

## **Legislative proposals to address broadband rollout in leasehold flats**

**Response from the Internet Service Providers Association (ISPA)**

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### **About ISPA and our sector**

1. ISPA is the trade association for ISPs in the UK. We represent more than 150 organisations that are building the telecommunications infrastructure and delivering internet services that are powering the UK's economy and society. Our members are investing more than £40bn to upgrade the UK to full fibre gigabit broadband, with nearly 75% of households now able to access full fibre broadband and over 85% of residential premises able to receive gigabit speeds.
2. The rapid expansion of fast, reliable internet access has fundamentally reshaped our society and the rollout of full fibre gigabit broadband is one of the largest and most vital of the UK's infrastructure projects currently underway. Digital connectivity forms the backbone of all the highlighted growth areas in the Government's Industrial Strategy, from digital technologies to professional and business services. Virtually all UK businesses and public sector entities rely on internet connectivity, making high-quality telecoms infrastructure crucial for driving growth, innovation, and opportunity.
3. This has been made possible from investment by a competitive market into the rollout of digital infrastructure, supported by a stable and consistent regulatory framework.

### **About our response**

4. While we note the barriers to delivery identified by Barrier Busting Task Force and the associated mitigative actions, ISPA's members consider that access to MDUs remains a key challenge to the delivery of the government's objective of nationwide gigabit-capable broadband availability by 2032.
5. We stress that ISPA represents a broad range of internet service providers and network operators, including altnets, established infrastructure providers, and service providers. Our members are uniquely aligned in a desire to find a workable, competition-driven solution to persistent MDU barriers, and this vital opportunity should be capitalised on by the government and be met with ambition.
6. We welcome this consultation to grant leaseholder rights to address MDU access issues. We do note, however, that this proposal should not be intended as an ultimate solution, and we urge government to not consider this as the only intervention that should be explored

to address MDU access barriers. Rather, it should be implemented in tandem with other actions in order to be truly effective.

7. This includes addressing the industry's ongoing concerns over the impact of changes to building safety regulations, in particular, fire safety obligations with Higher-Risk Buildings (HRB). These continue to have a severe and immediate impact on the roll out of broadband, though we greatly welcome the recent consultation issued by the Ministry for Housing, Communities and Local Government as a first step in addressing some of these concerns.
8. Though we understand changes to Telecommunications Infrastructure (Leasehold Property) Act 2021 ("TILPA") are not the focus of this consultation, nonetheless we still must highlight that targeted refinement to the existing framework (namely TILPA) would materially assist in overcoming current barriers to securing gigabit capable fibre into MDUs. Securing wayleaves to access buildings remains the principal challenge to facilitate deployment of infrastructure.
9. Furthermore, we note that this intervention only applies to England and Wales. While we recognise the complexities of devolved property law, given the UK-wide nature of the digital economy as well as Project Gigabit, we are concerned that an intervention limited to England and Wales may create an uneven operating environment for our members. We call for, where appropriate, similar interventions in Scotland and Northern Ireland to be implemented at pace to ensure that no one is left behind as we continue this once-in-a-generation project to build resilient digital infrastructure.
10. Finally, we must stress that many of our members maintain, and wish to continue, positive relationships with landlords as well as freeholders.
11. Overall, our response sets out the following recommendations:
  - a. Expand the scope to reflect the full property stakeholder chain - including tenants, and intermediate leaseholders;
  - b. Include social housing and commercial premises in order to meet wider government connectivity ambitions;
  - c. Streamline the process, including a shorter acknowledgment timeframe;
  - d. The existence of one gigabit-capable connection should not be a reasonable grounds for refusal;
  - e. A commitment from government to explore further wayleave and access reform - including refinements to TILPA.
12. We welcome further opportunities for input and collaboration with government on this issue.

