



SKY'S RESPONSE TO OFCOM'S CONSULTATION ON REVISED BROADBAND SPEED CODES OF PRACTICE

EXECUTIVE SUMMARY

1. Providing customers with clear and informative information on their expected broadband speed helps ISPs provide a positive service experience. Sky has been a signatory to the Broadband Speed Voluntary Code of Practice (VCOP) since its inception and consistently performs best in Ofcom's customer complaints figures.
2. Sky has been closely engaged in Ofcom's recent Industry discussions in developing this latest proposal and, therefore, only limited comments on the latest proposal are necessary.
3. Overall we support the proposal from Ofcom and would highlight the following:
 - We agree that the obligation to provide speed estimates reflecting the likely broadband experience at 'peak time' is more relevant to customers than a "sync speed" based estimate.
 - We support Ofcom's proposal to apply all elements of the Business and Residential Voluntary Codes [the Codes] to all broadband network technologies (including FTTP and Cable).
 - It is a positive step for consumers to now have an expectation around the timescale for resolution of slow speed issues.
 - Ofcom's proposal generally strikes the right balance between providing customers with comprehensive speed data while avoiding "information overload". For example, we support Ofcom's proposal that ISP's need only provide an upload speed estimate if prompted by the customer as this information is only of interest to a subset of customers and should not have to be provided in all occasions.
4. There are, however, some changes which we believe Ofcom needs to make to the proposed text to minimise unintended customer harm and to reduce unnecessary burdens on providers. In particular:
 - The Residential Code currently acknowledges that in exceptional cases a speed estimate may be unavailable for technical reasons in which case ISPs may place an order if the customer agrees to proceed without a speed estimate. The proposed Residential Code removes this possibility. This may result in the perverse outcome that some customers are unable to place an order with any provider if a speed estimate is unavailable at their address.
 - It should not be a requirement for ISPs to give a speed estimate before taking financial details from the customer if the ISP already has those financial details and would not otherwise have needed to ask for them.
 - Reporting requirements should be limited to cases where the customer was offered a Right to Exit under the Codes rather than all "slow speed issues".

- ISPs should be able to charge customers for engineer visits where the fault is caused by the customer's domestic set up or the customer is not present and the engineer is unable to gain access.
 - ISPs providing services to businesses should be able to select different peak times if more appropriate – for example, if providing broadband to serviced apartments an evening peak time may be more appropriate.
 - Ofcom should ensure that cable operators implement a testing approach which is comparable to that required of DSL providers within a reasonable time.
5. A reasonable implementation period is needed for ISPs to deliver the required changes. As mentioned by ISPs in Ofcom's workshops, the developments required are material and the compliance deadline must reflect this. We require a period of 15 months based on the current proposals and assuming Openreach undertakes ISPs' requested developments within a reasonable time.

DOCUMENT STRUCTURE

6. The remainder of this document is structured as follows:

Section 1 – General feedback on VCOP

Section 2 – Suggested amendments to the Residential and Business Codes

Annex 1 – Responses to Ofcom's specific consultation questions

SECTION 1: GENERAL FEEDBACK ON THE RESIDENTIAL AND BUSINESS CODES

- 1.1 This section contains Sky's general feedback on a number of points raised in Ofcom's consultation.

The use of "live sync speed" when providing speed estimates

- 1.2 Ofcom's position is that ISPs should use a customer's current / live sync speed as the basis of a speed estimate (where available and relevant).
- 1.3 Sky understands that Openreach plans to make "live sync speed" data visible within their Availability Checker response from July 2018. It is not clear exactly what data Openreach will make available and how frequently it will be available (e.g. what proportion of line checks will return the data).
- 1.4 Notwithstanding the fact that "live sync speed" is not currently available, Ofcom needs to consider the method by which a speed estimate should be derived from it. The specific data points to be provided to customers and how they are calculated should be discussed with ISPs, the OTA and Openreach. However, Sky's initial view on this are:
- (a) A range based (normally available) speed estimate should continue to be provided at PoS - this provides consistency within the sales process.
 - (b) It isn't necessary to tell a customer that an estimate is based on their line's current speed (as opposed to being based on the speed of "similar lines") as this level of detail is not relevant to the customer's purchasing decision.
 - (c) The methodology for calculating the minimum guaranteed speed could be linked to either the lower value in the normally available range or a percentage of the "live sync speed" returned by Openreach.
- 1.5 Sky agrees that having access to this data and using it as the basis for the speed estimate should produce better outcomes for customers. The key benefit being that it should prevent customers from being provided with a speed estimate that cannot be supported on their line (i.e. they should never be below the speed range provided by the ISP).

