



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

Virgin Media response

10 November 2017

Non-Confidential Response

EXECUTIVE SUMMARY



Virgin Media welcomes the opportunity to respond to Ofcom's consultation on its proposed revisions to the Broadband Speeds Codes of Practice. We agree that broadband speeds are an important factor in consumer choice and information about broadband speeds helps to empower customers.

We support the key aspects of the revisions proposed by Ofcom. We believe that they achieve the right balance between informing and empowering consumers, holding ISPs to account and supporting competition and investment in networks.

Achieving a level playing-field and supporting competition

Obligations imposed on ISPs should encourage investment and be comparable and consistent regardless of differences in technology. This is essential to enable customers to compare like with like and avoid distorting the market. We believe the proposals largely achieve this balance.

Avoiding information overload

As the only major ISP to publish its normally available speeds¹, updated on a monthly basis, we believe that the industry can do more to help customers understand the actual broadband speeds they can expect. However, it is vital that the revised codes strike the right balance so that any information we provide helps customers to understand their broadband speeds. Too much information is counter-productive and overburdens ISPs for no consumer benefit.

Sufficient time to implement

Virgin Media will require sufficient time to implement the proposed revisions to the codes.

BT and other DSL providers already have systems and processes in place to measure speed information as a range, log minimum speeds guarantees and enable customers to exit without penalty if speed falls below that threshold. Virgin Media will have to develop all of these systems and processes from scratch, for both consumer and business customers.

The consultation document does not set out the obligations in sufficient detail to enable Virgin Media to commence development work now. We will need to see the revised codes and testing

¹ www.virginmedia.com/ourspeeds

methodology and discuss with Ofcom our proposals to implement the codes to ensure we get it right first time.

Consultation Questions

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 principle, we support Ofcom's proposed revisions to the codes. As structured, we believe the proposals strike the right balance by informing and empowering customers, but stopping short of imposing disproportionate (and counter-productive) obligations on ISPs. We set out below where we believe customers would benefit from changes to these proposals or we have concerns about how Virgin Media and other ISPs would implement the proposals in practice.

BT and other DSL providers already have systems in place to measure speed information as a range, log minimum speeds guarantees and enable customers to exit without penalty if a customer's speed falls below that threshold. These obligations do not currently apply to Virgin Media. We will have to develop all of these systems from scratch, for both consumer and business customers.

We believe that any obligations imposed on ISPs under the code should support and encourage investment and be comparable and consistent, regardless of differences in technology. This is essential to enable customers to compare like with like and avoid distorting the market. We believe the proposals in their current form largely achieve this balance.

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

Customers use broadband services at all times of the day, not only at peak times, and Virgin Media believes that a measurement of speed over 24 hours better reflects actual use and would be more easily understood by customers.

Virgin Media conducted extensive consumer research earlier this year to ascertain the most informative and transparent way of presenting broadband speed claims. We carried out this research following the ASA's decision to review its guidance on how headline broadband speed claims are presented in advertising. The results showed clearly that consumers consider peak-time speeds unhelpful: they are interested in the speed they will receive over the whole day, rather than just between 8pm and 10pm. Consumers also show a worrying lack of awareness of when the peak-time occurs. Although we have not carried out equivalent research with business customers, we would expect there to be equal confusion amongst businesses about the peak-time period for business users. We question whether stating a peak-time that means nothing to customers is of benefit to them in making an informed purchasing decision. Any information we provide to explain what peak-time means is simply going to contribute to the information overload facing a customer when making a purchasing decision.

If Ofcom's view is that provision of speed estimates must highlight peak-time use, then analysis of use of the Virgin Media network over the course of the day suggests that the period for measurement should be broader. This would more accurately reflect actual peak-time usage. There are also additional benefits in measuring over a broader period, since it will enable more accurate testing. This is because we will not be able to test the speed of the line while in use. If the testing period is short and customers are using their internet connections throughout this period, we may not be able to test the speed of the line. Expanding the peak-time period not only reflects actual peak usage, but expands the window during which we can run speed tests on the line. This increases the likelihood that we can carry out speed tests regularly and this will increase the accuracy of those tests.

We are particularly concerned about the suggested peak-time for business. The suggested peak-time period of 12-2pm seems arbitrary and does not reflect actual peak time use by businesses for business-related activities. Virgin Media has carried out some analysis of peak-time use and in relation to business broadband services, 12-2pm does not appear to be the peak time for these services. We can share evidence of this traffic analysis if it would be helpful.

We have not conducted any specific research to determine why customers might be using broadband services during 12-2pm. However, it seems odd that ISPs should measure business broadband use during a narrow window over the lunchtime period, when the logical assumption is that employees who are using broadband services over their lunchtimes are more likely to be doing so for personal, rather than business use. It would make more sense to measure speeds over 9am to 5pm to capture periods when the service is in use for business purposes.

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

We understand the logic of providing a minimum guaranteed download speed at point of sale and in after-sale information. However, we believe there are certain points Ofcom should consider before revising the code to expand this requirement to all broadband providers.

