

Openreach's response to Ofcom's consultation

"Broadband Speeds Codes of Practice: Proposals to revise the Residential and Business Voluntary Codes of Practice on Broadband Speeds"

NON-CONFIDENTIAL VERSION

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Foreword

On 6 October 2017, Ofcom published its consultation on Broadband Speeds Codes of Practice: Proposals to revise the Residential and Business Voluntary Codes of Practice on Broadband Speeds”.

This response is provided by Openreach, a functionally separate line of business within British Telecommunications plc (“BT”),¹ in response to proposals related to Openreach’s business.

Any comments on this response should be sent to Mark Shurmer, Managing Director Regulatory Affairs, Openreach, at mark.2.shurmer@openreach.co.uk.

¹ As part of BT’s implementation of its formal notification dated 10 March 2017 under section 89C of the Communications Act 2003 (“the Act”), the Openreach business will be operated by Openreach Limited, which was incorporated as a separate legal entity on 24 March 2017, following the fulfilment of certain conditions set out in the notification.

1 Executive Summary

1. We fully support Ofcom's view that broadband is an essential service for people and businesses and that customers therefore need realistic information about the broadband speeds they can expect. We also agree with Ofcom that the voluntary Codes of Practice are a pragmatic and proportionate way to achieve its customer protection objectives.
2. Ofcom's consultation focuses on the broadband speeds codes of practice for residential and business customers. These codes primarily address the information retail customers should receive at point of sale, the information to be set out in their customer contracts, and customers' rights to exit their retail contracts under specific circumstances. As these elements directly impact end-customer facing communications providers (CPs), they will be the key respondents to the consultation, and not wholesale providers such as Openreach.
3. However, we have worked with Ofcom and our CP customers in the lead up to this consultation to provide relevant information on the characteristics of our products and information systems. Given the focus of the consultation we do not have extensive comments to make and we do not comment on items which are the domain of downstream CPs; but we do have some selected comments to make on elements of the proposals which are more directly relevant to us.
4. We consult regularly with our stakeholders in relation to Openreach product and systems developments and in particular we will continue to work with our CP customers through our regular industry forum, the Copper and Fibre Product Commercial Group (CFPCG), to support their requirements and the Codes of Practice as they develop.
5. Openreach would be pleased to meet Ofcom to discuss any of these points in more detail following the submission of this response. It is important to us and also our customers that a workable and pragmatic framework is developed and agreed between the parties which can support clear guidance for CPs and proportionate levels of protection for end-customers.
6. Our responses to Ofcom's questions are provided in Section 2 below.

2 Responses to questions in Ofcom's consultation document: *"Broadband Speeds Codes of Practice: Proposals to revise the Residential and Business Voluntary Codes of Practice on Broadband Speeds"*

Question 4.5: Do you have any comments on the proposed changes to the codes, as outlined in this consultation document (including Annex 1)? Please provide reasons for your response. In particular:

- a) Do you agree that the codes should require the provision of speed estimates that reflect peak-time network congestion?

Openreach response

7. We view this as primarily an issue for networks downstream of Openreach and for cable networks. However we do agree that it is reasonable, where viable, to adjust speed estimates to take account of peak-time network congestion. This is particularly important where different network architectures and technologies (including those owned and operated by Openreach's customers as well as cable operators) perform differently in peak periods (although we note speeds in peak periods are also impacted by various other factors).
8. Such adjustments will help to level the playing field when it comes to technology comparisons. Indeed, we note that cable operators have not previously been subject to the Code and, as Ofcom recognises at paragraph 2.8, "[t]he variation in speeds at busy times is more notable for cable than other technologies". To date such performance characteristics have not been taken account of in the code.
9. Additionally, we do have some brief points to make with regard to Ofcom's '*High Level Testing Principles*' proposed in Annex 5 of the consultation.
- Openreach is concerned that the proposed 10 second duration of speed tests is excessively long and will unnecessarily load Openreach's and our CPs networks during periods of peak demand.
 - Our experience based on network traffic simulations we carry out suggests a shorter duration test, for example approximately 3 seconds (after Transmission Control Protocol (TCP) slow-start phase) may be adequate to give sufficient time to avoid the overhead of the start-up period and provide a representative result.
 - We consider that this is a more realistic aspiration particularly where very high speed products are present and hence testing for long bursts at the full-line rate could represent a significant share of the backhaul capacity, thereby potentially inconveniencing other users during the period of the test.
 - We would urge Ofcom to consider in more detail this aspect of the proposal. We would also be pleased to discuss our views with Ofcom in more detail if required. As it will be our CP customers that will conduct such tests, we would value industry opinions on how to balance accuracy and overall data burden on our networks. If Ofcom were able to share further background or technical detail with us and industry on why they have proposed the durations that would also be useful.