Implementation – timescale and deployment approach

- 1.6 All ISPs must undertake significant developments in order to comply with the obligations in the revised Codes. The required changes impact a large number of different functions such as:
- (a) Development of router software (to undertake the testing of customer services). Updates are needed to a number of different versions of the Sky router.
 - (b) Updating of Sky's "availability checker" interface with Openreach – including establishment of "minimum upload" and "live sync" speed values.
 - (c) Enhancement of Retail / Online sales platforms in order to display the additional speed information to customers at point of sale.
 - (d) Changes to customer communications to provide the additional speed data and more detailed information on the Right to Exit.
 - (e) Comprehensive testing program to ensure that the revised data is being presented correctly and that Sky can provide the reporting information required by Ofcom.

- (f) Training of sales / support agents to ensure that they are educated on the new Code's requirements and discharge them effectively.
- 1.7 Regular speed testing of services is not currently undertaken by Sky. The establishment of this functionality is likely to be one of the more significant tasks required for compliance. The Codes require the ISP to collect and process 3 months' worth of testing data before providing the updated speed estimates, which means that we need to add 3 months to any development and testing time required.
- 1.8 Sky is currently establishing a project team to consider the required changes and provide a view of associated development timescales. However, based on the above, we expect an implementation timescale of at least 15 months.
- 1.9 In terms of the deployment approach across Industry, we would expect Ofcom to set a deadline for compliance with each ISP making the relevant changes before this point. We do not see the need to attempt to achieve a co-ordinated deployment by ISPs (e.g. all ISPs making changes over the same weekend).

Testing and identification of network contention

- 1.10 The revised Codes adopt a more "technology neutral" approach by obliging all ISPs to provide speed estimates at the point of sale. Sky considers this to be a positive enhancement to the current Codes.
- 1.11 We note that Ofcom has moved from its position of requiring cable providers to undertake testing at each CMTS (and, instead, supports a "national testing" approach). We understand this shift is based on a commitment from Virgin Media to invest in additional network capacity. We ask Ofcom to ensure that such commitments are honoured within a reasonable timescale and that the testing approach adopted by cable providers is comparable with that required of DSL services.

Identification of slow-speed faults and charging for Engineer visits

- 1.12 Ofcom is right to seek to ensure that ISPs treat "slow speed" issues promptly. Sky supports Ofcom's proposal for the Right to Exit to be offered no later than 30 days after the initial receipt by the ISP of the fault report from the customer.
- 1.13 However, it is not always clear when receiving a fault report whether the customer actually has a slow speed fault (and, if so, the cause of it). The definitive assessment is done by an engineer (either Openreach or Sky) visiting the premises to test the service and check the customer's internal "set-up".
- 1.14 Ofcom is concerned customers could be dissuaded from raising "slow speed" issues if ISPs levy a charge in instances where their engineer does not identify a "slow speed" fault. However, the cost of deploying engineers are significant overheads to ISPs and it is inappropriate for ISPs to be obliged to bear these charges if the fault is due to the customer (e.g. customer not being present to allow access, a slow broadband speed is caused by set-up issues within the customer's control and reasonable understanding). Ofcom's Codes should allow ISPs to recover reasonable costs in instances where a slow broadband speed was not caused by factors within the ISP's control.

Reporting required by Ofcom

- 1.15 In order to ascertain the effectiveness of the revised Codes, Ofcom asks signatories to undertake the collection of data and regular reporting to Ofcom on a number of metrics. Sky

accepts that providing data to Ofcom on the number of times the Right to Exit is offered / taken up by customers is appropriate.

1.16 However, Ofcom is asking for regular reporting for all “slow speed faults” raised by customers (i.e. including those that are subsequently not confirmed as “slow speed issues” or are resolved by the ISP / customer). This reporting obligation is wider than needed to give Ofcom visibility of compliance with the revised Codes. It is not clear to us how the total number of slow-speed issues reported by customers can be directly linked to an ISPs compliance with the revised Codes and the requirement to capture and provide more information will increase the costs and complexity to ISPs. Sky requests that Ofcom change the reporting obligations within Annex 3 to require ISPs to only report on:

- (a) The number of times a Right to Exit was offered to a customer (within the reporting period);
- (b) The number of times the Right to Exit was offered outside the 30 day period (within the reporting period);
- (c) The number of times a customer opted to take up the Right to Exit (within the reporting period);
- (d) The number of times a customer opted to accept an alternative remedy, instead of taking up the Right to Exit;
- (e) The number of times a customer opted to take no action after being offered the Right to Exit or alternative remedy.

