works, allowing flexibility for both MOLO / FL Operators to manage their resource requirements efficiently.

There should be a section in this COP to include the Wholesale operating model, which facilitates FL Operators to make use of Ofcom’s product - Passive Infrastructure Access (PIA), which is a tool to allow Alt Nets to share BT infrastructure. The PIA FL Operator will be required to communicate and seek agreements/permissions with the Site Provider in advance of their survey/engineering works. It is the responsibility of the PIA FL Operator to distinguish what appropriate contact information should be shared with the Site Provider.

We would suggest that the COP includes within the communications section that both MOLO and FL Operators may include relevant contact information in relation to their equipment e.g., damages, faults, emergency reporting, by either supplying a generic fact sheet attached to service agreements / wayleaves or advising the Site Provider where to find relevant contact information on their websites.

It may be worth including a clause to explain that, where the Site Provider requires MOLO and FL Operators and / or people working on their behalf to comply with strict access arrangements (Police Station, Airports, Prison, track side), this should be explained at the earliest opportunity. Site Providers should not unreasonably restrict access where Operators or their representatives have provided sufficient levels of identification agreed as part of the access arrangements.

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

Confidential? – **N**

We agree that Operators should provide information to Site Providers on when their Professional Fees would be compensated. As part of our wayleave process, we provide Site Providers with guidance/information relating to Professional Fees within the initial wayleave documentation.

This documentation explains when a Site Providers Professional Fees would be compensated and who would compensate the Site Provider (us or a third party).

We agree with the principle of 3.9 however, we would like to put forward a recommendation to amend the wording in the COP in relation to 3.10:-

A2.19

Where relevant, the Operator should provide information to the Site Provider on its professional fees policy, to include the details of when they may be able to claim, from the operator or 3rd Party thus ensuring that the Site Provider is fully aware of their options before seeking professional advice. The general principle is that a Site Provider should not be left out of pocket for its reasonably and properly incurred costs.

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

Confidential? – N

In certain circumstances there will be minimal, if any requirement for direct communications between the FL Operator and the Site Provider in relation to access requests, where the property can be accessed from the Public Highway. In addition, where existing apparatus is in situ and covered by a Code Agreement, the FL Operator has written rights of access already and therefore further requests for access may not be necessary. In deploying new apparatus, the FL Operator may engage with the occupier, sometimes through written fact sheets/notes, in relation to the access requirements they will need to provide the service. In these cases the FL Operator may devolve communication regarding access to occupiers/customers/tenants/CP's.

In response to A2.25 – As previously highlighted during discussion on the PSTIA / TILPA, we believe that legislation should have been introduced to allow Operators more flexibility to install apparatus if a Site Provider does not engage with them in a reasonable manner or within a reasonable time. In our experience, even when offering ADR (Alternative Dispute Resolution) is not always effective as some Site Providers still do not want to engage.

In Response to A2.24 Schedule A is predominately for access requests to survey and construct significant Electronic Communications Equipment. It does not allow for the simpler request for access to test / maintain Insitu apparatus or installation of minor equipment e.g., block terminal / single cable on wall.

In our opinion, it would be more effective and usable if there were two separate schedules. One for FL Operators and one for MOLO's detailing the different requirements both parties require for access.

Our suggestion is for this paragraph to be amended as such –

A2.24, An Operator will notify the Site Provider with details of the proposed access request for the purposes of deploying electronic communications apparatus, and this may include some of the information detailed in Schedule A. Relevant Operator contact information will be determined by the task and complexity of the services being requested of the Site Provider.

We think there is a requirement for an additional paragraph in this section, to highlight the access requirements for FL Operators apparatus that has been Insitu for several years. In certain circumstances, especially when land has changed hands to a new landowner, the details of the Operators Code rights have not been relayed to the new landowner and occasionally access rights

are denied despite the FL Operator sharing a copy of the Code agreement that binds the successor in title, as outlined in Part 2, Paragraph 10(3) of the Electronic Communication Code (the Code).

Our proposal is to include a new A2.26 as follows:

A2.26 It is important for the Site Provider to pass on relevant Code agreements when they exchange Land title to new occupiers / landowners. To ensure the new landowner is aware of the Operators rights to access their equipment. If a copy of the existing code agreement is required, the Site Provider can make a request under Para 39(1) to the Operator who will provide the necessary details.

Q7. Do you have any comments on our proposals relating to electromagnetic fields exposure in the Code of Practice?

