



2010 VOLUNTARY CODE OF PRACTICE: BROADBAND SPEEDS

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The Spirit of the Code

1. Ofcom's principal duty under the Communications Act 2003 is, in carrying out its functions, to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition, by having regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money. Ofcom is particularly required to secure the availability throughout the United Kingdom of a wide range of electronic communications services, which includes broadband services.
2. Ofcom is further to have regard, in all cases, to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principles appearing to Ofcom to represent the best regulatory practice. Ofcom is also to have regard to, where it appears to it to be relevant in the circumstances, among other things:
 - a. the desirability of promoting and facilitating the development and use of effective forms of self-regulation;
 - b. the desirability of encouraging the availability and use of high speed data transfer services throughout the UK; and
 - c. the opinions of consumers in relevant markets and of members of the public generally.
3. Indeed, this reflects Ofcom's regulatory principles¹; those being of particular relevance to this Voluntary Code of Practice ("Code") are that Ofcom will:
 - a. operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;
 - b. strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome; and
 - c. always seek the least intrusive regulatory mechanisms to achieve its policy objectives.
4. In light of the above, Ofcom believes that the Code is appropriate as a voluntary and self-regulatory measure. Whilst recognising that speed is not the only criterion on which consumers base their broadband purchasing decisions, the objective of the Code is to increase the overall standard of information on broadband speeds – and other relevant metrics – that should be made available to consumers at point of sale to help them make more informed choices of service products offered in the broadband market. This is because broadband speeds is a particularly complex area for consumers, taking into consideration, for example, different technologies and access routes used by businesses providing consumers with connection to the internet (i.e. internet service providers or "ISPs").

¹ <http://www.ofcom.org.uk/about/what-is-ofcom/>.

5. While Ofcom considers that the Code is appropriate at this stage to deliver benefits to consumers, Ofcom will continue to monitor people's experiences with matters covered by the Code, and we may introduce formal regulation if this self-regulatory form does not appear, in Ofcom's opinion, to satisfactorily address these issues or Ofcom otherwise considers that there is a need to intervene more promptly or effectively.
6. The spirit of the Code, the voluntary will and commitment by the ISPs to making self-regulation work, not just to the letter, is an essential element to its success.
7. Therefore, in honouring not only the letter but the full spirit of the Code, words, terms or provisions should not be so narrowly interpreted so as to compromise the ISPs' commitments to give consumers adequate information on broadband speeds before consumers make a decision to purchase the ISPs' services. Specifically, ISPs should use common sense in abiding by and interpreting the Code. In other words, Ofcom believes that the overall test should be whether, in the circumstances of each case, the ISPs are working within the spirit of the Code and are making every reasonable effort to comply with it. Their fullest co-operation with Ofcom also forms part of the spirit of the Code.
8. Specifically, Ofcom has sought to capture the ISPs' commitments under eight principles within the Code. For the avoidance of doubt, those commitments are not seeking to duplicate or replace requirements under legislation or regulatory requirements imposed by Ofcom or otherwise; they are also without prejudice to compliance with such requirements.

Introduction

9. The broadband market continues to evolve with increasing numbers of ISPs offering higher speed broadband packages. A greater variety of packages and services is now available than ever before.
10. There has been a noticeable trend for some ISPs to advertise their products based on faster and faster headline speeds². However, the evidence from Ofcom's research³ indicates that these headline speeds are rarely achievable in practice by the majority of consumers that buy them. This is due to a number of factors, including the nature of the customer's line, the capacity of ISPs' networks, the number of subscribers sharing the network, and the number of people accessing a particular website at a particular time.
11. This disparity between actual throughput speeds⁴ and headline speeds may have led to some consumers feeling confused and frustrated. With consumers' interests in higher broadband speeds likely to rise, it is important to remedy this mismatch in their expectations to avoid such confusion and frustration.
12. Ofcom believes that there are steps that ISPs can take to improve the information provided to consumers both before they sign up to a service and

² See "Definitions of Speed" further below.

³ http://stakeholders.ofcom.org.uk/market-data-research/telecoms-research/broadband-speeds/broadband_speeds/

⁴ See "Definitions of Speed" further below.

after they have had the opportunity to use the service. Ofcom introduced the Code⁵ to encourage ISPs to provide consumers with more information at point of sale on the speeds they could expect to obtain from their broadband service. In particular, the Code requires ISPs to provide consumers with information on their access line speed⁶ to help ensure that consumers choose the package that is the most appropriate for them in light of their individual circumstances and needs.

