openreach

Information we want you to know

Introduction

We aim to enable everyone access to a choice of high-quality electronic communications services. This is also a key principle of the Code and can be found in Para 21(4).

An unreasonable delay in securing an agreement can result in the prevention of this access. That is why Parliament has given Operators the power to apply to the Lands Tribunal (Sheriff Court in Scotland) for an Order conferring the rights we need. This is a step we have taken in the past where we have faced unreasonable delays in the progress of a case. This document seeks to provide any further information you may need to avoid any of these delays.

The agreement we are seeking is officially a Code Right. This is not a lease, nor an easement. It does not convey a legal interest in any property/land and is not a disposition of the land. There is no requirement to register it with Land Registry or execute it as a Deed. A "Wayleave" is the name given to these agreements.

Due to the nature of the agreements and our installations, a reasonable timeframe for the completion of these matters is in the region of 60 days, as long as all parties play their part in facilitating progress.

Process

In addition to this document, you will have received a series of further documents from us which includes:

- An introductory letter
- The wayleave agreement; and
- A route plan

These documents collectively provide you with all the information you should require in relation to what we wish to install, and why.

What do we need to know from you?

- That you are the correct person to grant us permission
- That you are happy with our proposed route
- That you are happy with the contents of the proposed wayleave agreement

What to do if you have queries with any of the above?

- If you are not the correct person to grant us permission, please let us know immediately so we can contact the correct person. If you can assist us with who the correct party is, please let us know.
- If you have queries regarding the planned route, please let us know the specific issue and we can work with our planning teams to try and reconcile this. The earlier you let us know, the quicker we can resolve any queries.
- If you are not happy with the contents of the proposed agreement, please let us know the specific queries you may have, ideally with a marked-up version of the agreement. We can then review this to come to a suitable resolution for all.

We have drafted the agreement to provide extra rights for landowners that go above and beyond the requirements in the Code to provide as fair and balanced a position as possible. However, if you feel you need to take professional advice on the contents, please instruct an agent at the earliest possible opportunity. This will enable swift progress to be made on the matter.

Our wayleave documentation is suitable for all varieties of installation, however there are two types of wayleave requests which is based on the purpose of the installation.

1st Party Request – Where the apparatus being installed is to provide service to a party legally related to you, often your tenant
3rd Party Request – Where the apparatus is to provide a service to someone legally unrelated to you

Payments
The main question we usually get asked is whether you should be offered a payment for our works. This normally comes from two different places:

1. A payment for the right to put apparatus on your land – we call this Consideration
2. A payment to cover any professional fees you may incur

Consideration
Whether a Consideration payment is offered for a wayleave is dependent on the purpose of the installation. This follows the aforementioned distinction between 1st and 3rd party requests.

If we are requesting a 1st Party agreement (to provide service to someone legally related to you) then we would not offer a consideration payment with the agreement. This is because the value of the installation to you is provided by the service being offered to the property in question.

If we are requesting a 3rd Party agreement, then we appreciate the value of the right needs to be considered. For this, we will offer you a payment that is proportionate to the type and amount of apparatus we are proposing to install. This figure is based on standard rates we have consulted on and agreed with the major landowning representative bodies. These payments offered are deemed to be a fair market value of the right - this is the requirement under the Code.

Professional Fees
Much like a consideration payment, the payment towards professional fees depends on the category of request.

For a 1st Party request, we would not offer a contribution towards any professional fees you incur. This is because we are contacting you at the ultimate request of an occupier of the land or building you own. In this scenario the landowner would need to seek any costs they require elsewhere, usually from their tenant directly. This is why it is very important any Agent/Solicitor is instructed as soon as possible, and the request for their fees is met at the earliest opportunity.

For a 3rd Party request, we would offer to contribute towards a fair amount of any fees incurred. We cannot agree to cover any fees you incur completely, as who you choose to take advice from is out of our hands, and therefore so are their terms of business. However, we find the reasonable contribution we are prepared to make does adequately cover the costs incurred by landowners in the vast majority of cases. Again, it is incredibly important that if you are to instruct anyone, this happens as early as possible, so this does not hold up the progress of the matter.

All agreed payments will be made upon completion of the wayleave.

Completion

Once all the above has been agreed, we want to try and complete the agreement as quickly, easily and simply as possible for everyone concerned.

We are happy to receive a scanned copy of the document signed by yourself, also using a digital signature if possible.

There is no requirement for a wayleave to have a wet ink signature, nor for a hard copy to be posted to all parties. Digital signing of agreements is accepted and is our preferred method of completing agreements.
After completion, you will be contacted by Openreach to schedule an appropriate date and time for the works to be carried out.