

## **Obstacle to Communications**

### **The Message:**

An operator was required by the Electronic Communications Code to pay not only for the right to install a cable under a canal, but also the right to keep it there.

### **The Case:**

Although the Telecommunications Code first appeared over 20 years ago, there has been little reported case law on its provisions. The Code (now known as the Electronic Communications Code) enables operators of communications networks to acquire rights to install and maintain equipment on other people's land. The Code is potentially important to many owners and occupiers, who must bear in mind its impact whenever they decide whether to allow mobile phone and other electronic communication operators to install equipment at their properties. The Code can inhibit the redevelopment of property and it is, therefore, crucial that anyone dealing with operators is aware of the Code's effect.

The High Court has considered the Code in *The Bridgewater Canal Company Limited v. GEO Networks Limited* [19 March 2010]. The Bridgewater Canal ushered in the great age of the canals, but it was now an obstacle (known in the Code as a "linear obstacle") to giving the citizens of Manchester access to broadband and fibre optic cables. This case concerned the special regime under the Code relating to linear obstacles (which are, essentially, railways, canals or tramways). Under that regime, the operator of a communications network has or may acquire the right to lay and keep cables under the canal. The question raised in this case is what, if anything, should the operator pay for the right?

The Bridgewater Canal Company Limited ("Bridgewater") was the tenant of the canal and GEO Networks Limited ("Geo") had an existing duct under the canal pursuant to a deed granted by Bridgewater's predecessor. Geo wanted to lay an additional fibre optic cable through that duct, but the deed did not give Geo that right. Geo was, however, entitled to rely on the Code. Bridgewater claimed to be entitled to payment of a sum under the Code to reflect the value of the right to keep the cable in position once it had been installed. Geo contended that, while the Code required payment for the right to carry out the installation, it did not for the right to keep the cable in place following installation.

The dispute was referred to an arbitrator who decided in Geo's favour. The Code gives the arbitrator power to award a sum to the objector to the works, representing consideration for the right to carry out the works. The consideration is determined on the basis of what would have been fair and reasonable, if the objector had given his authority willingly for the works to be executed on the same terms as the arbitrator's award. However, in this case, the arbitrator decided Bridgewater was not entitled to object to the cable crossing its canal and on that basis the arbitrator had no power to award payment for the right to retain the works once they had been carried out.

Bridgewater appealed and the High Court allowed the appeal, disagreeing with the arbitrator's reasoning. It did not seem fair to the Court that an operator should have something for nothing. What the operator must pay for under the Code is the right to carry out the works. The Court considered that the right to carry out works includes the right to keep the works on (or under or

over) the relevant land (in this case, the canal) after their completion in accordance with the terms of the arbitrator's award.

The price payable for those rights must be fair and reasonable, but will take into account everything that the operator acquires by carrying out the works. Since the price must be fair and reasonable, it will not include a "ransom value" (meaning any value, even if considered unreasonable). The Court did not specify a precise figure for the price in its decision.

Due to the complexities of the Code and the importance of the point, the Court was provisionally minded to give permission to appeal, so this may not be the end of the matter.