

**VOLUNTARY CODE OF PRACTICE:
BROADBAND SPEEDS**

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The Spirit of the Code of Practice

1. Ofcom's principal duty under the Communications Act 2003 is, in carrying out its statutory 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.
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;
 - 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 Code of Practice (the "Code") are:
 - a. Ofcom will operate with a bias against intervention, but with a willingness to intervene firmly, promptly and effectively where required;
 - b. Ofcom will strive to ensure its interventions will be evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome;
 - c. Ofcom will always seek the least intrusive regulatory mechanisms to achieve its policy objectives.
4. In light of the above, Ofcom believes that it is appropriate to introduce the Code 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 to help them make more informed choices of service products offered in the broadband market. This is because broadband speeds are a particularly complex area for consumers taking into consideration, for example, different technologies and access routes used by businesses providing customers with connection to the internet (i.e. internet service providers or "ISPs").

¹ <http://www.ofcom.org.uk/about/sdrp/>

5. The Code is, however, part of a wider piece of work which Ofcom is currently undertaking in this area. For that reason, Ofcom has included certain requirements in the Code concerning systems developments, process changes and further research. In the meantime, Ofcom considers it appropriate to publish the Code due to the consumer benefit the Code is expected to deliver in relation to broadband speeds alone.
6. In addition, Ofcom will continue to monitor people's experiences with matters covered by the Code and we may intervene with formal regulation at any stage if this self-regulatory form does not appear, in Ofcom's opinion, to satisfactorily resolve these issues or Ofcom otherwise becomes of the view that there is need to so intervene more promptly or effectively.
7. The spirit of this Code, the voluntary will and commitment by the ISPs to making this self-regulation work, not just to the letter, is an essential element to its success.
8. Therefore, in honouring not only the letter but the full spirit of this Code, words, terms or provisions should not be so narrowly interpreted so as to compromise the ISPs' commitments. Specifically, ISPs should use common sense in abiding by and interpreting this 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 this Code and are also making every reasonable effort to comply. Their fullest co-operation with Ofcom also forms part of the spirit of this Code in action.
9. Specifically, Ofcom has sought to capture the ISPs' commitments under eight principles within the Code. Those commitments are not seeking to duplicate requirements under legislation or regulatory requirements imposed by Ofcom; they are also without prejudice to compliance with such requirements.

Introduction

10. Currently, 57% of UK households have a broadband connection². The trend is expected to continue upwards with broadband serving a growing range of informational, practical and communication needs. The take up of services is encouraging and Ofcom is keen to make sure this trend continues.
11. As consumer demand for bandwidth-hungry applications increases, there has been a noticeable trend for some ISPs to advertise their products based on faster and faster headline speeds. However, the evidence reviewed to date by Ofcom suggests that these speeds are rarely achievable by the consumers that buy them. This is caused by 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.
12. This disparity between actual and headline speeds advertised has led to some consumers feeling confused. With consumers' dependence on higher broadband speeds likely to rise, it becomes increasingly important to remedy this mismatch in their expectations.

² The Nations & Regions Communications Market 2008, Ofcom, May 2008

13. 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 after they have had the opportunity to use the service. Ofcom has therefore introduced the Code to encourage ISPs to provide consumers with more information on the speeds they can expect to obtain from their broadband service. In particular, the Code encourages the ISPs to provide consumers with information on their access line speed³ and to help ensure that consumers choose the package that is the most appropriate for each of them in light of their individual circumstances and needs. Ofcom is also working hard to find a means by which this information can be supplemented by additional information, including on the average throughput speeds obtained through different ISPs, since these speeds are likely to vary for a number of reasons. If appropriate, the Code will be revised as a result of such further work.
14. Ofcom will encourage ISPs who have not yet signed the Code to do so or to adopt the same or similar measures, and we will work with all ISPs to increase the overall standard of information offered to consumers so that they can make informed choices in the broadband market.

