

Community Fibre would like to thank OFCOM for the opportunity to respond to its consultation to the changes to the Electronic Communications Code.

Obtaining Wayleaves from landowners is one of the main barriers Community Fibre faces as it continues to build its full fibre-optic network out to UK properties. If OFCOM is to achieve its target to achieve full competition between three or more networks for around 40% of premises then reducing the time and effort required in obtaining Wayleaves from landowners needs to be reduced significantly. Currently to costs associated with obtaining wayleaves has a significant impact on the economic viability of full fibre-optic roll-out.

**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?**

Para 4.7 We note with interest that the code of practice specifically includes lamp-posts as an example of a site. At least one local authority is currently tendering a service concession which would provide the winning operator with exclusive access to their street furniture. Our understanding is that such an exclusive arrangement would contravene the ECC which of course gives any code operator the right to install their apparatus on a site. We believe this issue highlights the key issue with the existing and new ECC namely that the legislative framework to encourage infrastructure competition is in place but landowners, and their professional advisors, are not aware of it or choose to ignore it.

Throughout the code the term Annex xx is used however and appendices to the code are title "Schedules". A single term should be chosen to avoid confusion going forward.

Para 4.22 In our experience arranging a survey date with a landowner can lead to considerable delay to the Wayleave process. We fully support OFCOM's proposal that a period of 7 days would be a reasonable time-frame to arrange a survey. In order to clarify this part of the process for all parties we would request that OFCOM publish a standard template for a survey request which includes an expectation statement that the survey request should normally be responded to within 7 days.

In some cases it may be more appropriate for an operator to obtain information about in-building infrastructure using the Telecommunications Access to Infrastructure Regulations 2016 and perhaps the Code of Practice should make reference to these regulations as well.

Para 4.27 Reference could be made here to the standard agreement published by OFCOM and also the City of London Standard Wayleave which we would see as being more appropriate for fixed line installations. Although designing for commercial MDU properties we have successfully used the City of London template for residential MDUs with a number of landowners.

The code of practice currently offers no guidance on appropriate wayleave charges which in our experience vary considerably. Any guidance that can be provided in this area would be very helpful. For example clarification that the ECC adopts a principle that fees should not take account of the use the apparatus will be put to. Our



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experience is that fixed line wayleaves do not always incur an ongoing annual fee. After all payment of a fee for new operators would distort the market as incumbent operators rarely pay an annual fee for their existing fixed line apparatus. The inclusion of the optional clause 3 in the standard terms and conditions risks encouraging landowners to charge a fee when none was previously paid. We would suggest including some guidance on reasonable charges even if it only explains some of the charging principles included within the ECC.

Para 4.31 Could OFCOM replace “a reasonable timeframe” with “28 days” as per the legislation?

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

We think that trying to create one template to cover all scenarios is too complicated and there should be at least two templates: one for fixed line installations and another for mobile installations. Rather than OFCOM writing a new template for fixed line wayleaves it could recommend the use of the City of London Standard Wayleave Toolkit:

<https://www.cityoflondon.gov.uk/business/commercial-property/utilities-and-infrastructure-/Pages/Wayleaves.aspx>

The proposed standard terms could then be used for mobile installations.

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

As per our comments above, although not required under paragraph 89, we would request that OFCOM creates a template notice for survey requests incorporating the 7 day turnaround expectation.

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

No

In conclusion we are very supportive of UK Government’s and OFCOMs efforts to simplify the wayleave agreement process as we believe it is currently a key barrier to full fibre-optic roll-out across the UK. Now that the legislation is in place we all have a shared responsibility to ensure that landowners and their professional advisors are aware of their obligations.

We would request that once the Code of Practice has been finalised it is published and clearly sign-posted on OFCOM’s web-site. We would also request that a .PDF version is created which could be printed by operators and included with any notices that they send out.