

LINCOLN DIOCESAN REGISTRY

GUIDANCE ON THE INSTALLATION OF TELECOMMUNICATIONS EQUIPMENT IN CHURCHES

Status of this guidance

1. This guidance has been issued by the Lincoln Diocesan Registry further to consultation with the Diocesan Advisory Committee and Chancellor. It is not intended to provide detailed legal or commercial advice, for which separate independent advice should be sought. It is based upon advice given by the Archbishops' Council. The advice is believed to be correct as of 1st August 2019.

NB. The Archbishops' Council have agreed a national framework contract with their preferred operator of mobile phone/broadband telecommunications, which is aimed to provide a more uniform approach to these installations. More information can be found [here](#).

NB. No installation of telecommunications equipment or entering into an agreement for their installation should take place without a faculty first being obtained.

What this guidance covers

2. This guidance covers the legal aspects of the installation of equipment into churches of the Diocese of Lincoln, designed for receiving and transmitting electronic communications, eg base stations for mobile phone networks.
3. Choosing pay-as-you-go mobile internet, or using an existing phone-line to install a router will be a relatively simple process. But most other routes to connectivity will be more complicated, and might involve structural work to your church building; which will in turn require a faculty before you can proceed.
4. Both mobile-network operators (MNOs) and wireless broadband providers can use church towers or spires to host telecoms equipment, which may serve the wider community as well as your church building.

Why is it a legal issue at all?

5. If your church is subject to the faculty jurisdiction, then the installation of telecoms equipment is likely to require a faculty. If the equipment is owned and operated by a third-party, then there will need to be an agreement between the local church and the telecoms provider which regulates the installation and use of that equipment. That agreement also requires a faculty, because it is giving a third-party continuing rights to use your church building. Both the physical installation and the grant of rights to operate the equipment can be applied for in a single petition for a faculty.

6. The process for obtaining a faculty for, say, a wireless broadband installation in your church building need not be overly complicated; but there is a defined order to events, and several important assurances which must be present in your petition if the faculty is to be granted. In most cases, an operator will be happy to project manage this process for you; but regardless of whether they or you are undertaking the responsibility, correct procedure must be followed.

Agreement on costs

7. The PCC should obtain assurance (by formal agreement in writing) that the operator (a telecoms or broadband company) will agree to pay all incurred costs of the faculty process, as detailed in this guidance – including the fees of the Consistory Court. The best way of achieving this is to give the operator a copy of this guidance.

NB: This specifically applies to any project where the operator aims to use the church building for commercial purposes in the wider community: i.e. wireless community broadband, or mobile coverage initiative.

Consultation with architect/structural engineer

8. The PCC or the operator should consult the inspecting architect on the structural feasibility of installation. If in any doubt, a structural engineer should also be consulted. The architect should in due course (once the faculty is granted and agreement signed) supervise the installation, and also be provided with a copy of this guidance and the resulting faculty.

Financial terms

9. The PCC should instruct the surveyor to negotiate financial terms for agreement with the operator (i.e. annual fee and/or per-subscriber fee for community projects); including scope for periodic review, subject to inflation or market levels. The surveyor should be provided with a copy of this guidance. There may be cases where the church is not entering into an arrangement with an operator for financial reasons but because the arrangement will allow the church and community to be connected to the Internet or mobile phone network. But the church should normally be taking advice on the commercial terms of the agreement, at least to ensure that it will "break even" and avoid any onerous terms such as terms which require the church to pay out for extra insurance, pay for damage and disrepair of the equipment and so forth. Some offers may seem like a windfall, but on closer inspection, could land the church with multiple liabilities.

Legal advice

10. Normally the PCC should instruct a solicitor (who should be familiar with Faculty Jurisdiction) to negotiate a licence agreement¹ to govern the relationship between the PCC and the operator from the installation onward. There is no one model but certain operators have models which have been agreed with particular dioceses eg that used by NET Coverage Solutions/Shared Access (through [Parish Buying](#)). The term of the licence should not normally be in excess of 20 years. It is not uncommon for legal agreements to allow the operator to grant sub-licences to other operators or to provide for assignment to other operators but care should be taken that any sub-licence is on the same terms of the head licence and that any assignment is only with the prior consent in writing of the incumbent, PCC and Consistory Court to a body which is capable of effectually performing the terms of the original licence. The licence must carefully restrict sub-licensing and assignments.

The incumbent grants the lease or licence under the authority of a faculty but the PCC is a party for the purpose of receiving the rent or licence fee and joining in the substantive provisions. In the absence of an incumbent, the Registrar will advise who the appropriate parties are.

Common covenants in the licence agreement would include the operator agreeing to:

- (i) pay the licence fee (subject to revision);
- (ii) pay for and install a separate meter to measure the electricity consumption of the equipment and pay for the electricity consumed in respect of the equipment;
- (iii) to isolate the equipment from the mains electricity supply with circuit breakers or other approved means of isolation such that the electricity supply to the church will not be interrupted;
- (iv) to provide an emergency isolator switch for the electricity supply in a position easily accessible to the Incumbent and persons authorised by him or her;
- (v) to pay promptly and to indemnify the incumbent and the PCC against all rates taxes and other charges payable in consequence of the grant of the licence or the presence of the equipment in the church;
- (vi) to obtain all necessary planning and other statutory consents for the carrying out of the works and for the maintenance replacement and use of the equipment;
- (vii) to carry out the works in a careful and workmanlike manner strictly in accordance with and complying with all conditions imposed by the faculty and the consents;

¹ Usually the agreement will be a licence, not a lease.