### **Barriers to roll-out in MDUs (Questions 2-14)**

13. We understand that the main barriers that the consultation has identified are difficulties faced by network operators in identifying the freeholder, and freeholders who do not engage with the process or deployment needs in leasehold flats. Though the former is indeed an issue for some members - particularly in areas such as London where large MDUs may be owned by offshore entities or shell companies with multiple parties involved - we must also emphasise that this is not the core barrier. The preeminent and longstanding barrier remains the ability to secure timely and reliable access rights in the form of a signed wayleave agreement across complex property ownership chains.
14. ISPA strongly agrees that, in a material number of MDU cases, freeholders and other “required grantors” (including intermediate landlords and their managing agents) often lack sufficient incentives to facilitate gigabit-capable broadband deployment at pace. Part of this can be addressed through education, including a government-backed awareness campaign, of the benefits of gigabit-capable broadband (as well as the impending PSTN switch off); for example, better broadband connections can increase the value of leaseholder properties and significantly improve tenant satisfaction. This is why we have called for property listings to include whether a building has gigabit-capable broadband, or not, in our submission to MHCLG’s consultation on material information in property listings.
15. However, ISPA members’ experience is that the principal challenge isn’t identifying the appropriate freeholder (though this can be an issue in some cases) but rather, the unreasonable behaviours, commercial practices and ransom terms sought by freeholders’ professional advisors (e.g: managing agents, property managers and external solicitors)
  - a. Professional costs to negotiate a typical fixed wayleave for business premises can be up to £20,000 per agreement.
  - b. One member (an altnet) provided us with a detailed breakdown of fees of £281,204 across a span of 13 months in costs deemed unreasonable, mainly related to legal, surveyor and managing agent fees.
  - c. Another member estimated that landlord compensation costs can escalate beyond £10,000, requiring roughly for all revenue from four customers 10 years to replenish.
  - d. Even for an average provider, costs associated with the wayleave process can therefore run into millions of pounds.
  - e. Beyond costs, the delays themselves can have an impact: one member reported that typical review to completion times for wayleaves are up to 6 months, whilst some can take 6 - 12 months with a few requiring over a year. The same member reported that they were currently experiencing two wayleave negotiations taking 15 months +.

- f. Another member has reported that it can take an average of 2 years to negotiate a wayleave, with their longest negotiation taking over 5 years.
16. We therefore call for DSIT to consult with stakeholders to explore whether greater standardisation of professional costs — such as legal and surveyor charges associated with negotiating and completing wayleaves — could help prevent excessive fees, while also ensuring that freeholders who currently do not apply such charges are not incentivised to start doing so
17. Though we greatly welcome and appreciate existing legal powers such as TILPA, unfortunately they are currently not as effective as intended for a variety of reasons, including the relatively short security of tenure (interim rights) that it provides (Part 4A rights last for only 18 months). This leaves a risk of providers investing significantly in a building before potentially then needing to vacate the property and creating an adversarial relationship by resorting to the tribunal, all whilst causing a detrimental impact on consumers as a result . Furthermore, for smaller MDUs, for example those consisting of 8 units or less, it is not commercially viable to use Code powers (such as making use of the tribunal), as it is currently designed.
18. TILPA was introduced with good intentions, but it has not provided a fully effective or scalable solution to the persistent problem of delivering speedy effective gigabit capable rollout in MDUs. We believe that several targeted improvements would make TILPA more impactful, including: enabling a streamlined, paper-based Tribunal process with decisions made within a defined timeframe once statutory contact requirements are met; and extending interim rights from 18 months to six years to provide contractual and operational certainty, avoid premature network removal and give operators a realistic window to secure permanent Code rights. Collectively, these refinements would reduce cost, increase predictability, and support more stable investment in gigabit-capable broadband deployment.
19. We must also remind DSIT of ongoing concerns on the impact of fire-regulations for HRBs on roll out. Enabling a leaseholder to request gigabit-capable broadband will naturally face a blocker, and be ineffective, if the roll-out is unlikely to commence due to issues surrounding HRB regulations - the consultation also proposes that a reasonable grounds for refusal would be if accepting would cause non-compliance with statutory obligations.
- 20. To summarise, we see barriers to MDU roll-out as being the following:**
- a. Partially, difficulties in identifying freeholders may be particularly problematic in specific locations (e.g., in areas such as London).
  - b. Lack of constructive engagement from relevant stakeholders, underpinned by their lack of incentive to install gigabit-capable broadband.
  - c. Long, costly wayleave negotiations where ransom terms are sought.
  - d. Existing legal powers are not as effective as they could be.