- b) Do you agree that the minimum guaranteed speed should always be given to customers at point of sale?

Openreach response

10. This focus of this question is related to the information provided to the retail customer at point of sale, and hence is not directly relevant to wholesale services provided by Openreach.
11. However we note for the avoidance of doubt that as a result of the way Ofcom proposes the minimum guaranteed speed will be calculated (namely the speed achieved by the bottom 10th percentile of the ISP's similar customers), there will be fully functional copper lines which perform below the minimum guaranteed speed estimates given to customers at point of sale. Provided a line is not faulty - in which case Openreach would repair it in accordance with its contractual and regulatory obligations - the line may be achieving the highest speed it is capable of but nonetheless will continue to function below the minimum guaranteed speed. Quite simply, some lines are statistically in the lower part of the speed distribution for the group of similar lines.
12. It would be helpful for Ofcom to clarify that the minimum guaranteed speed is not actually a minimum guaranteed line speed *per se* but rather a threshold speed that is used to determine whether a customer has the right to exit their contract.

c) Do you agree that, where a customer's speed falls below the minimum guaranteed level, there should be a limit on the length of time providers have to fix the problem before offering the right to exit? Do you agree that the limit should be 30 calendar days?

Openreach response

13. This focus of this question relates to the retail contract and hence is not directly relevant to wholesale services provided by Openreach.
14. We note that Openreach is already regulated by Ofcom in terms of its quality of service. Existing regulation was imposed via the Fixed Access Market Review 2014, and Ofcom are currently consulting on new service standards via the ongoing Wholesale Local Access Market Review² which is due to come into force in April 2018. Our non-confidential response on the proposed service standards can be found at:
https://www.ofcom.org.uk/data/assets/pdf_file/0013/105115/Openreach.pdf.
15. Openreach is therefore, and Ofcom proposes that Openreach will continue to be, subject to stringent minimum service levels which are well within Ofcom's proposed 30 calendar day limit for ISPs to fix a problem before offering the right to exit. Openreach will continue do everything it can to comply with Ofcom's minimum service levels regardless of Ofcom's conclusions on this particular point related to the Code of Practice.

d) Do you agree that the right to exit should also apply to a landline service sold over the same line, and to pay-TV services purchased at the same time, as the broadband service?

Openreach response

16. This question relates specifically to the contract between the retail provider and its customer. Openreach has no further comments on this point other than those already made in response to question c) above.

² <https://www.ofcom.org.uk/consultations-and-statements/category-1/quality-of-service>

e) Do you agree that the codes should be capable of being applied in full to all standard fixed broadband technologies, including cable and FTTP?