Progressing a sale when a speed estimate is unavailable

1.17 There are rare but unavoidable occasions where line data is not available to an ISP and a speed estimate cannot be provided at Point of Sale. This issue can arise when the customer is moving into a new housing development where no copper lines have been connected. The current version of the Residential Code allows the ISP to complete sale if the customer agrees to proceed without a speed estimate being provided (28d). The proposed version of the Residential Code removes this and obliges ISPs to always provide a speed estimate. This change could limit a customer’s choice of provider or in some cases prevent the customer from being able to place an order with any provider which would cause significant customer harm in some cases. We request that Ofcom modifies the proposed Residential Code such that it retains the ability for an ISP to make a broadband sale where a speed estimate is not available (as long as the customer specifically agrees to proceed on this basis).

Compliance with the Telecom Single Market (TSM) regulation

1.18 One rationale for further developing the Codes is to incorporate the obligations under the TSM regulation. Sky agrees that this is a sensible approach. However, we think it is reasonable for an ISP who is compliant with the revised Codes to have comfort that Ofcom would also find them compliant with the associated TSM regulations. We consider it appropriate for Ofcom to seek to provide such comfort to ISPs (in whatever form Ofcom considers reasonable).

SECTION 2: SUGGESTED AMENDMENTS TO THE RESIDENTIAL AND BUSINESS CODES

- 2.1 Below are drafting changes suggested by Sky – unless stated, the principles apply to both the Residential and Business Codes. We have retained the same numbering used in the proposed Residential Code and made amendments based on the text in the Residential Code only (save for the comment against 2.20 which applies solely to the Business Code).
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- 1.7 The small business reference may confuse residential users about their rights by wrongly suggesting that their residential service can always be used for business purposes (for example, Sky Broadband is for residential use). This comment only applies to the Residential Code. Please remove the section in red below:

The Residential Code applies to all fixed access broadband ISPs who sign up to the Residential Code (the “signatories”). The Residential Code does not apply to dedicated business products intended primarily for use by business customers for which there is a separate voluntary Business Code. However, all residential products ~~(which are used in some cases by small businesses)~~ will be covered by the Residential Code

- 1.11 The copy below is inconsistent with later paragraphs that carve out obligations for renewals without speed change (see our comment on paragraph 2.3 below). The change below can remove this conflict with no other impact:

The full requirements of the Residential Code apply in relation to new customers and to existing customers buying new services with a different advertised speed to their current service (including downgrading to a lower speed). ~~Except for those in Principle 1, all requirements also apply to customers renewing an existing contract.~~

- 2.20 The blue copy below reflects the fact that dedicated business broadband products may be purchased for use in a variety of different sectors, not just a typical office scenario (e.g. serviced apartments). ISPs should be afforded the right to refer to an evening peak time period where the ISP considers that alternative time period to be better represent the normally available speed. This comment only applies to the Business Code.

As noted above, ISPs must ensure that normally available download, minimum guaranteed download and normally available upload speeds account for the contention experienced at peak time, defined by default as 12-2pm every day, or 8-10pm if the ISP reasonably considers it appropriate and representative of that particular customer’s daily peak time period.

- 2.3 The blue copy below reflects our understanding of the intention where there is no change to a customer’s broadband speed (i.e. moving from a capped to an uncapped service) and clarifies that providers and customers need only send and receive speed updates where there is a speed change, as proportionate to manage operational cost and reduce information overload:

Where customers take a new service, or there is a change to their contractually agreed broadband speed (but not where a customer is changing their usage arrangements such as changing their usage cap), ISPs must provide information on estimated speeds as detailed in paragraph 2.8 as early as practicable in the broadband sales process. The sales process commences as soon as

customers are asked to input or provide any personal information (such as their address or landline number), regardless of the channel by which the customer chooses to contact the ISP, or the method of communication (e.g. webchats or emails). For existing customers changing their current broadband service, speed information must also be provided as early as practicable, and before they agree that their broadband speed will be upgraded or downgrade.

- 2.4 The requirement to provide speed information before financial details is too prescriptive in our view. For example, providers will already have existing customers' financial information. We request the following change:

ISPs must always provide the required speed information prior to the customer agreeing to purchase the service. ~~This will always be before ISPs ask for the customer's financial details.~~

- 2.32 We propose the blue copy because full speed information is disproportionate where a customer is extending their usage allowance with no impact on their existing speed:

Once the customer has purchased a service, or recontracted in circumstances where there is a change to their contractually agreed broadband speeds, ISPs must provide the customer with the information below in a written, durable format which the customer can refer to at a later stage, and in a way that is clear and transparent to the customer. This is most likely to be in an introduction/starter pack sent by letter, email and/or in "My Account" (in the latter case, notifying them when they have done so).