13. We believe that information on access line speeds benefits consumers because it will give them an expectation about the maximum speed achievable on their specific line (access line speeds depend closely on the particular technical characteristics of the line).
14. In addition to having information about access line speeds, consumers also benefit from having information about the actual throughput speeds which the particular ISP achieves – throughput speeds are an important metric for consumers since this is the download speed which they obtain in practice whilst using the internet. Different ISPs are likely to vary in their throughput speed performance as a result of a number of factors, such as the level of investment in their network capacity.

Definitions of Speed

15. It is useful to explain the different definitions of speed that are used in the Code, and in industry.
 - a. **headline** or advertised speed – This is the speed that ISPs use to describe the packages that they offer to consumers. They are often described as ‘up to’ speeds, but these are often only a guide as to the speed an ISP can provide and at what price;
 - b. **access** line speed – This refers to the maximum speed of the data connection between the broadband modem and the local exchange or cable head end. This constitutes the maximum speed a consumer will be able to experience on his/her individual line;
 - c. **actual throughput** (or **download**) speed – This is the actual speed that a consumer experiences at a particular time when they are connected to the internet. This figure is often dependent on factors such as the ISP’s network, its traffic shaping and management policy, the number of subscribers sharing the network and the number of people accessing a particular website at a particular time.
 - d. **average throughput** (or **download**) speed – This is an average of actual throughput speed for each different broadband product offered by an ISP.

Applicability of the Code

16. The Code applies to all fixed line access broadband ISPs who sign up to the Code (the “**signatories**”). A list of the signatories is kept on Ofcom’s website

⁵ See “History and development of the Code” further below.

⁶ See “Definitions of Speed” further below.

(www.ofcom.org.uk) and will be updated by Ofcom from time to time, as appropriate. The Code does not apply to dedicated business products intended primarily for use by business customers. However, all residential products (which are used, in some cases, by small businesses) will be covered by the Code.

17. Ofcom also notes that some of the principles of the Code are not relevant to all technologies used in supplying fixed line access broadband services. For example, on cable networks, the access line speed is expected to be consistent with the headline speed. Whilst some of the measures in the Code place additional emphasis on access line speeds, it is critical that ISPs explain to consumers that actual throughput speeds are likely to be lower than the headline speeds, regardless of the technology used. Similarly, other principles in the Code will apply to all ISP signatories, regardless of whether they use cable or DSL⁷ access line technology.

History and development of the Code

18. The Code was first introduced on 5 June 2008 and had to be implemented by the initial signatories by 5 December 2008. In late 2009 we undertook mystery shopping research (which was published in March 2010⁸) to ascertain whether and to what extent signatories were complying with the Code. The results suggested that although more information on broadband speeds was being provided by ISPs, insufficient information was often still provided to allow consumers to have clear expectations about the broadband service they sign up to. We noted in the market research report that we would seek to agree changes to the Code with ISPs to address the issues revealed by the research; for further information, please see the report⁹.
19. This revised Code (Version 2.0) is the result of agreement between Ofcom and the signatories following the evaluation of the mystery shopping research and further work on the calculation and presentation of access line speed estimates. The introductory sections to the Code¹⁰ have also been updated.
20. The operation and application of the Code will continue to be subject to review by Ofcom from time to time in consultation with the signatories and others, so that we can ensure it continues to serve the interests of citizens and consumers and so that any new developments within the market can be reflected in the Code if appropriate. Some of the provisions within the Code are designed to address the issue of consumers having expectations of their speed which are in excess of the speeds being delivered. This possible mismatch of expectations results, in part, from the way in which broadband is currently advertised. Some of the provisions in the Code may therefore be less relevant where an ISP uses indicators other than speed to explain broadband performance. Ofcom will therefore work with ISPs to consider whether and how the Code needs to be adapted so that consumers are still

⁷ DSL (or Digital Subscriber Line) means a family of technologies generically referred to as DSL, or xDSL, capable of transforming ordinary phone lines (also known as twisted copper pairs) into high speed digital lines.

⁸ See <http://stakeholders.ofcom.org.uk/telecoms/codes-of-practice/broadband-speeds-cop/voluntary-code/>.

⁹ Ibid.

¹⁰ The Spirit of the Code; Introduction; Definitions of Speed; Applicability of the Code; History and development of the Code.

given clear information on performance as the way in which broadband is promoted and sold changes.

