

Background to Batcheller Monkhouse

About 45% of Batcheller Monkhouse's clients have installations on Buildings, often in urban areas (Roof Top sites); about 45% on Bare Land, often in rural areas (Green Field sites); and about 10% have installations on their own Infrastructure, as is the case with our Water Company and Emergency Services Clients (Site Share sites). The following comments are therefore made against the background of this wide variety of sites, which are almost always served by telecommunication cables as well.

Code of Practice

Question 1.

Yes, I do. I set out my comments on the relevant Paragraphs below:

Para 4.13 - the words: "up-to-date contact information available to them" should be replaced by "up-to-date site and contact information available to them". This is because some landowners have many sites let to the same Operator and the Operator needs to simply ensure that the site name used by the operator matches that used by the owner otherwise there will be a delay in arranging say emergency access.

Para 4.14 – once the operator has been provided with the current site and contact information, the operator should be obliged to create and keep up to date a system for ensuring that such information is passed on to the operator's agents and contractors etc. In practice time is wasted and frustration is created when information provided by the landlord is not forwarded on to the people who actually need to access the site.

Para 4.16 – landowners reading this clause might not know that it is usual for the landowner's reasonable and proper costs to be borne by the operator. We believe this point should be made clear as the landowner might be disadvantaged by not being able to afford appropriate professional representation when dealing with commercial agents instructed by the operators.

Para 4.21 – many landowners are happy to arrange direct access to a potential site. However, it must be acknowledged that in some cases attendees will need to be vetted for security clearance before being granted such access. Sometimes direct access will be granted as a result of the operator being accompanied, however the protocol on most sites controlled by Police forces do require that anybody who wants to access a police property must have undergone and passed security clearance beforehand.

Para 4.23 – in addition to the relevant information that you list being provided, many operators find it helpful if the landlord were to explain whether or not there are any operational restrictions required by the owner affecting access to, or works on, the site. This may well apply in considering a development on a water tower where access is required through the centre of the water tower close to potable water. We also act for Hospital Trusts, Schools, Fire Brigades and Police Forces who will also wish to convey what operational restrictions might have to apply.

Para 4.27 – you list the documentation a landowner needs to consider and review. It would be helpful if this list could be extended to include the method a fixing apparatus to the landlord's building together with details of any alterations required to the landlord's building to accommodate the apparatus. This is a particular requirement of many water authorities who have telecom installations on water towers and they need to ensure that any fixings do not damage the reservoir of water. Additionally, owners of roof top installations need to ensure that the integrity of the roof membrane is reasonably protected to protect against water ingress.

Para 4.32 – the final bullet point “Procedures for safeguarding the landowner’s property” should be altered to “Procedures for safeguarding the landowner’s property, business and livelihood”. This will ensure that good and proper relationships are maintained between the two parties for the benefit of the public’s access to an electronic communications network. In addition to altering the final bullet point, a further point should be added: “Procedures for ensuring that appropriate steps are taken to comply with the owner’s health and safety and access procedures applicable to the site”. This will ensure that the correct protocols are followed and personnel are protected.

Para 4.39 – in the final sentence the requirement wherever possible for the operators to contact the landowner should not apply to historic events, but before access was taken. Therefore, the word “was” needs to be replaced with the word “is”. It is unacceptable for many owners (such a Blue Light Operators, MOD etc) to allow access to be taken without the proper procedures being taken.

Para 4.41 – some operators may not be “physically sharing a site” to actually need to access a site. Operators may also be “using any apparatus on a site”. In both these instances those operators who share or use a site should be notified to the owners for the reasons you set out.

Para 4.42 – in order to avoid a scenario when the operator has to return the land to the condition it was in prior to the land being used or accessed as a result of something avoidable, there ought to be the additional provision on the operator to take such additional steps to protect the owner’s property (including any pipes or services etc running under, on or over the property). This will hopefully prevent damage in the first place albeit that it is accepted that should damage actually take place there will still be an obligation on the operator to return the land to the condition it was in prior to the land being used or accessed.

Para 4.45 – after the words “...it might include arranging accompanied access to secure areas” the words “or for any contractors to have been security cleared or vetted” should be added. This will provide for the scenario when access cannot be accompanied but may be allowed unaccompanied provided the attendee has been security cleared first.

Para 4.58 – the following information should also be provided where requested by the landowner: the names of all people who will be attending on site. The Operator should also be able to provide to the landowner information about access to the site for operational staff once the equipment has been installed, including how often the operator is likely to need to require access to the site to undertake works. In addition to providing a description of the likely apparatus and any ancillary links required it would be appropriate to also seek information from the operator on where the apparatus is to be located and what routes any cables are likely to follow.

Para 4.60 – it would also be appropriate for there to be a requirement that prior to access arrangements being provided the operator should explain what works are proposed and give the owner the ability to discuss these works with the operator prior to any works being undertaken especially if they are likely to have an impact on the property; a service that the landowner uses; or, the owner’s core business.

You include the requirement for the operator to undertake to make good any damage to the landowner’s property. There should also be a requirement that the operator should pay compensation to the landowner should it not be possible to make good the damage.

You have provided that the landowner should notify the operator of various site specific considerations. We would propose that the words “Bio-security arrangements” should be altered to “Bio-security and any other appropriate security arrangements”.

Standard terms

Question 2.

Yes, I do. I set out my comments on the relevant Paragraphs below:

Annex 6 – Batcheller Monkhouse has been invited on to a panel to advise on the standard terms of the Code agreement and we will therefore make comments on that through that channel.

Template notices

Questions 3 & 4.

I am not a solicitor, but understand some will comment on this. I will not.