(viii) to make good all damage caused to the church by the carrying out of the works and the exercise of the operator's rights under the licence and to obtain a faculty whenever the same is necessary for the exercise of those rights;

(ix) to keep the equipment in good repair and safe working order;

(x) to comply with all statutory and other legal requirements in respect of the use and operation of the equipment;

(xi) to comply with all recommendations and requirements of the insurers of the church in so far as they relate to the installation maintenance and use of the equipment;

(xii) to monitor in accordance with normal industry recommendations the electromagnetic radiation produced by and all other emissions from the equipment and supply the results of such monitoring to the PCC and in the event that recommended levels are exceeded to suspend the use of the equipment until radiation and emissions are brought within such levels;

(xiii) to indemnify the incumbent and the PCC against all costs claims demands damages and liabilities which they may suffer or incur arising directly or indirectly from the presence of the Equipment or the exercise of the rights granted by the licence up to a limit of indemnity of [£10,000,000 (ten million pounds)] for each and every event;

(xiv) to maintain insurance in respect of the indemnity above with a reputable insurer and to produce evidence of such insurance on request;

(xv) to hold insurance monies received or payable in respect of the indemnity above on trust for the incumbent or PCC or both;

(xvi) to use the equipment as a [telecommunications base station (*or set out as appropriate to your installation*)] for the purposes of an electronic communications network as defined in the Communications Act 2003 and for no other purpose;

(xvii) not to do or permit upon the church anything inconsistent with the character of the church as a consecrated parish church or anything which may be or become a nuisance or annoyance to the minister for the time being conducting or the congregation attending divine service in the church;

(xviii) to pay the legal and other professional fees (including VAT) incurred by the incumbent and the PCC in connection with the negotiation preparation and engrossment of the licence and all costs incurred by them in obtaining the faculty

NB: The agreement must not be signed until after the faculty has been granted.

The Electronic Communications Code

11. In December 2017 the Government introduced a new Electronic Communications Code which substantially altered the rights and responsibilities of landlords and licensed telecoms operators. The new Code contains wide-ranging rights in favour of telecoms operators and against the interest of landlords. Many of these Code rights would prevail over the terms of any licence agreement. For that reason it is the strong advice of the Diocesan Registry that churches do not enter into agreements with operators who are registered with Code Powers under the Electronic Communications Code and that the legal agreement with the operator contain termination provisions in the event that the operator applies for or is otherwise designated with Code Powers.

The register can be accessed [here](#).

It is in this context that (at the time of writing) the Archbishops' Council recommend the standard framework contract [arrangements](#) with NET Coverage Solutions/Shared Access which is an operator which is not (at the time of writing) registered with Code Powers.

DAC and local authority to advise

12. The PCC or the operator should seek DAC advice on the proposed installation, and with the local authority if planning permission is to be required.

Planning permission

13. If planning permission is judged to be required for the project, the PCC or the operator to follow procedure to secure this.

Consultation with insurers

14. The PCC should consult its insurers to ascertain whether they have any specific requirements. The operators' insurance details (and those of any contractors working on their behalf) should also be recorded.

Other consultees

15. The operator should also consult (where appropriate and relevant to the project) specialists in archaeology, health and safety, arboriculture, wildlife, bells and turret clocks, lightning protection, electrical installations, and bats. Consult with and Historic England and any relevant national amenity societies, statutory consultees, and other appropriate bodies.

Particular issues which arise and which may require specialist advice include:

- (i) the provision of a suitable electrical supply,
- (ii) the impact of the equipment on lightning conductors and the insurance of the church,
- (iii) any aesthetic considerations arising from the effect of the installation on the appearance of the church,
- (iv) archaeological implications if interference with the fabric of the church or the ground below is required,
- (v) if bats are roosting in the area of the church in which the equipment is to be installed Natural England will need to be consulted,
- (vi) If bells are present the advice of the Central Council of Church Bellringers should be considered. They have published [advice](#),
- (vii) In the case of works affecting the character of listed churches of special architectural or historical interest or where the proposals involve any element of demolition, the Chancellor will in most cases direct that Historic England, the National Amenity Societies and the Church Buildings Council should be notified, if they have not already commented on the application. Historic England have produced a [note](#) (August 2017).

NB: The Archbishops' Council recommend that all lightning protection inspections should be conducted in accordance with BS EN 6205-3.

Plans and specifications

16. The operator and PCC should provide the architect and DAC with installation plans and specifications, including:
- (i) Size, type, shape and colour of aerials/antennae (infrastructure)
 - (ii) Precise location of all equipment – especially where close to bells/ropes and lightning conductors
 - (iii) Details of any work which might affect church fabric (drilling, cutting, etc.)
 - (iv) Details of any work affecting church fixtures, fittings, furnishings, etc. (including dust/rubble).

NB if plans change part way through the project, the DAC and Diocesan Registry will need to be informed and their advice taken before variations to the works are to take place.

PCC Resolution

17. The PCC should pass a resolution approving the petition for a faculty. The Secretary should keep a certified copy for inclusion in the petition upon submission.

Petition for faculty

18. Once the DAC has issued a certificate with its advice all plans, specifications, draft legal agreement, surveyor's advice etc. should be sent to the Diocesan Registry. The

Registry will make sure that the petition goes before the Chancellor who will make a decision on whether to grant a faculty or not. No works should begin, or agreements signed unless and until a faculty has been obtained.

Lincoln Diocesan Registry
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