Openreach response

17. We agree that this is a reasonable extension of the code and will help level the playing field with regard to the regulation of these different technologies. As noted in response to part (a) above we agree that it is reasonable to adjust speed estimates to take account of peak-time network congestion and that this is particularly important to put different network architectures and technologies on an even footing in terms of speed predictions.
18. As Ofcom recognise broadband technologies do have different characteristics and it is therefore appropriate that certain parameters in the codes (or their interpretation) may need to change depending on technology. In particular Openreach is currently rolling out a new ultra-fast broadband technology called G.fast. This works in a significantly different way to the existing xDSL technologies used in the Openreach network to provide superfast services, and the most appropriate and informative way of sharing predicted line speeds will need to be considered. For example:
- G.fast has Seamless Rate Adaptation (SRA) built-in to its operation. With SRA the line rate automatically varies to manage stability of the line. Speeds may change dynamically and automatically during the day and therefore there is no simple rule for identifying specific percentile values (such as the 10th for the minimum guaranteed speed). Agreement would need to be reached between Ofcom, CPs and Openreach as to the best methodology to adopt.
 - Further given the extremely high performance capability of the technology it may be the case that the bottom 10th percentile values in some circumstances could be very high e.g. greater than 250Mbps. It would seem reasonable in these circumstances to question whether offering a right to exit a retail contract on such very high performing lines is the right course of action.
 - G.fast may need a longer stabilisation period than standard VDSL when the service is first installed. This could be approximately 6 days in some cases. End-customers may need further guidance in this stabilisation period so that fault reports or complaints are not raised when the technology is actually optimising the performance of their line, rather than being related to a fault condition.
 - G.fast based products are still in the very early stages of deployment and similarly to VDSL when it was first rolled out we are likely to have a limited statistical history of actual G.fast speed data for some time. Therefore speed ranges and predictions will be based on simulations of line performance and not statistical measures derived from real data.
19. It would be useful to discuss these points further with Ofcom in due course, but in the meantime we would request that Ofcom acknowledge that some degree of flexibility in the application of the code may be required to enable further operational experience and demand for new technologies (such as G.fast) to be gained and appropriately incorporated into the code.
20. Finally we note a couple of points where we are unclear on Ofcom's intention in the consultation:
- In paragraph 2.21 of the consultation, Ofcom states that the current Residential Code sets out that the speed estimate should be provided in the form of a range equivalent to the access line speeds achieved by the 20th to 80th percentiles of the "ISP's customers" who have similar lines. We note that this is repeated in paragraph 2.11 of Ofcom's proposed new Residential Code.
 - We note for the avoidance of doubt that Openreach does not currently provide ranges which are ISP/CP specific, but supplies ranges that apply to any CP using an Openreach line. Such ranges are derived from the processing of UK wide data based on Openreach's assessment of "similar lines". The range is then provided in relation to a specific request relating to an individual line. We note that by way of comparison, in Figure 2 of the consultation, Ofcom

refers to the ranges supplied by the 'infrastructure provider' which is actually in line with how our estimation process operates.

- In paragraph 2.32 of the consultation, Ofcom states that the current Business Code sets out a requirement to provide an access line upload speed estimate at point of sale, and that this must be 'within the same range' as the access line download speed estimate range, if available, or a single point estimate if the range is less than 2Mbit/s.
 - We note that this phrasing does not appear to be repeated in Ofcom's proposed new Business Code. We understand from the text in paragraph 2.16 of the new draft Business Code that the intention is that upload speeds "*should be provided in the form of a range*". It would be helpful if Ofcom could clarify that the intention is that the estimate should be made using the same 'statistical percentile range' rather than the same 'absolute speed range' which might be inferred from the text in paragraph 2.32.

f) How long do you consider that signatories should be given to implement the proposed changes following publication of the final version of the codes?

Openreach response

21. In the first instance we would view this as primarily an issue which downstream CPs are best positioned to comment on given the impact and focus of Ofcom's proposals.
22. It is difficult for Openreach to comment definitively on this point until we see the final outcome of the consultation and we would also need time to work through, prioritise and align any potential systems or process changes with our CP customers and their development plans.
23. However we do note that should any significant systems changes or networks changes be required within Openreach then it would not be unreasonable to expect a period of 12-18 months, depending on complexity and cost, to address all elements of the development cycle from business case through to final release date.