

ISPA response to the DCMS consultation on ensuring tenants' access to gigabit-capable connections

1 About ISPA

ISPA welcomes the opportunity to respond to the consultation from DCMS on improving tenants' access to gigabit-capable connections. ISPA is the trade association for Internet Services Providers (ISPs) in the UK, with over 200 members, 90% of which are SMEs. Our members cover the whole spectrum of access provision in the UK using FTTP, FTTC, wireless and satellite connections at a wholesale and retail level. They play a critical role in delivering broadband and internet services across the UK to consumers and businesses.

2 Introduction

ISPA welcomes this consultation, having engaged with the Barrier Busting Task Force in DCMS since its inception. The Government's ambition to roll out full fibre to 15 million premises by 2025 and nationwide by 2033, as set out in the FTIR, will require considerable, and accelerated infrastructure construction. Our members are committed to delivering this vision and industry have been vocal about their support for the ambitious rollout plans and increased investment in this area.

In this context, the proposals set out by DCMS in their consultation on tenants' access and new build developments are welcome and will clearly help to accelerate rollout. However, despite being ambitious in its proposals, we believe that DCMS' current approach will only help to accelerate rollout in certain parts of the country and that a bolder approach is necessary to deliver on the vision set out in the FTIR.

In this response ISPA has set out:

- general comments on the ISP-landlord relationship;
- specific comments on how DCMS's proposed policy intervention could be made more effective; and
- specific comments on how DCMS' proposed policy intervention could be applied more broadly.

3 General comments on ISP-landlord relationships

The relationship between landlords and ISPs is very important, and one which ISPA members are keen to protect and continue to nurture. As such, industry welcomes the premise of encouraging negotiation between the parties that underpins the consultation. ISPA believes that continued dialogue is the best way to encourage greater participation from landlords in the future, and to avoid the situation of landlords refusing access. Education is key, and ISPA members are keen to unpack the benefits that landlords and their tenants will derive from their technologies. Better broadband connections can increase the value of landlords' properties and significantly improve tenant satisfaction and, as such, conveying this message to landlords is a key priority for ISPs.

The proposals will be of vital importance in cases where landlords are entirely unresponsive, acting as a significant block to delivering connections. However, our members have clearly indicated to us that their relationships with landlords are usually positive and, as such, it will be important for Government to stress that the new proposals are intended as a measure of last resort.

4 Specific comments on the proposed policy intervention

To enhance rollout, the proposals must be targeted, effective and ambitious, whilst striking a fair balance between landlords' interests, the pragmatic needs of industry and the wider public policy of high-quality connectivity in the UK.

4.1 Application to MDUs / office blocks

The proposed intervention by DCMS will achieve its aims in relation to a very specific barrier to broadband rollout – absentee freeholders for land/property where a tenant has requested access to a broadband connection. What is unclear, however, is what ISPs will be able to do in response to such a request and once they have acquired court-granted access. For example, if a request is made by one tenant in a Multi-Dwelling Unit (MDU) or a multi-storey commercial office block:

- would court-granted access apply exclusively to this one tenant; or
- would the provider have the right to install the relevant infrastructure to connect other units within the building ahead of demand to avoid revisiting the site should other tenants request a service later on?

A limited installation would have clear negative cost implications for the overall rollout plans and increase disruption for tenants.

4.2 Temporary nature court granted access

The consultation is clear that the court-granted access should be a temporary measure and we understand that this is required to balance the interests of ISPs, tenants and freeholders; however, there is need to address uncertainty around how this would work in practice, e.g.:

- Would there be a requirement for ISPs to remove any infrastructure fitted in a property under a court granted wayleave, if a freeholder starts to reengage but negotiations are either protracted or subject to tribunal proceedings?
- Would the ISP have to continue to engage with the Court once a warrant is granted e.g. to show continued attempts to contact the landlord, or would it be the responsibility of the previously absent landlord to demonstrate that contact has been established and that negotiations have begun?

DCMS' position on these matters will have a clear impact on the effectiveness of the proposals – putting the burden on engaged ISPs rather than the subset of absent landlords will not deliver on DCMS's FTIR vision.