The Principles of the Code

1st Principle: Training

21. ISPs must use their best endeavours to procure that all of their representatives (including all of their officers and employees and any agents or sub-contractors) (“Representatives”) involved in selling or promoting their broadband products and services or in the renewal or extension of agreements of existing customers are trained appropriately and that they have sufficient understanding of the products and services they are promoting and selling.
22. This commitment includes that ISPs are satisfied that any related training processes provide their Representatives with sufficient preparation to implement and apply the Principles of the Code.
23. This commitment also includes Representatives’ attention being fully drawn to the Code, including the philosophy and spirit of the Code as explained in the preamble.

2nd Principle: Information at point of sale

24. It is an essential cornerstone of the Code that consumers¹¹ can make informed choices about the type of service they are likely to receive upon entering into any contracts with the ISPs.
25. To achieve this Principle, ISPs must use their best endeavours to procure that all of their Representatives take the following steps contained in this Principle to ensure that accurate and meaningful information on broadband speeds is provided to consumers before they enter into any contract or, in the case of existing customers, where relevant, before their current contract is extended or renewed. ISPs and their Representatives must also ensure that consumers are made aware that there is additional information on the particular broadband service provided on the ISPs’ websites, including that referred to in the 5th Principle below.
26. For those ISPs using technologies such as DSL for which the access line speed can be lower than the headline speed, ISPs and their Representatives must:
 - a. Provide all consumers as early as practicable within the sales process, and in any event before consumers are asked for a Migration Access Code or personal financial details, with information on their estimated access line speed, regardless of whether this is conducted over the phone, in a retail shop or through the ISP’s website.
 - b. Provide a facility (line checker) on their website so that consumers can find out, in a clear and easily accessible manner, what their estimated access line speed is. ISPs must ensure that access line speed

¹¹ The expression “consumers” as used throughout the Code has the meaning given in section 405(5) of the Communications Act 2003.

information is given due prominence on the line checker speed results webpage (i.e. the page on which a consumer's access line speed estimate is generated following the input of a consumer's postcode and/or landline number). For example, ISPs should underline or embolden the estimated figure.

- c. Ensure that the access line speed information provided within the sales process is a range which is equivalent to the access line speeds achieved by the 20th to 80th percentiles of the ISP's similar customers (i.e. customers with similar line characteristics). The ISP should also explain to the consumer that the range of access line speeds provided is only an estimate and that if the consumer receives an access line speed which is significantly below this range then the customer should contact the ISP. If asked to explain further or asked to state the definition of "significantly below", the ISP should provide information on the access line speed achieved by the bottom 10th percentile (or above) of the ISP's similar customers ("the minimum guaranteed access line speed") and explain that if the customer's actual access line speed is below the minimum guaranteed access line speed, then it will follow the process set out in the 4th Principle. ISPs may supplement the range provided with an additional single-point estimate within the range which is no higher than the median access line speed achieved by the ISP's similar customers.

ISPs may adopt an alternative approach to calculating the range to that set out above if the ISP is able to demonstrate that this approach provides a more accurate estimate of customers' access line speeds. Any alternative approach used by the ISP must provide a narrower range than using the approach set out above, result in at least 60% of customers achieving an access line speed within the range provided and must be set such that, in cases where customers' actual access line speeds fall outside the range provided, fewer customers' actual access line speeds lie below the bottom of range provided than lie above the top of the range. In using an alternative approach, ISPs may supplement the range provided with an additional single-point estimate provided that this estimate is the arithmetic mean of the top and bottom of the range.

Regardless of which of the above two approaches is used to calculate the range, the ISP may, where the size of the calculated range is 2Mbit/s or less, provide the customer with a single-point estimate instead of the range provided that the customer is informed that the single point estimate is only likely to be accurate within +/-1Mbit/s .

- d. Ensure that consumers will only be able to complete an order online, over the phone or through a retail shop when they have been given the estimate of the range within which their access line speed is likely to fall. In the exceptional circumstance where the relevant line information is not available to ISPs, this condition will not apply for customers who expressly do not wish to have a speed estimate.
- e. Provide the customer with a durable record of the estimated access line speed range. If the ISP has such a facility available, the estimated access line speed range should be put into the 'My Account' details, and the customer should be advised that this has been done. If such a

facility is not available, ISPs should either send the customer the information in writing, by letter or email, or proactively encourage the customer to make a permanent record of the figures by printing off the relevant website page or making a note of it. ISPs may also provide the customer with a durable record of the minimum guaranteed access line speed either by putting it into the 'My Account' details, or by sending it to the customer in writing, by letter or email.