Definitions of Speed

15. It is useful to distinguish between different definitions of speed that are used in the Code.
 - 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.
 - c) **actual** throughput 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 at the same time and the number of people accessing a particular website.
 - d) **average** throughput speed – This is an average of actual throughput speed for each different broadband product offered by an ISP.

Applicability of this 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 (www.ofcom.org.uk) and will be updated by Ofcom from time to time. 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 under the scope of the Code.
17. Whilst the current code is focused on fixed line broadband access, consumers of mobile broadband may equally benefit from similar measures

³ Access line speed refers to the maximum speed of the data connection between the broadband modem and the local exchange or cable headend.

since they too may not, in practice, be able to achieve headline or advertised speeds. Ofcom will be urgently seeking to engage with the mobile operators to consider whether to include mobile broadband in the code or alternatively to develop a separate code, or if other measures are needed.

18. 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 or advertised speed. Whilst some of these measures place additional emphasis on access line speeds, it is critical that all ISPs explain to consumers⁴ that actual throughput speeds are likely to be lower than the headline or advertised speeds, regardless of the technology used. Other principles in the Code will apply to all ISPs, regardless of whether they use cable or DSL⁵ access line technology.
19. Information on access line speeds will benefit consumers because it will give them a better idea about the maximum speed possible on their specific line, since access line speeds depend closely on the particular technical characteristics of the line. In addition to having information on access line speeds, consumers would also benefit from having information about the average throughput speeds which each ISP achieves in practice. Throughput speeds are an important metric for consumers since this is the download speed which they actually obtain in practice whilst using the internet.
20. 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. By having more information on ISPs' respective performance, consumers would be able to make a more informed choice between ISPs and would also have a much clearer idea about what speed they should expect in practice.
21. Ofcom's aim is to develop a methodology and process which is sufficiently robust to accurately assess ISPs' average throughput speed performance. To this end, Ofcom is undertaking a research programme to look at this issue in more detail and to assess the role that each of actual and average throughput speed measurements can play. Ofcom will consider revisions to the Code in the light of this research.

Development of this Code

22. The Code will 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 consumer market place can be reflected within the Code if this is considered appropriate.

⁴ The expression "consumers" as used throughout the Code has the meaning given in section 405(5) of the Communications Act 2003.

⁵ 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.

1st Principle: Training

23. The 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) involved in selling or promoting their broadband services are trained appropriately and that they have sufficient understanding of the products and services they are promoting and selling.
24. The ISPs' commitment in **paragraph 23** above includes that they are satisfied that any related training process provides their representatives with sufficient preparation to implement the principles outlined below.
25. The ISPs' commitment in **paragraph 23** above also includes their representatives' attention being fully drawn to this Code, including the philosophy and spirit of the Code as explained in the Preamble.

2nd Principle: Information at point of sale

26. It is an essential cornerstone of the Code that consumers can make informed decisions and choices about the type of service they are likely to receive upon and after entering into any service contracts with the ISPs.
27. To achieve this Principle in action, the 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) take the following steps to ensure that accurate and meaningful information on broadband speeds is provided to all consumers before they enter into any agreement. Representatives should also ensure that consumers are aware that there is additional broadband information provided on their websites, including that referred to in the 5th Principle below.

For those ISPs using technologies such as DSL for which the access line speed can be lower than the headline speed:

- a. Provide all consumers within the sales process, 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 on their website so that consumers can find out, in a clear and easily accessible manner, what their estimated access line speed is. ISPs should ensure that access line speed information is given due prominence on the line checker speed results webpage (this is 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 single number rounded to the nearest Mbps (or $\frac{1}{2}$ Mbps for speed estimates below 4 Mbps). The ISP should avoid providing the customer with a range such as eg 0 to 8 Mbps. The ISP should highlight that this line speed is only an estimate and explain which factors will influence actual line speed post-activation of the service, and if a customer subsequently gets an access line speed

which is below the initial estimate, this will not necessarily mean that there is a fault on the line.