- 2.40 We propose the blue copy because full speed information is disproportionate where a customer is extending their usage allowance with no impact on their existing speed. We do not understand the intention behind the copy in red below, as Ofcom banned automatically renewable contracts in 2011:¹

Customers who are renewing an existing contract in circumstances where there is a change to their contractually agreed broadband speeds must also be provided with the information in this section, ~~including where their contract is renewed automatically.~~

- 2.41 We propose the blue copy because full speed information is disproportionate where a customer is extending their usage allowance with no impact on their existing speed:

The information set out in this section must be sent as soon as possible after the sale or recontract affecting a customer's agreed broadband speeds has been concluded or taken effect, and, in any event, must be sent within 7 calendar days of the transaction or contract renewal date. CPs must ensure that the information in paragraphs 2.33a) and 2.34 to 2.38 is incorporated into the contract for the provision of the relevant services to the customer in a manner consistent with the requirements of Article 4 of the EU Open Internet Access Regulation.

¹ <https://www.ofcom.org.uk/about-ofcom/latest/media/media-releases/2011/removing-barriers-to-switching-of-com-bans-rollover-contracts>

- 2.56 We propose the blue copy to balance the unintended financial implications of always free diagnosis visits:

ISPs must not charge customers for engineer visits that are needed for diagnosis purposes, or to address a speed problem, as part of the right to exit process, but may charge fees reflecting the cost of unscheduled customer cancellations (e.g. where an ISP has been unable to gain access having attended an agreed appointment) or engineer visits made in good faith and that transpire to be inappropriate and due to matters entirely within the average customer's full and reasonable control.

- 2.60 Please delete the copy marked red if Ofcom's online FAQs are correct concerning actual speeds (see extract below):

However, this process must not unduly delay diagnosis of the fault or, where relevant, moving through the process outlined in this section. ISPs can rely on their own performance checker (~~or Ofcom's~~) to verify the actual speed on the line where a speed problem has arisen. If the access line speed is below the minimum guaranteed speed, then the ISP does not need to carry out further testing. However, an access line speed above the minimum guaranteed download speed does not demonstrate that the actual speed at the CPE is also above the minimum (e.g. due to effects of contention).

Extract from Ofcom Broadband Checker FAQs:

*"This checker uses broadband availability and **predicted** speeds data provided by the UK's major Internet Service Providers in June 2016.*

*Standard Broadband speed **predictions** refer to the highest **predicted** speed of any major ISPs for packages up to 30 Mbit/s. Superfast Broadband speed **predictions** refer to the highest **predicted** speed of any major ISPs for packages between 30 and 300 Mbit/s. Ultrafast Broadband speed **predictions** refer to the highest **predicted** speed of any major ISPs for packages over 300 Mbit/s. **The checker should not be regarded as providing a definitive view** and we plan to update the data later in the year."*

We note also that the Ofcom Broadband Checker is available via a smart phone app, which provides a different measure of speed to that used by the Code because and includes the impact of Wi-Fi signals on the speed received.

- 2.67 We propose the blue copy because ISPs should have flexibility in how they resolve a speed issue including by providing a faster service at the suppliers cost with no additional cost to the customer (i.e. the supplier has provided the service that the customer contracted to receive):

The customer must be informed of the timescale for resolving problems and be kept informed of progress. An ISP may resolve a speed issue by providing a faster service for no additional cost or extension to a customer's minimum term or other contractual obligations. If the speed problem has not been remedied within 30 calendar days of the speed problem being reported, or if the ISP otherwise determines that the problem cannot be addressed, the ISP must formally offer the customer the opportunity to leave their contract immediately and without penalty.

ANNEX 1: RESPONSES TO OFCOM'S SPECIFIC CONSULTATION QUESTIONS

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

a: Yes – Sky considers this to be a reasonable principle for the Codes.

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

b: Yes – this provides a more consistent experience in principle for customers but please see our comments above.

Question 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?

c: Yes – we consider that 30 days is in principle a reasonable period to resolve slow speed faults but please see our comments above.. We would expect some faults to be resolved outside of this timescale (but only a small number)

Question 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?

d: When pay TV has been bought / re-contracted at that same time as the broadband service as part of a single transactional decision we agree in principle.

Question 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?

e: Yes – we think that one of the main benefits of the proposed Codes is that they adopt a more consistent approach across different broadband technologies.

Question 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?

f: We think that the signatories should be given at least 15 months to implement the proposed changes. This reflects the significant developments that are required in order to be compliant with the revised Code.