4.3 Timescales and administrative burden

We recognise that the Government must balance the interests of competing parties and we acknowledge that the two-months period proposed in the consultation is a marked improvement on the current timelines. However, given that the proposed powers are intended as a backstop to be used in cases where landlords remain unresponsive, a shorter timeframe would have been appreciated by some of our members (e.g. 4 to 6 weeks). In addition to this, the administrative pressure that a court case can place on providers should not be underestimated. A slick, efficient, and defined court process (potentially set out as a schedule to the legislation) should be considered.

4.4 Safety and standards

We recognise there are concerns about how health and safety standards and relevant building regulations would be upheld in situations where a provider has acquired court-granted access; as such, we believe that more should be done to facilitate this part of the build process. This could include agreeing a standard of works to ensure that landlords remain confident in the care providers will take with their property, enhancing trust between parties. The City of London wayleave agreement combines the access agreement with a risk assessment and management statement to ensure the

safety of all involved, but it does not yet fully address the issue of absentee landlords. In some instances, management companies can provide the relevant information, but more work is needed to ensure that genuine health and safety considerations do not undermine the efficient application of the new powers, and we are committed to work with DCMS and other parties to find a solution.

5 Comments on how to broaden the application of the proposals

If the aforementioned comments are taken into consideration, the proposals will help to improve rollout in situations where ISPs have a request from a tenant, but the freeholder is absent and fails to engage. We would, however, urge DCMS to take a bolder approach and consider removing the tenant request requirement from the proposals. There are two slightly different potential applications for this:

1. Facilitating network reach rather than individual connections.
2. Enabling large scale deployment.

5.1 Facilitating network reach rather than individual connections

Particularly in rural, but also some urban, scenarios an absentee freeholder might not impede an ISP from connecting a specific tenant but rather from building a network in the most efficient and effective way. When faced with choices, such as whether to cross a river, road or rail line or to route a network via a third-party property, the latter is often the most economical solution; however, the proposals under consideration would not provide any support as the wayleave would merely be required to cross the third-party property rather than connect a tenant. The removal of the tenant request requirement in these scenarios would greatly improve the ability of ISPs to rollout their networks in situations where an absentee freeholder currently forces them to make suboptimal decision, leading to greater disruption of the local community.

5.2 Enabling large scale deployment

The FTIR vision can only be fully realised if ISPs start to engage in large-scale network rollout ahead of demand. The removal of the tenant request requirement would help ISPs to achieve efficiencies by connecting buildings during rollout in the area. Crucially, several of our members have highlighted that tenants can only make a request for a connection once the network is already available thus leading to a chicken-egg situation if an absentee landlord is involved – the network cannot be built without a tenant request, but a tenant can only request the network once it has been built.

6 Conclusion

ISPA members are keen to stress that their own relationships with landlords are often broadly positive, and they are committed to dialogue and educating land owners on the benefits of better connectivity. There is a risk that these established positive relationships will be disrupted by the proposed legislative intervention and we would thus welcome guidance and advice for landlords to further their understanding of the benefits of gigabit-capable connections, established best practice regarding the granting of wayleaves, and highlight that the proposals under consideration are regarded as a backstop.

With clear guidance, we hope that the backstop will be used as little as possible in the, hopefully, isolated instances where landlords continue to be absent. As outlined in this response, the specific proposal in this consultation could be implemented in a more effective manner by proactively addressing concerns that have been raised in this response and the wider consultation exercise. Furthermore, a wider application of the proposed powers could be considered to enable providers to deliver on the Government's FTIR ambitions.

7 A wider look at broadband barriers

Other barriers which could be addressed by the Barrier Busting Taskforce (BBTF) include:

- Cost-oriented charging for use of land/facilities/infrastructure, especially public/government-owned infrastructure.
- Incentivising landlords to engage with the wayleave process in a timely manner.
- Reducing negotiation time through standardised wayleaves in primary legislation.
- Preventing unlimited liability clauses in wayleaves.
- Standardising professional costs to negotiate and complete wayleaves, for example: legal and surveyor charges.
- Addressing the issue of identifying landlords to begin wayleave discussions, especially when they may be off-shore or shell companies.
- Encouraging public sector freeholders to lead the way in forging positive relationships with communications providers.
- Encouraging developers to install multi-core fibre ducts to properties.