



Ofcom consultation on Electronic Communications Code – Code of Practice

Response from Mobile UK

1. Mobile UK welcomes the opportunity to respond to Ofcom's consultation on the Code of Practice which Ofcom is required to publish in relation to the operation of the Electronic Communications Code (ECC).
2. The ECC has been reformed by the Government in recognition of the central importance that electronic communications networks now have for the social and economic welfare of the United Kingdom and the need for considerable further investment by providers to deliver the geographic footprint and capacity to meet rising demand. A reformed ECC is intended to promote such investment.
3. The accompanying Code of Practice is designed first and foremost to encourage behaviours among all the relevant stakeholders that will allow the parties to agree on a range of issues relating to the occupation of a site where apparatus is to be installed. The Code of Practice cannot place obligations on the parties (landowner or occupier) that go beyond what the ECC requires.
4. The Draft Code, under the auspices of Ofcom, was created by a broad range of specialists in the field that balanced the interests of the relevant stakeholders – remembering always that the priority is to help improve connectivity in the UK, both in installing more apparatus but also keeping services in continuous operation. The outcome of these discussions are broadly balanced and proportionate and, Mobile UK believes, in their current form will do much to ease the task of network rollout, upgrade and maintenance.
5. There are a number of points of detail that Mobile UK wishes to emphasise briefly, as part of this response.

Language

6. A key objective in drafting the Code of Practice was to use language that was non-technical and accessible to a broad range of people. Furthermore, it was also important that the document was well-balanced in tone – emphasising the importance of improving connectivity in the UK, in line with consumer (both domestic and business) expectations, while signalling points of detail for non-specialists, for example the advisability of seeking professional advice, where appropriate.

7. By and large, Mobile UK believes the draft Code achieves that clarity of language and balance in tone. We strongly encourage Ofcom to retain these aspects in the final version.

Financial arrangements

8. The Code of Practice does not deal with the financial arrangements between the respective parties. It highlights, at relevant points, financial arrangements that have to be settled – for example: professional fees, the costs of relocating equipment while a landowner carries out repairs to their own property and recovery of reasonable costs for supervision. But the Code does not seek to steer the parties one way or the other as to who should cover such costs.
9. This is the correct approach, as there can be many variables and contexts in which such agreements come about. It is beyond the remit of the Code of Practice to pre-determine such matters.

Notifications of sharing

10. Subject to any requirements to obtain consents that have been negotiated between the parties, the ECC provides that code operators can ‘share’ sites – i.e. place the physical equipment of other providers on a given site. Such ‘sharing’ does not extend to sharing arrangements that occur elsewhere in the network – for example where a Mobile Virtual Network Operator provides a mobile service over the network infrastructure of a mobile network operator.
11. The Code of Practice could be clearer by emphasising that, in this context, sharing means placing physical apparatus on the site in question.
12. The ECC does not require it, but the Code of Practice nevertheless states that occupiers should notify landowners of such sharing, so that landowners can be aware, for security purposes, who is entitled to be on the site. This is a reasonable measure but it should remain clear that this is a security measure and has no wider implication.

Notification of upgrades

13. During the initial stakeholder drafting, there was some discussion as to whether upgrades to apparatus should be notified to landowners in advance of installation, so that landowners can make an assessment as to whether there was any adverse visual impact or additional burden on the landowner. In the end, the drafting group, assessing the overall balance of the rights and obligations falling on the respective parties, came to a consensus against such an approach.
14. This was the right outcome. First, the ECC has avoided requiring prior notification, so that network improvement can occur without unnecessary bureaucracy. The great majority of network upgrades have no or minimal impact on the appearance of a site or place any burden on the landowner, and so it is also perfectly logical that there is no notification requirement unless there is visual impact or extra burden on landlords (for example, if the landowner’s power supply has to be upgraded). In such an event, it is likely to be very obvious to both parties as to the likely impact of an upgrade and the appropriate consents can be obtained.

15. Reversing the burden of proof, as it were, would have a negative effect on the speed and efficiency with which code operators can deploy network and would not be proportionate or in line with the ECC.

Review

16. Mobile UK is confident that, as presented, the Code of Practice will make a good contribution to shaping the behaviours of all the parties in the network deployment value chain.
17. The Government has reviewed the ECC for a number of reasons, such as the opacity of the current version, the need to make certain policy changes but most of all in recognition of the greatly increased reliance that customers place on electronic communications networks since the ECC was first published and the need for further investment by providers.
18. Mobile UK supports the version that Ofcom has published for consultation. It represents a consensus among a broad church of stakeholders who have long experience in the communications sector. Should Ofcom consider any further changes, such changes should be discussed among the stakeholder group that helped with the drafting before any document is finalised. Furthermore, in such a dynamic sector, it will be necessary for Ofcom to keep the Code of Practice under review, to reflect any emerging or unintended consequences arising. Mobile UK stands ready to participate in such a process in due course.