- d. Ensure that consumers will only be able to complete an order online, over the phone or through a retail shop when it has been made clear to them what their estimated maximum access line speed is. In the exceptional circumstance of the line checker not being available, 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 given at point of sale. This could be achieved in several ways:
 - i. Through a letter or email to the customer;
 - ii. By putting the initial estimate number into the 'My Account' details accessible by the consumer through the portal and advising the customer that they can get the data through this mechanism; or
 - iii. Proactively encouraging the customer to make a permanent record of the estimate by printing off the relevant page on the screen or making of a note of it.

All ISPs should:

- f. 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 estimated access line speed and headline speed. ISPs should explain that the actual throughput speed experienced by a consumer will be influenced by a number of factors including the ISP's network capacity, the ISP's traffic shaping and management policy, the number of subscribers online at any one time, by time of day etc. ISPs should also indicate to consumers the times of day when the network is likely to be most congested.
- g. When there is suitably robust and meaningful information available from Ofcom's research programme, ISPs will also be expected to provide information on throughput speeds in addition to access speeds wherever they are set out in the Code.
- h. Not abuse the trust of vulnerable consumers or consumers that otherwise appear uninformed about their 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

- 28. Another important principle of the Code is that the information initially provided by the ISPs to consumers remains as accurate as possible.
- 29. To achieve this Principle in action, the 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. The ISPs should take all reasonable steps to ensure, where applicable, that line checker (access line speed) information provided at point of sale remains as accurate as possible and 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. In the event that issues are raised about information from third parties that are used by ISPs to estimate speed, Ofcom will work with ISPs and the relevant wholesale providers to ensure that appropriate steps can be taken to address the accuracy of information.
- 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 invite all ISPs to help develop a suitable methodology that can usefully assess the extent to which estimates given to consumers match the actual access line speed achieved.

4th Principle: Managing consumers' speed-related problems

30. ISPs should 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.
31. To achieve this Principle in action, the ISPs 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 should:
 - i. Have a robust process for identifying whether the problem relates to a slower than expected access line speed;
 - ii. Log the problem as a technical fault if diagnostics indicate that this is appropriate;
 - 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 how such problems could be eased;
 - iv. If, after following the procedures i, ii and iii above, the customer continues to receive an access line speed significantly lower than the estimate provided at point of sale the ISPs should offer the customer with an alternative broadband package. This measure only applies where the ISPs offer their subscribers a lower speed package than that originally signed up to. Consumers should not incur any change of package penalty in order to migrate onto a different broadband package under these circumstances other than

those charges that would have applied had they signed up to that lower package in the first instance.

- b. All ISPs should:
 - i. Have a robust process for identifying whether the cause of the speed related problem is within the ISPs 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 eased e.g. problems with in home wireless set up.
 - ii. Where the cause of the problem is within the ISPs 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 consumer's provision of service.

5th Principle: Presentation of broadband information on the website

- 32. The purpose of this Principle is to supplement and, where appropriate, extend the 2nd Principle of the Code.
- 33. ISPs must use their best endeavours to 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

- 34. The 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).
- 35. The 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).
- 36. Where it is reasonably possible to do so, ISPs should provide a means by which users can measure their usage over the relevant billing period.
- 37. 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.
- 38. The ISPs should also consider providing advance notification to subscribers approaching a usage limit.

Traffic management and traffic shaping

39. 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

40. The introduction of the Code (including the measures covered by above-mentioned Principles of the Code) recognises the need to take swift measures to ensure that consumers can begin to benefit from it as quickly as possible.
 - a. To achieve this Principle in action, the signatories must use their best endeavours to implement the measures within 6 months of signing up to the Code.

7th Principle: Monitoring of compliance with this Code

41. The Preamble to the Code explains that the ISPs' fullest co-operation with Ofcom also forms part of the spirit of the Code in action. This commitment includes the ISPs providing Ofcom with appropriate written information as to their compliance with this Code on Ofcom's request and by no later than the reasonable deadlines for responses as set by Ofcom from time to time.
42. Ofcom also 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.

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

43. The 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.