- There are advantages to expressing the minimum guaranteed download speed as a percentage of the advertised speed, as proposed for Cable and FTTP. This figure will be consistent across all customers on that broadband package. As a result, it will be transparent, easy for ISPs to communicate this figure to customers and easy for customers to remember.
- In the consultation, Ofcom suggested that the take-up of the right to exit for DSL services is very low. We believe that having personalised minimum guaranteed speeds and an associated lack of transparency may be a factor. The minimum guaranteed speed for DSL customers varies by customer depending on line length and line characteristics. As a result, customers may well not know what their minimum guaranteed speed is in order to exercise a right to exit. Even if ISPs provide this information at point of sale, this information may not be readily available to customers after the initial sale. To ensure a level playing field between the two different methods of calculating minimum download speeds, Ofcom should consider what more DSL providers should do to ensure transparency and accessibility of minimum guaranteed download speeds after sale. As a minimum, we would expect this information to be clearly available to customers in written documentation and displayed prominently in customers' online accounts.
- The consultation is unclear in some key areas. As acknowledged by Ofcom in the consultation, the speed problem may be due to factors within a customer's home, such as internal wiring, or wifi, or using old devices not capable of supporting high broadband speeds. What assistance is Ofcom expecting ISPs to provide to help the customer alleviate the problem? We believe that an ISP should help the customer troubleshoot the problem, as we do today, but we would not expect the ISP to be obliged to fix the problem free of charge. Ofcom should make this clear.

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?

If a customer's speed falls below the minimum guaranteed download speed for a sustained period of time and that problem is due to matters within the ISPs control (and not factors within the home) then we agree there should be a limit on the length of time providers have to fix the problem before offering the right to exit. However, the proposed time limit of 30 calendar days will be challenging to meet in practice and we believe that 60 calendar days is a more appropriate time limit. There may be many reasons why a customer may be experiencing speed problems and fixing these problems within a 30-day period may not always be within an ISPs control. For example, validating a speed issue may take time, or the customer may make fixing the problem difficult to achieve within this short time. If a customer is on holiday and only willing to make themselves available for an engineer visit at a specific date and time, or cancels an appointment, can the customer then exercise the right to exit? The lack of clarity around how the process would work exacerbates these concerns.

Improving the right to exit process in the code

Virgin Media believes it is essential that the codes clarify the steps an ISP must take. In particular:

- At what point does the clock start? When the customer first calls in? When the speed problem is validated? If the clock starts when a customer first calls in, Ofcom's proposal would give the ISP only 27 calendar days to fix the problem before a right to exit is exercised (given the 3-day period to validate the speed issue)
- How is a speed problem to be validated, particularly if the problem is intermittent?
- At what point does the clock stop? Can the customer still exercise the right to exit if the ISP offers and the customer accepts credits for the duration of the speed problem as an alternative to a right to exit? If so, how and when? We suggest that if a customer has accepted credits for the duration of the speed problem, that customer should not have a right to exit.
- If a customer has caused a delay, how does this affect the time limit of 30 days?
- What else would fall outside of the ISPs' control and responsibility? For example, if a manufacturer update to firmware caused an issue, or a firmware update is required to fix the problem (with all the attendant time required for adequate testing before implementation), does this have to be completed in the 30-day period? This is not practical or possible.

Minimum guaranteed download speed

The consultation suggests that the minimum guaranteed speed with an associated right to exit applies only to download speeds and we think this is right. Applying a minimum guaranteed upload speed would lead to information overload and create confusion.

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?

This is likely to have significant commercial implications for broadband providers who also provide pay-TV services, including premium TV services.

We note that Ofcom states it is not proposing to extend the right to exit to mobile phone contracts taken up alongside broadband services. We agree with this. The consequences of cancelling broadband but continuing with mobile services should remain a contractual issue.

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?

In principle, we agree that the codes should be capable of applying to standard residential and business fixed broadband services that are contended. We would not expect the codes to apply to bespoke services to businesses or to non-contended services such as leased lines or to wholesale services. So far as is possible, the obligations imposed on ISPs should be comparable and consistent between services regardless of differences in technology. A level playing field is essential to enable customers to compare like with like and to avoid distorting the market.

We note that Ofcom proposes that Virgin Media measures the 'normally available download speed' at a national level. We support this and agree that there would be limited benefit in testing at a local level compared with the enormous costs that would be incurred to provide testing at this level, costs that other providers are not being required to incur. Requiring Virgin Media to measure at a local level when other providers are able to measure at a national level would be disproportionate. A customer is likely to assume the measurement that is taking place on the VM network is the same as on BT and other networks for the purposes of comparison, which will lead to market distortion, and trying to explain the differences between the tests to customers will cause confusion.

Measurement at a national level across all technologies is a fair and proportionate approach and ensures a level playing field across all ISPs. It will also set expectations about what speeds a customer can expect to achieve in a consistent manner across the country, treating all customers on the same package in the same manner.

We support Ofcom's proposal to tie the minimum guaranteed download speed for FTTP and cable to 50% of the advertised speed. This will encourage and incentivise continued investment in networks to improve speeds, in a way that the existing measurement for DSL (lowest 10th percentile of customers) does not. However, we are not clear from the consultation how Ofcom proposes to treat FTTC. As it uses the same technology as ADSL, we assume that ISPs would calculate the minimum guaranteed download based on the lowest 10th percentile of customers. If this is the case, to ensure a level playing field between the two different methods of calculating minimum download speeds, Ofcom should consider what more xDSL providers should do to ensure transparency and accessibility of minimum guaranteed download speeds after sale. As a minimum, we would expect this information to be clearly available to customers in written documentation and displayed prominently in customers' online accounts.

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?

Virgin Media will require sufficient time to implement the proposed revisions to the codes.

BT and other DSL providers already have systems in place to measure speed information as a range, log minimum speeds guarantees and enable customers to exit without penalty if speed falls below that threshold. Virgin Media will have to develop all of these systems from scratch, for both consumer and business customers.

The consultation document does not set out the obligations in sufficient detail to enable Virgin Media to commence development work now. Before a project can be set up to begin development work, we will need to see the revised codes and testing methodology and discuss with you our proposals to implement the codes, to ensure that we get it right first time.

Virgin Media

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