- e. Ongoing issues surrounding the application of fire safety regulations on HRBs.

### **The proposal in principle (Questions 15-22)**

21. In terms of the current proposed option of granting leaseholders the right to request gigabit-capable broadband, we welcome the government's recognition of the rights of leaseholders and their need for connectivity to be taken into account. However, to increase its effectiveness, we recommend expanding this to apply beyond just leaseholders and freeholders as written, to as well as expanding the in-scope buildings.
22. The consultation rightly asks to what degree should intermediate leasehold landlords be captured, and whether any residential leaseholder should have the right to make a request. ISPA believes that there should be a chain-of-duty to ensure the whole complex property stakeholder chain is incorporated into this proposal. Legislation should be designed to capture whomever controls access to common parts and who ultimately is responsible for negotiations - this can include intermediate landlords and managing agents. The proposal should therefore state that landlord leaseholders and agents can't unreasonably block a request. In other words, intermediate landlords (and agents) should be under an explicit duty not to unreasonably prevent a request from progressing up the chain to the party that must ultimately facilitate engagement. Legislation should clearly set out the intended definition of 'leaseholder' within this context.
23. Furthermore, we believe that tenants and renters should be included in such a chain. Therefore, ultimately, we believe the proposal should be written more along the following lines of: *The right for tenants and residential leaseholders to request gigabit-capable broadband, for landlord leaseholders not unreasonably prevent a request from progressing, and for freeholders to not unreasonably refuse.* This should be supported by a clear accompanying clarification setting out the circumstances in which refusal would be considered unreasonable.
24. Where a leaseholder/tenant has approached a provider, the process should allow the operator (with authority) to issue the request notice on their behalf.
25. Regarding in-scope buildings, the consultation asks whether other leasehold arrangements such as commercial properties (including business parks), houses and social housing should be considered. ISPA strongly believes the scope should be expanded to capture these arrangements and buildings as well. In fact, houses are a particular gap in current legislation and Code powers - once again, for houses and buildings of 10 units or less, it is not commercially viable to use enforcement under the Code.
26. On commercial properties, it is important to outline that fast, reliable connectivity not only concerns residents, but businesses as well: businesses depend on robust digital

infrastructure to compete, grow, make use of innovative technology, and contribute to the economy. Business premises also face similar challenges of having multiple parties in the chain, and unresponsive or unincorporated freeholders. Previous interventions have also mostly sought to address residential premises and therefore cannot use other mechanisms to speed up the process. The importance of business connectivity has indeed been outlined in the recent draft Statement of Strategic Priorities (SSP) for telecoms. As a result we believe that explicitly excluding them from such an access right is counter to the government's wider strategic objectives.

27. We believe it is also vital to include social housing within the scope of this intervention to meet the government's digital inclusion goals, including meeting the objectives of the Digital Inclusion Action Plan. We understand from members that there can be difficulties in engaging with local authorities and housing associations for social housing - for example, with regards to how the Building Safety (Wales) Bill is being interpreted in Wales. Given the wider government drive to digitise public services, from the NHS to welfare, it is crucial people aren't left behind.

**28. In short, we recommend:**

- a. Creating a chain-of-duty that includes tenants, and which prevents leaseholders from blocking progressing a request further up the chain;
- b. Including social housing, houses and commercial properties.

**The process (Questions 23-27)**

29. ISPA supports the proposed process in principle, with a number of recommended refinements in order to strengthen its intended purpose.

30. We strongly recommend shortening the length of the acknowledgement window. Two periods of 28 calendar days we believe is excessive in an age of modern communications. The acknowledgement should be a maximum of 7 days, given that they do not need to provide any detail or a decision, simply a confirmation of receipt.

