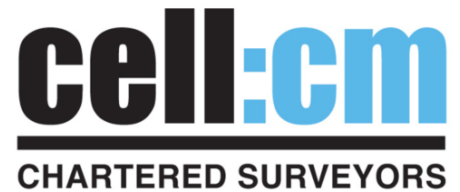


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Dear Sirs

**OFCOM CODE OF PRACTICE CONSULTATION RESPONSE ON BEHALF OF CELLCM
CHARTERED SUREYORS AND CLIENTS**

Cell:cm Chartered Surveyors is one of the leading consultancies in electronic communications code property matters. We advise site owners, property owners and operators with electronic communications apparatus on their land and buildings. Our clients vary from individual site owners with a single mast or site on their building through to multi billion-pound pension funds with million pound plus portfolios of mast site and building infrastructure agreements.

We have been closely involved in the consultations on the new electronic communications code from the initial law society consultation in 2012 to following the Digital Economy Bill though parliament and its recent royal assent.

This is our response to Ofcom's consultation on the proposed Code of Practice to accompany the recent changes to the electronic communications code. We refer to the four questions in the consultation document:

1. Do you have any comments in relation to the scope or drafting of the Code of Practice, as set out in Annexes 4 and 5?

Ofcom appears to be weakening to operators' demands to make the code even more onerous on Landowners and site providers. The CoP should not be a way to implement custom and legislation through the back door.

A code agreement is a very onerous undertaking on a site owner. It is important for the market that Owners are fully recompensed for their time and cost in dealing with any aspect of a code agreement. This is from an initial approach from an operator to install apparatus on land or buildings through to legal completion of a site lease or wayleave.

Para 4.16 of the draft CoP states that fees should be agreed between the parties. The CoP should go further than this. An owner should be able to insist on having its reasonably incurred costs for professional advice met in full by the Operator making the approach. Otherwise Owners will be left out of pocket for expenses which may in many cases be incurred for speculative approaches from operators. Operators may run several options at once for a new site. Only one option will be chosen. The owners of the other options should not be left out of pocket.

The ECC has been drafted at length and with considerable modification following representations from both sides of the industry – operator and site owner.

What has been written is very onerous on site owners and will put many off even considering the use of their land and buildings for e-comms apparatus. One of the most onerous aspects is the difficulty in removing an operator. The Code sets out a clear way of doing that. One of the circumstances is the Owner has an intention to improve or develop the land in question.

Alarminglly the CoP takes this further by suggesting that intention could be demonstrated by having planning permission in place for the proposed development. This is taking the CoP outside of its scope and seeking to interpret the legislation. No mention of having planning permission is in the ECC and the site owners side of the market would not have allowed that. Any mention of having planning permission should be removed from the CoP (paragraph 4.52). The requirement for owners to give operators as much notice as possible is more than sufficient.

If this reference is not removed it is very likely to further dissuade site owners to commit to new sites. It will lead to a slowdown in network rollout and poorer connectivity.

At 4.54 the CoP states that owners should seek to include the apparatus in a development scheme. There should be an obligation on operators to meet the reasonable cost of such a design change. After all it is the operator which will be benefitting from being able to use the same site location.

At 4.18 & 4.19 the CoP suggests that a basic written agreement only may be entered in to without a site visit being required. This is oversimplifying the site acquisition process. If an owner requires a site visit the Operator should be obliged to undertake one and to meet the cost in full of that. No one should be permitted to acquire interests in land without the party giving the rights away being fully briefed on the matter and properly represented.

At 4.27 there is a proposal that an owner may be sent a simple written agreement and asked to sign and return it. An operator should have to provide a detailed notice of the implications for signing and returning such an agreement. Including a warning to take legal and professional advice and for the owner to be reimbursed for the cost of that advice.

Standard terms 2. Do you have any comments on the scope or drafting of the standard terms, as set out in Annex 6?

Standard terms are a reasonable starting point for the most basic of agreements and simplest installations. However, for a prominent site on a high specification building an owner should be free to negotiate a lease or agreement which meets its own specific needs. Otherwise the owner is likely to lose significant value by entering in to an agreement which suits a basic site location only.

Standard terms should be used only in the most basic of circumstances. They should not be adopted as a short cut to acquire code rights for operators. The implications of Code rights on Owners are so great that they should be given an opportunity to use a reasonably drafted agreement of their own.

Template notices 3. Do you agree that Ofcom has identified all of the notices it is required to prepare under paragraph 89 of the New Code?

There should be a pre-notification of assignment intention by an operator. To say we will be assigning the agreement to XXXX. This gives an owner an opportunity to seek reasonable conditions on the assignor and assignee, such as an authorised guarantee agreement. It also enables the Owner to check for any breaches of the existing agreement which it otherwise may not have got around to raising with the operator. A breach such as a reinstatement of land which has been damaged but a farmer may have been too busy (such as at lambing time or harvest) to have formally notified the Operator.

Once the assignment has taken place the horse has effectively bolted and the relationship between owner and operator will be soured.

4. Do you have any comments on the scope or drafting of these notices as set out in Annex 7?

All the notices should include a warning to the Owner that they may wish to obtain legal or other professional advice on the notice and to cover the reasonable costs of that advice. Otherwise an owner may be persuaded to enter in to an agreement without fully understanding the implications of the matter.

This concludes our consultation response.

Yours faithfully



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