- f. ISPs must state with equal prominence to other written information provided that if the consumer receives an access line speed which is significantly below the estimated access line speed range then the customer will have the ability to leave their contract without penalty if the measures set out in the 4th principle are not able to resolve the problem.
27. For services such as cable broadband where the main cause of disparity between headline speed and actual throughput speed may be network capacity limitations, ISPs must provide all consumers as early as practicable within the sales process, and in any event before consumers are asked for personal financial details, with information that actual throughput speeds during peak hours may be lower than at other times of the day where this is material. Specifically, where peak time speeds are likely to be more than 10% below the headline speed of the service, the ISP must indicate the throughput speed that is likely to be achieved during peak times.
 28. Regardless of the technology used, ISPs and their Representatives must:
 - a. Explain to the consumer in a clear and meaningful way that the actual throughput speed that a consumer receives is likely to be lower than the headline speed and, for DSL services, the estimated access line speed range. ISPs must explain that the actual throughput speed experienced by a consumer will be influenced by a number of factors, including:
 - i. the nature of the customer's line;
 - ii. the ISP's network capacity;
 - iii. the number of subscribers sharing the network;
 - iv. the ISP's traffic shaping and management policy;
 - v. the number of subscribers online and accessing a particular website at any one time, by time of day, etc.

For customers signing up over the telephone, this information should be provided over the telephone by the ISPs and their Representatives, if it is not otherwise provided following completion of the sales process in written form such as in a confirmation email or letter. For customers signing up over the internet, it should be conveyed by at least the relevant website page.

- b. If available, ISPs and their Representatives should also provide information on the actual throughput speeds customers are likely to receive under normal circumstances in addition to access line speeds.

- c. Not abuse the trust of vulnerable consumers or consumers that otherwise appear uninformed about the ISP's services or products, e.g. those who are elderly or whose first language is not English.

3rd Principle: Accuracy of information on access line speed provided by ISPs

- 29. Another important principle of the Code is that the information initially provided by the ISPs to consumers at point of sale is as accurate as possible.
- 30. To achieve this Principle, ISPs must use their best endeavours to implement the following measures to ensure that information is kept up to date and as close to consumers' experiences as possible. This Principle will only apply for technologies such as DSL where the access line speed can be lower than the headline speed.
 - a. ISPs must take all reasonable steps to ensure, where applicable, that access line speed information provided at point of sale is as accurate as possible and is updated to reflect any changes to or new information on the line.
 - b. Ofcom recognises that some estimates of access line speed provided to consumers by ISPs are dependent on third party wholesale providers. Ofcom will work with ISPs and the relevant wholesale providers to ensure that appropriate steps can be taken to address the accuracy of information, and, in particular, to ensure ISPs are able to comply with this revised version of the Code within 12 months of signing up to it. Implementation dates from those ISPs that choose to use BT Wholesale for access line speed estimates will be dependent on BT Wholesale making the necessary changes to its systems. We expect that ISPs will, where possible, make the necessary changes to their own systems in parallel to minimise the delay in implementation.
 - c. In order that Ofcom can have confidence in the accuracy of information provided to consumers, ISPs will work with Ofcom to verify the overall quality of this information. Ofcom will continue to work with ISPs and wholesale providers to improve the accuracy of the methodologies used by ISPs to estimate the access line speeds given to customers.

4th Principle: Managing customers' speed related problems

- 31. ISPs must be prepared to manage customers' problems when they report that they are not receiving the speeds that they had expected to receive when they purchased the broadband service.
- 32. To achieve this Principle, ISP must ensure the following:
 - a. Those ISPs using technologies such as DSL for which the access line speed can be lower than the headline speed must:
 - i. Have a robust process in place for identifying whether the problem relates to a slower than expected access line speed;
 - ii. Log the problem as a technical fault if the actual access line speed is at or below the minimum guaranteed access line

speed, or if it is otherwise appropriate to do so. As soon as possible after the problem is logged as a technical fault, the ISP must tell the customer their minimum guaranteed access line speed and explain that if the technical fault cannot be fixed then the customer will have the opportunity to leave their contract immediately and without any penalty provided this is within a three month period of the start of their contract (or longer if the ISP so chooses). The ISP must then take steps to ensure the fault is corrected;

- iii. If it appears from the diagnostics that the problem is likely to have resulted from factors within the customer's control, e.g. internal wiring, the ISP should advise the customer of that fact and provide assistance to alleviate the problem as soon as possible;
- iv. If, after following the procedures i and ii above, the customer has implemented the measures advised by the ISP but continues to receive an access line speed at or below the minimum guaranteed access line speed then the ISP must offer the customer the opportunity to leave their contract immediately, and without penalty. Customers will only have the option to leave their contract without penalty within a three month period of the start of their contract.

b. Regardless of the technology used, ISPs must:

- i. Have a robust process for identifying whether the cause of the speed related problem is within the ISP's control and, where it is not, to explain clearly to the customer the possible causes of the lower speeds and how such problems could be addressed.
 - ii. Where the cause of the problem is within the ISP's control, to monitor the problem through to resolution or until reasonable remedial actions are exhausted or the customer is satisfied with the outcome.
- c. Ensure that these processes are clearly highlighted on a prominent position on the ISP's website or in the introduction/starter pack that typically accompanies a customer's provision of service.

