

## INSIGHT

### Removing telecoms operators from landowners' sites

Landowners often enquire how they can remove telecoms operators from their land or buildings, whether because they wish to develop, sell or simply no longer to host telecoms equipment

Leases involving telecoms equipment are usually governed by The Telecoms Code, which is specialist legislation enacted for the purpose of governing relations between telecoms operators and landowners. The legislation sets out that certain (in practice most) telecoms companies are "Code Operators" and therefore have "Telecoms Code Rights".

The current process for removing telecoms operators from a site over which they have Telecoms Code rights is outlined below. It is based on our extensive experience of litigated cases against each of the main operators at various sites, on the basis of Paragraphs 20 (if the lease contains usable provision for termination of the lease) and 21 (if no usable termination provision) of the Code.

#### The current process

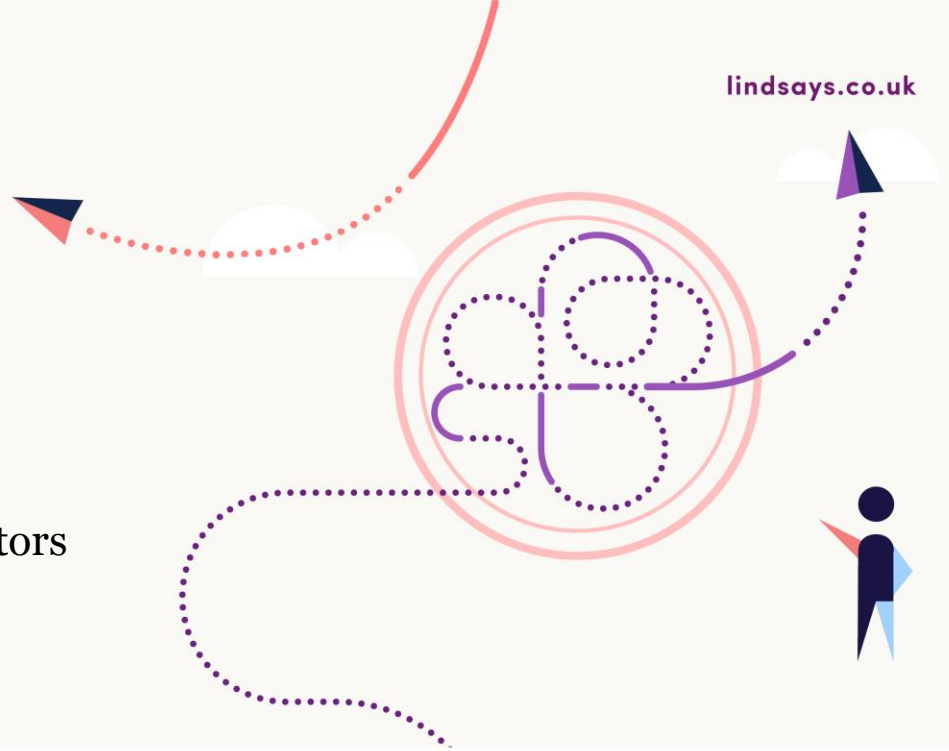
**Stage 1: Clients decide they require the operator's equipment to be removed from their site.**

**Stage 2: We examine the lease to check on what basis we can require the operator to remove** (either Code Paragraph 21 or Code Paragraph 20).

**Stage 3: Serve the required lease notices.** If we are relying on Paragraph 21, we must serve any required lease notice to terminate the lease: we can rely on Paragraph 21 only if the lease is first terminated.

This step can add many months to the process because termination provisions often require long notice periods, but it will usually be worth it because using Paragraph 21 is in most cases easier than using Paragraph 20.

If we are proceeding on the basis of Paragraph 20 alone, we do not need to serve lease termination notices because Paragraph 20 does not rely on any lease provisions.



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**Stage 4: Assuming we are in a position to serve Code notices, we do so.**

**Stage 5: We receive Code counter-notices from the operator.** If none is received (which in our experience is unlikely) within the statutory period, an action for decree for removal (and possibly permission to remove ourselves) can be raised on the simple basis that the right to remove the equipment is unchallenged.

**Stage 6: If Code counter-notices are received, raise a court action seeking decree of removal.** The form and progress of the action will be very different depending on whether it proceeds under Paragraph 20 or 21.

If Paragraph 21, the main issues are likely to be whether:

- (i) the landlord has a right under the lease to require removal of the equipment; and
- (ii) the operator would obtain permission to occupy the site under Paragraph 5 of the Code (i.e. against the landlord's wishes), and in fact seeks that permission.

If Paragraph 20, the main issues are likely to be whether:

- (i) the landlord genuinely requires that the equipment is removed for redevelopment or maintenance. A fairly detailed report on this may be required, showing what work is planned, how it would be carried out and that there is no practical alternative way of carrying out the work that would not also require the equipment to be removed; and
- (ii) whether the court considers the operator has all the rights it is appropriate that they should have to ensure the equipment can be removed, and that there would be no substantial interference to the operator's network in doing so. In theory, the legal burden of showing this is on the landlord.

This can create problems in practice where, for example, the operator requires planning permission for an alternative site for its

equipment, which only the operator can apply for. Further, only the operator truly knows what effect removing any piece of their network would have, and how any detriment may be remedied or minimised. Still, the landlord has to show, at least on the face of it, that there would be no substantial interference and an expert report is often required.

**Stage 7: Negotiations.** In our experience, operators are not especially keen to proceed to a full court hearing because the legislation is not well drafted and therefore there is always a risk of losing and the court setting a precedent that is unhelpful to them. Further, operators generally do not want the negative publicity of being seen to be holding up property development work because they always require new sites across the country, and landlords would be reluctant to grant them if they become known as very difficult to remove.

From the landlords perspective, the risk of losing is likewise a factor.

**Stage 8: Settlement.** This must be done very carefully because the legislation makes it very easy to create new Code rights, even where that is not the intention. All that is required to create Code rights is an agreement in writing for a Code operator to occupy land. That means any settlement agreement on the basis that, for example, an operator can occupy a site until a certain date, could in theory itself create new Code rights and send the landlord back to square one.

Any settlement therefore has to be oral (which is undesirable, for obvious reasons) or framed very carefully so as not to create Code rights, which is difficult because the Code makes it clear parties cannot contract out of the Code. It is possible, however (though the veracity of a written settlement has not, to our knowledge, been tested in Court).

**Stage 9: If negotiations are not successful and a court case does proceed all the way to a decree being granted, then any decree has to be enforced.** This may involve



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seeking a second decree for permission for the landlord to remove the equipment themselves and for recovery of the expense of doing so. This is rare, however, as negotiation is almost always successful.

Changes to the present legislation are expected in the next few years and the process and legal approach to removing telecoms operators from land are likely to become significantly different from how they are now.

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