Earlier this year we sent out a briefing note on the Telecommunications Act 1984 (which has now been superseded by the Communications Act 2003) and its implications for property owners. It was noted that the telecommunications operator, once it has entered into a written agreement with a land owner, will not only benefit from contractual rights but will also benefit from statutory powers conferred by the Telecommunications Code annexed to the Telecommunications Act 1984.

Since that briefing, this firm has been instructed by a client attempting to obtain vacant possession of a site it wished to dispose of and seeking to enforce the removal of the telecommunications equipment from that site. The position is regulated by

- Contractual law and
- Statutory law

In order to obtain vacant possession it is necessary to terminate the operator’s contractual rights and also, separately, the operator’s statutory rights. In order to do this two separate notices must be served; this is because, under the Code, no party can terminate the statutory rights of the operator unless and until it is in a legal position to do so. Therefore, the operator’s contractual rights must be terminated first.

Accordingly, there is a two-step procedure:

1. **Contractual notice**
   If the written agreement conferring the statutory rights contains provision for contractual termination then those provisions must be followed to the letter. It is vital that the correct terminology is used in any such notice and the notice should also confirm an intention to dispose of or redevelop the site. Most agreements provide for termination to be on a minimum of twenty-eight days’ notice, but with the land owner obliged to use best endeavours to serve up to three months’ notice. This is a loophole which the operator can and will use.

2. **Statutory notice**
   Once the contractual notice has expired it becomes necessary to serve a statutory notice under the provisions of the Code. Again, great care needs to be taken in getting the terminology of the notice correct.

After the expiry period of the statutory notice the next step will depend on whether or not the operator has served a counter-notice under the Code. If it has, it will definitely be necessary to go to Court and, even if it has not, an application to Court may be necessary in order to remove the operator from the site.

From a practical point of view it is essential to find out on any disposal as soon as possible whether there is any telecommunications equipment on the property and to seek legal advice without delay.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.