5th Principle: Presentation of broadband information on the website

- 33. The purpose of this Principle is to supplement and, where appropriate, extend the 2nd Principle of the Code.
- 34. ISPs should explain, in a prominent place on their websites, how customers can check the access line speed and actual throughput speed they are receiving in practice.
- 35. ISPs should also provide information on their websites which clearly explains to customers what steps they can take to ensure that they receive the highest possible access line speeds and actual throughput speeds.

36. ISPs must also set out clearly, and in a prominent place on their websites (e.g. within “Help” or “FAQs” sections), information relating to their respective policies on fair usage; traffic management and traffic shaping to cover, at a minimum, the matters set out below.

Fair usage policies and usage limits

37. ISPs should publish, in a clear and easily accessible form, any criteria they use for determining breaches of its fair usage policy (e.g. total usage, specific percentage of users, etc). ISPs whose fair usage policy is breached when a specific usage limit is reached should set out that limit. ISPs with a fair usage policy should set out in their policy an indication of the approximate level of usage which is likely to trigger a breach of the policy, e.g. the average level of usage in the past six months that has triggered a breach of the fair usage policy.
38. ISPs should publish, in clear and easily accessible form, the actions they intend to take should a user exceed a usage limit or breach a fair usage policy (e.g. the size of any extra charges or nature of any speed restrictions, etc).
39. Where it is reasonably possible to do so, ISPs should provide a means by which users can measure their total usage over the relevant billing period or indicate to customers how they can do so.
40. ISPs in possession of a user’s email address should provide users with email notification when users exceed a usage limit or breach a fair usage policy which informs users about the precise consequences of doing so, e.g. additional costs, information on speed restrictions imposed, etc.
41. ISPs should also consider providing advance notification to subscribers approaching a usage limit.

Traffic management and traffic shaping

42. Where ISPs apply traffic management and shaping policies, they should publish on their website, in a clear and easily accessible form, information on the restrictions applied. This should include the types of applications, services and protocols that are affected and specific information on peak traffic periods.

6th Principle: Timescales

43. The introduction of Version 2.0 of the Code (including the measures covered by above-mentioned Principles of the Code) recognises the need to take swift action to ensure that consumers can begin to benefit from it as quickly as possible.
44. In recognition of the fact that some of the changes involved in this revised version of the Code (such as those set out in the 2nd and 4th principles above) involve significant costs and effort, some provisions of the Code may be implemented over a longer timescale than others. ISPs must therefore implement the Code in full within 12 months of signing up to it, and must implement each provision in the Code as soon as it is reasonably practical to do so. In order that consumers are aware which ISPs are complying with the

Code and when, Ofcom will publish on its website the current list of signatories, the date each of them became a signatory to this version of the Code and the date each of them have confirmed they have implemented all of the provisions in the Code

45. ISPs who are signatories to Version 1.0¹² of the Code must comply with all of its provisions until they confirm have implemented all of the provisions in Version 2.0 of the Code.

7th Principle: Monitoring of compliance with the Code

46. The preamble to the Code explains that the ISPs' fullest co-operation with Ofcom forms part of the spirit of the Code. This commitment includes the ISPs providing Ofcom with appropriate information, in writing or otherwise, as to their compliance with the Code on Ofcom's request, and by no later than the reasonable deadlines for responses as set by Ofcom from time to time. ISPs must confirm to Ofcom when they have implemented all of the provisions in the Code in full.
47. Ofcom intends to monitor compliance with the Code through a number of methods including, but not limited to, carrying out regular mystery shopping exercises by Ofcom itself or its agents. Ofcom may itself or through its agents also undertake audits, for example, using ISPs' actual sales calls to assess whether ISPs are giving consumers the information required by the Code. The results of any research or audits undertaken to monitor compliance will, where appropriate, be published on a provider-specific basis.

8th Principle: Consumers' awareness of ISPs' adoption of the Code

48. ISPs must make reference to the Code within the sales process and provide a full copy of the Code through an easily accessible link on their respective website.

¹² <http://stakeholders.ofcom.org.uk/telecoms/codes-of-practice/broadband-speeds-cop/voluntary-codes-of-practice/>