31. To ensure further efficiency, DSIT should introduce standardised templates for the request and the freeholder acknowledgement and response (supported by accompanying guidance on their use), to limit scope for tactical delay while ensuring consistent information is provided across all MDUs. ISPA would be willing to work with its members to propose an example template to DSIT.

32. Care should be taken to ensure that this intervention does not inadvertently force freeholders to only engage through this process. It should allow the requestor to nominate an operator they have already approached; allow operators to approach freeholders proactively and should not be used to refuse engagement that does not have a formal

request.

33. Currently, we understand the reasoning behind requiring engagement with two appropriate operators, but we caution against “gaming the system” by ensuring such engagement should be meaningful and based on credible ability and intent to serve that building/area.
34. More substantial refinements relate to our concerns that a freeholder can comply by acknowledging and issuing a response whilst still delaying negotiations. This still remains our core concern with the proposals. We recommend specific to this that there should be an additional duty for operators to be engaged with in good faith, but to truly address this, further examination of wider wayleave and access reform is required. TILPA does not require significant legislative changes in order to be made more effective. We believe it could be strengthened at pace, including duties to require formal engagement within the Code process within prescribed period, extending interim rights from 18 months to 6 years and more.
35. Furthermore, we are concerned that enforcement remains a high-friction route, which can weaken its practical effectiveness.

**36. To summarise, we recommend:**

- a. Reducing the acknowledgment window from 28 calendar days to a maximum of 7;
- b. Creating standardised acknowledgement and request templates in collaboration with industry;
- c. Allow flexibility for other routes of request including enabling requestors to nominate an operator they have already approached, allowing operators to approach freeholders proactively and not allow freeholders to refuse engagement that does not have a formal request;
- d. Ensuring that freeholders, when engaging with two operators, are doing so meaningfully and based on credible ability and intent to serve that building/area.
- e. Exploring wider legislative (TILPA) wayleave reforms/amendments to address barriers in rollout.

**Reasonable refusal (Questions 65-68)**

37. ISPA disagrees that an existing gigabit-capable network already existing in the building should be considered reasonable grounds for refusal<sup>1</sup>. We believe this is counter to government ambitions to encourage network-level competition in the market and therefore better consumer outcomes, and that DSIT should consider allowing the right to enable further gigabit-capable connections within a building. Furthermore it runs contrary to the intention of paragraph 21 of the Code, which requires consideration of the public

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<sup>1</sup> Please note that this position does not reflect the position of our member, Hyperoptic.

interest in ensuring people have access to a choice of high-quality electronic communications services.

38. However, we must also note that such an amendment would need to be mindful of scenarios in which existing gigabit-capable connections are uniquely suited for the purpose of that building, as well as alternative business models, including those which involve direct contracting between freeholders and network operators where the connectivity is part of the rental or maintenance arrangements. This should be reflected in any such amendment of reasonable refusals.

## **Conclusion**

39. ISPA welcomes DSIT's willingness to address persistent barriers to delivering gigabit-capable broadband in MDUs and we support the proposed right to request as a pragmatic step. However, ISPA is clear that this intervention alone is not a comprehensive solution.
40. To maximise impact, we urge DSIT to strengthen the proposal by widening scope, including by capturing intermediate landlords and managing agents through a clear chain-of-duty, and extending protections to tenants and renters. We also encourage DSIT to consider expanding scope to capture social housing and commercial/mixed-use buildings, given the central importance of connectivity to the government's growth and digital inclusion agendas.
41. Finally, we hope that this consultation seizes upon the opportunity of sector alignment by acting as a springboard for further reform. ISPA encourages DSIT to commit to a wider programme on wayleaves and access reform, to address unreasonable costs, delays in negotiations, and security of tenure, as well as providing clarity on building safety obligations for HRBs. We continue to be ready to support DSIT with evidence and technical input and welcome further opportunities for engagement.