Confidential? – **N**

We have no specific comment but acknowledge the COP is an accurate reflection of the regulatory environment.

As an FL Operator, none of our products emit EMF (Electromagnetic field) and as such the inclusion of this paragraph appears to be an accurate reflection of the current regulatory environment however, it is a complex topic that in our opinion the average Site Provider will find complex and confusing.

Q8. Do you have any comments on our proposals relating to the sharing and upgrading of apparatus in the Code of Practice?

Confidential? – **N**

We believe it is important that site providers are aware of the circumstances where BT is required to share its physical infrastructure. We believe we have found a practical solution with PIA CPs, but this did mean amending the current standard Ofcom notices to make clear to the Site Provider that:

- where another operator is using PIA they are building their own network to provide their own services albeit using BT's ducts and poles.
- the PIA CP should be the primary point of contact for any issues on or relating to the sharing; and
- a right to share does not mean a right to access land without consent. The PIA CP must still obtain the Site Provider's consent to enter the land.

We are allowing the PIA CP to put up the notices on BT's behalf because otherwise, with over 100+ PIA CPs, it would not be workable, but we need to ensure Site Providers have all the information they need to consider.

We are concerned about the inclusion para A2.67 below, as we would not be aware if the relevant conditions under para. 74 are being followed. We would argue that it is the sharing Operator's responsibility to make sure it meets the conditions in (a) and (b) and para. 74 are met. If not, it

puts BT under an undue burden to police what PIA CPs do and this is or should be a matter between the Site Provider and the sharing Operator.

A2.66 The sharing Operator will engage with the Site Provider within a reasonable time period prior to sharing the host Operator's ECA (Electronic Communications Apparatus) to a) agree access rights to the land if access to the land is required; and b) provide any relevant notice (where applicable).

A2.67 In addition, a host Operator can agree to allow another Operator to install and keep lines attached to their poles if the conditions in (a) and (b) above and the relevant conditions under paragraph 74 and of the Code are followed.

Considering that the telecommunication industry could see a number of Alternative Network Operators (Alt Nets) consolidate in the next few years, it is our opinion it would be beneficial to include guidelines in this COP to reflect how FL Operators will co-ordinate the removal of any identified redundant cabling/infrastructure. For example, Main Operators who have shared infrastructure cannot be expected to be wholly responsible for recovery and disposal of redundant 3rd Party equipment. The administration requirements of dissolving or merging of an Alt Net should include a requirement to recover any redundant apparatus.

Q9. Do you have any comments on our proposals relating to ADR in the Code of Practice?

Confidential? – **N**

We have already included a level of ADR in our procedures when we are engaging with site providers to obtain the relevant code agreements. We will consider the use of ADR when faced with circumstances around non-responsive site providers or their agents.

Q10. Do you have any overarching comments on our proposals for the Code of Practice (included in its entirety in Annex 2 above)?

Confidential? – **N**

In our opinion this Code of Practice as a whole has been heavily weighted towards MOLO or more intrusive surveys & installations than is necessary for FL Operators. Therefore, in relation to Site providers for FL Operators, the Code of Practice might be unduly complex and confusing.

As previously stated, the COP would be simplified by having an Index at the beginning, a number of generic behavioural requirements for MOLO and FL Operators to follow, and then separate schedules for each to detail the different requirements for site survey, access arrangements, contact information, equipment impact on land, property and environment to aid the Site Provider to understand and respond to requests in a timely manner.

For example, in Schedule A – Process for the Site Survey
This schedule is predominately geared towards major electronic communications survey / installations and as such may deter Site Providers from responding to requests for minor works where this level of details is not applicable.

There is a need to include a separate schedule, dedicated to minor electronic communications survey / installations for FL Operators with examples and simpler process to allow the Site Provider to distinguish the impact on their land / property.

In our view, this COP is missing the opportunity to highlight the importance to Operators of protecting the environment and specifically where new installations of apparatus is proposed to be constructed on land that has protected designation status. For example, a Site of Specific Scientific Interest (SSSI), Special Area Conservation (SAC) and Special Protected Area (SPA). An example of guidance has been provided by Natural England to Dept Science Innovation and Technology (DSIT) which has been specifically designed as guidance for delivery of broadband services, this could easily be expanded to include MOLO operations. Document is available via the following link - [Guidance for broadband suppliers working in protected nature sites - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/broadband-suppliers-working-in-protected-nature-sites)

Please complete this form in full and return to ECCCOP@ofcom.org.uk.